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SECURING THE BORDER—2011

HEARINGS

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 30, 2011
BUILDING ON THE PROGRESS MADE

APRIL 7, 2011
PROGRESS AT THE LOCAL LEVEL

MAY 4, 2011
PROGRESS AT THE FEDERAL LEVEL

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SECURING THE BORDER—2011

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SECURING THE BORDER: BUILDING ON THE PROGRESS MADE

WEDNESDAY, MARCH 30, 2011

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

The Committee met, pursuant to notice, at 2:34 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Landrieu, McCaskill, Tester, McCain, and Johnson.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. I want to thank our witnesses particularly and everybody else who is here.

This is part of a continuing series that we have been doing on this Committee overseeing our border security operations, and this one is important because of the range of the witnesses that we have before us and the work Mr. Stana and the Government Accountability Office (GAO) has done. We are going to follow this with two more hearings on the Southwest Border particularly in which we are going to have some State and local officials and then Secretary Janet Napolitano will be with us after that.

The question of border security continues to be important to our country in various ways. This morning, right here in this room, we began a different series of hearings on taking a look at the institutions of our government that were created after September 11, 2001, to better protect our country than we were able to on September 11, 2001. We had Tom Kean and Lee Hamilton of the 9/11 Commission testify. And, of course, in that case we have done an enormous amount to increase border security in the sense of stopping terrorists and the instruments of terrorism from coming into our country, and with some success, I think.

I was struck in the testimony that has been filed for this Committee hearing about the interest in the question of what is border security—in other words, to better define it. And one series of definitions comes from the Secure Fence Act of 2006 in which they list the elements of operational control, and it is with regard to terrorism and its tools. Narcotics and other contraband are obviously quite relevant when you think about the fact that the Federal Bureau of Investigations (FBI) in testimony before this Committee a while ago said that the No. 1 organized crime threat in America today is from the Mexican drug cartels.

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Obviously the Mexicans say that we are creating a problem for them going the other way and that weapons are coming in from the United States. And, of course, probably the most politically sensitive and controversial aspect of border security is quite different, which is the security of knowing that people are not coming into the country illegally and in that sense making a mockery of our law.

We have spent a lot of money and a lot of time increasing the resources that we have devoted to border security. Some numbers that GAO provided:

In fiscal year 2004, when the Department of Homeland Security (DHS) first existed, at that point we had 10,500 agents to patrol the land borders. In fiscal year 2010, we had double that, 20,000 agents at the land borders.

In 2004 we had 17,600 agents inspecting travelers at air, land, and sea ports of entry. That went way up by fiscal year 2010, and the expenditures more than doubled, from $5.9 billion to $11.9 billion for personnel, infrastructure, and technology.

The question that we constantly ask is: What do we get as a result of these investments and how do we measure the results? And this goes back to the first question that I raised.

One of the standards that is used a lot is apprehensions, and it has an odd and inverse effect as you look at it. That has always struck me as problematic, but it may be relevant. As you can see in that chart that we are showing,[1] as the number of agents go up, the apprehensions go down. So you would say, what does that tell us? Well, generally speaking, we have felt that tells us there are fewer apprehensions because there are fewer people trying to come over illegally, although, as others have pointed out, using apprehensions as the metric here is problematic because the data tracks events rather than people. So if one person is apprehended more than once a year, it is counted more than one time.

At different times, in fact, in the past decade, the Border Patrol has cited both increases and decreases in apprehensions as a sign that they are being more effective. Either they are apprehending a higher percentage of those crossing the border or their operations have reduced flows.

There was a recent RAND report that says, "commonly reported Border Patrol measures, such as numbers of illegal immigrants apprehended or miles of border under effective control, bear only an indirect and uncertain relationship to the border control mission, making them unreliable management tools." So that leads me to want to engage you—and some of you have provided testimony to that effect—in helping us to see if we can find a better way to measure security at the border. In terms of illegal immigration, the common sense lay person's measurement would be how many people are trying to get over and how many people are actually coming in as undocumented aliens.

This question of border security continues to be important to us in all the ways that I stated, in terms of the organized crime threat represented by the Mexican drug cartels; obviously in terms of the terrible violence in Mexico, some of which has threatened border

[1] The chart submitted by Senator Lieberman appears in the Appendix on page 97.

communities within the United States; and then in terms of illegal immigration, both because when there is a law, we have a responsibility to enforce it to the best of our ability, but also in the context of the congressional environment. Estimates vary but there are never less than 10 million people who are here as undocumented aliens, and I think there is a widely held conclusion that improving border security is a precondition to coming back and dealing with illegal immigration. Ms. Meissner has actually suggested in prepared testimony an inverse relationship that maybe it should go the other way—that is to say that fixing the problem of undocumented aliens may actually help us to better secure the border or reduce the flow of illegal immigrants, and we welcome that testimony as well.

But, anyway, it is an important hearing. I thank the witnesses. You come with extraordinary experience and I look forward to your testimony.

Senator McCain, welcome. He has been designated as the Ranking Member by Senator Collins. He obviously has a lot of both expertise and interest in the subject, and I have always wanted to work closely with him on something, and this gives me the opportunity. [Laughter.]

Senator MCCAIN. That is an inside joke.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Thank you, Mr. Chairman, and thank you for your continued interest in this issue, and I know that Connecticut is a long way from the U.S.-Mexico Southwest Border, particularly, but you have been good enough to come to Arizona and hold hearings there, and it is obviously an issue of great importance to the people that I represent.

I want to thank our witnesses for coming today, and I would like to mention I recently returned from a visit to the Arizona-Mexico border last week. And while I was at the Douglas Port of Entry, I was shown a video taken 3 days earlier of a cartel-led execution in Agua Prieta. That is across the border mere yards from the Douglas Port of Entry. In the video, three trucks of men armed with fully automatic weapons sped down a busy street flashing police lights. After cordoning off a busy city block, they began shooting, firing over 400 rounds, killing an estimated five people and wounding 17. This level of violence is new to Agua Prieta.

Ten years ago, we could not have anticipated the headlines that routinely appear in newspapers today throughout the country, detailing the dangers along our Southern Border. For example, on March 3, *Reuters* reported, "Police link Arizona beheading to Mexican drug cartel"; and the January 5 headline in the *L.A. Times,* "Mexico's Drug Violence Respects No Borders." It goes on and on.

The extreme levels of violence in Mexico that have resulted in the killing of 36,000 Mexicans over the past 4 years—and, by the way, over that past 4 years, 21,000 Afghans have been killed in Afghanistan, and yet in Mexico there have been 36,000 over the same period of time. It has not spilled over. We have had a Border Patrol agent killed, we have had a rancher killed, but it has not spilled over yet, but it is getting closer.

As the witnesses today will testify, we are seeing progress, and I have witnessed this progress myself, particularly in the Yuma Sector, which has seen a dramatic reduction in the number of illegal border crossers. In the Tucson Sector, it appears illegal traffic has slowed due to the continuing economic recession, the increased numbers of Border Patrol agents, the deployment of National Guard troops, and increased use of consequence programs like Streamline. And I want to emphasize under Operation Streamline, a repeat crosser knows that the individual is going to face increased penalties, it is a strong disincentive for crossing. And also, once they are done, releasing them at a border crossing far away has also had a significant effect.

But progress is not success. We are far from success in the Tucson Sector. Forty percent of the marijuana smuggled across our Southern Border comes through the Tucson Sector, and there are now today—I was just briefed—between 75 and 100 guides sitting on mountaintops in Arizona with sophisticated communications equipment, food, binoculars, and other equipment guiding the drug smugglers as they move up through Pinal County into Phoenix, Arizona, from where drugs are distributed all over America. Phoenix has become the drug distribution center for every place in America but southern Texas. And so if we still have 75 to 100 guides sitting on mountains in Arizona guiding the drug smugglers, I do not think we could declare success.

GAO is going to tell us that only 129 of the 873 miles of the Southwest Border are considered to be under "operational control." Additionally, the success our law enforcement agencies achieve at protecting our cities and towns is often made at the expense of citizens that live in more rural areas. In other words, as they are driven out into the rural areas, the enforcement efforts in Douglas, Nogales, and Yuma are sending the human and drug smugglers across Arizona's ranches and farmlands, particularly in eastern Arizona.

This is why many people in southern Arizona feel like they are living in a no-man's-land, abandoned by the Federal Government and this Administration. It does not help that last year David Aguilar, Deputy Commissioner for Customs and Border Protection (CBP), was quoted in *The Arizona Republic,* saying that "the border is not a fence or a line in the dirt, but a broad and complex corridor." It is, Mr. Aguilar explained, "a third country that joins Mexico and the United States." Citizens should not be required to live in a "third country."

By comparison, the improvements made in the Yuma Sector have been a great accomplishment. Despite some people's recollections, this progress was neither easy nor a foregone conclusion. I would like to remind you that 10 years ago the Yuma Sector was as out of control as the Tucson Sector. Now it is viewed as a success.

In other words, Mr. Chairman, we know how to succeed. We have done it in San Diego, in Yuma, and in parts of Texas. It is not as if this is an impossible task.

By the way, I want to thank Senator Johnson, from Wisconsin, for coming to visit our border, and I hope he found it to be an enlightening and enjoyable experience. I know he is a person of great

personal wealth, and I hope you spent a lot of money while you were there. [Laughter.]

Finally, the National Guard is now going to leave. I have been told by higher and lower ranking people that have to do with our border that they are indispensable. So I do not know how the Administration can say that we still have significant issues and yet remove the National Guard, who also, by the way, gain a great deal out of being on the border. So it leaves me wondering why members of this Administration who claim they want to make every effort to secure the border insist on taking another step backwards by removing the National Guard prematurely.

Again, Mr. Chairman, I want to thank the witnesses. I have probably taken too long in my opening statement, but I know the Senator from Wisconsin had the same experience that I do. You meet with the ranchers down there. The people, some of them have been there four and five generations, and they are afraid to leave their homes. They literally cannot find a secure environment to drop their kids off for school. We cannot force our citizens to live under those kinds of conditions. And I acknowledge again, Mr. Chairman, there have been improvements made. But we still have quite a ways to go, particularly in rural parts of our States, but also this issue of the drug cartels is something which is going to be with us for quite a period of time.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator McCain. I think that strikes the appropriate note. We feel like we are making progress, as the chart suggests, but obviously we have some distance to go, and it is very important that we get there for a host of reasons that I cited in my opening statement.

Let us go right to the witnesses now. I thank my colleague, Senator Johnson, whose wealth has been celebrated, and I am very happy for him. And, Senator Tester, I am not going to comment on your net worth here. This happened before you came in, Senator Tester, so it was Senator McCain's humor.

Asa Hutchinson has many attributes that I admire, and the one that brings him here to us is his service as Under Secretary for Border and Transportation Security at the Department of Homeland Security in the previous Administration. Thanks for coming and we welcome your testimony now.

TESTIMONY OF HON. ASA HUTCHINSON,[1] FORMER UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY AT THE U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HUTCHINSON. Thank you, Mr. Chairman and Members of the Committee. It is a pleasure to appear before you again, and I want to thank you for your leadership on this important issue.

First, let me make it clear that I agree with the comments that have been made that significant progress has been made as a Nation in terms of securing and strengthening our border. Since I had the honor of serving as the Nation's first and actually only Under Secretary for Border and Transportation Security when the Department was first founded, I have a unique perspective, and I can see

[1] The prepared statement of Mr. Hutchinson appears in the Appendix on page 100.

the progress that has been accomplished in terms of human resources, in terms of technology, intelligence fusion, and State and local cooperation. We could only dream about the resources that are available today in terms of the Border Patrol agents. In the early days of the Department, the number of Border Patrol agents was 11,000 and now it is 20,700. The number of border liaison officers who work with Mexican counterparts has increased 500 percent. And as has been noted, the Border Patrol apprehensions have decreased by 36 percent in the last 2 years, which I believe is an indication of growing effectiveness of our border efforts. Statistics are difficult, but I think that is the logical interpretation of that statistic whenever you see the apprehensions going down.

This Committee, I would emphasize, has played a significant role in this progress. Without a doubt, more needs to be accomplished, and that is the subject of our remarks today. And, Senator McCain, I do want to acknowledge that you gave me my first education on the border with the promise that you solicited from me that I will appear at the border with you. I did and it was a great education, as others have received, and I look forward to the occasion to go back.

We are talking about border security, and I will come back to that, but I want to mention one other success, which is the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program, which requires a biometric check for our international visitors from visa countries. It is a success story. It was implemented under very strict guidelines of Congress, and it has dramatically improved the security and integrity of our immigration system. But there remains a gaping hole in our border security efforts so long as we do not have the capacity to know when a visitor leaves the country. And I would emphasize very dramatically, if I could, that we must adopt an exit system with greater urgency. I urge Congress to enact firm deadlines for the Department of Homeland Security to implement an exit system.

Now, in the broader picture, I would emphasize three priorities that are essential to control our borders:

First, to accelerate the resources necessary to control our Southern Border. Much of this deals with technology.

Second, we need to monitor and enforce the law on visa overstays.

And, third, we need to reduce the power and pull of the marketplace for illegal employment.

All of those three ingredients I believe will serve as a deterrent and will serve as all of the tools necessary to be successful in our border efforts.

And despite the fact that we have achieved some success in border security, the fact is that our government has operational control of less than half the 2,000-mile Southwest Border. Now, you can define operational control in different ways. I do not think it is wise for the government to redefine operational control so that we can achieve greater success. I think we ought to have a definition of operational control that the American people understand and accept, and if we are short of that, they understand it and they understand the gaps. They have to understand the resources that

are needed to reduce that gap. But I think we have to have that level of honesty.

I would define operational control as the capability to detect illegal entry at the border, and the detection part is important. That is the knowledge of when there is an illegal intrusion in our border, and then the ability to respond and stop any border breach. Now, that does not mean you get everyone, but that means that you have the capability to detect it and the ability to respond and stop a border breach.

Now, with that measurement, which I think has been accepted largely, we have control of less than one-half of the Southwest Border. And while we increase it at the rate of 126 miles per year, it is still woefully inadequate, and we have to accelerate the deployment of resources, but it should be done intelligently. We need not build a fence across every inch of the Southwest Border. It is an important tool to utilize, but the fact that you have thousands of fence breaches that have to be repaired shows that is not the end-all solution. We should use a combination of physical fences and barriers, human resources and technology.

Now, if I might move on to the visa overstays that I addressed, it is estimated that 45 percent of the illegal immigrants in our country are here because of visa overstays. They come in legally. They stay illegally. And this is just as much a part of border security as the Border Patrol agents along the border. It is a threat to our rule of law and the integrity of our immigration system, not just the hundreds of thousands of illegal border crossings, but the hundreds of thousands who enter lawfully but remain illegally because of visa overstays.

Our border can be breached even more easily by getting a lawful visa and remaining in the United States after the visa expires, than trying to sneak across the Sonora Desert. And that was evidenced by the September 11, 2001, terrorists who came in just that way. At the present we have no effective way to tackle this challenge. On paper the solution is simple, but it is much more complicated than that.

We must have every visitor who departs the country check out using biometrics. This is no easy task. While I was Under Secretary, I worked to develop pilot programs at airports and land borders on the exit system. It continues to be difficult, and Secretary Napolitano has retreated from the exit strategy requiring biometrics. In fact, the Department has announced it is no longer pursuing the biometric exit system. It is very clear to me that this solution will never happen without the leadership, the mandate, and the oversight of Congress.

In 2003, Congress was clear in its direction to the Department to build the entry system, and you gave strict deadlines, oversight. You held us accountable, and it was accomplished on time within those deadlines and within the budget Congress gave us. I think the same type of intensity has to be devoted to developing an exit system where the mandate of Congress is clear and your oversight is ubiquitous.

The third element of border security is interior enforcement, and while we always need to give Immigration and Customs Enforcement (ICE) the necessary resources to enforce our immigration

laws within our country, it is just as important to give the tools to the employers so that they know whether they are hiring somebody who has legal status in this country, or does not have legal status. Right now we have the E-Verify program that is a significant success story because even though it is voluntary, over 250,000 employers are participating in it. But the fact is it gives the employer information as to whether that is a valid Social Security number or whether there is some other indication that the person is in here illegally. But it is not a real-time system that provides a level of information needed to assure that the Social Security number is not being misused in some means and that program needs to be strengthened.

When this type of capability is deployed, then the magnet will lose some of its drawing power for those that are trying to illegally enter the country to obtain employment because they will not be able to get the employment even if they are successful in going across the border.

I look forward to the opportunity for questions and answers to further discuss these particular issues, but let me end with a comment as a former head of the Drug Enforcement Administration (DEA). It is very significant to me as you look at the increased security and capability at our ports of entry, and a significant sign of success is that while the apprehensions of illegal aliens between the ports of entry have dramatically decreased, the seizure of illegal drugs has increased, which tells me that the tightening and hardening of our ports of entry have been successful. It has forced the cartels to move to a much more difficult route to bring in our drugs, and, of course, that brings a new level of concern with our Border Patrol agents meeting very violent drug traffickers between our ports of entry. And so there is more work to be done, and I look forward to the leadership of this Committee.

Thank you very much.

Chairman LIEBERMAN. Thanks very much for that testimony. Very thoughtful, really interesting, and it probably would shock most people in our country that the statistic you cited, that as much as 45 percent of the illegal immigrants in our country are actually visa overstays, people who came in legally and then stayed illegally. That is not the common perception. The common perception is that the undocumented immigrants are all coming in illegally, mostly, in the common view, across the Southwest Border. I have seen different numbers on that visa overstay, but never less than 35 percent. So that is quite a significant number, and I know that the politically controversial part of this is on the Southwest Border, but if we are really concerned about making a mockery of our system of law, then both elements of this have to be dealt with. And the probability is that we can deal with this element with a better exit system and make a real difference in it than we can at the border. But hopefully we can do both. Thank you very much.

Doris Meissner was, during all of the Clinton Administration, the Commissioner of the Immigration and Naturalization Service at the Department of Justice and now is associated with a think tank that works on migration policy. So we are very grateful you are here and welcome your testimony now.

TESTIMONY OF HON. DORIS MEISSNER,[1] FORMER COMMISSIONER OF THE U.S. IMMIGRATION AND NATURALIZATION SERVICE AT THE U.S. DEPARTMENT OF JUSTICE

Ms. MEISSNER. Thank you very much, Mr. Chairman, Members of the Committee, and thank you for the opportunity to be here today.

My core message today is to urge that the Administration and the U.S. Department of Homeland Security, working with Congress, define what constitutes effective border control and establish measures of effectiveness for managing and assessing our border control efforts. Clear definitions and indicators of what constitutes effective border control are essential as a basis for promoting a more informed public discussion and broader consensus about the effectiveness of border enforcement, especially at the southwest land border.

The need for effective border enforcement and control may well be the most widely shared point of agreement in the national immigration debate. For more than 15 years, and particularly since September 11, 2001, both Democratic and Republican Administrations and Congresses have allocated unprecedented levels of resources to strengthen border enforcement. Yet we have very little basis for assessing the return on that investment, and it would seem that many Americans have yet to grasp how much enforcement at the border has indeed been strengthened.

The build-up began in earnest in the mid-1990s. I remember well its origins and driving the border enforcement agenda. The Immigration and Naturalization Service fiscal year 1995 budget request was the start of more than 15 years of major infusions of people, equipment, and technology for border enforcement. As a result, the Southwest Border is today a dramatically different place.

The two highest crossing corridors that historically had accounted for almost 60 percent of apprehensions—San Diego and El Paso—now represent only about 20 percent of apprehension activity. Apprehension levels that had reached historic highs of more than 1.6 million in 2000 dipped to below 450,000 last year. These are lows that have not been experienced since the 1970s. They represent dramatic and positive changes.

At the same time, the changes have brought with them important lessons and new challenges. By far, the most important, of course, has been the experience of September 11, 2001, and the imperative for effective border control in the face of the threat of terrorism.

Today, the Border Patrol employs 20,700 agents, more than double the numbers just 6 years ago, and a budget that exceeds $11 billion, an amount that has also grown at a comparably rapid rate.

But what constitutes effective border control has not been meaningfully defined or debated. As a result, we have little basis for assessing the return on the investment of substantial multi-year border enforcement expenditures or for conducting an informed debate on the adequacy of today's border enforcement strategies and results.

[1] The prepared statement of Ms. Meissner appears in the Appendix on page 105.

In addition, disagreements about border control that are often based on unexamined assertions about the adequacy or inadequacy of current efforts have contributed to a continuing stalemate in Congress over the broader immigration reform agenda.

Opponents of comprehensive immigration reform legislation argue that control of the border must be established as a pre-condition for broader reforms. Reform proponents maintain that effective border control can only be achieved with broad immigration reform. In both cases, "border control" is undefined.

Moreover, lawmakers "keep moving the goalpost," as Homeland Security Secretary Janet Napolitano has observed. Secretary Napolitano has also argued that DHS will never be able to "seal the border" in the sense of preventing all illegal migration.

From a professional law enforcement standpoint, her point is well taken. Zero tolerance is unrealistic, and it is not a standard to which we hold law enforcement in other realms. Instead, overall effectiveness—established through a combination of metrics and other factors—is the appropriate goal and assessment for which to strive.

In recent speeches on the Administration's Southwest Border strategy, Secretary Napolitano has been explaining the ways in which she argues that today's approach is working. This is an important step in sparking a responsible debate about border control. Still, without greater rigor and broader consensus about what constitutes effectiveness, public confidence and immigration reform initiatives will remain vulnerable to assertions of inadequate control.

Historically, apprehension numbers have served as the Border Patrol's answer to the question of what is effective control. However, apprehensions are insufficient as the primary method for assessing enforcement effectiveness, and I have outlined fuller reasons for that in my full statement.

CBP and DHS collect many other kinds of data. Especially valuable should be the extensive biometric data that now number more than 91 million records of fingerprints collected on persons apprehended since the mid-1990s or coming into contact with the immigration system in ways that Mr. Hutchinson has described, such as the US-VISIT program. These data could be analyzed to better understand crossing patterns, repeat entries, smuggling activity, and the success of various enforcement strategies.

Examples of measures of effectiveness that are relevant to border control and could be systematically tracked and incorporated into regular assessments would include analyses of hot spots and responses to them, crime rates, ports of entry activity as smugglers attempt to compromise legal avenues for entry, border community confidence and support, and census and other demographic data.

For example, Mexico's 2010 census shows that the numbers leaving Mexico have fallen by more than two-thirds since a peak in the mid-2000s. Mexican analysts attribute that drop both to the U.S. economic downturn and to stepped-up border enforcement.

At the present time, available measures point in varying degrees to meaningful positive progress in securing the borders. However, the goal should be to systematically track such measures and allow for open assessment of the substantial investments that the coun-

try has made in border security. Only then can public debate about border control be honest and informed. In turn, determining how much and what border enforcement work to keep us safe is essential for building public confidence in the government's ability to enforce the Nation's immigration laws and to manage its immigration system.

Thank you very much, and I am happy to answer your questions or comments.

Chairman LIEBERMAN. Thank you very much. Very important questions that you raise and we will come back to them.

Mr. Stana, welcome back. Thanks for your work for GAO on this question, and we look forward to hearing your testimony.

TESTIMONY OF RICHARD M. STANA,[1] DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STANA. Thank you, Mr. Chairman, Ranking Member, and Members of the Committee. I am pleased to be here today to discuss the work that we have done over the past two decades on border security, and my prepared statement summarizes some of the more recent work that we have done. We have also done work on some of the areas touched on by Mr. Hutchinson, on E-Verify and visa overstays. In fact, Chairman Lieberman, if you think the American public would be shocked to know that 45 percent of the illegal alien population is here through overstaying a visa, they might be even more shocked to know that with the tens of thousands of people that we have put to border security at the border, the number of people we have in the interior searching for visa overstays is in the low three digits.

Chairman LIEBERMAN. Much less than a thousand.

Mr. STANA. Much less than a thousand. A little over a hundred.

I do not want to repeat some of the statistics that have already been discussed. The number of staff at the ports have been increased by 17 percent since former Under Secretary Hutchinson's tenure, and by five times the amount that former Commissioner Meissner had when she took over in 1973. In fact, today there are nearly as many Border Patrol agents in the Tucson Sector alone as there were guarding all of the Northern and Southern Borders when former Commissioner Meissner took office in 1993. So there has been a substantial increase in personnel.

But the personnel is not the whole story. At the ports, we have hardened the infrastructure. We have put in a lot of technology. We have put in portal monitors. We have put in x-rays. We have put in backscatter machines. We have other information available at the booth, passcard readers and so on, that inform the person in the booth whether the person who is presented to them is at least eligible to enter the country as far as the background information goes.

Similarly, the number of Border Patrol agents does not tell the whole story. The equipment that they have is upgraded. The vehicles are much better. They are heavier duty. They have night scopes. They have technology. They have radars. They have sensors

[1] The prepared statement of Mr. Stana appears in the Appendix on page 115.

that they did not have before. So the job is made much easier for the Border Patrol agents than it was, maybe 10 or 15 years ago.

But despite all of this investment, this $12 million investment last year alone, it is still a fact that there are hundreds of thousands of people entering the country illegally every year, and there are tons and tons of illegal narcotics entering the country every year.

I would like to just talk about a couple of areas from my prepared statement, and then we can go to questions and answers. First, let us talk about the situation at or near the border, both at the ports and between the ports.

At the ports there is a rather impressive record: 227,000 travelers were turned away when they attempted to enter illegally; about 8,400 people were apprehended for a variety of charges, some serious; $147 million in currency was seized; as were over 870,000 pounds of illegal drugs and almost 30,000 fraudulent documents, and so on. But beyond these statistics, again, people are getting in, as are narcotics, and this is mainly due to a number of factors. First, the staffing levels are not up to authorized levels. Second, there is a tension between trying to make the ports easier for commerce and legitimate travelers to enter into the country while maintaining a focus and trying to fight back complacency of the workers at the booth. So that is at the ports.

Also at the ports we have the outbound enforcement program, which I think Senator McCain may have mentioned, where CBP is searching for weapons and cash heading south from the sale of drugs and to promote the sale of drugs.

On the cash side, the program is responsible since its beginning 2 years ago for seizing about $67 million in cash. It sounds impressive, but that is out of a total of about $18 to $39 billion that crosses the Southwest Border each year. Not so impressive.

Add to that the fact that the stored value cards, which are extremely difficult to detect, are coming more and more into the smuggling picture, and that is going to present a real challenge to law enforcement.

As far as the weapons side goes, no one really knows how many weapons are going south, but there is a substantial number. And when the Bureau of Alcohol, Tabacco, Firearms, and Explosives (ATF) was asked by Mexican authorities to identify the lineage of the weapons that they seized on their side of the border, they found that nearly 90 percent of them came from the United States.

Between the ports, similarly impressive apprehension statistics in some respects. If you follow the chart there,[1] you see that in 2001, about 10 years ago, it shows that about 1.3 million people were apprehended. The past year it was about 463,000. The Border Patrol considers this as a success through deterrence. That is one interpretation. The Federal Reserve Bank of Dallas had a different interpretation. They overlaid on that chart available jobs, and it tracked with apprehensions. In other words, as available jobs dry up with recessions, the apprehension rate is sensitive to that. Now, neither one of these is an exclusive interpretation, but it is impor-

[1] The chart referenced by Mr. Stana appears in the Appendix on page 97.

tant to understand the context of numbers like this and not attribute it only to the number of Border Patrol agents.

Again, many more drugs are getting into the country between the ports of entry it is mainly marijuana, at the ports maybe more on the cocaine side.

Traffic checkpoints—and I know you have interest in one in Arizona. That one was fairly controversial. Actually, one-third of the seizures of drugs by the Border Patrol are made at those checkpoints. You would wonder, well, how do drugs get that far into the country through a port and over a highway? They do.

Regarding the fencing, most of the fence is between Imperial Beach, California, and El Paso, Texas. It was constructed at a cost of nearly $3 billion. No one knows the effectiveness of that fence, but last year alone there were over 4,000 breaches, and these breaches cost about $7.2 million to fix, about $1,800 per breach.

I want to talk about performance measures very quickly. People had mentioned the operational control measure, and 44 percent of the Southwest Border and only 2 percent of the Northern Border are considered to be under operational control. It is not a perfect measure, but it is a refined measure. The Border Patrol has various steps it takes to make sure that it is not just a scientific guess. It is not perfect, but the Border Patrol has, at least for public consumption, decided not to use that, and they are going to a new set, which will be ready next year, in fiscal year 2012. In the meantime they are just counting things. They are counting apprehensions; they are counting joint operations; they are counting cash seizures. That is the numerator. There is no denominator so you do not know a batting average, if you will.

There are many other ways to come up with performance metrics, and we can talk about that in the question and answer session. But I want to talk about two other issues very quickly.

The first has to do with information and intelligence sharing, and here I think there is a much better story. It has improved, not only between Federal agencies but among Federal, State, local, tribal, and some of our partners on the Northern and Southern Borders. Again, it is not perfect. There have been problems with sharing data in some cases. People can get parochial with some data, and that should not be. In other cases, the Fusion Center information that is sent out to the State and locals may be of questionable value, but they never really assess the value of these products. And for their part, the State and locals are not provided guidance as to what the Federal agents might be interested in as they gather statistics. So as far as information gathering, there is good news and there is not so good news.

Finally, technology. As you know, Secretary Napolitano canceled the SBInet program, and DHS is replacing it with something called the Alternative (Southwest) Border Technology program. It will probably use similar towers to those used with the SBInet program. The first towers are up for funding for fiscal year 2012. They are asking for about $240-some million to start that process. We have been tracking the rationale for the Alternative (Southwest) Border Technology program. We examined the analysis of alternatives they used. We found that there are some flaws in it that concern us. We have not yet been given access to the documents

that would allow us to trace how those analyses made it through technology laydown and translated into a budget. We are continuing to look at that program, and we will have more information later in the year.

Finally, with respect to US-VISIT, as Mr. Hutchinson pointed out, there is some good news and there is some not-so-good news. The good news is the entry side. Every visitor that enters the United States through a port of entry is to be fingerprinted, and their documents are to be swiped, and their identity is to be confirmed.

The not-so-good news is on the exit side. Not having an exit capability is not that much of a concern with seaports because we mostly see cruise ships and that is a closed system. With airports, it is difficult. Our airports are not really configured the way they are in foreign countries to gather exit information, so what they rely on are airline manifests, which is sort of reliable but not 100 percent. On the land exit side, it is just a big problem. It is just difficult to do, and perhaps our Canadian perimeter security negotiations that are just getting underway may allow for an arrangement where our exit becomes their entrance and we can exchange information.

That is my oral statement. I would be happy to answer any questions you may have.

Chairman LIEBERMAN. Thanks very much, Mr. Stana. That was very helpful. We will do 7-minute rounds of questions.

I think there is an agreement across the board here that we have increased our resources, particularly on the Southern Border where most of the concern has been, and we are doing better at the reduction of illegal immigration coming over, but there is not total uniformity of opinion on if the fact that there are fewer immigrants coming over illegally is the result of the increase in the resources we are putting there. I am thinking of the Federal Reserve data that was described. Common sense would say that it is having that effect, and both Mr. Hutchinson and Ms. Meissner have said essentially that it is not possible to achieve 100 percent stoppage of illegal immigration.

I wonder what our goals should be here. I know we talked about how do you define border security. The Secure Fence Act of 2006 that I cited defined it as the "prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband." It is interesting that not only Secretary Napolitano but her two predecessors, Secretaries Michael Chertoff and Thomas Ridge, at a recent colloquium, they said that they thought that was an unreachable goal.

So let me just begin with you, Mr. Hutchinson, what is a reasonable goal here by way of defining what we want to achieve in border security?

Mr. HUTCHINSON. To me the missing element is the measurement as to what percent we are able to apprehend that are coming across. If we are detecting and apprehending 400,000——

Chairman LIEBERMAN. Right.

Mr. HUTCHINSON. There used to be the statistic that for every one you catch, there are three that get through. I have no clue

whether that is accurate or not. Those are just anecdotal statements. But I think there has to be a greater measurement of that because if the economy increased right now, I have no doubt because of the double number of Border Patrol agents, our apprehensions would dramatically increase.

Chairman LIEBERMAN. Would go up, right.

Mr. HUTCHINSON. And so the question is not whether we are apprehending more, but of those that are trying to come across, what percent are we apprehending? And I think people that are very smart need to address that issue, and I think that is the unknown part of the equation.

I think in terms of definitions, I really am disappointed, quite frankly, in the Border Patrol trying to redefine what is effective control or operational control. They have a definition. It is a measuring standard and just because it does not look good to say we only have half of our sectors that are under operational control is not a good reason to change the definition.

Chairman LIEBERMAN. No, I hear you. I want to make explicit what I think is implicit in how I opened this question, which is we have made progress both by observation and by the various metrics that are established, but still, even by the metric that is on the board based on apprehensions—I think nobody would disagree that there are hundreds of thousands of people coming across the border illegally every year, and that is broadly unacceptable.

Ms. Meissner, what can you say to help us understand better what our goals should be and how we might best achieve them?

Ms. MEISSNER. The goal is probably something that is also subjective and relative. The goal that we thought we ought to have in the 1990s, when we had a very permissive attitude about our labor markets and about our economic growth, and the role of migrants in that setting was a very different sense than we have had since September 11, 2001, and in a tighter economy. So this is not entirely science. However, there certainly needs to be more science in it than has been the case, and I would subscribe to what Mr. Hutchinson has said here about needing to know much more fully what percentage or what proportion of the crossings are actually people that we are able to apprehend.

But I think it is also the case that we have demonstrated—and Senator McCain made reference to this in his own experience—with the contrast between Yuma and the Tucson Sector right now. I made reference to the difference between El Paso now and 10 years ago, San Diego now and 10 years ago. When you go to those places—and I spent many an hour in those counties and in community meetings with local leaders, etc., hearing the complaints, talking to them, working inch by inch with the Border Patrol from the ocean to the Otay Mountains to really bring that part of the border under control. When you go there now, it is not that people are not concerned, it is that they recognize that there is an infrastructure in place in which they can have confidence. That is not to say that there are not going to be breaches from time to time. But it is a question of the sense of chaos versus the sense that somebody is in charge.

And so that is both science and numbers and knowing the percentages, but it is also really working on the ground in a commu-

nity policing way to deal with the issue of border control along the Southwest Border.

Chairman LIEBERMAN. I think you were the one who referenced the Mexico Census of 2010?

Ms. MEISSNER. Yes.

Chairman LIEBERMAN. Did the U.S. Census of 2010 give us any guidance as to numbers of undocumented immigrants there are in the United States now?

Ms. MEISSNER. Yes, but we do not have that yet. As you know, the census is——

Chairman LIEBERMAN. We do not have that detail yet?

Ms. MEISSNER. It is being rolled out in pieces, and we just have this most recent information about the degree to which our population has grown based on immigration, which includes illegal immigration.

Chairman LIEBERMAN. Right. It is very important that illegal immigrants are counted in our census.

Ms. MEISSNER. That is correct.

Chairman LIEBERMAN. Mr. Stana.

Mr. STANA. Well, I would agree with everyone's observation that you have to have a numerator and a denominator, the people you catch versus how many are out there. It is difficult to do. The Department is contracting with a firm to try to gather more information about the flows, where the flows are going, the numbers of the flows, and so on. And that is supposed to be incorporated into the 2012 new statistics. So we will wait and see how well they can do that. It is a difficult task.

But I think there are some things that could be done in the meantime to better measure success, and I agree with everyone on the panel about that. I do not think it can be denied that the border is in better shape today than it was previously. How much further can we go?

Chairman LIEBERMAN. Right.

Mr. STANA. And I think taking advantage of some of the technology that they already have in place to count things would be advantageous. For example, each and every apprehension is supposed to be noted by Global Positioning System coordinates as to where that apprehension took place, and they have maps to show where the apprehensions took place. Out of that you could create a measure, like how many apprehensions did you get within 5 miles of the border. It is Management 101 that you get what you count.

Another thing you could do with the Integrated Automated Fingerprint Identification System data, the five-print data, is count the number of recidivists, and that may help you better understand what the flows are and if you are dealing with the same numbers of people again and again or if you are dealing with new people.

And, again, with respect to border violence, it is true that there is some concern, although it has not spilled over quite yet in large numbers. But I think we need to get a better measure and a better handle on that because the uniform crime reports (UCR) from the FBI do not capture a lot of metrics that might be useful.

On the other side of the border—and I do not know about this one incident you talked about across from Douglas, Senator McCain—but a lot of times the violence is trafficker-on-trafficker

violence that is not captured by the UCR. And maybe getting a metric on trafficker-on-trafficker violence would be helpful.

I would like to see a batting average for the Border Patrol that could better interpret that graph, but as of yet, it does not exist. It does exist on the Office of Field Operation side, at the ports of entry where they have a Compex System, where they measure success scientifically. People who were given authorization to enter the country are selected through statistical sampling and instructed to proceed to the secondary area where they do a more detailed analysis to see whether the officer in the booth made the right decision. And those statistics are not very impressive, by the way, but it is a good measure.

Chairman LIEBERMAN. Thank you. My time is up. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. Mr. Stana, to follow up on that, most of the violence is obviously between the drug cartels. The problem is that violence spreads to weddings, children, innocent civilians, and an interesting statistic is that in the time that President Felipe Calderon has been president, some 21,000 Afghan civilians have been killed. In that same period of time, some 34,000 Mexican citizens have been killed. So the level of violence is something—one of the reasons, frankly, is because the drug cartels intimidate the media in Mexico as well. There is very little doubt that, except for the Mexican army, there is very little reliance that the government can have on any of the other law enforcement agencies. So if they are having gunfights on the street next to Douglas, Arizona, in Agua Prieta, to me it is just a matter of time. And I guess I would ask Mr. Hutchison and Ms. Meissner, did the cartels have guides on mountaintops in Arizona when you were in the business?

[No response.]

Senator MCCAIN. No, they did not, and this shows the penetration of the drug cartels into my State. And they have weapons, and they have sophisticated communications equipment, and they have very sophisticated drug transportation capabilities, as I said in my opening remarks. That is throughout the country, not just Arizona but throughout the country. That puts a different aspect of the issue of illegal immigration.

For example, 10 years ago, Mr. Hutchinson, even when you and I went to the border, probably the majority of people who came across came back individually or in small groups. Now they come across as a result of the drug cartels and human smugglers, in large groups, in a very highly organized way, and the only problem with that is the mistreatment of them, as you know, is horrendous. The drop houses, the rapes—I mean, it is just terrible.

So I guess my first comment is on yours, Mr. Hutchison, that if you do not like the statistics, which shows that operational control is 44 percent of the Southern Border and then only 15 percent is airtight, then change the definition. And I guarantee you that changing the definition you will see better numbers. And I think that is disingenuous on the part of the Secretary of Homeland Security to change the definition of operational control. But I can also understand why if you are interested in giving the impression that things are better because the Border Patrol under this parameter

reported that 873 of the nearly 2,000 Southwest Border miles are under operational control, and they will improve an average of 126 miles each year. That would take us another 9 years at that rate.

I guess also this issue of recidivists that you talked about, we have found in the Yuma Sector and other parts of the border that not only increase but also when you send them back, take them all the way over to Texas or vice versa, that has had a very salutary effect, too. Have you found that out?

Mr. STANA. Yes. In the Mexican Interior Repatriation Program we have found that has reduced the recidivism rate the further you bring them into the Mexican territory.

Senator MCCAIN. You mentioned SBInet. According to, I think, your organization, we wasted about $800 million and got 17 miles of fence under——

Mr. STANA. Well, actually, it is better and worse. It is about $1 billion and you got 53 miles.

Senator MCCAIN. A billion dollars we spent for 53 miles——

Mr. STANA. Just on the towers and the cameras and the radars, yes.

Senator MCCAIN. And, as usual, no one was held responsible.

Mr. STANA. Well, they will use that technology. It is finally getting to the point where it is getting stabilized, but now the SBInet program has ended, and we are starting anew. I think some of the risks that are out there are that they are looking for off-the-shelf technology again and our searches on the Internet and elsewhere just are not finding a whole lot of other alternatives that seem to perform much better. But we hope that they are successful with the new program.

Senator MCCAIN. One of the things that our Attorney General did, Mr. Hutchinson, was follow the money, and they were able to have a significant degree of success. It seems to me that is a good example of another way to counter these people. Are you familiar with that program?

Mr. HUTCHINSON. I am, and actually I read that and Mr. Stana's testimony I think talked about what we can learn, many of the GAO reports from the Arizona Attorney General's investigation and following the money, and obviously you have to do that going after the cartels.

I do think that the exit program where we are looking for outbound money is a very worthwhile emphasis that we should have because if they do not have the capability of getting back the cash, then they are not going to be able to accomplish their objective. You can sell drugs in the United States. The second part of it is getting back that cash. And we have never concentrated on that before in terms of our inspections, and I think that is something we really should target.

Senator MCCAIN. Ms. Meissner, one of the relatively new issues associated with this whole problem has been the southward flow of guns and ammunition. In fact, again, when I was just down there last week, they apprehended—I believe it was a vehicle with 6,000 rounds of AK–47 ammunition. I mean, these are not small. And I wonder if you have any thoughts about that particular issue. I frankly think the Mexicans have a very legitimate complaint.

Ms. MEISSNER. That is not something I have experience with because it certainly was going on during the time that I was in the government, but it was not at all the issue that it is today. Regarding the question of southbound controls, as we have said here, government agencies are having a difficult enough time trying to figure out how one would do southbound controls just in terms of information in the US-VISIT system. But that further layer of southbound control you are suggesting is difficult.

I do think that the deeper point you make about being sympathetic with the Mexican dilemma on this goes to the issue of border control in general. In fact, we are asking law enforcement to do the job of responding to fundamental laws of supply and demand in the economy and problems of human nature and drugs that they have no role in creating. And so they are dealing with symptoms of deeper trends and issues in our societies and that is one of the reasons that we cannot expect 100 percent perfection in this. The underlying causes are not things that law enforcement is suited to address.

Senator MCCAIN. Mr. Chairman, we have an outstanding U.S. Attorney in Arizona. His name is Dennis Burke, and just recently we had a ballot initiative in Arizona which basically legalized the medical use of marijuana. And I asked him how that coincides with the fact that we are trying to stop the Mexican farmer from growing marijuana and sending it to the United States, but yet it might be okay for a person to grow some marijuana in their backyard. Frankly, he had no answer to that dilemma. That is a problem, isn't it, Mr. Stana?

Mr. STANA. Yes, it is a problem. Part of the reason why it is just tough to get at the southbound cash if we are talking about that, for example, is in order to run those operations, they have to take the people and the resources out of inbound operations. And these are not 24/7 operations. They do not have a separate area for outbound secondary inspections. You may have seen that if you visited the ports in Arizona. The secondary area is just off to the side, and traffic is going by, and these agents are lying on the ground and cars are whizzing by just feet from their own feet. So we are really not structured to do that sort of thing.

As for the question on how much cash and drugs we are going to get if we substantially increase that investment, that is unknown. Just like there are spotters on the mountains looking for drug avenues, there are spotters waiting for the inspection operations to go down. If there is an operation underway, they tell the traffickers to go have lunch for a while, come back at 3 o'clock, it will be wide open, you can take the cash or weapons south.

So, it is a tough problem. I think it would be extraordinarily expensive to seal the borders, as was suggested here, and total control is an awfully high bar to achieve. But there are some things we can do with far less money perhaps that would improve our success.

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

Chairman LIEBERMAN. Thank you, Senator McCain.

I will call on other Senators in order of arrival: Senators Johnson, Tester, Landrieu, and McCaskill. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman, and I would like to thank the witnesses. This has been pretty informative.

I did make a trip last week down to the port of entry in Nogales, again, to get myself up to speed on this issue. And, Mr. Stana, I would first of all agree with you. They are dramatically increasing the infrastructure down at Nogales, but even as the infrastructure stands now, they are understaffed. They are not at full capability. In our desire to beef up the Border Patrol—and I do not want this to be a competition, but have we concentrated too much on Border Patrol and not enough on customs agents at those ports of entry?

Mr. STANA. Well, the bigger problem with the agents at the port of entry is keeping them. They have a much higher attrition rate than you would think. And, of course, now the economy is not in as good shape as it was just a couple of years ago, so attrition is stagnant. But they have an authorization of about 20,700. They are at about maybe 1,200 short of that. They get close to it, the number falls back, close to it, it falls back again. They try to staff the bigger ports like Nogales to the best of their ability, but it is difficult to get agents to go to places that are not very attractive or that are very expensive. So they are up against some real challenges there.

Senator JOHNSON. I would say, first of all, the level of the dedication of those individuals was high. It was very impressive. It seems like they cycle people through. A lot of military folks go through a training program. Is that pretty much a standard mode of operation in terms of staffing those?

Mr. STANA. I have not seen too many military people in the primary booths. I have seen them sometimes assisting in secondary inspection areas. The military are often used as spotters, almost like the cartel people on the mountains. They also are in the mountains looking for people trying to get into the country and alert the Border Patrol to get there for an apprehension. I have not seen too many of them at the ports.

Senator JOHNSON. I would like to turn my attention just in terms of this definition of a secure border because it is critical. I mean, if we are going to actually move to the next stage, I think a lot of people do talk about securing the border first. And without definition, you never get to that second stage, which I think we absolutely have to get to.

So what is the stumbling block? Where does the argument occur? Why can't we come up with a definition?

Ms. MEISSNER. Well, I am not sure that we have really forced ourselves to confront that issue. I think that this hearing and your leadership in identifying progress in border enforcement is very important. I am glad to hear you say that it is legitimate to be asking questions about how far border enforcement has come because the debate basically has been a debate where border control is bandied about as though we do not have it and we need it, or we are only going to get it if we do other legislation. We must go deeper than that.

So if there is a recognition in the Congress and committees like this to ask questions about border enforcement effectiveness, I would hope that the Administration and the Department of Home-

land Security are interested in answering those questions as part of the overall case that they make about their efforts. Maybe there is a way here to come together on thinking—having more of a shared view of what we are really striving for in border enforcement as the basis for having a more honest debate.

Senator JOHNSON. Does anybody have a recommendation for a definition?

Ms. MEISSNER. Well, I think we could come up with one.

Senator JOHNSON. Mr. Hutchinson.

Mr. HUTCHINSON. Well, Senator Johnson, I did recite a definition that probably is very similar to what the Border Patrol used before they rejected the definition. But it is to be able to detect border intrusions and to respond effectively to those. That is what is expected.

I think the challenge is that there are really two questions: What is operational control? And then once you define that, how do you achieve 100 percent operational control, and how much is it going to cost? And I think that is the challenge, so that if we have only achieved half, less than half operational control, the American public is going to say what is it going to cost to do the whole thing, and that is their expectation. And that is where we have to be honest with them. It is going to be a gradual process to get there because of budgetary constraints.

Senator JOHNSON. I mean, define "detection."

Mr. HUTCHINSON. Well, detection—and that is where it would come in helpful to know when there is a border intrusion. That is where we have to use technology. It is the integrated towers. It is to be able to know whenever there is an intrusion and that is the detection part. And if we are not able to respond, then that gives us the statistics as to what is our batting average, and it tells us a great deal more information when we know we have the detection capability, and I think that is where we have to accelerate the technology side.

You asked about more personnel in the booths and so on. That is always an issue. We need to continue to do that. But you can be more flexible in your personnel when you invest in the technology side.

Mr. STANA. Yes, I would agree with that. Having what they call situational awareness is key because otherwise you do not know what you do not know, and it is hard to come up with the denominator that we have been talking about. What is the number of people crossing the border?

The new technology, the tower technology, is useful. I do not know if you have been down on the border and saw the Mobile Surveillance System truck with the 25-foot boom that comes up and on top is a camera. They also have a laser pointer on them. Not only do they detect illegal crossers, but they point out to the Border Patrol where to go to apprehend them. That would be a very useful thing. Not only do you have situational awareness, you have something guiding you to the target. So I think there are other things along those lines that could be done.

Senator JOHNSON. Now, we have achieved some pretty good successes, like you mentioned in Yuma. We are measuring that in

some way, shape, or form, so why not use that exact same measurement? How is that occurring?

Ms. MEISSNER. That is basically apprehensions. I mean, it is apprehensions and it is as we were talking earlier. It is a sense in the community, and it is a recognition that there is a concentration of resources that is actually changing the circumstances on the ground. People do not feel, experience, or see the kind of lawlessness and chaotic conditions that they did a year ago or 2 years ago. But fundamentally the metric is apprehensions, and what we do not know is what is going to happen in Yuma two harvests from now when the labor market perhaps comes back in a different way. There are all kinds of things that we could project that are likely to change in the future that will change the apprehensions, and it may not mean less success or more success. It is just that apprehensions are relative and they do not fully tell the story. They are a valid measure, but they cannot be the only measure, and they have basically been the only measure.

Senator JOHNSON. Thank you very much.

Chairman LIEBERMAN. Thanks, Senator Johnson. It was interesting, and, of course, as I said at the beginning, the odd thing is that when the apprehensions go down, we conclude that there is less illegal immigration, right?

Mr. STANA. Yes.

Chairman LIEBERMAN. I understand why we do that. We assume that the increasing number of border agents has meant fewer people are trying to come over; therefore, there are fewer apprehensions. But another way to look at this logically would be, well, that is not the way to measure it; that apprehensions would somehow be correlated in number to attempts to go over the border illegally.

Ms. MEISSNER. Right.

Chairman LIEBERMAN. I know it is very difficult to pin a lot on a subjective standard. There is something to be said for the attitude of the neighboring community because they are there. Senator McCain has told us, if you keep seeing people crossing your land, well, that is pretty obvious that the system is not working. If there is an orderly effort to stop them and the numbers goes down, then you assume it is.

Let me go on. Senator Tester, thank you.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Yes, thank you, Mr. Chairman. You bring up a lot of good points and there are more questions that crop into my head with every word that is spoken, but I will stick with what I have down here, and then hopefully I will have time for some other ones.

First of all, thank you all for what you do and I appreciate you being in front of the Committee. Dr. Stana, I thank you first. I very much appreciate your work and the research, findings, and recommendations. Very helpful, I think.

Since I have been on this Committee and since I am from Montana and we share a 550-mile border with Canada, I have been concerned about low-flying aircraft. The GAO report that was set out said that we have about 32 miles that are secure, and we can get into their definition of secure versus someone else's definition,

but I do not want to do that at this point in time. But they said about 32 miles are secure.

I live about 80 or 90 miles south of the Canadian Border myself and have a lot of friends up there, and low-flying aircraft is something that I think is of concern to me and I think it is a concern to the people across the country, or it should be.

Radar seems to be a cost-effective tool to get our arms around it. We have had our struggles with getting that implemented, although I talked to Secretary Napolitano and she seems to be on the same page. Could you just give me your thoughts about low-level radars, is it a reality, can it happen, should it happen, or should it not happen?

Mr. STANA. Well, it probably should happen. There is a cost to it, let me put it that way. I think the areas of Montana you are referring to are in the Spokane sector with the Border Patrol.

Senator TESTER. No. Actually it is true in eastern Washington, but it is also true in eastern Montana.

Mr. STANA. OK.

Senator TESTER. Eastern being the eastern two-thirds.

Mr. STANA. The reason I bring that up, we did some work on the Northern Border and I believe you were one of the requesters of that, Senator.

Senator TESTER. I was.

Mr. STANA. And one of the things we found was exactly what you are saying, is that in that part of the country, the radar capability is key because the biggest threat is low-flying aircraft.

Senator TESTER. That is correct.

Mr. STANA. In fact, if I remember correctly, there was a joint Department of Defense (DOD)/DHS exercise in 2008 where they brought in DOD radars and the DOD radars detected as many low-flying aircraft in the months that the exercise was in operation as normally DHS identifies in a year.

Senator TESTER. That is right.

Mr. STANA. So it is much more sensitive, although many of those aircraft were moving east-west rather than north-south. But still, it had the capability of detection. That is a big problem and it needs to be addressed, and perhaps we need to look to the Pentagon for some of these answers. Some of their equipment would be more expensive at DHS because of economic order quantities and things like that—but they do have technology that is more sensitive and would be very useful in areas like this.

Senator TESTER. Without that radar, it is just basically eyeballs, right?

Mr. STANA. Pretty much and there are not that many Border Patrol agents up there. There are only about 2,000 agents for the 4,000 miles between Washington and Maine.

Senator TESTER. There is a lot more now than there used to be, I will tell you that.

Mr. STANA. And there are Forest Service agents and others.

Senator TESTER. I would like to get into that, too, actually. Is there opportunity to maybe reduce some of the manpower if radar was up there? Could you see that as a possible cost savings?

Mr. STANA. Well, I think you could study that. The activity on the Northern Border is not what the activity is on the Southern Border. It is just two different solutions.

Senator TESTER. No doubt about it.

Mr. STANA. I think before I would talk about reducing manpower, I would like to see how effectively we can integrate this new technology.

Senator TESTER. Right. What I am saying is, if it works as advertised, there could be some possibility there.

Mr. STANA. Well, anytime you increase situational awareness and can actually pinpoint incursions, then you can direct your resources much more effectively, and thereby, perhaps, reduce the need for agents.

Senator TESTER. Very good. Commissioner Meissner, I have recently called for an investigation into so-called sham universities, that basically manipulate immigration laws to offer student visas to allow foreign nationals into the United States. They abuse the system, they ignore the laws, they threaten our security, and I think they are opening a back door to thousands of potential illegals. Are you familiar with these schools? Are you aware of any effort to rein them in?

Ms. MEISSNER. No, I am not, but it is not something that I have looked at. I have been out of government for 10 years, so it is not something that I am working with at the present time.

Senator TESTER. Any of the other folks on the panel? Go ahead, Mr. Hutchinson.

Mr. HUTCHINSON. We implemented the International Student and Exchange Visitor Information System program which is for the international students, and part of it is the qualification of the school or the university. And so, you have to be qualified for that program. I think that is something they have to look at tightening up, so I am aware of the abuse. But they do have a program that actually addresses the international students and the programs that qualify for that.

Senator TESTER. There has been some talk about the US-VISIT Program and how, in fact, it is good at getting the folks coming in, but it is not so good getting the folks going out, and I do not know how you solve that problem myself, and hopefully there are some minds that can talk about that. But how effective is that program if you cannot determine exits?

Mr. HUTCHINSON. It is not. And that is the challenge. That is why we have the visa overstays.

Senator TESTER. Right.

Mr. HUTCHINSON. There is a lot of simple things that can be done. I was very impressed with Dr. Stana saying that such a small percent of resources are devoted to 45 percent of the problem. That is a significant challenge and it needs to be addressed.

Mr. STANA. And I would add to that, Senator, that whatever hits they get on US-VISIT, they send them to ICE, but then you have a limited number of people to react to it. So this is one of those things where you have to right-size your total response. If you have the best US-VISIT system in the world but you do not have anybody to chase the people that you identified, it is not useful.

Senator TESTER. Yes, but we make folks run through a pretty rigorous routine to acquire a visa to get into this country, do we not?

Mr. STANA. That is correct. Unless you are in a visa waiver country. There are about 28 or 29 countries where you do not need a visa.

Senator TESTER. So why is there not that same rigorous work done when the visas run out? We know when they run out.

Mr. STANA. That is absolutely correct, and when they run out, they do check whatever information they have from I–94s past or through airport manifests, but it is not perfect.

Senator TESTER. I did not hear Senator McCain's statement early on, it was before I came here, and I wished I would have. But we will read that in the record. You did touch on something about people crossing land, and I can tell you that on the Northern Border, there is a tremendous resource out there called local police, county police, farmers and ranchers, that know this land like the back of their hand.

Is there a concerted effort to get those folks involved or are we dealing with so much secrecy here that we cannot get them involved?

Mr. STANA. No, they do get them involved through the task forces called Integrated Border Enforcement Teams and Border Enforcement Security Task Forces. They do try to get the local, State, tribal, and of course, Canadian Mounted Police, in your case, involved in these task teams to share information, resources, and occasionally do joint operations. It is working OK. In fact, if there is a limitation there, there is a proliferation of these task forces and the locals say they just cannot go to every task force meeting. They do not have enough people.

Senator TESTER. And there is no need to have meetings for the sake of meetings. The real question is, in this country you have the highway patrol, you have the county police, and you have the city police.

Mr. STANA. Right.

Senator TESTER. Outside the task forces, is there an outreach to those folks saying, "We want you to be a part of this equation." If we work as a team, we get more stuff done. And we are going to share information with you and, by the way, some of it is pretty sensitive, but you are in law enforcement and so am I.

Mr. STANA. A lot of that is supposed to be happening, but it all boils down to that special agent in charge, whether it is ICE or whether it is the Border Patrol or whoever, making those kinds of agreements work. Sometimes they work great and you get kudos for our people; other times it does not.

Senator TESTER. Just one more question and then we will make this very quick. In Great Falls, Montana, we have an international airport where airplanes fly in and oftentimes, it being fairly close to the Northern Border, there is some port security that takes place there. There is a rule on the books that says you have to take them to an international airport, which are in Spokane, Seattle, Minneapolis, Denver, or Salt Lake.

We are working with CBP on this, but recently, planes have been turned away. They have been turned out of Montana, we have done

it before, and they have been shipped somewhere else. I have to tell you, it is somewhat disconcerting to me that we are going to ship a potential plane that has some issues revolving around terrorism to Salt Lake, which is halfway across the country, from a north-south standpoint, instead of dealing with them more locally.

Now, I know there are bigger planes, bigger numbers, that is the story, but smaller planes, smaller numbers, there is no reason why those cannot be done here. Could you give me your thoughts on that?

Mr. STANA. Well, I think it would probably depend on what agents and resources are available at the airports.

Senator TESTER. That is the problem. It used to be done. We have different agents now and it is not being done.

Mr. STANA. Right. And so, you would have to get on the list of locations that are authorized to have the appropriate agent.

Senator TESTER. I do not want to hang you gentlemen out on this, but it seems a bit crazy to me. I mean, if they could do it with the previous agent, why can they not do it with the next one? Especially if there has not been any incidents and they have caught them.

Anyway, thank you, Mr. Chairman. Appreciate the hearing. Thank you, gentlemen, for testifying.

Chairman LIEBERMAN. Thank you very much, Senator Tester. Senator McCaskill, welcome.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Senator Lieberman, and I thank all of the witnesses for being here. I think as we struggle with how we define success or failure along the border, it gets back to the old prosecutor's dilemma. How do you prove what you have prevented?

And that is where the apprehension figure is difficult because it could be that we are apprehending less because we are doing a terrible job, or it could be we are apprehending less because we are doing a really good job and fewer people are trying to cross the border because we are doing a good job.

It reminds me of that which is live by the sword, die by the sword, when I was a prosecutor, the crime statistics. It was the very same problem. When crime went down, nobody was anxious to say the prosecutor had done a great job by preventing crime. But when crime went up, it was a real problem. I am glad we are trying to tackle it because I think it is very easy to say over and over again, "Secure the border." It is much harder to define in objective terms what that really looks like.

As we say over and over again, "Secure the border," I was proud to co-sponsor, along with Senator McCain, a bill fully paid for last year that added $600 million to border security, including drones for realtime surveillance. I am assuming that there is no one on the panel that disagrees that this technology, in terms of realtime camera surveillance, unmanned, could be extremely effective along the border as it relates to criminal activity.

Mr. HUTCHINSON. And it gives us the detection capability.

Senator MCCASKILL. Right. And so, imagine my surprise when we put $600 million in, fully paid for, that is part of what was cut

in the Continuing Resolution (CR) that was passed by the House of Representatives. So I am willing to bet that most of the folks that were excited about passing that CR in the House of Representatives, I bet they said, "Secure the border," a few times during their campaigns. So I was surprised when we got a bill that basically took some of the money that were paying for this $600 million and used it for something else, rather than the $600 million that we need to, in fact, secure the border.

I would like to spend my remaining time on employer enforcement. I am a big believer that one of the problems we have had is a failure to be aggressive about employer enforcement. One of my first hearings in this Committee, I was shocked when the woman that was in front of us for confirmation to head ICE, when I asked, "Could you tell me how many employer criminal prosecutions there have been in the last year?" She had been running the program for awhile, and she said, "We do not keep that number."

Then they tried to tell me at the time that not only do they not keep that number, they could not even get it for me. So I had my intern sit down with Google and go through and try to figure out, over the course of years, how many workplace enforcements had been brought against the employer. It was a shockingly low number, Mr. Hutchinson.

Now, the audits and fines are up the last couple of years, and I would like all of you to comment on how fundamental employer enforcement is because these folks are not coming across the border for vacation. They are coming for a job. And the reason they know they have come for a job is because up until fairly recently, I do not even think we were doing that good a job on employer enforcement. I think we are doing better.

But I just think it is a real opportunity for deterrent if these employers think something serious is going to happen to them. I know you mentioned E-Verify. I am a big supporter of E-Verify. But I would like you all to speak to that.

Mr. HUTCHINSON. I agree 100 percent with you and it is my understanding, I think it is fairly evident from the statistics, that for various reasons, there has been a shift away from employer enforcement in the last couple of years by ICE. And they are doing audits, they are doing intelligence-based investigations, but they have diminished from what they were doing 2 and 3 years ago. I think that is a concern. You have E-Verify, you have a lot of reputable employers, but you always have those that want to skirt the law and take advantage of illegal employment.

So you have to have that capacity because you have to pull down the strength of the magnet. So I think that has to be re-invigorated and I hope that ICE will maintain a vigorous approach to employer enforcement.

Senator MCCASKILL. Well, now maybe the statistics I have been given are wrong. Is it the audits are up and the civil fines are way up in the last 2 years?

Ms. MEISSNER. Right.

Mr. STANA. Well, there is a difference between an audit and a work-site raid, and work-site raids are down and the audits are up.

Mr. HUTCHINSON. Yes.

Senator MCCASKILL. Well, the work-site raids that used to happen, they would happen, but all they did was round up the immigrants. They never did anything with the employers. I mean, nothing happened to the employers after a work-site raid. So, I mean, I am pretty confident that in the last 10 years, there was nothing in that record to brag about in terms of employer enforcement, in terms of holding people accountable.

In fact, I raised a fit about a workplace raid in Missouri. This was a renowned employer of illegal immigrants. Everybody in town knew it, everybody in the community knew it, and they did a workplace enforcement, rounded up the illegal immigrants, detained them, but did not do anything to the employer until I raised a fit, and then finally the U.S. Attorney did something.

So I am confused as to whether or not you think we used to do more workplace enforcement than we are doing now in terms of employers being held accountable?

Mr. HUTCHINSON. That is my understanding. I hope Mr. Stana can comment on this. I will tell you that whenever I was Undersecretary of Homeland Security, we were not doing very well on employer enforcement. So we are starting at that low level, and that was post-September 11, 2001, because our resources were going to critical infrastructure like the Sears Tower and doing audits of those.

Senator MCCASKILL. Right.

Mr. HUTCHINSON. So we were focused on that. And we realized the tremendous gap because we were not doing sufficient work-site enforcement and so ICE picked up the ball and invigorated that. They got a lot of criticism because it did include what you mentioned as some random enforcement and inspections. I do believe that it led to employer investigations. You can quibble about that, but I think those are the facts.

But there is a deterrent effect in there as well. There is a concentration on audits and they have the civil fines, but I believe the comprehensive enforcement policy against employers has changed and diminished.

Mr. STANA. You know, this is not one Administration versus another. This goes all the way back to the Immigration Act of 1986 when we first started getting into this. We gave amnesty, we created an I–94 system, which I think you know what that means, and then we promised enforcement. Well, two of the three legs of that stool were stood up. We never put the enforcement in place.

Senator MCCASKILL. Right.

Mr. STANA. I think on average, we spend maybe 300 staff on work-site enforcement. When you compared that to the 20-some-thousand Border Patrol agents and to the 20-some-thousand people at the ports and whatever else is going on, having 300 people dealing with the magnet, just does not add up.

Senator MCCASKILL. I am a big believer that if we start putting a few of these employers in handcuffs and you actually prosecuted them, when they have done this over and over again and you can prove they knowingly had seven or eight people working at their place with the same Social Security number, give me a jury. I can prove they knowingly broke the law, and I will bet you could too, Mr. Hutchinson, knowing your background. I bet you could, too.

So I do not condone illegal immigration and I do not think it is a good thing, but the notion that we have done high profile efforts against illegal immigrants in the workplace, while we had the thing in Iowa that got a lot of press, there have been very few incidences where I think employers have been held accountable for knowingly and repeatedly violating the law when it comes to illegal immigration. I would like to continue to work on that. Thank you, Mr. Chairman. Thank you for the witnesses.

Ms. MEISSNER. Can I just interupt?

Senator MCCASKILL. Sure.

Chairman LIEBERMAN. Commissioner, go ahead.

Ms. MEISSNER. Because I think it is such a core point. I mean, we would all agree, I certainly agree, that employer enforcement is essential to the equation here. I also think that the element about employer enforcement that keeps getting overlooked is that it is, in my view, the best response to the overstay problem and the people who overstay their visas that we have.

Senator MCCASKILL. Right.

Ms. MEISSNER. All the talk about Southwest Border enforcement we know is not going to get there. I appreciate the issue of exit controls where US-VISIT is concerned, but that is not the way to deal with overstays. It is important to do that, but the idea that once somebody has not left, you would then try to send ICE agents around the country to try to find them is not an effective use of resources, particularly for people who have been visitors, which largely is who they are, who have left the name of a hotel in a particular city on their I–94 and that is all you have.

What you have is the job. That is what they are doing. They are staying here to work. And so, if you have a viable employer verification requirement in the enforcement system, you address the overstay part of this and you get a much more balanced, integrated, effective, across-the-board deterrent.

Senator MCCASKILL. Absolutely. I could not agree with you more and I thank all three of you very much for your testimony today. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator McCaskill, and I would be glad to work with you on this. I think it is very important. I have a few more questions. I just want to focus on the visa overstay problem because the testimony has been very helpful and I think informative about the extent to which visa overstays constitute the illegal immigration problem in our country.

Just as a factual basis—I will start with you, Mr. Stana, but welcome others to testify—what do we know about the visa overstay population? In other words, I presume intuitively that they are different from the illegal immigrant population in terms of where they come from. Also, perhaps because we at least have the information that they came in legally, I presume we have a better idea of who they are. Am I right?

Mr. STANA. Well, we know who they are. We know what address they left with the inspector at the port which may or may not have lasted more than a day.

Chairman LIEBERMAN. Right.

Mr. STANA. But they have been very effective in blending into the society.

Chairman LIEBERMAN. I guess when I say we know who they are, I really mean we know where they came from.

Mr. STANA. Yes.

Chairman LIEBERMAN. We know which country they came from.

Mr. STANA. Yes. And that is an issue with the visa waiver program. Visa waiver status is only to be given to certain countries that do not have a large overstay population.

Chairman LIEBERMAN. Right.

Mr. STANA. And sometimes those two statistics are not matched very well.

Chairman LIEBERMAN. My presumption is that most of the illegal immigration is coming over the Southwest Border, and therefore, it is probably Mexican nationals and Central or Latin American nationals. Whereas—and I ask if I am correct—the visa overstay population coming in legally and then staying illegally is from elsewhere in the world.

Mr. STANA. Could be from Asia, could be from Europe, or Africa.

Mr. HUTCHINSON. Mostly flying in.

Chairman LIEBERMAN. Mostly flying in, right.

Ms. MEISSNER. Right.

Chairman LIEBERMAN. And obviously mostly not, therefore, coming at a land border.

Mr. STANA. Coming through airports of entry.

Chairman LIEBERMAN. Exactly. And can we draw any conclusions, anything we know about why they are overstaying? Are they overstaying and becoming illegal immigrants for the same reasons that those who come in illegally are?

Mr. HUTCHINSON. They are doing it because they can. They could have a 2-year visa, it could be a 3-month visitor visa, or a student visa, and they just stay.

Chairman LIEBERMAN. Right.

Mr. HUTCHINSON. They know that we do not have the capacity, they do not have to check out, they can circumvent the system, and so, it is hit and miss as to any follow-up, if any at all. We cannot track them.

Ms. MEISSNER. But fundamentally, it is a jobs issue.

Chairman LIEBERMAN. That is what I was going to ask. So in that sense, they are coming for the same reason that we think most of the immigrants come for.

Ms. MEISSNER. And they may have come completely legitimately to visit for awhile and then they change their view.

Mr. STANA. Or they work on an H1–B.

Ms. MEISSNER. Exactly.

Mr. STANA. High tech and they just stay.

Chairman LIEBERMAN. Yes. Did you want to add something, Mr. Meissner?

Ms. MEISSNER. Well, I would just add that this number—Mr. Hutchinson used 45 percent—sometimes the number has been that high. I think the recent estimates are more in the 35 to 40 percent neighborhood. I feel a particular kinship to it because when I was Commissioner, we put out the first numbers on that dimension of the unauthorized immigration problem.

Chairman LIEBERMAN. Yes.

Ms. MEISSNER. It was an incredible eye-opener.

Chairman LIEBERMAN. Yes.

Ms. MEISSNER. And it continues to be overlooked as an element of this phenomenon.

Chairman LIEBERMAN. Absolutely.

Ms. MEISSNER. I would add it to the list of analytics that I think that the government should be reporting on, on a regular basis, and analyzing, because not only is it an important part of the issue, but there is some reason to believe that perhaps it is going down to some extent because of the controls that have been put in place in the 2000s through US-VISIT and through the consular and visa-issuing programs which, in fact, have been effective. But again, we do not know.

Chairman LIEBERMAN. That was my next question about whether there are any trends and numbers of visa——

Ms. MEISSNER. We think that there is a trend and the best information on this at this point is available through the Pew Hispanic Center. The government is not regularly reporting on those kinds of things, and I believe it should be doing so. We think that perhaps the trend of overstays is coming down to an extent.

Chairman LIEBERMAN. Down.

Ms. MEISSNER. But again, we do not know whether that is——

Chairman LIEBERMAN. Because of the economy? Because of the fact that there are less jobs?

Ms. MEISSNER. Right now, it is always going to be a commingling of the economy and of enforcement. It is difficult to know.

Chairman LIEBERMAN. Yes.

Mr. HUTCHINSON. I agree totally. We need more analytics and these are numbers we should be able to achieve. You think about the illegal crossings. We do not know who is coming across a land border illegally, but we know who is coming in, the starting point, with the visas.

Ms. MEISSNER. Exactly.

Mr. HUTCHINSON. And so, all it takes is an audit sample where because we have their home address in the foreign country, we have where they are supposed to stay here in the United States. You have an audit team that audits a certain percent, extrapolate from that. I would think you would be able to get a good analysis.

Mr. STANA. Yes. We have a report coming out next month on the visa overstay issue. I cannot really talk too much about it now because it is not yet public and we do not have all the agency comments, but all of these things are issues that my co-panelists here have talked about.

Chairman LIEBERMAN. So you are answering some of the kinds of questions we have addressed here?

Mr. STANA. Some of these kinds of questions. As far as how many there are, I have seen estimates as high as 57 percent recently, but I think the point still remains, who knows? Because you do not know what you do not know.

And the other thing is, some of these overstays are kids, the kind who used to backpack through Europe for 2 weeks and now are backpacking through the United States for 2 weeks.

Chairman LIEBERMAN. Right.

Mr. STANA. And the duration of overstay might be for 6 months, a year or something. It is not always a hard core population of 45

percent who are working at a multinational firm in Denver. Many of them just overstay for brief periods, but a lot of them do come to stay and they come with the intention of staying. I think it is fair to say that the word is known in other countries that, based on relatives or others they have seen come here, overstaying a visa is a loophole, it is a way to get in. It is much easier than crossing the Southwest Border.

Chairman LIEBERMAN. Right. I presume that once you get a visa—now, that may be difficult, but if you get a visa to come here in one of these other categories, if you decide to overstay, the odds of apprehension are very low.

Mr. STANA. Well, I would extend that. No matter how you get into the United States, once you are in you are in unless you misbehave.

Chairman LIEBERMAN. Well, that is true. I guess I was thinking that anybody who comes over illegally is putting themselves at some risk, sometimes physically or at a cost, but if you are able to get on an airplane legally and come into this country and you decide you want to stay, the odds you are going to be caught are very low right now.

Mr. STANA. Well, I think that gets to former Commissioner Meissner's point, that an effective way to do this is through work authorization permits. It certainly neutralizes that magnet.

Chairman LIEBERMAN. Yes. Let me ask you a final question on the nexus between border security and immigration reform. The premise we have been operating on—part of why we are doing this series of hearings—is to see if we can agree on a common ground on what we are striving for in terms of border security. What is achievable? What the problem is? How much of the problem is illegal entry?

And if we can do that, then to have that be a premise for dealing with the undocumented alien population of the country. I know some people say actually that is not all bad, but maybe if you look at it the other way around, too, that if we deal with the illegal immigrant population, that will contribute to effective control over our borders. Anybody want to comment on that, either Commissioner Meissner or Secretary Hutchinson?

Ms. MEISSNER. I am happy to comment on it. I do think that we obviously have been talking about border enforcement. It is an essential part of the equation, but there is an equation here. And that is that we rationalize our immigration system in a way that is suited to today's economy and to, more importantly, what we think the economy and needs of the country for the future are going to be.

Those needs, I think, certainly by many measures that I know, need to include immigration and they need to include better avenues for people to come to the country legally for work purposes across the spectrum. And we do not have a system in place that does that and we need to put that into place. Were we able to do that, it would be easier to enforce the laws because there would be laws that are more aligned with reality on the ground, economic, social, and labor market driven.

Chairman LIEBERMAN. Yes.

Mr. HUTCHINSON. The fundamental foundation is the confidence in the immigration system as a whole. That starts with border security. You pointed that out, Senator, and once you have that and the people have confidence that the immigration system has regained its footing, then I think they are willing to look at what else we need to do. But it starts with that.

Because immigrants do provide the energy in our society, such a great part of our fabric, we want to make sure they are a part of that, and the legal path here is very important to meet the needs of our economy and to make sure they do not go by some other means.

Chairman LIEBERMAN. I agree. Thank you very much. I think it has been a very informative and helpful hearing, which will be a good preface for the subject matter hearings that follow.

We are going to leave the record of the hearing open for 15 days for additional questions and statements, but for now, again, I thank you very much for your testimony today.

The hearing is adjourned.

[Whereupon, at 4:20 p.m., the Committee was adjourned.]

SECURING THE BORDER: PROGRESS AT THE LOCAL LEVEL

THURSDAY, APRIL 7, 2011

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

The Committee met, pursuant to notice, at 1:36 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

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

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. I think we will begin the hearing. I will begin my opening statement and hope, with the inherent ability I have as a U.S. Senator to continue talking for long periods of time, that I will be able to fill the space between now and when Senator McCain arrives.

I thank the witnesses for being here. I appreciate it very much.

Today's hearing is the second in a series that the Committee is holding to examine the progress made over the past decade as a result of the infusion of substantial Federal support to secure our borders—particularly our border with Mexico—and how we can build on the current level of border control.

At our first hearing, the panel of experts outlined the significant increases in manpower and resources that have been sent to the border over the past decade, and they all agreed that progress has been made toward securing the border but that, of course, much more still needs to be done before we can say we have done everything we can do.

Last week's hearing also raised, I think, some important questions about how we define and gauge border control and about the inadequacy of our current measurements of what is inherently a difficult question, which is to gauge how many people are coming over illegally. If we knew that they were all coming over and when they were coming over, presumably we would apprehend them all. So we understand it is a difficult challenge. Our witnesses agreed that the metrics collected and disseminated about border security must be improved to provide us with the best possible understanding about how well the border is being secured.

Right now, for example, apprehensions of illegal border crossers are at their lowest levels since the early 1970s—with 465,000 people apprehended last year compared to 1.6 million in 2000. Now, this is interpreted by many as a clear sign of progress—and these

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are people who believe that the substantially decreased number of apprehensions means that border control operations are deterring people from crossing illegally. I guess it also assumes the same basic percentage of apprehensions as compared to the total number of people attempting to go over. But that is an interesting question.

Nonetheless, at various times in the last decade, the Border Patrol itself has turned this formula upside down and pointed to increases in apprehensions of illegal crossers as evidence of progress, in that case arguing that the increasing apprehensions meant that agents were targeting their efforts better. So, in my opinion, apprehensions are obviously one indicator of border security, but we have to see if we can find a better, more direct way to conclude how many people are actually trying to enter the country illegally and how many people actually succeed in doing so.

I realize, again, that this is not an easy undertaking, but some Border Patrol sectors—including the Tucson Sector—are already using cameras, sensors, and footprint analysis to conclude how many illegal entries are occurring. It gives them a little more data to make a conclusion that, in the end, is an estimate, but we are trying to make it as educated an estimate as possible. I think we have to expand this across the entire border in order to give us a better idea about whether our border security strategies are succeeding and to help the Border Patrol marshal its resources more effectively.

The panel we heard last week also agreed that the apprehension rate of illegal border crossers cannot be the only way we measure border security. Other factors, they said, must be considered as well, including a subjective factor but one that presumably is based on objective experience, which is public perceptions. That is, can we measure and consider how secure people in border communities believe they are as one indication of how secure they actually are.

In confronting the problem of illegal immigration, I think we have also got to take into consideration a statistic that was testified to last week that would probably surprise most people, which is that, depending on who you talk to, between 35 and 45 percent of the people now in this country illegally originally entered the United States on valid visas that subsequently expired.

Welcome, Senator McCain. I saved you from hearing half of my opening remarks, understanding that you were on your way.

So, in other words, what I am talking about is that these are people who were legal immigrants who became illegal because they overstayed the period of time in which they were legally authorized to be here. And most of these people did not enter the United States across our border with Mexico. So that is a separate category of this problem of illegal immigration and one that I think people have to understand as we deal with the problem.

To help us get beyond the statistics and understand the situation on the ground—because last week we really heard from Washington-based administrators and experts—we have called a panel of witnesses that we are privileged to have before us today, people with real firsthand experience along our entire Southern Border from Texas to California. You are the people who confront this problem of illegal immigration and border-related crime every single day in your positions as sheriffs and judges.

I think the Committee is very interested in your views on the status of our control of the border closest to you right now, on what we can do to improve that control, and on how much the terrible drug-related violence in Mexico has spilled over into your jurisdictions.

I would also like to know, and I will ask about whether the Federal Bureau of Investigation (FBI) statistics which reflect decreased rates of violence in a lot of the border communities reflect your experience within your own communities.

Last week, we heard testimony that border security cannot be achieved in isolation from our immigration system of laws and that hundreds of thousands of people will continue to risk their lives to illegally cross our borders unless and until we reform our immigration laws, and presumably what was meant here is to create a system that allows immigrants to enter legally for temporary periods of time for work and then to return. So, assuming we have time, I am going to ask our witnesses to address the relationship between immigration reform and border security because the ultimate aim of these hearings is, one, to do oversight on what we are getting in return for the considerable Federal investment in border security; two, obviously what we can do to improve it; and, three, there is a political equation here which has to do with the relationship between border security and our current immigration system, which just about everyone agrees is broken.

So, with that, I thank the witnesses very much for being here, and I call on the Ranking Member, Senator McCain.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Thank you, Mr. Chairman, and I apologize for being a few minutes late, and I want to thank our witnesses. And, Mr. Chairman, if I could, I would like to submit for the record testimony by Larry Dever, who is the sheriff of Cochise County, Arizona.[1]

Chairman LIEBERMAN. Without objection.

Senator MCCAIN. I thank the witnesses for being here and taking the time from their important duties.

The deadly violence in Mexico has fundamentally changed the jobs of law enforcement along the border. They are now asked not only to serve eviction notices, assist courthouses with the transport of prisoners, and execute and service process of civil litigation matter, but you are also now our Nation's first line of defense in defending our homeland, and for that we are very grateful. The job of sheriff or sheriff's deputy is more difficult, more challenging, and more dangerous than ever before.

Mr. Chairman, I have a prepared statement that I will submit for the record.[2]

I do not think there is any doubt that there have been improvements in border security or a dramatic increase in violence on the other side of the border.

I was recently down in Douglas, Arizona. Agua Prieta is the town on the other side of the border. Three nights before I was there,

[1] The prepared statement of Mr. Dever appears in the Appendix on page 229.
[2] The prepared statement of Senator McCain appears in the Appendix on page 155.

three sport utility vehicles (SUVs), blue lights flashing, blocked off the traffic on the street right on the other side of the border, took a left turn, half a block down from the border crossing, individuals jumped out and a fusillade of automatic weapons fire kills five people and wounds 14 others. That is in the block next to our border. And I appreciate the fact that our border towns are safe on our side of the border, but it is not logical to assume that will be the case when the level of violence on the other side of the border continues to escalate. It just cannot happen.

I just saw it on the TV: 59 more bodies were found in the same place where 70 bodies have been found recently. Cities like Monterrey and others where we never expected this kind of violence to take place are happening. And I think that Sheriff Paul Babeu will tell you, and I believe the other sheriffs will, the level of sophistication of the drug dealers has dramatically increased.

We now have, according to the High Intensity Drug Trafficing Areas (HIDTA) in Arizona, between 75 and 100 guides sitting on mountaintops in Arizona—not on the other side of the border, but on mountaintops. They are armed. They have sophisticated communications equipment, food, and they stay for a long period of time. They guide the drug smugglers up to Phoenix which has become the drug distribution center for America with the exception of parts of Texas.

Then you couple that with the lifestyle of the ranchers and the residents of the southern part of my State who are not in a secure environment. That is why the Federal Government has put up signs that say, "Warning: You are in an area of drug smugglers and human smugglers." They would not be putting up those warning signs if there was not a reason to warn our residents. They are afraid to leave their homes because of home violations.

Now, there are not many citizens in the southern part of my State, but they should have the right to live in a secure environment. They should have the right to drop their kids off at a bus stop without fear of them being endangered.

So we have a lot of issues, as you pointed out. One of them is that we have not had a national conversation about—and we have to—the demand issue. What is the situation also with a State like mine and California where medical marijuana is allowed? We are going to try to stop that farmer in southern Mexico from growing marijuana, but we are going to allow someone in Phoenix, Arizona, to grow marijuana for "medical purposes?" I am not sure that has a lot of logic associated with it.

And I asked our U.S. Attorney Dennis Burke, who is a great man, and he said he did not know how he was going to handle this issue either now that it is going to be quasi-legal in my State of Arizona for marijuana usage. But at the same time, right now at least, the cash crop is marijuana, more than cocaine or any of the others. And last year, in the Southwest Border, just in the Southwest Border States, seizure of marijuana was 1.7 million pounds, and 1.2 million of these pounds were seized in the Tucson Sector.

So I acknowledge that there has been improvement. I acknowledge that our sheriffs on our side of the border are doing a great job in keeping our communities safe. I do not acknowledge that when you see the level of violence continue to escalate on the

southern side of the border, we are somehow immune from that spilling over to our side of the border. There is no logic associated with that. And I think that Sheriff Babeu and I believe our other sheriffs may tell you that it used to be when you saw a drug smuggler, they dropped their product and ran. Now many of them are armed and ready to fight. That is a very different situation and a very different challenge to our sheriffs and their deputies.

I could go on for a long time, Mr. Chairman, but the purpose of this hearing is to hear from our distinguished witnesses, and I want to thank them again for their outstanding service on the front lines. Thank you.

Chairman LIEBERMAN. Thank you, Senator McCain.

We will go first to the Hon. Veronica Escobar, County Judge for El Paso, Texas. Thanks for being here, Judge.

TESTIMONY OF HON. VERONICA ESCOBAR,[1] EL PASO COUNTY JUDGE, TEXAS

Judge ESCOBAR. It is my honor. Thank you very much for the opportunity.

I have the honor of being the County Judge for El Paso, Texas, the greatest city in the United States. In Texas, the County Judge is the chief executive of the county. I preside over a five-member commissioners court, which has budgetary and administrative authority over county government operations.

The County Judge is elected county-wide. That means, as of the 2010 census, I now represent 800,000 people in the world's largest bi-national metropolitan community.

El Paso also happens to be the safest city of our size in America, and we have consistently been ranked among the top three safest communities in the United States for well over a decade. Not only do we have some of the lowest crime rates in the Nation, but a recent poll of our citizens shows that we know we are safe and we feel safe.

Residents who live on the U.S.-Mexico Border have seen their communities used as a convenient backdrop to heated debates and political posturing about immigration and drug policies. Incredibly, it has been said by some elected officials, two from my own State, that there are bombs going off in El Paso, and that is absolutely untrue. As a border community, we have challenges, no doubt, but exploding bombs are not among them.

What happens when the rhetoric escalates and the facts get lost? It hurts my local economy. It hurts our ability to recruit talent. It negatively affects our convention business, and it does not address the real problems.

We are all concerned about and devastated by the tragedies occurring every day on the other side of our river. The drug war is raging just across from where I live in the streets of Ciudad Juarez. I am glad for the assistance being given Mexico, and I hope there is more to come, including discussions about our own contributions to the drug war that is devastating Juarez and El Paso families.

[1] The prepared statement of Judge Escobar appears in the Appendix on page 157.

In the meantime, illegal drugs continue to flow north to feed Americans' insatiable appetite for them. U.S. guns used in that bloodshed continue to move south, and El Paso, like other border cities, is a corridor caught in the middle of that north-south activity as well as the rhetoric that emanates from our State's and Nation's capitals.

My local law enforcement agents are dealing with transnational gang activity. My jail houses them. Our prosecutors are pursuing charges against them in court. And my local property tax base is shouldering much of that burden. The Federal Government has been aware of the costs associated with the challenges we face on the border, and we appreciate your support through the State Criminal Alien Assistance Program (SCAAP) and through HIDTA funds. But, unfortunately, they have not grown as the need has grown, and so my local property tax base then shoulders whatever is not shouldered by the Federal Government.

Grants offer an important supplement, but sometimes they can be inflexible, not allowing my sheriff's office to purchase vehicles, for example, through Operation Stonegarden.

We need investments that supplement our ability to recruit and hire more officers. Office of Community Oriented Policing Services (COPS) grants, for example, flowed into Texas, but the El Paso County Sheriff's Department and the El Paso Police Department, law enforcement agencies on the border, we did not receive any of that funding.

We become more concerned with the talk of slashing budgets and cutting support to our communities, and we believe it will erode the gains we have made in getting the Federal Government to assist us as we assist you.

When the war between the cartels began to reach a critical level in Ciudad Juarez, we saw a pattern emerge that we never predicted and that has not stopped. Our county hospital district, which houses the only Level I trauma facility in the region—the next closest is 275 miles away—began seeing victims of violence who were rushed through our ports of entry and into our emergency room. Since 2008, we have spent $4.9 million in trauma care for the victims of Mexican violence. To date, we have been compensated for only $1.2 million, leaving local property taxpayers to pick up the $3.7 million in uncompensated costs.

We have repeatedly requested funding from the Merida Initiative to help offset those costs borne by our local property tax base because we just do not see that financial burden diminishing unless the United States changes its drug policies or the cartels suddenly declare a ceasefire.

Where has some of the funding gone if not to my trauma facility or increasing my law enforcement capacity? It has gone to a wall. While Federal law enforcement has gone on the record to praise the wall, it is to me and others an example of considerable Federal dollars being spent on a rusting monument that makes my community look like a junkyard.

The vast majority of border crossers are not criminals but economic migrants, and as you know, a significant amount of illegal drugs are funneled through our ports of entry. A true fix to undocumented immigration would come from comprehensive immigration

reform, and, frankly, it would take away the platform by so many State leaders who want our local law enforcement agents to enforce Federal immigration laws. And for the record, all of my local elected officials oppose using local law enforcement to enforce Federal immigration laws. Community policing is what keeps us safe, and having my local law enforcement become de facto immigration agents would erode that trust.

Another facet of an overall fix should be our border ports, which lack significant investment in our infrastructure and personnel. We have $70 billion of commerce that comes across my ports of entry, and we need more modern ports.

I live in a thriving, safe, and wonderful border community. I am fiercely loyal to and very proud of El Paso. While some politicians like to use caricatures of the border for purposes of political rhetoric, rhetoric that portrays my community as dangerous, volatile, and unsafe, the reality for me in El Paso, for those of us who live there, could not be more different.

Do not get me wrong. We have challenges. But those challenges can be addressed much more effectively by more responsible burden sharing by the Federal Government, whose mission it is to secure our borders and, by extension, our public safety, our commerce, and our immigrant population. We are indeed on the front lines, and a safe border means a safe Nation. But vilifying immigrants, building expensive, ugly walls, and encouraging hysteria and xenophobia only hurts our border communities, my economy, our commerce, and the economy of the Nation. Thank you.

Chairman LIEBERMAN. Thank you, Judge.

Next we will go to Sheriff Raymond Loera, who is the sheriff of Imperial County in California, which has an 84-mile border with Mexico. Sheriff, thanks for coming all the way across the country.

TESTIMONY OF HON. RAYMOND LOERA,[1] SHERIFF OF IMPERIAL COUNTY, CALIFORNIA

Mr. LOERA. Well, thank you very much. It was a pleasant trip. I was sitting the whole way.

Thank you very much for the invitation to speak before this Committee. It allows me the opportunity to bring to your attention the significant and important work being done in a small but very important corner of the United States. This work is being done in an area already hit hard by economic pressures and diminishing resources. Even with these significant handicaps, law enforcement in the Imperial Valley is making significant headway in making the entire United States a safer place.

The Imperial County Sheriff's Office is responsible for law enforcement and detention in the county of Imperial in California. Imperial County extends 4,597 square miles, bordering Baja California, Mexico, to the south, Yuma to the east, San Diego to the west, and Riverside County to the north. The county contains seven incorporated cities and 10 unincorporated cities. The estimated population is 172,672. There are three ports of entry in the county. Two of the ports of entry are in Calexico and the third one is in Andrade, close to the Yuma, Arizona, border.

[1] The prepared statement of Mr. Loera appears in the Appendix on page 166.

Imperial County is a rural and agricultural community. Clean energy, wind, geothermal, and solar are emerging, and Imperial Valley could be a significant player in these fields in the very near future. However, currently the unemployment rate is consistently, and has been for many years, 24 to 25 percent.

The Mexicali-Imperial Valley corridor is a significant, lucrative drug-smuggling corridor. Customs and Border Protection (CBP) reports that during fiscal year 2010, the Calexico ports of entry led with the most cocaine seized, as compared to seizures at other ports of entry along the Southwest Border. For fiscal year 2011 this trend continues, and for fiscal year 2011, the Calexico ports of entry also lead in crystal methamphetamine seizures along the Southwest Border.

Mexicali, Baja California, which borders the city of Calexico, has a population of 936,826. Mexicali has not experienced the degree of violence reported in other areas along the border, such as Juarez and Tijuana.

Intelligence has indicated for some time that Mexicali is a neutral zone, a safe haven, due to the plaza having been controlled for many years by the Joaquin "Chapo" Guzman drug-trafficking organization. Recently, there are indications that this is changing. This is evidenced by the killing of five individuals on January 24, 2011, at a bar in Mexicali, Mexico. Intelligence reflects that the Beltran-Leyva organization may be vying for control of the Mexicali Plaza.

The Imperial County Sheriff's Office is part of the Imperial Valley Drug Coalition, comprised of 20 participating law enforcement agencies. This is a High Intensity Drug Trafficking Area initiative. This HIDTA is administered by the Southern California HIDTA, the California Border Alliance Group.

The Imperial Valley Law Enforcement Coordination Center houses the following initiatives: The Imperial County Narcotics Task Force, Major Mexican Traffickers, and the California Department of Justice's Major Narcotics and Violence Team. Although not currently housed at the Imperial Valley Law Enforcement Coodination Center (IVLECC), it supports the Border Enforcement Security Team and the FBI Safe Street Task Force, which are also HIDTA initiatives. These task forces and the Intelligence Support Unit are made up of various State, local, and Federal agents, officers, and analysts, to include deputies from the Imperial County Sheriff's Office.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) established an office within Imperial County in 2009. The domestic component, Project Gunrunner, is the primary focus of ATF El Centro's efforts within Imperial County. ATF El Centro partnered with the California Department of Justice Bureau of Firearms in 2010, as members of a Firearms Trafficking Task Force to implement the domestic component.

In summary, Imperial County is a significant drug-smuggling corridor and poses a potential security threat not only to Imperial County, but also the rest of the United States. As rival drug trafficking organizations (DTOs) seek to take over the Mexicali Plaza, violence is expected to escalate in Mexicali. The Mexican DTOs have adjusted their smuggling methods to counteract law enforcement efforts, such as the utilization of tunnels and ultralights. The

sharing of intelligence between agencies is critical in order to plan for and tackle these challenges. Imperial Valley law enforcement, working with all available partners at the IVLECC is an example of what can and must be done to counter these public safety threats by working together and putting turf issues aside to accomplish this mission.

Also, just between the time that you contacted me and this meeting, there was a finding—and I will pass it around for you to look at, but there is a picture on April 2—I believe they caught the people that may have been responsible for or at least partly responsible for that shooting where five people were killed, and you would be amazed at the amount of military-type arms that they located. Thank you.

Chairman LIEBERMAN. Thanks, Sheriff. Thanks very much.

Next we have Sheriff Raymond Cobos, who is the Sheriff of Luna County, New Mexico, which has a 54-mile border with Mexico and is directly across from the State of Chihuahua, Mexico, which has unfortunately, sadly, been experiencing a lot of violence lately.

Sheriff, thank you for being here, and we welcome your testimony now.

TESTIMONY OF HON. RAYMOND COBOS,[1] SHERIFF OF LUNA COUNTY, NEW MEXICO

Mr. COBOS. Thank you, Senator. It is an honor and a privilege to testify before this Committee.

Let me start by saying that I just want to enumerate some changes in the last 10 years, some of these specific to Luna County.

We experienced a doubling of the number of Border Patrol agents in the Deming Station, from around 250 to a little over 500.

We have increased the technological infrastructure along the border to include additional sensors, cameras, fencing, border vehicle barriers, and the construction and completion of the Forward Operating Base along Border Highway State Road 9. This is supplemented by the incorporation of National Guard personnel that monitor these systems and free Border Patrol agents for the field.

The Border Patrol has partnered with local law enforcement in all-terrain vehicle (ATV) operations. We coordinate checkpoint operations with the Border Patrol. They do theirs and then we do our traffic enforcement program in close proximity.

We have noted that the citizen complaints about Border Patrol activity has changed from "very few Border Patrol agents" to "too many" in many instances. That strongly indicates the effectiveness of the Border Patrol strategy. The presence of Border Patrol agents is the most visible sign of the Federal Government's efforts at practical control of the border, at least in my area.

Luna County crime statistics have plunged along with the apparent numbers of apprehensions of undocumented persons in the El Paso Sector, which includes Luna County. And you have many of those instances along with narcotics seizures.

There are many factors affecting the decline in numbers of persons crossing illegally into the United States, at least in the Luna County area. We attribute that to the state of our economy, the so-

[1] The prepared statement of Mr. Cobos appears in the Appendix on page 170.

cial stress in Mexican society, particularly the increased Federal, State, and local enforcement on the U.S. side, and possibly cooperation from law enforcement counterparts in Mexico in some instances.

We have greater unity among the levels of government agencies outside of law enforcement. That has increased. We get notified by the Department of Housing and Urban Development (HUD) and the FBI on local residents in HUD housing with outstanding warrants, and we act upon those immediately.

In Luna County's case, one cannot overlook the quality of leadership of the Federal law enforcement agencies. I simply would have to credit the close support from El Paso Sector chiefs, patrol agents in charge, in particular in my area, Daniel Serrato, former patrol agent in charge Rick Moody—who is now, I think, the assistant in the Tucson Sector—and Chris Mangusing, who moved over next door to the Lordsburg Station. And it seems every time we form a particular close relationship with one of these supervisors, they move them on to somewhere else. But that simply increases our ability to network.

The one thing I want to emphasize here is that we are the recipients of the Operation Stonegarden program. Through that program we have been able to put officers out in the field, work very closely with the Border Patrol and other agencies. We have gone ahead and initiated a five-county memorandum of understanding (MOU) where we establish a MOU with four other sheriffs, sheriffs of neighboring counties of Hidalgo, Grant, Otero, Dona Ana, and my county, Luna. We cross-commission deputies, so it is a force multiplier. But we have gone ahead and done this on our own in response to the increased violence, and so that way we can trade resources.

We did this well ahead of Operation Stonegarden. But Operation Stonegarden allows us to give our residents services that we could only dream of about 10 years ago.

We are blessed in Luna County with relatively flat terrain, a few mountains. We cannot say the same thing about our neighboring county, which is Hidalgo County. They have a thousand square miles more than we do. We have approximately 3,000; they have about 4,200 square miles. We have 54 miles of border; they have about at least twice that. We have a population of a little over 27,000 with 33 sworn officers; they have a population of about 5,000 with 8 officers. They try to address the problems coming in through their area.

What we have done very successfully is moved the activity out of our area in conjunction with the Border Patrol and pushed it into the Hidalgo County side, which adjoins Cochise County. There is no question about it. We address the issue of feeling safe along the border. The statistics indicate that there is very little of that activity. However, the one thing that we do know—and that is one of my agreements with Sheriff Dever in Cochise County—the character of the people that are coming across now, particularly in the drugs, is much more hostile. They are much more willing to defend their product; they are much more willing to carry arms and use them. And, yes, in our areas we do have lookouts that are stationed on mountaintops—not so many in our county because, like I said,

we shut down that activity pretty much for practical purposes. But I know in neighboring counties we do have evidence of people that are stationed on the top of mountains guiding people across. That is why the Border Patrol uses our deputies to patrol the highways so they can get into the mountains and counteract that ability.

So, anyway, the one thing I do want to do is make sure that you understand that, particularly with Operation Stonegarden, we want to make sure those things continue because it has been pretty much of a success story in our county, and you cannot walk away from success, because it is a recurring issue.

Thank you very much.

Chairman LIEBERMAN. Thanks, Sheriff. I appreciate the reference to Operation Stonegarden, which this Committee has supported over the years.

And the final witness, Sheriff Paul Babeu, Sheriff of Pinal County in Arizona, which is in the Tucson Sector for the Border Patrol, located between the cities of Tucson and Phoenix and, therefore, in a major drug- and human-smuggling corridor.

Sheriff, thanks for coming here, and we look forward to your testimony now.

TESTIMONY OF HON. PAUL BABEU,[1] SHERIFF OF PINAL COUNTY, ARIZONA

Mr. BABEU. Thank you. Mr. Chairman and Senators, I appreciate the opportunity, not just as the Sheriff of Pinal County—I happen to be Arizona's youngest sheriff. I like to remind my fellow sheriffs of that in Arizona. And I have also served as the president of the Arizona Sheriffs Association for the past 2 years, and I bring a message from Arizona: Mexico is not our enemy. President Calderon and the leaders of Mexico are not our enemy. The people, the citizens of Mexico, are not our enemy. It is the drug cartels of Mexico that have destabilized Mexico, nearly toppling their government, that are the enemy of Mexico, are the enemy of America. And that violence is not coming here. It is here.

Pinal County is the fastest growing county after the decennial census, growing 109 percent in population this past decade. We also have another title. We are the No. 1 pass-through county for drug and human smuggling in all of America. And people would say, "Well, you have got Santa Cruz County, you have got Cochise County, you have got Pima County to your south." And I will use the words of the Border Patrol, saying, "Sheriff, all roads from these three counties go to Pinal County." And so we are the No. 1 pass-through county on their way to metro Phoenix, as our Senator, John McCain, pointed out.

So what is going on? And is the border more secure than ever before? And when I share that with my citizens and the families of Pinal County and throughout Arizona, I can tell you, they laugh, because we know the reality on the ground. The Tucson Sector is overwhelmed. And you can add all the resources that you would like, in terms of staffing and manpower, but they forget key elements. And I have told Customs and Border Protection, Border Patrol, Immigration and Customs Enforcement (ICE) Director John

[1] The prepared statement of Mr. Babeu appears in the Appendix on page 177.

Morton and Commissioners Alan Bersin and David Aguilar, all the leaders, that they are forgetting key elements that will bring the solution to a secure border. Because as you mentioned, Mr. Chairman, earlier on, what is the end state? Where are we going here? And what do we want to get to? And you are looking at numbers over the past decade.

Well, the end state a lot of folks want to talk about is immigration reform. Well, I can tell you, myself and the majority of people in Arizona, I think throughout America, are saying absolutely not, until this border is secured, like it is in the Yuma Sector, that discussion does not have legs. And we are not talking about back in 1986 when amnesty was provided to approximately 2 million people. We are talking 12 or 13 million-plus individuals. And are we in the business of having that conversation now? Absolutely not, because the border is not secured.

If we had the Border Patrol's estimate, 219,300 illegals in the Tucson Sector were apprehended alone last year, and they say to me in briefings—these are people who work for Secretary Napolitano—that reflects 1 out of every 2.6 that come into the Tucson Sector. That is—do the math—385,000, approximately 400,000. I do not know how you figure out if there are 400,000 people that got away, we do not know where they are from, where they are going, and who they are. That is a problem for us in law enforcement because close to 17-plus percent have a criminal record already established in the United States. Some of these people are wonderful, good people who want a better life, albeit it illegally. And then you have other than Mexicans (OTMs), and you have people from countries of interest.

I can tell you, when I served as the commanding officer of Task Force Yuma—I have completed 20 years in the Army National Guard, proudly served our country in Iraq. Down in Yuma, I was the task force commander commanding 400, 700, at times up to over 1,000 active duty soldiers and airmen in Operation Jump Start, and this is the basis for what the solution is. And you do not have to look anywhere closer than to your right.

Senator John McCain and Senator Jon Kyl have the solution to secure the border so we can get to this point that we all want to get to. We know we need to. We as a republic have allowed us to get to this point—Democrats, Republicans, all of us. This is our government, and the solution is the 10-point border security plan that needs to be brought to bear. Three of the key elements are 6,000 armed soldiers deployed to the border, 3,000 of those in Arizona, 1,000 each to the other three border States—3,000 is not because it is Arizona and I want more support. It is where nearly half of the illegals are coming in. And you have the OTMs and people from countries of interest, and this is where it is a national security threat. And then while they are deployed for that up-to-2-year period, you build the necessary infrastructure.

I served as a combat engineer. You point out the path of least resistance. Back about 15 years ago, as a young lieutenant, I brought combat engineers to north of Tijuana, south of San Diego. We built 14-foot, corrugated steel, no-climb fence with steel 6 feet under the ground, and it works, because there are proven historical paths where there is built-up urban centers north and south of the

border. What you want to do is deny immediate assimilation. The Secretary often quotes that "Show me a 50-foot fence, I will show you a 51-foot ladder," and she thinks she has won the argument.

Well, the key here is you have to have enforcement, you have to have surveillance, you have to have infrared cameras, you have to have lighting, and we even built roads that traverse east and west north of those barriers so Border Patrol can rapidly deploy to intercept, to make that apprehension.

And that brings us to the third point. You need to have the deployment of soldiers and to build the necessary infrastructure, and then you go to this novel concept of enforcing the law. And when that happened in the Yuma Sector, you have seen, as we sit here today, a 96-percent reduction in illegal entries. That is what a secure border looks like. The rest of America deserves it and is demanding it. And then we can get to this reasonable discussion dispassionately.

I have other information I would like to present in the record.[1] I am running short on time. But that violence that we have had, the cartel hits have actually arrived in America.

Chairman LIEBERMAN. Thanks, Sheriff.

We will do 7-minute rounds for the Members of the Committee. You have all been very helpful in testifying.

Let me begin with you, Sheriff Babeu. I know you mentioned law enforcement. What is the key factor that has made the border in the Yuma Sector so much more secure?

Mr. BABEU. During Operation Jump Start we have seen one of the high watermarks. In 2005, there were 134,000 illegals apprehended that year. Now you are looking at 7,100, thereabouts. And how did we get there? There is not one soldier there. So we have to have these components that I shared earlier. We had armed soldiers. We deployed four or five at one position north of the border; to the right limit, the same number; to the left limit; and virtually along the Colorado River we formed a human curtain, and in other areas along the border.

Now, I have soldiers, airmen from the Midwest, from back East, and they say to me as I troop the line, "Sir, we have not seen anybody in 4 days. Are we really making a difference?" And I chuckled and said, "That is exactly what we want to see."

Eventually it grew to a 74-percent sustained effort. And then the Border Patrol and their leaders—and there are heroes in the Border Patrol—could focus on other criminal elements and to reinforce. Then they started to go zone by zone within the sector—what is called streamline. No longer is there a diversion program. The slang is "catch and release." Everybody is prosecuted, and that immediately was found out south of the border and said, hey, you cannot go through here because you are not detained for a short period of time, less than a week. Now it is 14 to 21 days, up to 60 days, to go through that process. So that alone is a deterrent. And then you are formally deported. So this needs to be brought uniformly across the border.

[1] The exhibits referenced by Mr. Babeu appear in the Appendix on page 180.

Chairman LIEBERMAN. So you would say if we took some of those practices to, for instance, the Tucson Sector, there would be a significant decrease in illegal crossings?

Mr. BABEU. Absolutely, Senator.

Chairman LIEBERMAN. Let me ask the panel just to briefly get into the question of how, from the point of view of judging the results we are getting from the Federal investment, to better judge border security and what border control we are getting in return. You heard me talk about the number of apprehensions being used. Judge Escobar, any other thoughts about how we might do that?

Judge ESCOBAR. Well, I think the way that we are ranked the safest city in the United States is through FBI statistics on criminal activity happening in my community.

And as I mentioned at the beginning of my comments, we are the safest city of our size in the Nation, and that is going back 11 or 12 years. We have been in the top three——

Chairman LIEBERMAN. Has there been any alteration in those crime statistics in the years since violence has so dramatically gone up across the border in Mexico?

Judge ESCOBAR. We achieved the status of being the safest city in the Nation last year, and before then we had been No. 2 or No. 3 consistently.

And so last year was when we finally peaked at No. 1. I would be vehemently opposed to militarizing my border. What keeps us safe is a great relationship and community policing between our local law enforcement and our neighborhoods. And if, for example, law enforcement, as I mentioned before, becomes an immigration officer or if you have military patrolling the streets, that changes the dynamic and that changes the trust and a neighborhood's ability to report crime. And we depend on that relationship and that communication to keep us safe.

Now, what has been extremely helpful, Operation Stonegarden, any Federal funding that has come through HIDTA and SCAAP, it helps offset the burden carried on the shoulders of my local property tax base, and it helps us use our resources more effectively. But as we have been growing and we have not seen the investment continue, that is where I have really a tremendous concern because we either have to scale back operations or the burden on the local property tax base grows more significantly.

Chairman LIEBERMAN. Am I correct that El Paso is not a major smuggling corridor?

Judge ESCOBAR. It is.

Chairman LIEBERMAN. It is. So even though it is, your crime statistics are as low as they are.

Judge ESCOBAR. Right. And we have achieved that designation, even though we live across what is called by some the most dangerous city in the world, Ciudad Juarez.

Chairman LIEBERMAN. Right.

Judge ESCOBAR. And, again, we have not done that by militarizing our border. We have not done that by having local law enforcement enforce Federal immigration laws. We have done that by smart community policing, trying to be strategic about how we invest our money, but really the Federal funds that come to my community are critical, and they are not enough.

Chairman LIEBERMAN. You know, it is interesting. You have two different models. Sheriff Babeu, you talked about in Yuma more of a law enforcement model that has worked. And you have one which is quite different. It is law enforcement but it is more community policing, community involvement.

Sheriff Loera, any thoughts about how folks within your jurisdiction feel about their safety and how we might better measure border security and border control?

Mr. LOERA. It is interesting that you put it that way, that you have two different models here. Yuma Sector goes into Imperial County. Part of that issue is that we have one of the largest or most active recreational areas, the Glamis Sand Dunes, which can at times bring up from 150,000 to 160,000 people in one area.

Prior to the fence being put up, we had several problems. One was that when these large groups of people are there, the cartels or the smugglers would just jump on their ATVs and mix with the crowd, and we had a real difficult time in controlling any traffic coming north.

Before the fence came up, people would drive straight across into Imperial County, get on the highway, I–8, which runs east and west, and their favorite tactic was to drive against traffic because they knew that the law enforcement were not going to get involved in that or would call off a pursuit so that they would not harm any other people.

When the fence came up, that almost came to a standstill. There are no more pursuits, at least of that magnitude. The fence came up and now the crowds do not mingle as much as they did. The problem now is that, as Clint Eastwood said, they adapt and overcome. We are now seeing an increase in tunnels. Tunnels are going through from Mexicali to the city of Calexico. We found probably four or five in the last few months, and they are getting more and more sophisticated.

We have gotten the ultralights which are now flying over the fence. My understanding is that the Drug Enforcement Administration (DEA) task force has 20 or 25 ultralights in stores that they have found. No drugs, but the assumption is that they were used for drugs, the drugs were successfully flown over and picked up, and the ultralight is a minimal loss to them.

In Imperial County, we have a strong community policing ethic that we really push. I will tell you on my behalf as a sheriff that I do not want to be involved in enforcing immigration laws. But I think the community supports us in doing the job that we need to do. And it has been built up over many years.

Chairman LIEBERMAN. Right. Thank you. My time is up. Sheriff Cobos, do you want to answer that?

Mr. COBOS. As far as measuring the statistics, obviously one of the things that we use is our local statistics. Back in 2005, we were catching vehicles on the road just by being out there on traffic checkpoints and doing saturation patrols simply for traffic enforcement. We were picking up vehicle after vehicle. Mind you, there were four or five people on the shift at a good time, but they would be picking up three, four, five vehicles a day. Now I do not think we would get that many in 6 months. An obvious change. So our statistics bear out that it has been effective.

What happens, of course, is that we see our neighboring county, especially Hidalgo County to the west bordering Arizona, so it appears to me that we have pushed that activity. So there is no question about it in our mind. And in terms of how the people feel for the most part, we initiated a number of activities, including our farm and ranch patrol where a deputy goes to each ranch along the border and talks to the ranchers, and he does that about three, four times a week. Not so much that we expect that will do much more than show the flag. Our presence along the border at regular intervals indicates to them that we are always ready to respond.

We also have a community patrol which goes along each little unincorporated area that knocks on doors and asks the people how they feel about things. But, again, the main, consistent feeling that we get is that they realize—because they see in the news media the terrible tragedy that is occurring in Mexico. And let me point out it does not necessarily have to be a violent attack on the United States. In my county we had a mayor of a small town, the police chief, and a member of the governing board of trustees arrested by ATF and about five or six other individuals for illegally purchasing firearms and then sending a number of them into Mexico.

Chairman LIEBERMAN. So, in other words, it was not violence, but they were corrupted by what is going on.

Mr. COBOS. Exactly so. That is a subtle way of introducing violence. So to me that was a very black stain on law enforcement. I hate to get emotional about it, but I was outraged, and so were a number of other heads of agencies in that area. But that is one of the things that—you do not have to introduce a platoon of AK–47-carrying people to come across the border and do violence. You can do this through the almighty dollar.

Chairman LIEBERMAN. Thanks, Sheriff. Senator McCain.

Senator MCCAIN. Well, thank you, Mr. Chairman, and I thank the witnesses. Thank you, Sheriff Babeu, for your continued service to the country. I noted with some interest that both Sheriff Loera and Sheriff Cobos are Vietnam veterans. Thank you for serving.

Mr. LOERA. I have to clarify. That is the Vietnam-era for me. I did not serve——

Senator MCCAIN. Vietnam and Vietnam-era veterans, thank you for serving. And, Judge, congratulations on your outstanding record of service.

Do you recall, Sheriff Babeu, how many bodies we have found in the desert around Tucson? I think it is around 200.

Mr. BABEU. Yes. There was a large article looking at illegals, Senator, who are being brought up, and we often ask where is the human rights outrage for the lack of care or concern for human life.

Senator MCCAIN. And I believe that number continues to go up, the number of bodies we find in the desert of individuals, either because the coyotes have abandoned them or for various reasons. And, of course, another human rights issue is the unspeakable things that are perpetrated on these illegal immigrants by the coyotes, especially young women. They are horrifying stories.

Did I hear you correctly, Sheriff, when you said that the building of the fence was a very important step forward in your ability to control the border?

Mr. BABEU. I think it was. I will be truthful with you, Senator, that when it was first proposed, I had my doubts as to how successful it would be, even with the Border Patrol coming in and being a proponent of it. I think that it is a piece——

Senator MCCAIN. I do not mean to interrupt, but isn't it that the key here is not just a fence but also the surveillance capabilities plus manpower? Isn't that pretty much the conclusion that we could draw? I am not putting words in your mouth, but——

Mr. BABEU. No. I think that is correct.

Senator MCCAIN. And that is sort of what has happened in your area of jurisdiction?

Mr. BABEU. Well, it is right now. Like I said, our issue is that we have not seen this level of violence. The corridor issues have been historical. We are concerned about the violence like in Tijuana and some other areas spilling over, which there are indicators that it may be coming, and coming faster than we are prepared for.

Senator MCCAIN. I noticed this, by the way, this morning: Mexican forces seeking kidnapped bus passengers stumbled on a mass grave holding 59 bodies. This is beyond belief, some of the things that are happening.

Sheriff Cobos, what is your view of the measures that need to be taken to secure the border? Do you pretty much agree with Sheriff Loera?

Mr. COBOS. Yes, I am very much in agreement. One of the things that I need to point out, in the Port of Palomas, adjoining our port of entry, on our side we erected a 12- or 14-foot barrier fence that extended out to about 1½ miles on either side. You speak about the bodies we found. I remember up until about 2 or 3 years ago, we had found 36 bodies by various agencies.

Senator MCCAIN. Where did you find them?

Mr. COBOS. They were out in the desert. The remains were stumbled upon by people, or sometimes—in one case we received a call from a Border Patrol agent in the Yuma Sector saying that he had received a call from a person indicating that one of his relatives that he had, had died in our area. We went to milepost 56 or 57 on I–10, which is west of us. We went there and, sure enough, within 10 or 15 minutes we found the body. And, again, the same scenario, people get sick, they get abandoned, and unless you have a very close relative or a very close friend with you, they are going to leave you there to die or fend for yourself.

One of the things about that fence is that it stopped women and children. We got pretty tired of having to rescue women and children. We were looking for a 16-year-old immigrant that was supposedly dying. We went out on four-wheelers, and I found probably about nine in an area. They had broken off bushes and covered themselves with them in about 110 degree heat. They laid there all night long. But one of them was a woman with a 9-year-old daughter, and, again, it is one of these things. You saw the desperation in their faces, but we simply had to take them out of the area.

So we are going to be working closely with Border Patrol because, if anything else, we do not want them dying in our desert. We do not want them dying anywhere.

Senator MCCAIN. Thank you.

Sheriff Babeu, you obviously made the case for the three-legged stool here: Surveillance, fences, and the personnel requirements. One of the misnomers that I think is out in America is that we cannot control our border. And the fact is you mentioned the Yuma Sector is largely secure. The San Diego Sector is now secure where people used to just run up in traffic to cross the border. Parts of Texas are secure. So it is not that we cannot achieve that. And, yes, they will use ultralights and, yes, they will dig tunnels. I think it was in Douglas, we found 11 tunnels in the last short period of time. So they are very inventive and ingenious, and, again, we need to have this conversation about demand.

I congratulate you, Judge Escobar, on having the country's safest city, and it is a testimony to your and others' great work and other public servants. But I also was interested in a couple of your statements. You said, "We are indeed on the front lines, and a safe border means a safe nation. But vilifying immigrants, building expensive, ugly walls, and encouraging hysteria and xenophobia only hurts our border communities . . . our commerce, and the economy of the Nation." Then you went on to say, ". . . Federal dollars being spent on a rusting monument that makes my community look like a junkyard."

Let me just tell you that I respect your opinion and maybe that is the case in El Paso. The Federal Government has found it necessary—and I will be glad to show you a picture of the sign—to put up a sign in the southern part of my State reading "Danger: Public warning. Travel not recommended. Active drug and human smuggling area." It goes on to say, "If you see suspicious activity, do not confront. Move away and call 911."

I do not think we should ask our citizens who live in any part of this Nation to be subjected to an environment where our own Federal Government has to put up signs warning our citizens that they cannot travel freely in our sovereign territory. So I must say I respect your view about ugly fences and junkyard things, all that. But it certainly does not apply to my State, nor the citizens of my State. And so I respect their views, and I do not criticized anybody, and I certainly do not view the ranchers who live in the southern part of my State who are subject to repeated home invasions as xenophobic. And I hope that you were not including the citizens of my State in your comments about people who practice xenophobia.

I would be glad to hear your response to that.

Judge ESCOBAR. Thank you, Senator. When you create walls along the Southern Border, you are simply shifting the flow of the undocumented elsewhere, either through tunnels or to more extreme terrain, where they are more than likely to die in higher numbers. And so if you want to tackle the issue of the undocumented—and there are different types of undocumented migrants. Clearly we can admit that there are migrants who are here for economic purposes to seek out a better life, and they are here frankly because there are Americans willing to give the undocumented employment. And so there is a pull. It is the fundamental law of supply and demand. If there were not the demand in the United States, then you would not have this supply chain.

And, again, all you are doing is moving the issue or the challenge either into some other community or through tunnels, and in my

humble opinion—and I am not a Federal decisionmaker, but I think if you want to tackle the issue of the undocumented, you can do it through comprehensive immigration reform. And if you are able to tackle that and utilize your resources much more wisely on trying to attack the problem of those who are trying to traffic in drugs or trying to create harm in communities, then I would rather have my Federal law enforcement agents focused on that population than on chasing migrants who are here because there is an American company offering them a job.

And the same thing goes with drug trafficking. It is our insatiable appetite for illegal drugs that create these corridors. And the longer we go not acknowledging that or dealing with that, we are not going to get to the root issue, is how I feel about this.

Senator MCCAIN. Well, thank you, Judge, and I appreciate your opinion. So basically your assertion is that we cannot secure our borders. That is a fundamental assertion that you and I have a strong disagreement on because I think the security of our citizens is our first and foremost obligation.

You said the answer is comprehensive immigration reform. I must tell you that a major part of that obviously—and I know you are a strong advocate for it—is amnesty. I have seen that movie before. I saw it in 1986 when we gave amnesty to 2 million people who were in this country illegally on the promise and commitment that we would secure our borders and that we would not have a problem anymore with illegal immigrants. Now we have 10 or 12 million people who are here illegally.

So to somehow assert that comprehensive immigration reform will stop or stem the flow of people coming into this country illegally, I think, has not been authenticated by history. So I appreciate and congratulate you on having a very safe city. It is hard for me to tell the family of Brian Terry, the Border Patrol agent that was just murdered, or the rancher who was just killed, or one of Sheriff Babeu's deputies who was just wounded, that it is OK, we really do not have to take additional measures to get our border secured.

Those 75 to 100 guides, they are not there guiding people who would come across the border looking for a job. They are guiding the drug cartels that are bringing the cocaine, methamphetamine, and marijuana into Arizona and then to Phoenix where, according to the HIDTA people, it is distributed throughout the Nation with the exception of some parts of Texas. So I strongly appreciate and respect your view, but I strongly disagree. And I think the lessons of history are on my side.

And, by the way, I would be glad to have Judge Escobar respond to that. I think you have the right to.

Judge ESCOBAR. Is there something in particular you would like me to respond to?

Senator MCCAIN. Would you like to disagree that we gave amnesty to 2 million people and the promise that we would have our border secured and we would not have the problem anymore? Do you disagree with that?

Judge ESCOBAR. Here is what I disagree with. I disagree with your characterization of my testimony as stating that I do not believe we can secure our borders. I absolutely believe we can secure

our borders in a smarter, more effective way. I think when you have modern ports of entry—when you look at your cell phone and the things you can do with your cell phone—my 14-year-old son can hold up his cell phone, and there is an application that will tell him what song is playing. That is a pretty modern application.

The ports of entry in my community have remained essentially unchanged. There has been very little investment in technology in my ports of entry that will help keep us safer. I think there are smarter ways to expend our resources. I think it is a combination of funding, technology, and policy. But when I hear anyone advocate for militarizing the border or trying to create a situation that I do not think utilizes our resources in the most effective way, I feel obligated to speak up.

Senator MCCAIN. Well, I thank you for that comment, and none of us are advocating militarizing the border. What we are seeking is the National Guard to supplement the Border Patrol and not through military action on their part, but they have played a critical role in surveillance, identification, assistance in a variety of ways to the overworked and overtasked Border Patrol. The head of HIDTA, the head of Border Patrol on the border, I asked them, "How has the National Guard helped you here?" And all of them said they are "indispensable." And they are not militarized. They are not physically arresting any illegal immigrant. There is a Posse Comitatus situation here. But the work that they have done, in the words of the people who are down on the border, they are "indispensable."

I have long overused my time, Mr. Chairman, but this is a very important conversation. I take some of your recommendations very seriously. We need to address the issue of demand, and I agree with you on that very seriously. And I also understand the attraction of jobs. I also understand that if we are going to have immigration reform, employers must be punished who hire people who come to this country illegally.

I think there is a lot of common ground that we are going to have to seek, and I am confident that we can. But I cannot say to the citizens of Pinal County who have guides sitting on the mountains near where they live that we have the border secure and we can move forward with comprehensive reform.

I thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator McCain. That was an important exchange. And thank you, Judge.

Senator Coburn, you are next.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you. Thank you to each of you for being here. I have planned a trip to the border, maybe, depending on what happens on the Continuing Resolution, and that will be, I think, on April 18 and 19, and a couple of you I hope to see.

Sheriff Babeu, are you aware of any pressure that local law enforcement has received, or the Border Patrol, in terms of reducing the number of arrests for deportation?

Mr. BABEU. Senator, ironically enough, I just spoke with Sheriff Larry Dever within the hour on the cell phone—there has been some public controversy over those statements where the head of

the Border Patrol here in Washington, DC, has come out and said absolutely that is false, that is untrue, literally calling Sheriff Dever a liar. So I called my lieutenant, Matt Thomas, earlier today as well. He is a career deputy, came up through the ranks, was a sergeant in charge of our narcotics task force, working undercover, and he said, "Sheriff, I have heard that myself directly from Border Patrol agents in the Tucson Sector."

And then I called T.J. Bonner, who has been the national president of the Border Patrol Council, within the last 2 hours. He was the president from 1989 to 2011. He just retired a month ago. And he says, "Absolutely." Not firsthand, but he has all of his Border Patrol agents, many of them, giving firsthand accounts of that fact. I do not have firsthand myself, but I can tell you that we need help out in Arizona. In anybody's scorecard, if the majority of people are getting through undetected, that is a failing grade, period. The people in my county do not feel that the border is more secure than ever, and we are 70 miles north.

Senator COBURN. Are there particular ways that any of you all would say things we are doing that make it more difficult for you to secure—or at least administer your law enforcement on your side of the border? Are there things that we, through the Federal Government, are doing that make it more difficult?

Mr. BABEU. Yes. The Federal Government, President Obama, and Eric Holder should stop suing the State of Arizona. At a time that we need help, we ask for help, we try to pass laws on our own—which is not the solution. S. 1070 is not the answer, even though I support it for uniform enforcement. We need the help that we have been talking about, is real border security. And instead we have teams of lawyers sent to fight our State and then malign us. And then those of us who are proud to serve in law enforcement and as protectors are made out to be the bad guys. We stand up for the rule of law. It is not race, color, or national origin. Two hundred of my deputies are Hispanic. So what are they saying about them in the application of the law?

Senator COBURN. Sheriff Cobos.

Mr. COBOS. Our relationship with Border Patrol in my county is very close. We have never had any indication—I was even unaware of any controversy going on until shortly before I arrived in Washington yesterday.

But the one thing I will say is that in terms of any inhibitions on the part of the Federal Government, I think it is better to say there are things that the Federal Government can do.

Senator COBURN. Right.

Mr. COBOS. And one, in particular, is our biggest problem of communications along our Southern Border in my county, and I know that the Border Patrol and other agencies build infrastructure, communications towers and so forth. What I would like to see is a good study of that to see if any of that infrastructure can be used to incorporate and include——

Senator COBURN. That is a great idea. Do you know of anybody that is working on that?

Mr. COBOS. There are plans, I believe, to build towers in——

Senator COBURN. But to incorporate you into the communication loop.

Mr. COBOS. Not that I am aware of, no.

Senator COBURN. That is key. Thank you. Sheriff Loera.

Mr. LOERA. Senator, I do not know if you were here for the part where I spoke about the coalition that we have in Imperial County.

Senator COBURN. Yes, I was.

Mr. LOERA. I think we have a very strong working relationship not only with the Border Patrol, but with the DEA, the FBI, and all of the Federal agencies. That has not always been true. Ten years ago you could not get us in the same room.

I think that things are going well. The Border Patrol has been very accommodating with working with us. So I think that the relationship is good.

Operation Stonegarden has been very good for us and everybody in Imperial County because of our financial issues that we have. It has not only allowed us to support them but also support our communities.

Senator COBURN. But you do not see anything specifically that we are doing now that is a negative factor, anything the Federal Government is doing that is a negative factor in terms of you being able to carry out your job? That is really the question.

Mr. LOERA. I do not think so.

Senator COBURN. Thank you. Sheriff Babeu, why do you think the Department of Interior recently replaced warning signs on lands on the border with signs claiming to be the information signs? Why do you think that happened?

Mr. BABEU. The signs that Senator McCain pointed out, are probably the highest insult that you could pay the citizens of Arizona, and all Americans should have been outraged at that—not only the Federal Government not helping us, but putting up these signs. We screamed about it. Our governor went on TV and talked about it. All these 15 billboard signs that were put up were put up in my county, not even on the border but 70 miles north of the border, warning American citizens that in a certain part of America travel is not recommended because foreign cartels basically, I guess, control these areas. And weeks before the November 2, 2010, election, these signs miraculously came down, and more politically correct signs about high-level law enforcement at the Federal level is taking place here. They say, by the way, call 911. Guess who 911 is? Me. And they have these others signs that are up, that have been up for some time, "Travel caution. Smuggling and illegal immigration may be encountered in this area." Well, thanks for the public warning for that.

Senator COBURN. Have the conditions changed to warrant such a switch?

Mr. BABEU. The conditions changed because the American people are becoming aware of the inaction, and then the insult of suing Arizona on the Supremacy Clause saying that inherently it is their job. We are saying do your job. So at least they did us a favor and took down those signs.

Does it warrant it? We just want them to act. How has it become my job as the local sheriff to go out there and fight foreign cartels? We have arrested these people. We have had hits. Here is one such hit, who was working for the cartels, and he was shot half a dozen times in Casa Grande, Arizona, and his wife and family said be-

cause the cartel suspected he was working for local law enforcement and he was giving information to us, and that is why he was killed.

In Chandler, Arizona, we have the local Chandler Police Department, which I used to be an officer, and the very beat that I served, now it comes out months later as the Freedom of Information Act requests for these reports show that this is connected to the cartels, a man was stabbed a number of times, and had his head cut off in Chandler, Arizona.

So this violence, it is not just coming here. It is here.

Senator COBURN. I think you have seen a copy of the letter that I recently received from the Department of Interior[1] that no Bureau of Land Management lands are closed to visitors because of border-related criminal activity or that only 3 percent of the Buenos Aires Refuge is closed to visitors or that only 68 percent of Organ Pipe National Monument is closed to visitors.

Are you aware of other areas effectively closed to visitors?

Mr. BABEU. In Pinal County, Senator, I can tell you—and I personally inspected myself and took pictures and showed Senator Kyl, and I believe I showed Senator McCain as well—70 miles north of the border, they are putting steel rail, actually used for railroad tracks. They cut it and put on Normandy barriers and put 1.3 miles near the Vekol Valley south of I–8 to try to divert all of this traffic. Well, guess what they do? They just drive around it. And so why are we putting barriers this far north? They should be on the border.

So there are certain parts there. That is where these signs are. So the Federal Government has said travel is not recommended here. So, in fact, yes, they are.

Senator COBURN. I would presume in the Tucson Sector you are aware of federally owned lands on the border that are used by smugglers and drug cartels to smuggle narcotics and illegal aliens? You are aware of that?

Mr. BABEU. It happens. Ask Nancy Henderson about it—it is not on the border where it is sparsely populated. In my county families have to plan—they leave a family member home while somebody is going shopping for food because they do not want somebody breaking into their house and stealing their property. And this was one of our cases in Arizona City, right off I–10. I know Nancy Henderson, who is a young widow, who says, "I am an American, and I do not feel free in my own country." And her husband was an avid gun collector. She was at work. And she came home, and they had busted open her safe with a pick axe and pry bar, stole all nine of her weapons, all of her ammunition, went in her cabinet, took food items, packages of batteries that she had there, and six pairs of heavy-duty socks.

Well, you do not have to be a detective to figure out what happened here. They did not take her computers. They did not take her TVs or her jewelry. And then there were footprints going from her house to Wildcat Peak in the Sawtooth Mountains, where there have been three individuals who have been arrested who were scouts, lookouts for the cartels who provide safe passage.

[1] The letter referenced by Senator Coburn appears in the Appendix on page 215.

There are eight families, three of them had the courage to come forward to stand with me to talk about it to the media. It is just outrageous. I asked them, "Why did you wait 3 days to come forward?" One of these families, Pat and Penny Murphy, were personal friends of mine for years, and they said, "We were afraid we would be killed."

Thirty-five miles outside of America's sixth largest city, Phoenix, Arizona, we have American citizens who are in fear of drug cartels in Mexico, that they were going to be killed by that scout living in a cave in the mountains, less than a mile from their backyard, or by the people that came and resupplied him with food and water or by the people they work for.

Senator COBURN. Are you responsible for recovering bodies of those that die on Federal lands?

Mr. BABEU. Yes.

Senator COBURN. Why are you responsible for it?

Mr. BABEU. We are the local law enforcement and have jurisdiction. Border Patrol, anything happens, they call us. If there is a rape or if there is an assault, I have to take a deputy out of a beat that is primarily responsible to answer 911 calls. So you cannot divorce this from local law enforcement and the impact upon public safety. And I have other pictures here of kidnappings and people who were dumped in canals, people who were shot.

This was one of two individuals who were illegals, kidnapped in Phoenix, Arizona, and brought not to other parts of Phoenix but to Pinal County, and these two guys, when the vehicle stopped, they could not come up with a $3,000 ransom. This is what they told us. And they knew they were going to be walked out and be executed. They ran for their lives, and this guy was the slower of the two and got shot twice in the back.

In other cases, here is one gentleman who was kidnapped, duct-taped, thrown in the canal after he was killed. And that is happening here.

So we care about these people. My deputies are dispatched with the same urgency if you called and were in a head-on collision. We respond to families who are abandoned. As the sheriff said, we had nine individuals, two adult men, five women, two children ages 6 and 11, that were abandoned. They finally got into an area where they had cell service, and one of the men called, in Spanish, and asked for help. We triangulated his location, and we went out, our deputies. They had not had water for 2 days, could not even move. They were drinking their own urine for 2 days.

The compassion of law enforcement, the compassion even of my soldiers and airmen—we never got in any gun fights. As the Senator pointed out, through Posse Comitatus, we did not have enforcement authorities, we did not go on patrol. We were a physical presence and a deterrent.

Senator COBURN. I want to make one last statement, and anybody who wants to respond to it. I notice in your testimony, Mr. Babeu, you used the word "illegals." And I notice that Judge Escobar, an officer of the court, she uses the word "undocumented." And I just find it curious that somebody that is a smuggler or a drug runner can be labeled as undocumented when, in fact, they

are a felon. They may not be convicted yet, but they certainly have crossed the border illegally.

And so, I think it is unfortunate that we are going to try to—because I use the word "illegals." I wonder if I am considered xenophobic because I do not use the word "undocumented." And I just find it curious that we are trying to move this debate in terms of making things worse rather than to making things better.

The fact is if you cross the border illegally, you have committed an illegal act. And if you are a drug runner and have done that, I think it is highly unusual that we would call them "undocumented."

Mr. BABEU. Right.

Senator COBURN. I think they are illegal. And so I do not say that because I do not care for Hispanic people. I say it because it is a fact.

Judge ESCOBAR. Senator, if I could respond?

Chairman LIEBERMAN. Go ahead.

Judge ESCOBAR. Clearly, this is a question that refers to my testimony.

Senator COBURN. I said that.

Judge ESCOBAR. Right, and so that is why I think I should be the one to respond. I appreciate that.

I think what is important here is to understand the difference between economic migrants, people who, as the sheriff himself pointed out, are here because they want to improve their lives, they want to put food on the table for their children, and there absolutely is a difference between them and drug smugglers and coyotes, people who take advantage of the poor and the most vulnerable in the most difficult conditions. I never called you or anyone on the dais xenophobic——

Senator COBURN. I did not imply that.

Judge ESCOBAR. Well, that was the implication.

Senator COBURN. No. Let me take over here. I said is it because I do not use that word, does it imply that I am xenophobic. I did not say anybody said that.

Judge ESCOBAR. So if you meant it rhetorically——

Senator COBURN. But you have to admit, in the debate out there that is going on, the emotional debate that is going on in our country today, is if you do not use the proper words, then you are automatically categorized. And we are never going to solve this problem when we do it that way. The problem is we have people breaking the law.

Chairman LIEBERMAN. Senator, I will let you respond, and then we are going to have to move on.

Judge ESCOBAR. Thank you. I think what is important is keeping the debate rational, and I think my perspective is completely rational, and it comes from a point—I live on the border. I live, as I mentioned, in the largest bi-national community in the world. And so I do think I have credibility when it comes to telling the story of what happens on the border, just as everyone on this panel has credibility before you. And simply because I have a difference of opinion in the nomenclature of how I choose to refer to migrants—and, again, I believe there are criminals that are coming across this border, that are intending to harm people, intending to

provide illegal drugs to Americans who want them and ask for them and pay for them. But I see a difference between the two populations. And I identify——

Senator COBURN. But you do not see it as an illegal act to come across our border if you are undocumented?

Judge ESCOBAR. It is an illegal act. But you choose a different nomenclature than I do, and I am not critical of your nomenclature, and so if you are critical of mine, you have to evaluate what motivates that. I do not know.

All I can tell you is it is important in this country to have rational discussion, not based on what you want to believe but based on the facts. And so I bring to you a certain set of facts. If you do not like those facts, I cannot control that. All I can do is bring before you what has made my community safe. It is interesting that you ask the question what can the Federal Government do better, and you asked it of everyone except me. And I am going to tell you what you can do better

We need stronger investment—we are trying to line up all of our radio communications among all law enforcement, Federal, State, and local, in El Paso. We would love more Federal support in doing that. We think that will make us safer, smarter, and more effective in terms of all law enforcement levels. We would like more technological advancement in our ports of entry. We would love for you to supplement HIDTA and SCAAP funds, which are not funding the complete burden of what we are trying to do with you because we do want to be a partner with you.

Regardless of ideological beliefs about nomenclature, we are one and the same and wanting to ensure we are all safe.

Chairman LIEBERMAN. Good note to end on.

Judge ESCOBAR. Thank you.

Chairman LIEBERMAN. I actually think there were some meetings of the mind along the way there.

Judge ESCOBAR. I hope so.

Chairman LIEBERMAN. I have to go to a meeting on the budget impasse now, and I want to solve it because I want Senator Coburn to be able to come and visit you on the border. I am prepared to yield the gavel to Senator McCain, if you have any more questions.

Senator MCCAIN. I have no more questions. I want to thank the witnesses. It has been very helpful.

Chairman LIEBERMAN. It really has been. I think you used the words "rational" and "respectful." It has been a rational and mutually respectful discussion, and you did exactly what the Committee hoped you would do, which is you brought us firsthand experience, real live experience, different reactions but right from the border. So you have helped our inquiry very much.

We are going to leave the record of the hearing open for 2 weeks for any additional questions or statements to be added.

In the meantime I thank each one of you not only for coming here, which took some effort, and contributing to our oversight but also for the work you do, the tough work, really critical work every day. So stay safe and God bless you.

And with that, we will adjourn the hearing.

[Whereupon, at 3:05 p.m, the Committee was adjourned.]

SECURING THE BORDER: PROGRESS AT THE FEDERAL LEVEL

WEDNESDAY, MAY 4, 2011

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

The Committee met, pursuant to notice, at 10:05 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Carper, Pryor, Landrieu, Tester, Collins, McCain, and Johnson.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. We welcome everyone. The topic for the hearing today is "Securing the Border: Progress at the Federal Level." This is the third in a series of hearings we have been doing on border security, focusing particularly, of necessity, on our Southern Border. But just as history changed on September 11, 2001, in another way, much more positively, history had a turning point on Sunday with the killing of Osama bin Laden. And I would be remiss not to say a word of thanks to you, Madam Secretary, Janet Napolitano, and to all the people who work with you in the Department of Homeland Security (DHS), and by extension to all the people in the security sector of our government—military and intelligence—who performed so brilliantly and bravely and worked together to bring about the extraordinary result that was achieved on Sunday in Pakistan.

The teamwork that was so pervasive in the successful assault on that compound in Pakistan is precisely what this Committee hoped for when we worked so hard first to establish the Department of Homeland Security in 2002 after September 11, 2001, then introducing and bringing forth the legislation that created the 9/11 Commission Act, and then considering in two phases and advance through the Committee, and ultimately to enactment, the Recommendations of the 9/11 Commission Act, reforming the intelligence community. I think all of us are very grateful and very proud of the work that was done. And since this is the first opportunity I have had to see you in public, I wanted to thank you and ask you to thank all those who have worked with you. And I hope you will say a few words about that in your opening statement.

Also, as good as we feel about what happened on Sunday in Pakistan and as much as we know that it makes us safer, and the world safer, we also know the war against Islamist terrorism is not

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over. The enemy is still out there and will continue to try to attack us here at home, and to the extent that you are able in your testimony, I think, either in the opening statement or in questions, I would like to ask you a bit about the post-bin Laden sense of homeland security.

Let me come back to the topic of the day. Briefly, the security of our borders in all its manifestations is very important. The truth is that one of the great achievements since September 11, 2001, is the extent to which we have secured our borders against those who would come in to do us harm. The focus of these hearings, of course, has been on a different kind of border security, which is border security related to illegal immigration, but also concerns about the drug cartel violence in Mexico and the extent to which it may come over our border into the United States. And, in this regard, too, I want to thank you for all you have done. I think you have faced really significant challenges, both in terms of all kinds of border security and, of course, natural disasters. And you have handled your job with real strength and effectiveness and common sense, and I appreciate it.

Witnesses at the two previous hearings on the topic of border security, particularly the Southern Border, largely agreed that the situation along that border has improved significantly over the past decade. The best statistics available bear this out. The one that seems to be most commonly used is that apprehensions of illegal aliens along the border are down 73 percent since 2000, which is the lowest level in three decades.

This is, of course, good news. We have spent a fair amount of time in the previous hearings on the metrics, on the statistics, and we know that they are just a piece of the picture and can be misleading. At different times, for example, the Border Patrol has cited increases in apprehensions as proof of progress, and sometimes decreases in apprehensions, on the theory that the fewer people trying to get over into the United States, the fewer the apprehensions. So we believe we have to try our best to figure out how many people actually are attempting to come over the border and compare that to the number of those who succeed. I understand the Border Patrol has been trying to collect this information through footprints, video footage, and sensors, but that its methods are not 100 percent up to the challenge. And it is a difficult challenge because we are trying to measure the number of people whom we have not apprehended. I hope that you will be able to find ways to improve the collection of this information and consider making it public so we can more accurately assess the extent of the problem and our progress on it.

The second point that has come out of these hearings that has struck me is that the focus on the Southern Border has often overshadowed other vulnerabilities that continue elsewhere in our immigration enforcement system. One statistic which reveals such a vulnerability that I would guess would be and is very surprising to most Americans is that about 40 percent of the illegal immigrants in our country—undocumented aliens, people living and working in the United States today illegally—came into this country legally and then overstayed the terms of their visas. So in terms of the problem of illegal immigration, about 40 percent of the problem is

not people who come over the border and into our country illegally but people who have come in legally and over stayed. And this both undercuts the kind of legitimacy of the law that we have about temporary visas, for instance, but it also threatens our security.

The most pressing, the most sort of illustrative number to me still is the 9/11 Commission, which reminded us that five of the terrorists who attacked us on September 11, 2001, entered the United States legally and then intentionally overstayed their visas. Just recently, a couple of years ago, in 2009, Hosam Maher Husein Smadi, arrested in Dallas on suspicion of planning terrorist attacks, was in the United States originally on a student visa, a legal visa, and then overstayed.

A new GAO report,[1] which just came out, concludes that of the roughly 400 people who have been convicted of any terrorism-related crimes since September 11th, 36 had overstayed their visas. In other words, almost 10 percent of the people who have been convicted of terrorism-related activities in the decade since September 11, 2011, were legal immigrants who overstayed their visas and became illegal.

Despite a lot of congressional effort and DHS effort, we still lack an exit system that will effectively identify people who have overstayed their visas in real time. The reality, it seems to me, is that the U.S. Visistor and Immigrant Status Indicator Technology (US-VISIT)—the DHS program that is supposed to identify visa overstays based on visitor entry and exit information—remains a troubled and ineffective program.

Officials of your Department have told the Committee that US-VISIT processes less than half of all potential overstays identified by automated matching of entry and exit records, and GAO, in this just-released report, found that the program has an overall backlog of 1.6 million potential overstay records that have not yet been processed. I am sure part of this is that we have not given you the support to do that, but it is a real problem.

Identifying individuals who overstay is a crucial component of securing our borders and making our immigration system credible and real to the law. And to me it is just unacceptable that we are still unable to systematically identify people who overstay. So I hope you will be able to talk about that and what the Department is doing about it in your testimony.

As we began this series of hearings on border security, I at least had the goal of both dealing with the current state of border security, how are we doing at keeping our borders secure, particularly with regard to illegal immigration. But here was my hope: That if we reached the level of finding out what is not working in border security and could fix it, that we would not only have achieved that good result, but it would be a preface to going back and considering reform of our immigration laws, which just about everybody here in Congress agrees need to be fixed but have different ideas about how to fix them. So the presumption was border security could lead not only to better border security, but to building a political consensus to deal with the continuing problem of illegal immigration.

[1] The GAO report referenced by Chairman Lieberman appears in the Appendix on page 263.

It seems to me now, as I listen to the testimony, that the inverse is also true, that there are forms of what I would call "smart immigration reform" that also can enhance border security, or to put it more explicitly, there are kinds of smart immigration reform that can significantly reduce the flow of illegal immigrants into America. And to the extent that we have time—and I hope we will—I welcome your thoughts on that connection. Thanks very much for being here. I look forward to your testimony.

At this time I am pleased to call on our Ranking Member, Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman. Let me join you in welcoming the Secretary of DHS back before our Committee today. With the welcome news that Osama bin Laden has been killed, I want to join the Chairman in thanking everyone involved, particularly those brave Navy SEALs who so flawlessly executed the mission, and the many other members of our military, intelligence, and homeland security forces whom we may never know. This was, as the Chairman has pointed out, exactly the kind of collaboration of our intelligence and operational capabilities that we envisioned when we reformed our intelligence community in the wake of the attacks on our country on September 11, 2001.

This successful operation demonstrates once again the importance of sharing intelligence information across the agency silos—the very opposite of the disjointed pre-September 11, 2001, experience.

I appreciate, Madam Secretary, that the Department immediately issued a Situational Awareness Alert to key State and local homeland security and law enforcement officials at midnight on Sunday sharing intelligence information and including a call for heightened vigilance. That system did not even exist prior to the attacks on our country.

Today's hearing, as the Chairman has pointed out, is a continuation of this Committee's focus on the challenges facing us regarding border security. Border security is critical not only to prevent individuals from entering the United States illegally for whatever reason, but also to stop—at the border, at visa-issuing points, or on inbound flights—those who are determined to harm us. And, despite the killing of Osama bin Laden, we must never forget that the battle against Islamist extremism will continue.

The first two hearings in this most recent series emphasized the challenges along the Southwest Border, while earlier the Committee held a hearing on the Northern Border. When we consider the Southwest region, we should all pause to honor and remember the sacrifice of Border Patrol Agent Brian Terry, who was murdered last December, and Immigration and Customs Enforcement (ICE) Agent Jaime Zapata, who was killed by members of a drug cartel in February.

These fallen heroes and the horrific news reports continuing to stream out of Mexico reveal the brutality of the cartels. Recently, nearly 300 bodies were discovered in mass graves—some just 90 miles from Brownsville, Texas.

Just last month, Federal Bureau of Investigation (FBI) Director Robert Mueller observed that "drug cartels transport kilos of cocaine and marijuana, gangs kidnap and murder innocent civilians; traffickers smuggle human cargo; and corrupt public officials line their pockets by looking the other way." Director Mueller concluded that, taken together, these issues "constitute a threat not only to the safety of our border communities, but to the security of the entire country."

This backdrop explains why many of us were perplexed to hear the Secretary state, in late March, that security on the Southern U.S. Border is "better now than it ever has been" and that violence from neighboring Mexico has not edged north.

The National Border Patrol Council, the union representing Border Patrol agents, has countered that crime indeed is spilling over from Mexico. They point to the murder of three Border Patrol agents by the cartels in the last 3 years, the ranchers and other citizens who have been gunned down in border communities, and the Phoenix area which has risen to become a cartel-related crime hot spot. The council concluded, "The U.S.-Mexico Border is unsafe and to say anything else is not true."

While the Secretary's data on apprehensions on the border are certainly useful, there are contributing factors that should not be ignored as we scrutinize the numbers about declining interdictions.

For instance, are some of the declining numbers simply reflecting a slow economy so fewer people are trying to cross over into this country? Is the persistent cartel violence deterring others from crossing? To put it bluntly, individuals will not be arrested at the border, or north of it, if they are too frightened to run a gauntlet of terror that may end in a mass grave.

These and other factors should be considered as we evaluate the effectiveness of the Administration's policies in addressing what is a very difficult issue.

While the Southwest Border is much more likely to make the evening news, we must not forget the Northern Border, and the Chairman has pointed that out. Senator Tester has also made that point on numerous occasions. According to a report released by the GAO earlier this year, the Border Patrol was aware of all illegal border crossings on only about 25 percent of the 4,000-mile Northern Border. The Border Patrol was able to make an immediate arrest on less than 2 percent, or 69 miles, of that 4,000-mile border. This is especially troubling because GAO has observed that the terrorist threat on the Northern Border is higher than the Southern Border, given the large expanse of area with limited law enforcement coverage. That is why I believe that the Administration's proposal to limit Operation Stonegarden to the Southwest Border is ill-advised, and I am glad that it has been repeatedly rejected by Congress. This program should be used to help secure both the northern and the Southern Border. It helps fund joint operations between the Border Patrol, State, and local law enforcement that act as a force multiplier in areas that otherwise would be left unguarded.

To cite just one example of the program's success from my own State, Operation Stonegarden funds were instrumental in the arrest and conviction of an individual involved in a bulk cash smug-

gling operation. During an Operation Stonegarden mission, a Fort Kent, Maine, police officer caught this criminal attempting to smuggle $137,000 across the border. He was patrolling well outside his regular community of Fort Kent, and this individual simply would not have been caught but for Operation Stonegarden funding.

Finally, the effort to secure our borders is not limited to the borders themselves, and the Chairman has mentioned a GAO report that is of tremendous concern to me. The report indicates that ICE is only allocating about 3 percent of its resources to target individuals who are here illegally because they have overstayed their visas. They came legally in the first place, but now they are here illegally. And it is an enormous number. It is more than a third. It is between 33 and 40 percent of the number of people here illegally fall into that category.

Another report by GAO examined the Visa Security Program (VSP), which deploys ICE special agents to foreign visa-issuing posts to help identify terrorist and criminal threats. According to the GAO, the United States only has VSP offices at 19 of the 57 high-risk posts. The GAO further found ongoing turf battles between ICE and the State Department, which are simply unacceptable when it comes to dealing with the terrorist threats.

So I look forward to discussing these issues with the Secretary today, and I thank her for appearing.

Chairman LIEBERMAN. Thanks very much, Senator Collins.

Secretary Napolitano, thank you once again for being here, and we welcome your testimony now.

TESTIMONY OF HON. JANET A. NAPOLITANO,[1] SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Secretary NAPOLITANO. Well, thank you, Chairman Lieberman, Senator Collins, and Members of the Committee, for the opportunity to testify today. I have a more complete statement that I ask be included in the record.

Chairman LIEBERMAN. Without objection.

Secretary NAPOLITANO. I would like to begin, however, with discussing a topic that is on everyone's mind before moving on the principal topic of the hearing.

The operation against Osama bin Laden was an extraordinary success, not only for the United States but for the entire world. And I want to join you in commending the men and women of the intelligence community, the armed forces, and our counterterrorism professionals who played such an important role in bringing Osama bin Laden to justice.

But this does not end our counterterrorism efforts. We must remain vigilant regrading the threat to the United States posed by al-Qaeda affiliates or al-Qaeda-like affiliates such as al-Qaeda in the Arabian Peninsula (AQAP), al-Qaeda in the Islamic Mahgreb (AQIM), and al-Shabaab, as well as the threat posed by homegrown violent extremists.

Our security posture, which always includes a number of measures both seen and unseen, will continue to protect the American

[1] The prepared statement of Secretary Napolitano appears in the Appendix on page 246.

people from the evolving threats that we face. We have taken a number of actions specifically in response to Sunday's events. These include issuing advisories to fusion center directors, homeland security advisers, major city chief intelligence commanders, private sector critical infrastructure owners and operators, and other law enforcement entities. We are and have been reviewing all open cases of potential al-Qaeda core, AQAP, and AQIM operatives possibly in the United States in conjunction with the FBI. We are identifying any new targeting rules that should be instituted based on incoming intelligence. We are continuing to strengthen our recurrent vetting for visa asylum and other benefit applicants and recipients in cooperation with the intelligence community. We are deploying additional officers to non-secured areas at our large airports, the so-called Category X airports. And we are providing additional information to all air carriers.

Now, as you know, we have recently substituted for the old color code, which was commonly viewed as obsolete, a new system, known as the National Terrorism Advisory System, to more effectively communicate information about terrorist threats. Right now we do not have any specific or credible intelligence that would lead us to issue an alert under this new system, realizing that under the new system the baseline is already elevated. In other words, the baseline assumes a continuing and evolving terrorist threat against the United States.

We continue to review on an ongoing basis all material seized during the operation as well as new intelligence that may be coming in, and I stand ready to issue an alert should intelligence or information emerge that warrants it under the new advisory system.

Now, to move on to the main topic of today's hearing, I am glad to have the opportunity to speak about the Southwest Border, and I gather I will now be speaking also about the Northern Border, because unprecedented resources have been dedicated over the past 2½ years, and that has resulted in significant progress being made. And I also want to discuss the metrics that can be used to gauge that success.

Now, as I just said, the Administration has dedicated a historic level of resources to securing the Southwest Border in terms of manpower, in terms of technology, and in terms of infrastructure. We have increased the size of the Border Patrol to more than 20,700 agents, more than twice the size it was in 2004. ICE now has a quarter of all of its personnel in the Southwest Border region, more than ever.

We have completed all but three miles of the fencing called for by Congress, and we have deployed thousands of technology assets along the border. And for the first time, DHS unmanned aircraft aerial capabilities cover the Southwest Border from California to Texas, providing critical aerial surveillance assistance to personnel on the ground.

Furthermore, the actions being taken at the Southwest Border are being supplemented by critical security improvements at the Northern Border, including additional Border Patrol agents, technology, and infrastructure, as well as strong, serious, and strategic

enforcement of immigration laws in the interior of the United States.

Now, as someone who has lived most of her life in border States and who has worked as a public official dealing with border-related issues since 1993, I can say from personal experience that the steps that have been taken constitute the most comprehensive and dedicated effort to strengthen border security that our country has ever deployed. Over the past 2 years, seizures of contraband have risen in all categories: Drugs, illegal weapons, and illegal bulk cash. Illegal immigration attempts, as measured by apprehensions of illegal aliens, have decreased by 36 percent in the last 2 years and are less than one-third of what they were at their peak.

In addition, FBI crime statistics demonstrate that the crime rates in border communities have remained steady or have dropped dramatically in recent years, continuing a decade-long trend.

In this sense, I am not the only one, Senator Collins, who has stated that the border is safer now than it has ever been. The border city mayors themselves have stated that and are concerned that the misperception that the border communities on this side of the border are unsafe is interfering with their ability to attract jobs and economic development to their own regions.

I am also, I must say, perplexed that the union which represents some of our Border Patrol agents does not support the success that the Border Patrol has achieved over the past 2½ years, and I can only say that I am perplexed. I will not go into that any further.

Now, the significant improvements would not have been possible without the bipartisan support of this Congress, particularly the $600 million supplemental appropriations for border security passed last summer, and I thank you for your continued support in that regard.

Nonetheless, we still face challenges. This is not a victory lap. We must continue to build upon the progress we have made. We remain deeply concerned about the drug cartel violence taking place in Mexico. We know that these drug organizations are seeking to undermine the rule of law, especially in northern Mexico, and we must guard against any spillover effects into the United States. And while our efforts over the past 2 years have led to progress in every significant metric we currently have, we must focus on new ways to comprehensively measure results along the border.

Ultimately, the success of our efforts must be measured in terms of overall security and quality of life along the entire border region. Accordingly, I have directed the U.S. Customs and Border Protection (CBP) to develop a new index supported both by CBP, other law enforcement, and third-party data to comprehensively measure security along the Southwest Border and the quality of life in the region.

As part of this process, CBP is convening a group of independent third-party representatives to evaluate and refine any such index. In developing these border metrics, it is important to keep in mind our ultimate goal, which is to make border cities more secure and to provide a basis there for economic prosperity.

That is why a new border security index will not only take into account traditional measures, such as apprehensions and contra-

band seizures, State and local crime statistics, and overall crime index reporting, but we will also incorporate indicators of the impact of illegal cross-border activity on the quality of life in the border region. These can include factors such as traffic accidents involving illegal aliens or narcotics smugglers, rates of vehicle theft and numbers of abandoned vehicles, impacts on property values, and other measures of economic activity that can be impacted by illegal immigration.

Because defining success at the border is critical to how we move forward, our definition of success must meet several guidelines. It must be based on reliable, validated numbers and processes, it must tell the complete and transparent statistical story, and it must draw upon the priorities of border communities themselves.

The approach currently underway is designed to meet all of these criteria, and I look forward to working with this Committee on this important issue.

There are a number of other things I can say, particularly in response to some of the GAO numbers that were cited. I think I will reserve that time for the question-and-answer portion of the hearing. Suffice it to say, however, that many of those GAO statistics are neither comprehensive nor totally complete with respect to the efforts that have been undertaken. I look forward to being able to address that a little bit during the question and answer period.

But with that, Chairman Lieberman, Senator Collins, and Members of the Committee, thank you again for the opportunity to testify. Thank you again for the opportunity to present the case for border security in the United States.

Chairman LIEBERMAN. Thank you, Madam Secretary. We will do 7-minute rounds of questioning.

I appreciate the comments you made about the state of readiness of the Department post-bin Laden's death. I want to ask a few questions to, I think, hopefully illustrate the seamlessness of our counterterrorism effort now.

We know that the Navy SEALs took out of that bin Laden compound in Pakistan an enormous amount of data, computer systems, and the rest. I assume that as this material is gone over, anything related to homeland security will be shared immediately with your Department.

Secretary NAPOLITANO. It is being shared.

Chairman LIEBERMAN. Great. Second, I want to sort of highlight what I believe I heard you say, which is that although you have not raised the National Threat Advisory System alert—and you are right, it is very important to point out that in one sense the change that you put into effect just last week, the new system, has us always at a state of alert.

Secretary NAPOLITANO. That is correct.

Chairman LIEBERMAN. We are always at a state of alert. The judgment you make in changing that would be to raise it to an elevated state of alert and then one that is imminent, where there is imminent danger?

Secretary NAPOLITANO. We have a Counterterrorism Advisory Board that is comprised of all of the members of the intelligence community that are constantly reviewing the intelligence coming in as it relates to the homeland. And then they analyze it for whether

a threat is either elevated from the norm or it is so specific and credible that it actually reveals an imminent threat.

At that point, an advisory would be issued. It has three parts, tells people as many facts as we can. It tells them what they can do to protect themselves or their families from the threat. It tells them what they can do to help us with regard to the threat. For example, we may be looking for certain types of vehicles, certain types of other things. And it tells them where they can go to get consistently and continually updated information.

So, rather than the colors, which did not communicate any information, the new system is designed to communicate information.

Chairman LIEBERMAN. And just to clarify, the fact that you do not have specific and credible evidence and, therefore, have not raised the alert level to elevated does not mean that the Department has not taken additional steps in the days since Osama bin Laden was killed. And in your testimony today, you indicated that there was increased security at ports of entry, including airports. And I do not know that you mentioned seaports, but I assume that is included. Is that correct?

Secretary NAPOLITANO. That is correct. We have surged some resources there. In airports in particular, we have also taken additional efforts at our borders, and as I mentioned, Mr. Chairman, we are also going back and reviewing all of the pre-existing intelligence with respect to open files against the United States.

Chairman LIEBERMAN. Right. I appreciate that. It is very reassuring to know that some of the materials that were seized at bin Laden's compound are already being shared with the Department because it is certainly my impression that bin Laden, himself, continued to be focused on attacks on the United States of America, on our homeland. And it may be that the information that was gathered by the SEALs from his compound will help us hopefully prevent such attacks.

Let me focus in now on the direct question that we originally were going to handle, which was border security. We are operating in a political context here, and I mean that in terms of the body politic, not partisan politics. We are dealing with how we can form a consensus to both improve the security at our borders, but as we said, there has been an equation that many people have articulated that yes, our immigration system is broken, but we are never going to have enough support for immigration reform until we can say our border is secured. So I want to deal with that part of it first.

The Secure Fence Act of 2006 required that the Department of Homeland Security achieve operational control of the border, which that 2006 law defined as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."

Madam Secretary, at a recent colloquium, former DHS Secretaries Michael Chertoff and Thomas Ridge and you all agreed that total operational control over our border is effectively an unreachable goal, that we are never going to be able to fully seal off the border from all illegal activity.

If that is correct—and I suspect it is correct—I think we have to ask ourselves, and I am going to ask you now: What is an achiev-

able goal in terms of securing our border? And I ask that both because we have a responsibility to secure our border, but also be hopeful that it will help us determine what the level of border security is we can agree that we need to achieve before we can then go on to deal with the problem of immigration reform.

Secretary NAPOLITANO. Well, Mr. Chairman, I think two things. One is that is why we have gone back and said, look, "operational control" is an archaic term. I think that was testified to by some of the other witnesses you have had in this area. It is a limited term of art. It makes for a sound bite, but it does not actually reflect the reality of what is happening at the border.

But the fact of the matter is that we need a more quantitative and qualitative way to reflect what actually is occurring at the border. That is what I have directed CBP to prepare. But also, Mr. Chairman, there is a linkage between immigration reform and the border. They are interrelated, so the notion of this kind of sequencing does not reflect the reality that with immigration reform on some of the underlying laws involving visas, temporary workers, those sorts of things, if you deal with the legal immigration system, that also has an impact on what is in the illegal immigration system.

And so this is a Gordian knot that we must untie, looking at all of these things together.

Chairman LIEBERMAN. So I take it that what you are saying as an example is that we may be able to reduce the flow of illegal immigrants by altering immigration law, for instance, to provide for temporary work visas, or perhaps to raise the existing cap on visas allowed for people coming into the country.

Secretary NAPOLITANO. Indeed, and a category example would be, for example, agricultural work visas.

Chairman LIEBERMAN. Right. Exactly.

Secretary NAPOLITANO. But there are many others as well.

Chairman LIEBERMAN. Let me just as a final word—my time is up—thank you for the announcement you have made this morning, I think, significant, which is that you have directed Customs and Border Protection to come up with a new index, a new metric for measuring border security, and in doing so they are going to bring in outside experts to consult with them. I think that will really help to inform the debate and allow us to set some goals that are achievable, that we can meet, and also hopefully create a foundation for moving on to the related question of immigration reform.

Secretary NAPOLITANO. Thank you, Mr. Chairman, and we are moving as expeditiously as possible on this. It is a bit of an onion to peel when you actually look at it.

Chairman LIEBERMAN. It is.

Secretary NAPOLITANO. One of the things we want to know, for example, is how many people have been deterred or prevented from crossing illegally by the measures we are taking. And it is very difficult in all areas, but especially here, to measure a deterrence number, to get the denominator in that way. And so we have to have other factors we look at from which we can reasonably say and reasonably extrapolate that we now have a safe and secure border region that also facilitates the flow of legal commerce, trade and tourism, and the like.

Chairman LIEBERMAN. Right. Thank you very much. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Madam Secretary, let me first just start on the border security issue because you made a comment that you were expecting to talk about the Southwest Border but would talk about the Northern Border. Just to clarify, our title of this hearing of "Securing the Border" and our witness letter made very clear we were talking about all the borders.

Secretary NAPOLITANO. And I am ready to do that.

Senator COLLINS. So I just do not want those watching this hearing to have a misleading impression.

Secretary NAPOLITANO. Indeed.

Senator COLLINS. Let me just start with a December GAO report that looked at a number of border security issues, and I know you are familiar with it. It was in this report that GAO quotes DHS as reporting that the terrorist threat on the Northern Border is higher given the broad, expansive area with limited law enforcement presence. The GAO also went on to say that DHS reports networks of illicit criminal activity in the smuggling of drugs, currency, people, and weapons between the two countries.

Now, the vast majority of trade and travel between the U.S. and Canada obviously is legitimate, and we do not want to impede that legitimate travel and trade. But that is one reason I am such a supporter of Operation Stonegarden. It allows for joint operations that truly are a force multiplier for the Federal Government as well as helping State, county, and local law enforcement.

So I truly do not understand, in light of DHS's own assessment that the terrorist threat is higher from the Northern Border and that there is significant criminal activity and smuggling of drugs, people, and weapons, why the Administration year after year tries to restrict Operation Stonegarden to just the Southern Border.

Secretary NAPOLITANO. Well, if I might discuss some of the measures that are ongoing at the Northern Border that I think are not captured in the December GAO report, the Northern Border is different than the Southwest Border in the sense that you have some big areas, urban areas, where a lot of traffic goes back and forth, and then you have huge expanses of very sparsely populated farmland, to which Senator Tester could testify.

So our design for the Northern Border is different than the Southwest Border, and our Northern Border strategy is different as well. It is much more technology dependent, for example. So we are adding more systems up there that can detect low-flying aircraft. Also, our partnership with Canada has really evolved over the past months so that you had Prime Minister Stephen Harper and President Obama themselves announcing a joint vision for a perimeter involving Canada and the United States, and greater cooperation with Canadian law enforcement on both sides of the border. And that is going extraordinarily well. For example, we are looking at being able to integrate their own sensor and radar feeds into our system as well.

With respect to Operation Stonegarden, there are some Operation Stonegarden monies that have been allocated to the Northern Border, but, Senator, in terms of looking at where the need is

greatest—because I only get so much and we only get so much—measured by what the local law enforcement is asked to do, the overtime, the maintenance of vehicles, those sorts of things that Operation Stonegarden is designed to help pay for, I will acknowledge that the priority has gone to the Southwest Border, and it probably will continue to do so.

Senator COLLINS. Well, I would just suggest—and I understand the problems of the Southwest Border are severe, and that is why we have so many more border agents there, and we should. But this is a program that is not an expensive program that allows you to do more than you otherwise could, and it is DHS's own findings that warn about the terrorist threat from the north and the smuggling.

Let me in my remaining time switch to a different issue, and that is the Visa Security Program. I have been watching this program for many years, since 2002, I think, when it was first established, and the fact is we are just not making much progress. ICE personnel have only been deployed to 19 of the 57 highest-risk State Department posts around the world, and this program is an example of one where we can stop people from getting visas in the first place. And it is an example of the kind of coordination that you have advocated and helped advance across department lines and that this Committee has always promoted. So, to me, it is very disappointing that the President's budget request is unchanged from last year for this program.

Are you going to be able to cover more of these high-risk posts given a flat budget?

Secretary NAPOLITANO. I think in the fiscal environment, one of the things we were asked to do was to see if there are current functions we are performing that we could continue to perform or even enlarge if we could figure out another way to do them. The Visa Security Program, as you acknowledge, requires an agreement with the State Department, and I will acknowledge there have been some issues there. I think we are working our way through them.

But the other thing I tasked ICE to do was to figure out a way in which we could provide the same sort of double-check service on a visa remotely by using now some of the information technology systems we have in place. And I believe, Senator, that this year we will be able to do that and expand our visa eyes and ears in that fashion.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thanks very much, Senator Collins.

In order of appearance, the next Senators would be Senators Tester, Johnson, Landrieu, and Pryor. Senator Tester.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Yes, thank you, Mr. Chairman, and it is always good to see you, Madam Secretary. I appreciate the trips to Montana to look at the Northern Border and see the challenges up there. I also very much appreciate the statement you made earlier today when talking about Osama bin Laden, that this is not a victory lap; this is about getting a job done and moving forward, making sure we are diligent on our security in the war on terror, and it is about some very difficult decisions that were made. And you

were a part of that, and you need to be credited for that, and I want to thank you.

The other thing that I wanted to talk about really quick, because the Ranking Member talked about this a lot, was Operation Stonegarden, so I am not going to dwell on it a lot, but I do want to just simply refresh on what you just said, and that is, there would be Operation Stonegarden grants available to the Northern Border.

Secretary NAPOLITANO. Yes, there are Operation Stonegarden monies available, Senator, but they are not in the same amount as for the Southern Border.

Senator TESTER. And I understand that, and when we are talking about Operation Stonegarden and limited amounts of money, are you able to take into account, as the head honcho, the potential money that the Operation Stonegarden dollars could save in manpower and be able to use some of that money saved from manpower to further expand that program? Are you able to do that within your budget?

Secretary NAPOLITANO. Yes, and that is an analysis we are using for all our grant funding. I will say, Senator, that one of the things that we have been doing over the past weeks is looking at the fiscal year 2011 budget agreement, which cut a lot of the grant funding that we have for anti-terrorism grants and looking at, well, how do we prioritize, how do we make sure the money is going to where it is best used to reduce risk, realizing that we will never totally eliminate risk. And we are doing the same with Operation Stonegarden.

Senator TESTER. At least can I get your reassurance that when 2012 comes around there will be dollars, whether Operation Stonegarden or some other grant, there will be dollars to be able to develop partnerships with local law enforcement agencies up on the Northern Border?

Secretary NAPOLITANO. Senator, it is fair to say that through Operation Stonegarden or other grants there will be dollars available, but the whole universe of grants, when you add them up, is less than it was last year.

Senator TESTER. Yes. We may or may not be able to help with that.

Border interoperability: There is a demonstration program. I was pleased that DHS announced a round of grants through that demonstration program on interoperability. I think that it is critically important that people are able to communicate, as you well know, with what just transpired, how important that is.

As we move forward, is DHS looking to expand upon this program? And if so, how are they going to expand to help increase communication abilities between the very same people we are talking about through Operation Stonegarden?

Secretary NAPOLITANO. Well, we have a whole different set of funding streams for interoperability, and the answer is yes. And I will also say that this is an area where the Northern Border is a particular issue because of the large amount of rural territory that has to be covered. And from an interoperability standpoint, that is really our most difficult problem in some respects. Urban areas, we

pretty much have ways to deal with the urban areas of the country, but the rural expanses of the country are more difficult.

Senator TESTER. These overstays—and I am just going to touch on it a little bit. The Chairman and Ranking Member also touched on it. You had talked about Prime Minister Harper and President Obama getting together and having a meeting and a joint vision. Is there anything being done to be able to share information on visa overstays in that regard?

Secretary NAPOLITANO. That is something we have discussed. There is nothing concrete at this point, but I have met with my counterpart several times about this. And let me, if I might, though, go to a point that was made about the GAO saying that only 3 percent of our resources go to visa overstays. That is an example of only looking at one account which is 100 percent devoted for visa overstays. But the fact of the matter is that a lot of our programs capture visa overstays. Secure Communities, for example, which picks up those individuals who have been arrested, also picks up visa overstays. And so the 3 percent is not really an accurate reflection.

Senator TESTER. And I understand that. I mean, it is difficult, but I will tell you that folks who come in legally and then forget to go home, I think it is a huge problem, and I think the Chairman brought it up. And anything we can do, whether it is developing relationships with Canada, Mexico, or anybody else, to help you in that regard to remind them to head back, I think, is critically important.

Also there are sham universities. Recently I called for an investigation into sham universities that manipulate immigration laws to bring people in, totally back-door, thousands of folks. Are you aware of these schools? And is the Department taking any steps to remedy that?

Secretary NAPOLITANO. Yes, we have had a whole initiative out of the U.S. Citizenship and Immigratin Services on the sham university issues, and we have actually dealt with several of the shams, so absolutely.

Senator TESTER. Good. Thank you for that.

First of all, I appreciate Commissioner Alan Bersin's work with that as far as—well, there are some issues about allowing planes to land at the Great Falls Airport with fewer passengers. The director of Great Falls Airport is going to be coming here and meeting with, I believe, Commissioner Bersin and other senior folks over at the CBP, and I would hope that would be a productive meeting.

I do not ask this as a question, but I just appreciate your efforts in working together to solve the problem. I think it is a big problem, quite frankly, from my perspective, and I think it is a problem that can be handled at your end giving guidance to folks on the ground. So thank you for that.

Secretary NAPOLITANO. We will work with the Great Falls Airport Authority. If they want to land more international passengers, as I understand it, they need to do some different things at the facility. They are landing 20 to 29 passengers now by flight. They want to go to 56.

Senator TESTER. Yes, well, I think it can be worked out, and I think that the bottom line is that—well, I will just put it this way—there is no need getting into the specifics.

Secretary NAPOLITANO. We will try, yes.

Senator TESTER. I appreciate that.

Secretary NAPOLITANO. Absolutely.

Senator TESTER. You talked about an elevated state of alert, which is what we are on now, correct?

Secretary NAPOLITANO. We are always on that, yes.

Senator TESTER. Was it increased after the events of Sunday?

Secretary NAPOLITANO. No, we did not issue a separate advisory, except I think it is important to note that we began immediately putting out intelligence products to fusion centers, State and local law enforcement, transportation authorities, and the like so that if they wanted to take any individual actions, they could do so.

Senator TESTER. Well, it was interesting. Just as a sidebar, I had to fly into Minneapolis Sunday night and flew out Monday morning to get here earlier than I could normally out of Montana, and it seemed to me that the Transportation Security Administration (TSA) was in a more elevated state. I saw people walking around in places I had never noticed them before. Lines were much longer. I thought maybe the job being done at security was more thorough.

Did they do that on their own, or did you give them instruction, or did somebody give them instruction?

Secretary NAPOLITANO. No. That is correct, Senator. TSA surged some resources for a few days until we could see what the intelligence outcome was from what was seized at the compound.

Senator TESTER. Very good. Well, once again, I just want to thank you for your leadership. I very much appreciate it, and it is good to have you in front of the Committee. Thank you.

Secretary NAPOLITANO. Thank you, Senator.

Chairman LIEBERMAN. Thanks, Senator Tester. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman. Madam Secretary, welcome back.

Secretary NAPOLITANO. Thank you.

Senator JOHNSON. I would like to pick up a little bit on what Senator Tester was just talking about, the increased threat level. I just want to understand why we are not increasing the threat level. It sounds like we will only increase it under the new system if there is a specific threat as opposed to just a generalized threat level.

Secretary NAPOLITANO. If there is specific credible intelligence of a threat, yes, an advisory would go out. It can be elevated or it can be imminent. The idea or the thought behind this—and this was the product of a bipartisan commission co-chaired by former FBI Director William Webster and Fran Townsend, who was President Bush's Homeland Security Advisor, and then there were a number of experts on the commission. The idea is, instead of just putting out a color, to actually give people information. An advisory itself, if we elevate, might be restricted to, say, a particular transportation sector or it might be restricted to a particular area of the country. And they are designed to expire on their own in 2 weeks

so that we do not continually add advisory on advisory on advisory with the effect that nobody really pays attention anymore.

Senator JOHNSON. But if you increase the threat level, that does imply that certain actions are being taken, correct?

Secretary NAPOLITANO. There would be certain actions taken associated with increased threat levels, yes.

Senator JOHNSON. And if there was ever just a generalized increase in the threat level, it would be in relation to an action, the successful capturing and killing of Osama bin Laden, correct? I just do not quite understand why we would not be increasing the threat level here over a short period of time.

Secretary NAPOLITANO. First of all, this is an ongoing evaluation, but at the time of the capture of Osama bin Laden, and as of yesterday, there was no specific credible threat of specific retaliation other than generalized there may be something that happens. Under that generalized sense, we already lean forward; we already ask people to help, if they see something to say something. We already have police departments doing suspicious activity reporting. We already have resources deployed at areas that have been of particular interest historically, like aviation. So that already happens.

The idea behind the advisory system is that if we need to elevate a particular area or a particular sector of the country, that goes out, and we provide them as many facts as we can, and we provide then what we want people to do, how they can help the government, and how they can stay consistently informed. And if you go to disasteralerts.gov, there is a template for the advisory system and a briefing on how it works. It is new, and that is why I think people are still making that adjustment.

Senator JOHNSON. Well, let us go on to border security. The last time you appeared before the Committee, I was trying to determine what we needed to do to secure the border, and one of the questions I asked you is: If it is a problem with resources, what would it cost to actually secure the border? And your answer was: We have enough resources.

So taking off from that point, do you have in your mind a multiple-step process—I mean, what are your priorities in terms of, you say you have the resources, now what steps are you going to take to actually get the border secured?

Secretary NAPOLITANO. Well, they will be different between the Southern and Northern Borders. As I mentioned to Senator Collins, these are very different areas to secure. But it is a combination of manpower, technology, and infrastructure. And we are constantly looking at a number of measures to adjudicate whether we are getting results for the investments we are making.

And when you ask me whether we have enough resources, I realize and I think we all realize that we are in an era of depleted resources, and I have to figure this out, recognizing that in all likelihood there is not another $600 million supplemental that is going to come my way for the border.

So how do we make the best use of what we have? Well, we insist on accountability. We insist on producing results. And now I am insisting that the CBP develop a better way to measure those results.

Senator JOHNSON. I am a little confused. Do you have enough resources or don't you?

Secretary NAPOLITANO. I believe, Senator, that with the resources we have and the resources that the President has requested, which will sustain the record level of resources at the border—we have never had these kinds of resources at the border. So the key is not more. The key is sustainment. So with those, with the supplemental we already have and annualizing the supplemental, which is what the President has asked be done in fiscal year 2012, we will be able to continue our efforts at securing the border.

The question is and the challenge for the Committee and Senate will be making sure we have a fiscal year 2012 budget from which to work because if we have to go back to a continuing resolution, we will have some problems.

Senator JOHNSON. I am a numbers guy, so I am liking the idea of some overall metric because in preparing for this hearing, there is just an awful lot of numbers, there is a lot of data. Turning that into real information, I mean, is the concept here that we are going to have an overall single number index? And is that going to be by region? Is that going to be for the entire country? What is your concept in terms of a threat assessment or securing the border type of index?

Secretary NAPOLITANO. I am waiting for CBP—they are already in this process—to come back to me, but I believe it conceivable that we would have two different indices, one for the Northern Border and one for the Southern Border, because they are different. But I do not think we have concluded that. And the index may be a range, which would reflect overall efforts at the border.

What I know for sure is looking at apprehensions alone does not cut it. Using the anachronistic term "operational control" also does not cut it. We need to have something more qualitative and quantitative that you can use in allocating resources and we can use as well.

Senator JOHNSON. Even at the Southern Border, there is a vast difference in terms of our level of success, correct? Wouldn't you want to have that index region by region along the different borders?

Secretary NAPOLITANO. Well, we would anticipate using it sector by sector. I mean, there is a big difference between, say, the Yuma Sector, which is very isolated and in which there is a lot of military land, and the Tucson Sector, which is the busiest and is the one where we are putting the most resources right now. So even within one State—albeit the Yuma Sector crosses a little bit into California—we see a difference. So that is why I think any kind of index will probably have to reflect some sort of range.

Senator JOHNSON. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Johnson.

Just to come back to the threat level, we are all getting accustomed to the new system, though I think it is an improvement. Well, let me put it this way: We are always on alert, and so the question is do we raise it to elevated. Right now, after Osama bin Laden was killed, you have not raised it to elevated for the reason you state. There is not specific and credible evidence of a threat

against the U.S. homeland. However, you have taken additional steps.

So just for clarification—I do not want to belabor this—when you go to elevated, if you did, does it mean that the government is taking additional steps or that you are calling on the citizenry to be more alert, or both?

Secretary NAPOLITANO. Both.

Chairman LIEBERMAN. Both.

Secretary NAPOLITANO. And it also corresponds to additional efforts by State and local responders as well.

Chairman LIEBERMAN. Right.

Secretary NAPOLITANO. And so in instituting the new system, one of the things we did was to work a lot with police departments and so forth around the country as to what elevated would mean.

We are always at a state of alert. We are always calling on the citizens to, as we say—and it is a very easy to remember slogan—if you see something, say something. And our actions are predicated on the fact that we are always on alert.

I will also say that the decision to raise or not to raise is based on recommendations from the Counterterrorism Advisory Board, which is comprised of representatives from all of the intelligence community and is constantly reviewing what is coming in. And right now, given the material obtained from the compound, they are meeting at least once daily to go through everything to advise me as to whether, yes, we should raise it.

Chairman LIEBERMAN. That is really important, both the clarification—but, again, I come back to the fact that our system is really working seamlessly now so that you are getting real-time information from the material seized at bin Laden's compound in Pakistan, and you are evaluating it every day to determine whether you see anything in that information that would lead you to raise the threat level.

Secretary NAPOLITANO. More precisely, Mr. Chairman, the Counterterrorism Advisory Board is receiving that, and other information as well.

Chairman LIEBERMAN. Right.

Secretary NAPOLITANO. I mean, it constantly comes in, and they are constantly analyzing it. Instead of meeting sporadically, they are meeting regularly and really in an ongoing fashion now in relation to what happened on Sunday. And if they provide me with or advise me that, Secretary, this is what we have and we think this means that you should elevate the alert system that already exists, then I will act.

Chairman LIEBERMAN. That is very good to hear. I think the system is working as we would want it to.

Let me go to the visa overstay question and the report that was issued yesterday by GAO. I know you have taken issue with at least one segment of it in terms of, you might say, the accuracy or clarity of the information. The report did say—and this is the part that was most troubling to me—that the US-VISIT program has a backlog of 1.6 million potential overstays that were identified but which have yet to be processed. So let me ask you to talk about that a little bit.

To the best of your knowledge, is that accurate? How are the potential overstays identified under the current system?

Secretary NAPOLITANO. Well, let me, if I might, explain what is happening and what we are doing to improve the system. Visa overstays are another form of illegal immigration. I mean, once you have overstayed your visa, you are in the country illegally just as if you had come across the border. I mean, you have broken the law.

Just as we do with people who have crossed the border and with visa overstays, we are appropriated enough money to remove about 400,000 people a year from the country, and that is probably a small percentage of those who are in the country illegally total.

Chairman LIEBERMAN. And that 400,000 is specifically on the overstays?

Secretary NAPOLITANO. No. Total.

Chairman LIEBERMAN. Total of overstays and illegal entry?

Secretary NAPOLITANO. Yes. If you really cost out what it costs to remove somebody who is in the country illegally, we get enough money between ourselves and the Justice Department to remove about 400,000 people. And so we have set priorities. Who are the ones we really want to make sure we get?

First, we want to make sure we get those who fall within our guidelines for being possible national security threats.

Second, we want to remove those who are violating criminal laws in addition to the immigration laws.

And then we want to, third, deal with those who are fugitives—and this is not really so much a removal process as dealing more effectively with those who we pick up right at the border who are gaming the system and going back and forth.

Now, when we get a visa overstay—and there are systems set up now that tell us or reveal to us that somebody is a possible overstay—the first thing we look at is who of those fall within our guidelines for being a possible national security threat. I do not want to say in an unclassified setting what those guidelines are, but they exist. All of those individuals are sent to another unit within ICE to be vetted and found. So we have 100 percent in that category.

Chairman LIEBERMAN. Let me stop you there just to ask, what is typically the way under the current system—just for the record—the Department finds out that somebody has overstayed their visa?

Secretary NAPOLITANO. It can be a number of ways. One is if we have no record of exit.

Chairman LIEBERMAN. Most logical, right?

Secretary NAPOLITANO. So right now, in the air environment, which this all started not because of land crossers but air.

Chairman LIEBERMAN. Right.

Secretary NAPOLITANO. We now can match or no-match about 89 percent of all travels to an entry and an exit. So 89, 90 percent. The question is the remaining 10, and we do not have a match for them. And then if they fall within our national security guidelines, 100 percent of that category would go to an ICE unit to be vetted and found and investigated. So we start there.

The second category are those who have violated criminal laws, who are dangerous to the public safety, and we do a similar process

there. Now, there the institution of Secure Communities is really helping us because it is identifying for us those who are in the country illegally who are also in jail.

Chairman LIEBERMAN. What can you do and what can we do to help reduce both the backlog of those who are identified as potential overstays but not processed and also, of course, to more effectively identify people either prior to coming in who seem to be coming in with the intention of overstaying, or to do better at finding the people? This is a larger question, a wrap-up question in a way on this subject. But if you take the 40-percent number and you take the lower number that we hear for estimates of illegal immigrants in the United States, 10 million, that means 4 million people are here because they came in legally and overstayed their visa. And as you just said—you are absolutely right—once you overstay your visa, you are as illegal as somebody who illegally crossed the border. For instance, if somebody hires you, that is illegal.

Secretary NAPOLITANO. Right.

Chairman LIEBERMAN. So how can we better deal with this part of the illegal immigration problem?

Secretary NAPOLITANO. Well, I think, Mr. Chairman, it is important to recognize that we have to have priorities because, as I said before, we get enough money to remove 400,000, so now we have to go from 4 million, and that is just on the visa overstays, plus the illegals who cross the border to the 400,000. That is why setting basically prosecution priorities is key.

The plain fact of the matter is most of the visa overstays, they are here illegally, but they are being drawn because they can work here. So that is why border security and immigration reform are so connected, because the plain fact of the matter is that a number of these individuals, if they could get a different kind of visa or a longer visa tied to employment, you would not put them in that 4 million category. So we want to take off the top national security, criminals, and fugitives.

Chairman LIEBERMAN. That is fair, and I think that is the right thing to do. I am over my time, but I just want to ask one more question while we are on this. I want to ask who are the people, do we know, who are more likely to overstay their visas and then become illegal immigrants? Are they coming from different parts of the world even though their motivations may be similar, which is to work here, rejoin family, or the like?

Secretary NAPOLITANO. That is a question to which I do not know the answer. In other words, you are asking are the demographics different for the overstays versus the illegal border crossers?

Chairman LIEBERMAN. Right. We assume that most of the illegal immigrants are coming in illegally. They are illegal immigrants because they came in illegally. They have come across the Southwest Border.

Secretary NAPOLITANO. That is right.

Chairman LIEBERMAN. And probably there are a lot of reasons for that. The interest in coming over is greater by far than the number of legal visas that bring them in.

Secretary NAPOLITANO. Well, and the other thing is recognize that the vast majority of people who are coming into our country illegally or coming legally and overstaying are coming for purposes

of employment or they are related to somebody who has come over to work. And so all of the systems that are designed to really deal with the interior enforcement issue would help. E-Verify helps. Increasing—and this will take legislation, and that is why I say all these things get knit together. Increasing the penalties on employers who consistently hire illegal labor and adjusting the elements in the burden of proof which makes those cases so unnecessarily difficult, that also would be very helpful because then you are dealing with the demand driving illegal immigration as well as the supply.

Chairman LIEBERMAN. Thanks very much. I thank my colleagues for their patience. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Madam Secretary, I want to return to the issue of the threat level because as I listened to my two colleagues question you about that—and I thought about the comments of the Director of the National Counterterrorism Center (NCTC) that we can expect attempts to retaliate—I am wondering why we are not increasing the threat level. It seems to me that until a further assessment is conducted of the intelligence, including a full exploitation of the materials and data seized at the compound at which Osama bin Laden was living, it would be prudent to increase the threat level, not to the highest level but you have revamped it in a way that I believe makes sense, but to acknowledge that we are in a situation where we are at risk. And so I am curious why given Michael Leiter's public comments, given the fact that we have yet to do a full exploitation of the materials from the compound, and given the fact that we are still doing an assessment of the reaction to Osama bin Laden's death, we are not taking what to me would be a prudent step of increasing the threat level.

Secretary NAPOLITANO. Well, Senator, I think we are always asking people to be alert. We are providing additional intelligence products into the law enforcement community and to the private sector so they could take whatever actions they deem prudent. We are constantly evaluating whether we should issue a special advisory, and NCTC is part of that group that makes that recommendation.

So on an ongoing basis now, it may come to the point where we say in this area for this we are going to issue an elevated alert, but I think we want to be careful here. We do not want to say because we suspect, and reasonably so, that at some point there may be retaliation that we go ahead and put the Nation into an alert status without more information than we currently have. That could change. It could change tonight. It could change tomorrow. But the whole idea behind the new system is to say, look, we are always on alert, we are always facing risk. The threat of terrorism is always with us, and we are never going to be without it, even with the death of Osama bin Laden. We have other members of al-Qaeda, we have AQAP, we have AQIM, we have al-Shabaab, and that does not even count the homegrown terrorists who we are quite concerned about just from a lone wolf standpoint in particular. But that does not mean that under the new criteria we issue an elevated threat.

Now, as intelligence comes in, as things are digested—and that is happening on a real-time, seamless basis—that may very well be adjusted. But I think for the Nation to keep paying attention to these alerts, we want to really make sure they are tied to something that is specific.

Senator COLLINS. I appreciate your explanation of the process. From my perspective, it just still seems prudent to temporarily, at least, elevate the threat level until the assessment is completed. But I understand your point.

You have mentioned just now and earlier the threat of a lone wolf attack, and as you know, this is an issue that this Committee has devoted countless hearings over the past few years, and as part of our Fort Hood investigation and report, we called upon the Administration to create a strategy to ensure a unity of effort among Federal departments and agencies and the development of a specific strategy to counter radicalization within our country. If you look at the plots over the last 2 years, they have largely been domestic plots by people who have been inspired by al-Qaeda, but not in most cases directly linked to al-Qaeda.

I would appreciate this morning an update on the development of those Federal strategies to counter domestic radicalization and to ensure a coordinated effort.

Secretary NAPOLITANO. Yes, we have looked at this from what do we do to prevent somebody who has been radicalized from successfully carrying out an act of violence, and we have concluded that the best way for us to intervene is to support through grants and other programs local police in kind of neighborhood policing strategies that reach out to the community in the same way that we dealt with gang violence during the crack epidemic, where we really focused on police on the street who were intimately known by the neighborhood. You develop that flow of information because there was an underlying foundation of trust. And the Department of Justice and the Community Oriented Policing Services (COPS) program has also worked on that.

So out of that conclusion, we said, well, we should have a curriculum that really focuses on what are the behaviors that indicate that somebody has become radicalized, and radicalized to the point of violence. So working with police across the country, we developed a training curriculum. We have beta-tested it already at the Federal Law Enforcement Training Center (FLETC). We are putting people through it now. There is a curriculum at FLETC, and then there is a training module that can be used at home so that you do not have to travel to FLETC. So that is ongoing as well.

We continue to look for other ways, but we are really going to focus on is how can we empower local law enforcement in particular to prevent a lone wolf from being successful.

Senator COLLINS. Thank you. Let me just say that I was very pleased to hear you mention the "See something, say something" campaign. The Chairman and I had to work so hard to get that through when it came to the transportation sector, and without the Chairman's willingness to stand up against many on his own side of the aisle, we never would have suffered. So I hope your comments mean that you will endorse the broader bill that the Chairman and I have introduced, which would provide immunity from

civil lawsuits to individuals who in good faith report suspicious activity to the authorities. They would not be protected if it were not in good faith because right now the law that we wrote only applies to the transportation sector.

Secretary NAPOLITANO. I would be happy to look at that, Senator.

Senator COLLINS. Thank you.

Secretary NAPOLITANO. And if I see something, I will say something. [Laughter.]

Chairman LIEBERMAN. I only supported Senator Collins' proposal because it happens to be right. [Laughter.]

Chairman LIEBERMAN. Senator Johnson.

Senator JOHNSON. Well, thank you again, Mr. Chairman.

I do not want to beat a dead horse here, but let me take just one more stab at this threat advisory. The purpose of an advisory is to signal to the American public that something has changed. I mean, if we are always on the same constant level of alert, that just degrades over time. So, again, I am just kind of scratching my head.

Secretary NAPOLITANO. Well, if I might, Senator, that was the problem with the color code because we were always at orange and nobody paid any attention. The purpose of the advisory, in my view, is to communicate facts and information so people know what to do. So if we elevate the advisory, it will be accompanied by information. What are the facts that we can disclose? What can people do to protect themselves and their families? Where do people go to get updated information? How can people help us help them?

So it is not just to be alert. We are always on alert. That is the elevated base. But now we would be providing additional facts based on the intelligence we receive that tells people what to do.

Senator JOHNSON. I get that. Let us move on.

Let us talk a little bit about where the threat of terrorism sort of intersects with border security. I have read some relatively alarming statistics about percentage of non-Hispanic apprehensions at the border. Can you speak to what are the real facts and what are the stats by region?

Secretary NAPOLITANO. Yes, we are looking at that right now because one of the things we have seen is an uptick in a category called OTMs—it means "other than Mexicans"—illegal immigrant apprehensions in one of the Texas sectors. It has gone as high as one in three recently. Many are from east India, the country of India, and we are trying to get to the bottom of what is the trafficking route, what is the demand, what is happening there. And in this setting, I would just prefer to say we have seen that trend over the last few months. We have devoted some additional resources to that trend, and we are trying to get to the bottom of it.

Senator JOHNSON. Have we increased our alert level in terms of those apprehensions now in light of recent events?

Secretary NAPOLITANO. No.

Senator JOHNSON. Do you think we should?

Secretary NAPOLITANO. Senator, if I am advised by the Advisory Board on the intelligence side that we should, I will do that.

Senator JOHNSON. I did make a trip down to the Tucson corridor there, and went down to the border by Nogales. You talked about manpower and infrastructure, and I am a little concerned. You know, obviously, we want to protect the border, and so we have put

a lot of resources into Border Patrol. But I am a little concerned about the Customs and Border Protection agents. We are building a lot of infrastructure down at Nogales. I think even with the current infrastructure I am concerned about the staffing levels there. Can you just speak to the relative staffing between Customs and Border Protection versus Border Patrol?

Secretary NAPOLITANO. Well, the supplemental that was passed provided for several hundred more port officers to use on those additional lanes and so forth. And so they are in the process of being deployed right now. It is another reason why I am concerned about our fiscal year 2012 budget request. The President has asked that those additional port officers be annualized, that they become part of our base. And that is necessary because we need that legal trade to move; we need those lines, those wait times to be shortened. We have been investing in some major improvements and enlargements on some of these ports, and that means more lanes to cover. We want to keep some of them open more hours, and that also means more coverage.

And so right now we are watching that very carefully. We have been hiring up on the port officer side, and we want to annualize that hiring.

Senator JOHNSON. I do want to say I was very impressed with the professionalism and dedication of the agents down there. I really was. I mean, that was comforting.

Secretary NAPOLITANO. That is great. It is a hard job.

Senator JOHNSON. It is.

Secretary NAPOLITANO. It is a very tough setting.

Senator JOHNSON. It is very hard. You have to remain vigilant. I was impressed.

Secretary NAPOLITANO. Great.

Senator JOHNSON. I was intrigued by Senator Lieberman's comments about smart immigration policy. Can you just speak to what your concept of that would be and how that would really affect our illegal immigration problem here?

Secretary NAPOLITANO. Well, as I mentioned, one of the big draws for illegal immigration is the demand for illegal labor, and the current laws on employer sanctions are very minimal. They do not give us a great deterrent on the investigation and prosecution side, and so I think those need to be looked at as well as the elements of proof that we are forced to demonstrate or that the Justice Department is forced to demonstrate.

I think we should be looking at the different types of visas that are offered and look at streamlining and enlarging the visa categories that we have, particularly on the temporary visa side. And then we have to have some way to parse the population that is already in the country illegally given that we are only given the resources to remove about 400,000 people a year, and we want to focus on those who are security threats, who are criminals, who are fugitives—in other words, those who fit in those kinds of priorities.

Well, once we fill those priorities there are still millions of people left. What are we supposed to do? So that is where really the tough part comes in, but I believe the President would support a program to get those people out of the shadows, regularized, identified, and for those who are there, if they can earn their way to citizenship

by paying a fine, getting in the back door behind people who are attempting to use the system legally, or figure out some way to do that. That has been the hardest part of the immigration issue because that has been viewed as amnesty.

Senator JOHNSON. Let me go back to the step process of securing the border. I am assuming from what you have said already that the first step is really measuring, getting the metric. Correct?

Secretary NAPOLITANO. I think that is an initial step, yes.

Senator JOHNSON. Once we have that metric, what is the next step?

Secretary NAPOLITANO. I think then we need to be concurrently looking at what is the intersection between interior immigration enforcement, what is going on in immigration generally, and what is happening at the border. The border is only one part of this entire problem, so we need to be looking at the intersection between that and the border metric at the same time.

Senator JOHNSON. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Johnson.

Senator McCain has just arrived. I do want to state for the record, I know he was very interested in this hearing, and I know he was not able to be here until now because Senate Intelligence and Armed Services Committees both met with Admiral William McRaven today.

Incidentally, Senator Collins and I are going to ask Admiral McRaven if we can have another briefing for those of us who had to be here. Admiral McRaven is head of the Special Operations Command which oversaw the SEALs that carried out the assault on Sunday.

So, with that, I thank Senator McCain for coming by and call on him now.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Well, thank you, Mr. Chairman, and I apologize, Madam Secretary. I was at this briefing by Director Leon Panetta and Admiral McRaven, and I apologize for being late.

Madam Secretary, I am interested in your comments about the hardest part with the things that we need to do. Again, Senator Kyl and I have introduced legislation which we believe would be sufficient measures to secure our borders. We have never had on your part or the part of the Administration serious sit-down negotiations on this issue.

Now, I understand the President's zeal for immigration reform, and yours, but as I have said on numerous occasions, I have seen this movie before. I saw it in 1986 when we gave amnesty to 2 million people and said we would secure the borders, and we have not. When there are still 171,000 people apprehended in one year crossing our Tucson border, in the view of most observers that is not a secure border.

We have a plan that can do that, and sometimes my friends from other parts of the country and other people think that maybe Senator Kyl and I and a lot of our constituents, particularly those who live in the southern part of Arizona, are a bit intransigent.

I received a briefing from the High Intensity Drug Trafficing Area (HIDTA) program staff—two of them—that there is between

100 to 200 spotters sitting on mountains in southern Arizona, inside the borders of the United States of America, spotting for drug cartels, who then get the drugs up to Phoenix and—in the words of HIDTA, not mine—distribute them. Phoenix is the drug distribution center for the Nation with the exception of some parts of the State of Texas.

Now, I do not think that that is an acceptable situation. Perhaps you do. It was not my assessment of the situation. It was the assessment that was given to me—100 to 200 spotters sitting on mountains inside the State of Arizona guiding the drug cartels as they bring the drugs to Phoenix and then distribute them throughout the country. That, at least to the constituents that I talk to of mine, is not an acceptable situation.

Then in an act that I still do not understand, the National Guard is withdrawn from the border. I go down to the border, and I ask the Border Patrol, the HIDTA people, and I ask the U.S. Attorney: How important is the role of the National Guard? "Indispensable." That is the word they use.

And then we are supposed to believe that the Administration is serious about securing our borders. Well, I do not think so.

So I would hope that we could understand that when any State has 100 to 200 spotters, members of drug cartels, inside their borders guiding drug cartels as they bring drugs to Phoenix, Arizona, and then distribute them throughout the Nation, with the exception of some parts of Texas, that that is not a situation that I should expect my constituents to tolerate.

So I guess it is more of a statement that I would seek your response. The border is not secure. The Yuma Sector is secure. There are many other areas. There have been improvements. I do not doubt that. But I was in Douglas, Arizona, a few weeks ago, and we saw a film of what had happened about 3 nights before—SUVs with flashing lights on the road right next to the fence, take a left turn, stop, and let loose a fusillade of bullets killing 5 people and wounding 13. That is a serious situation, and some of those bullets fly across the border. And these mass graves are obviously something that has shocked the Nation. And all of it has to do with drugs that are moving into the United States of America.

So, again, I would hope that we could have some serious conversations rather than meetings with various interested groups and see if we cannot sit down and take the necessary measures that are clearly there in our view that could assure our citizens of the country that our border has a reasonable level of security and maybe move forward in order to achieve that.

I would be interested in your response.

Secretary NAPOLITANO. Well, thank you, Senator, and your constituents used to be mine, and I spent a lot of my life on these border-related issues, and so I think we share the same values and the same goal. Let me take on four of the points that you have made and help provide you with some information.

First, with respect to the National Guard, they have not been withdrawn. They are at the current force level they have always been this year, and the Administration has not made a final decision about whether to continue to deploy them.

One of the issues is who pays for the Guard, and we have asked our appropriators twice to allow us to reprogram funds to pay for the Guard and to continue to pay for the Guard at the border. And that reprogramming has been denied. This Committee may want to look at that issue. It would be very helpful for sustaining the presence of the Guard. But, again, like I said, I asked our appropriators, and it was denied last year. We would renew that request.

On the 10-point plan, Senator, many of those things we are doing or are close to doing, there is a fiscal cost to it. I think your own numbers show it to be over $4 billion, and the issue, I think, is whether some of the items there are the most cost effective way to reach the common goal that we share. I want to have that discussion with you and work with you on that.

On the spotters, now I speak as the former Chair of the Arizona HIDTA, and I speak as the former U.S. Attorney and Attorney General. I know the Vekol Valley very well. I have asked the Border Patrol because I have been down there myself several times in the last few months. "Where are the spotters that I keep hearing about?" And the answer I receive is that there are a couple hundred tops from which a spotter could act, but they are not sitting there, 200 drug spotters. And we are now deploying technology into that area to enable us to pick up more individuals involved in the drug trade than we already are. So I would really be interested in seeing if we can clarify that particular point.

And then, last, on the number of illegals coming across the Tucson Sector, I agree with you, I do not like that number either. It is dramatically down from what it used to be. It is down 35 percent from what it was when I started as the Secretary. But we are going to continue to put resources into that sector until we get that and drive that number down even further.

The part of this hearing that you missed—and I will be happy to set up a private meeting with you about—is developing a real border metric that takes into account apprehensions, typical crime statistics, but also other measures that give us a better overall sense of what is happening at the border because I think there is a general consensus that the apprehension number in and of itself is not a complete measurement.

Senator MCCAIN. Well, thank you. I am fascinated by your comment that they could not tell you where these spotters are. They probably cannot tell you exactly where they are because otherwise they would get them. But the fact is they are absolutely, totally, factually correct. They are there, and everybody knows they are there. And for you or your staff to deny that they are there is sort of symptomatic to me of the lack of really recognition or appreciation of the problems that exist along our border.

Secretary NAPOLITANO. Senator, with respect, there is no one who has spent more time working on this Arizona issue than I have over the past 2 years, and we will continue to drive the numbers down——

Senator MCCAIN. There is no one that has spent more time on the issue than I have, Madam Secretary, long before you were governor and long before you were Secretary, and I am told by the law enforcement people from the sheriffs up to the U.S. Attorney that there are between 100 and 200 spotters sitting on mountains in Ar-

izona. And for you to dispute that is a big problem you have between yourself and them. And it should be clarified.

Secretary NAPOLITANO. Well—yes, let us clarify it.

Senator MCCAIN. So if you want to say that it is not true, that is fine with me. But it happens to be true, and it happens to be a huge problem, and it also happens to be that Phoenix, Arizona, in their view, and other experts' view, is the distribution center for drugs around this country. So maybe you want to deny that, but the fact is that it is. And so, again, if you want to change the matrix, fine, change the matrix. But on the ground, in Arizona, on the border, we see people still living in an environment that they are not living secure lives. And we had witnesses before this Committee who testified to exactly that, ranchers and sheriffs of the counties along the border—Larry Dever and others.

Secretary NAPOLITANO. Well, if we are going to get into the sheriff discussion again——

Senator MCCAIN. See, you may not trust the word of Larry Dever and these other sheriffs. That is fine. You may dispute them. We, in Arizona, trust them because they are the elected law enforcement officials that are there dealing with these issues every single day. And I know the facts on the ground, and I agree that there have been improvements, and I am grateful for those improvements. But I would argue they have not kept up with the escalation of violence on the other side of the border.

And I go back to my original point that I made at the beginning of my comments. I think that it would be great if at least once for the Administration to come and sit down with us who are in border States, not just Arizona but New Mexico, Texas, and California, and see if there is some kind of way we could work out a way to get our borders secured. And maybe then it would be of some benefit to all of our constituents. Please respond.

Secretary NAPOLITANO. Well, Senator, look, the issue is a lot more complicated, and what we need to do at the border is exactly what we are doing, and more so and sustain it. It is more manpower, it is more technology, it is more infrastructure. It is adding air cover, which we now have across Arizona, which we did not have before. It is also, though, related to interior enforcement. It is having the ability to identify who is in our jails that are also in our country illegally and being able to remove those.

The ability to have consequences for all who cross illegally, that is important. I grant you that. Doing the same thing in every sector that you do in a small sector like the Yuma Sector may not be the best way to achieve that. That is a discussion we ought to be having.

So I look forward to sitting down with you, and we will go point by point through the plan. We have some options I would like you to consider. As I mentioned before, your challenge to me at our last hearing was: What is a border metric? What is something that we can measure that would say we have a secure border? And you asked me that question. So I have directed CBP, I said, "Look, we need to create a metric that makes sense, that measures all of these things." And we can include, and probably will, all of the drug activity and so forth.

I must say, however, that let us not get into a debate because some sheriffs say the situation is better, and some sheriffs say it is not. Most mayors say it is better, but there are a few who say it is not. We have to look at the entire border and create a safe and secure border region that legitimate trade and travel can use because Mexico is the second or third largest trading partner for 22 States of the country. And we do not dispute that is the goal. We just have some differences on how we measure and how we get there.

Senator MCCAIN. Well, I do look forward to sitting down with you on this issue before the election season gets too polarizing, but I think it is important because I think we are on the right track, and I have clearly stated that there have been improvements. But I think we have some more to go.

Would you indulge me one other comment?

Chairman LIEBERMAN. Sure.

Senator MCCAIN. Madam Secretary, this is an entirely different subject—I continue to get complaints from people who are subject to this physical pat-down. We really ought to try to work on some kind of technology that would not be necessary for our inspectors to go through. It is just very invasive, and I have heard all the reasons for it, but it seems to me in a country like ours we could develop some kind of technology that would make something like that unnecessary. Some people feel it is really embarrassing and humiliating, and I certainly understand their complaints.

Secretary NAPOLITANO. Senator, I understand them as well, and I receive them as well. Three things:

One, we are investing in research and technology. The research cycle is not an immediate cycle, but we are investing and working with national labs and others on better technology.

Two, I have asked and TSA is moving to a more risk-based approach to how we screen. Part of that will lead to what my third point, which is we want to enlarge trusted traveler type programs where people have a biometric card, then they can go through similar to what we use for pilots now, anyway, and we are looking for ways to scale that up.

Senator MCCAIN. Well, thank you, Madam Secretary, and I look forward to continuing our spirited dialogue.

Secretary NAPOLITANO. I enjoy them, too.

Chairman LIEBERMAN. And may I say, those of us who are not from Arizona enjoy them, too. [Laughter.]

I actually want to thank both of you for the exchange, and you both agree that things are better along the border, and you both agree that they are not good enough. And I think your announcement today that you have directed the CBP to develop a new metric, a new index for judging, for reaching a conclusion of whether the border is secure and how to make it more secure is very important.

Beyond your official announcement to an earlier question, in typical Napolitano style you said, and I paraphrase: The existing system of judging border security by the number of apprehensions "does not cut it," and the existing definition in law of "operational control" of the border does not cut it either. I agree with you, and I think you have the opportunity here now to develop a new stand-

ard of border security that is much more accurate and effective and can be a basis for a meeting of minds between people on different perspectives, both on the question of border security and on the related question of immigration reform. And I really urge you forward. I hope you will engage Senator McCain and the other Members of Congress from the Border States, and the governors, whom I know you know well. And if you have room in any of those meetings for a guy from Connecticut, I would be honored to be invited.

Secretary NAPOLITANO. We will make you an honorary Border State Senator.

Chairman LIEBERMAN. Thank you.

You both know this better than I do. This is a really important question, and it ties directly to the other important question of immigration reform. And Senator McCain is right. I may be quixotic in saying this, but we still, in my opinion, have a chance in this session to try to achieve some significant improvement in border security and in a related way some what I called earlier "smart immigration reform." And I hope we try every opportunity to do that. And the two of you are critical in whether that is possible or not, so I thank you both.

Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. As Joe Biden would say, "From your lips to God's ears." That would be great.

Madam Secretary, nice to see you. Thanks for your leadership and your commitment and hard work and that of the team you lead.

Secretary NAPOLITANO. Thank you.

Senator CARPER. One of the things I have been focused on is deficit reduction. They look at cutting spending and they look at raising taxes. And I focus more on a third and a fourth idea; and the third idea is how do we promote economic growth to help us in our efforts and what kind of smart investments can we make in the workforce, infrastructure, and research and development (R&D) that could be commercialized on the R&D side to create the products and innovations that we can sell around the world. So that is a focus of mine.

My other focus is really on creating what I call a culture of thrift in the Federal Government to replace what some might describe as a culture of spendthrift. We talked about it a little bit in our caucus luncheon just yesterday. And I like to say that everything I do, I know I can do better. I think the same is true of most of us. We were just talking about in this exchange you had with Senator McCain trying to find ways to do better. I like to say if it is not perfect, make it better.

I think we need to look in every nook and cranny of the Federal Government and ask a question of almost all Federal programs, whether domestic, discretionary, or entitlements, is there a way to get a better result for less money or maybe a better result for not much more money?

And with that, and in the spirit of that thought, I just wanted to ask you about the Department of Homeland Security's Secure Border Initiative. It was created, as I recall, to bolster our South-

ern Border with a variety of high-tech technologies, with physical infrastructure, and with border enforcement officers, and we have all supported that stuff. The program was, I think, designed to secure some 700 miles of the Southern Border by, I think, the year 2005 at a cost, I think, close to $900 million. I think this includes both the new metal fencing and some of the various surveillance technologies.

What has troubled me the most with respect to this program is the technology component, and I am told that of some 700 promised miles of various surveillance equipment, we have deployed maybe 50 or so miles of the anticipated 700, and this at a price of about $750 million. At least this is what I have been told.

I understand you have frozen that program, the Secure Border Initiative, to try to identify a smarter and more cost effective way forward, and I just want to ask you to take a couple of minutes here today to discuss with us, if you would, how we can get a better bang out of the taxpayer's buck in this regard and what you see we ought to be doing going forward in this regard.

Secretary NAPOLITANO. Thank you, Senator. The so-called SBInet program I did freeze. It was not proving to be cost effective. One of the reasons why was because it presumed that you could have one fixed sort of technology to use across the border at tremendous cost. And so we ended it at one small sector, and what we have done is say let us buy off-the-shelf mobile technologies that are available now that we can equip our men and women with now. And that will differ depending on what sector you are in because you will have different types of geography, different populations, and so forth.

So every sector along the border has to develop their technology plan for how they will use the funds freed up by not investing in the SBInet system.

I asked for the technology plan first from Arizona because it had the greatest need. That is in. We are making those procurements now. And then we are moving border wide over the course of the year.

Senator CARPER. And how will you measure success as we go down this new path?

Secretary NAPOLITANO. Well, it is the question that has dominated the hearing today, but a number of ways, one of which obviously is apprehensions both of individuals but drugs, drug traffickers, so forth. One is the ability to be a force multiplier so that we are able, once we spot somebody, to immediately go out and pick them up. Those are the kinds of things that would be added to the mix.

Senator CARPER. Just about every day we see more violence along our border with Mexico. I think we are partly to blame for that, and part of this is the exchange of drugs for guns. We are somewhat complicit in that exchange, unfortunately. I was down there about a little over a year ago, and I had a chance to go along the border, not in Arizona but over on the California side and talk to a number of the folks that are working down there, in some cases at real jeopardy to their own safety. My understanding is we are having patrol agents that are being shot at more frequently, patrolling some of the harshest terrains on our continent. And then

we have a new trend, and it is a disturbing trend. We have had agents actually being killed by drug traffickers and by cartel members. It is also beginning to become less safe for Americans traveling to some of these cities across the border.

Could you just describe for us your assessment of the escalating violence along the border? And is it safe to say that this violence has—I am tempted to use the word "officially"—officially spilled over into the United States?

Secretary NAPOLITANO. The states of northern Mexico have been experiencing a serious increase in violent crime, especially homicides, over the last several years related to the determination by President Calderon to take on the cartels, a determination with which we agree and are supporting in any way that we can, and also cartel-on-cartel violence as they fight over ever more limited territory.

In Juarez, for example, I think Juarez must be one of the one or two highest homicide rates in the world right now. But it has also spread to other states, Tamaulipas, Sonora, and so forth. When I say a safe and secure border region that border—on our side we have about 7 million people who live along the entire border. There is a much higher number who live in Mexico along the border. So we are really working with Mexico—in fact, we met with their leadership last Friday on a number of cross-border strategies to increase safety.

Our men and women in the Border Patrol have very dangerous work, and any way we are supporting them, making sure they are well equipped, well trained, and have support, you have given us the resources to help do that. That is very important.

I would say, however, that while we have had isolated instances of violence that have come into the United States from northern Mexico, if you take a step back and look at everything, the police reports, the arrest reports, the numbers, etc., they do not indicate that officially we have a plague of spillover violence.

Senator CARPER. All right. Thanks.

Mr. Chairman, my time has expired. Could I just ask for one more minute?

I have been at another hearing, as some of my other colleagues have, so I missed your testimony. Would you just take a minute, give me some good take-aways from what you had to say in your testimony, just maybe one or two points that I ought to just walk out of the room——

Chairman LIEBERMAN. You are back as U.S. Attorney or Attorney General, and the Judge is giving you——

Secretary NAPOLITANO. I am giving a summation.

Chairman LIEBERMAN. A summation of your argument, right.

Senator CARPER. You have both been Attorneys General, haven't you?

Secretary NAPOLITANO. Yes. They were both great jobs.

Senator CARPER. Would you say it is the greatest job you have had so far?

Secretary NAPOLITANO. I would say I have always had great jobs. [Laughter.]

Senator CARPER. I would say you have, too. And so have the rest of us.

Secretary NAPOLITANO. I would say that we talked about Osama bin Laden and that we have current and seamless exchange of intelligence right now, and if I am so advised, I will raise the advisory level. But I have not been so advised.

On immigration, that we have more resources at the border than ever before, at both borders, and different strategies at both borders, but they continue to be works in progress. We cannot deal with border security without dealing also with interior enforcement and immigration reform. They are related.

Senator CARPER. All right. Thanks so much. Good to see you.

Secretary NAPOLITANO. You bet.

Chairman LIEBERMAN. Thanks, Senator Carper.

Madam Secretary, thanks for your testimony. You have been responsive to our questions. You have been informative and very helpful. My confidence in you continues to rise.

Secretary NAPOLITANO. Thank you. I appreciate it.

Chairman LIEBERMAN. We will keep the record of the hearing open for 15 days for additional statements and questions.

And with that, the hearing is adjourned.

[Whereupon, at 12:07 p.m., the Committee was adjourned.]

APPENDIX

United States Senate
Committee on Homeland Security and Governmental Affairs
Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
"Securing the Border: Building on the Progress Made"
Homeland Security and Governmental Affairs Committee
March 30, 2011
As Prepared for Delivery

Hearing will come to order. I want to thank our witnesses and everybody else who's here. This is part of a continuing series that we've been doing on this committee on oversight of our border security operations. This one is important because of the range of witnesses before us and the work Mr. Stana and GAO has done. We're going to follow this with two more hearings on the southwest border in which we're going to have some state and local officials in and then Secretary Napolitano will be with us after that.

The question of border security continues to be important to our country in various ways. This morning we began a different series of hearings, taking a look at the institutions of our government created after 9/11 to better protect our country. In and in that case we've done an enormous amount to increase border security in the sense of stopping terrorists and the instruments of terrorism from coming into our country, with some success.

I was struck in the testimony that has been filed for this hearing about the interest in the question of what is border security. One series of definitions comes from the Secure Fence Act in which they list the elements of operational control, with regard to terrorism and its tools. Narcotics and its contraband are obviously quite important when you consider that the FBI said in testimony before this committee that the number one organized crime threat in America today is from Mexican drug cartels.

Obviously the Mexicans say that we're creating a problem for them with guns flowing the other way. Of course probably the most politically sensitive and controversial aspect of border security is the security of not knowing that people are coming into the country illegally.

We have spent a lot of money and time increasing the resources we've devoted to border security. Some numbers the GAO has supplied:

In Fiscal Year 2004, when the Department of Homeland Security first existed, we had 10,500 agents to patrol the land borders. In Fiscal Year 2010 we had double that, 20,000 agents at the land borders.

In Fiscal Year 2004 we had 17,600 agents inspecting travelers at air, land and sea points of entry. That went way up by Fiscal Year 2010.

The expenditures more than doubled, from $5.9 billion to $11.9 billion for personnel, infrastructure and technology.

The question we constantly ask is what do we get as a result of these investments and how do we measure the results.

One of the standards that is used a lot is apprehensions and it has an odd and kind of inverse effect that's always struck me as kind of problematic. As the number of agents go up, the apprehensions go down and generally speaking we've felt that tells us there are fewer apprehensions because the number of people trying to cross over illegally has gone down. Although, as others have pointed out, the data is problematic because it tracks events rather than people. So if a person is apprehended more than once a year it's counted more than one time.

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At different times in the past decade, the border patrol has cited both increases and decreases in apprehensions as a sign they're more effective. Either they're apprehending a higher percentage of people coming across the border or their operations have reduced flows.

There's a recent RAND report that says "commonly reported border patrol measures, such as numbers of illegal immigrants apprehended or miles of border under effective control, bear only an indirect and uncertain relationship to the border control mission, making them unreliable management tools." So that leads me to want to engage you in seeing if we can find a better way to measure security at the border. In terms of illegal immigration, the common sense measurement would be how many people are trying to come across the border and how many are actually getting in.

This question of border security continues to be important to us in all the ways I've stated—the organized crime threat posed by Mexican drug cartels; the terrible violence in Mexico, some of which has threatened border communities within the United States; and then in terms of illegal immigration, both because when there is a law we have a responsibility to enforce is to the best of our ability, but also in context of the congressional environment. We continue to have the reality of no less than 10 million people who are here as undocumented immigrants and I think there's a widely held conclusion that improving border security is a precondition to coming back and dealing with illegal immigration. Ms. Meissner actually suggested in prepared testimony that maybe it should go the other way that fixing the problem of undocumented immigrants may help us secure the border or better control the flow of illegal immigrants.

It's an important hearing, I thank the witnesses, you come with extraordinary experiences and I welcome your testimony.

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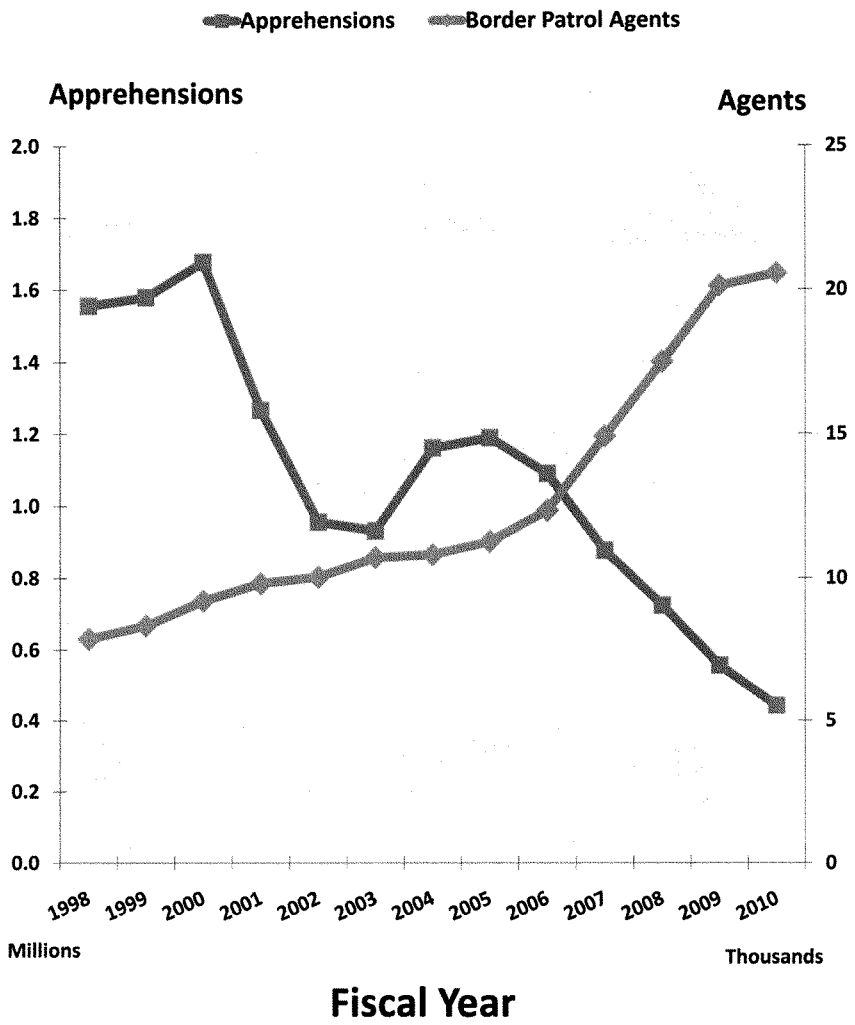
Apprehensions vs Border Patrol Manpower



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STATEMENT OF SENATOR JOHN MCCAIN

"SECURING THE BORDER: BUILDING ON THE PROGRESS MADE"
MARCH 30, 2011

Thank you for calling this hearing today. I believe that it is appropriate and imperative that early in this Congress we take stock of the progress made along our southern border.

I recently returned from a visit to the Arizona/Mexico border. While at the Douglas Port of Entry, I was shown video taken three days earlier of a cartel-led execution in Auga Prieta, Mexico, mere yards from the Douglas Port of Entry. In the video, three trucks of men armed with fully automatic weapons sped down a busy street flashing police lights. After cordoning off a busy city block, they began shooting, firing over an estimated 400 rounds, killing an estimated five and wounding 17. This level of violence is new to Agua Prieta.

Ten years ago, we could not have anticipated the headlines that routinely appear in newspapers today, throughout the country, detailing the dangers along our southern border. For example, on March 3rd, Reuters reported, "Police link Arizona beheading to Mexican drug cartel;" the January 5th headline in The Los Angeles Times declared, "Mexico's Drug Violence Respects No Borders;" and a March 6th headline in The Associated Press, "Gunmen kill 3 at bar near US consulate in Juarez." While our border with Mexico has always seen some level of illegal immigration, it has not seen the powerful threat of deadly violence that exists today as a result of Mexico's ongoing war against its drug cartels.

Fortunately, the extreme levels of violence in Mexico that has resulted in the killing of 36,000 Mexicans over the past four years has not spilled over into our border towns but many in Arizona fear it is getting closer.

As the witnesses today will testify, we are seeing progress along our land borders. I have witnessed this progress myself, particularly in the Yuma Sector, which as seen a dramatic reduction in the number of illegal border crossers. In the Tucson Sector, it appears illegal traffic has slowed due to the continuing economic recession, the increased numbers of Border Patrol agents, and the deployment of National Guard troops, and increased use of consequence programs like Streamline.

But progress is not success. And we are far from success in the Tucson Sector. As you will hear from the GAO, only 129 of the 873 miles of southwest border are considered to be under "operational control". Additionally, the success our law enforcement agencies achieve at protecting our cities and towns, are often made at the expense of citizens that live in more rural areas. Just as the pressure applied by Border Patrol in Texas and California drove illegal traffic to Arizona, the efforts in Douglas, Nogales, and Yuma are sending the human and drug smugglers across Arizona's ranches and farmlands, particularly in eastern Arizona.

This is why many people in southern Arizona feel like they are living in a no-man's-land, abandoned by the Federal government and this Administration. It does not help that last year David Aguilar, deputy commissioner for Customs and Border Protection, was quoted in The Arizona Republic as saying that the border is not a fence or a line in the dirt, but a broad and

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complex corridor. “It is,” Aguilar explained, "a third country that joins Mexico and the United States."

By comparison, the improvements made in the Yuma Sector over the past few years have been a great accomplishment. Despite some peoples recollections, this progress was neither easy nor a foregone conclusion. Lest you forget, last decade, the Yuma Sector was as out of control as the Tucson Sector. Now it is viewed as a real success.

According to Border Patrol agents on the ground in Yuma, the formula was straight forward: surging the National Guard, increasing the number of Border Patrol agents, building double and triple layer fencing, and instituting consequences, like Operation Streamline, for those that come across illegally. I believe we can replicate the success that was made in Yuma in the Tucson sector.

On a final note, the announcement by the Administration last week regarding the removal of the National Guard currently deployed to the border is disappointing. Everyone I talked to in Arizona about the National Guard not only wants the Guard to stay on the border but to see its deployment expanded. According to federal law enforcement officials, the National Guard has been “indispensable.” Their words, not mine. So it leaves me wondering why members of this administration, who claim that they want to make every effort to secure border, insist on taking two steps backward by removing the Guard prematurely.

Again, thank you for calling this hearing today.

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Testimony of Asa Hutchinson
Before the U.S. Senate Committee on Homeland Security and Governmental Affairs

"Securing the Border: Building on the Progress Made"

March 30, 2011

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Member of Congress 1997-2001
Administrator, DEA 2001-2003
Undersecretary, DHS 2003-2005

Mr. Chairman, Ranking Member and Members of the Committee, thank you for the opportunity to testify on the border security challenges that have been of great concern in the United States over the last decade.

First, let me make it clear that we have made progress as a nation in strengthening our border security. Since I had the honor of serving as the nation's first and only Undersecretary for Border and Transportation Security, progress has been accomplished in terms of human resources, technology, intelligence fusion, and state and local cooperation.

In terms of progress, let me be more specific. Since the Department's challenging early days, the number of border patrol agents has doubled to 20,700 agents. The number of border liaison officers who work with Mexican counterparts has increased 500%. Most significantly, the number of border patrol apprehensions has decreased by 36% in the last two years, which is an indication of the growing effectiveness of our border efforts. This committee has played a significant role in this progress. Without a doubt, more needs to be accomplished, but the progress should be noted.

The U.S. Visit program, which requires a biometric check for our international visitors from visa countries, is a success story. It was implemented under strict deadlines given by Congress, and it has dramatically improved the security and integrity of our immigration system. But there remains a gaping hole

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in border security so long as we do not have the capacity to know when a visa visitor leaves the country. **WE MUST ADOPT AN EXIT SYSTEM WITH GREATER URGENCY. I urge Congress to enact firm deadlines for the Department of Homeland Security to implement an exit system.**

Now, let me emphasize 3 essential priorities necessary to control our borders:

1. Accelerate the resources necessary to control our Southern border;
2. Monitor and enforce the law on visa overstays; and
3. Reduce the power and pull of the market place for illegal employment.

Despite the success that has been achieved in border security, the fact is that our government has operational control of less than half of the 2,000-mile southwest border. While our control of the border has increased at the rate of 126 miles per year, it is still woefully inadequate, and our efforts at border enforcement need to be accelerated. The deployment of resources should be done intelligently. We need not build a fence across every inch of the SW border, but rather, we should use a combination of physical fences and barriers, human resources, and technology.

Next, we must remember that visa overstays account for approximately 45% of the illegal immigrants in our country. The threat to our rule of law and the integrity of our immigration system is not just the hundreds of thousands of illegal

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border crossings each year; it is also about the hundreds of thousands who enter our country lawfully but remain illegally through visa overstays. This is just as much a part of border security as agents on the Southwest border. Our border can be breached even more easily by getting a lawful visa and remaining in the United States after the visa expires, as evidenced by the 9-11 terrorists. At present, we have no effective way to tackle this challenge. On paper, the solution is simple: have every visa visitor who departs the country check out using biometrics. But we know this is no easy task. While Undersecretary I worked to develop pilot programs at airports and land borders on the exit system. It was difficult then and I know Secretary Napolitano has found it equally challenging. In fact, the Department has announced it is no longer pursuing the biometric exit system. **It is very clear to me that this solution will never happen without the leadership, mandate and oversight of Congress.**

In 2003, Congress was clear in its direction to build the aforementioned entry system. It was first to be built in our airports and seaports and then at our land borders. The timelines were clear and the oversight was ubiquitous. As a result, the system was completed on time and within budget. The same type of commitment and strict deadlines need to be assigned to the deployment of an exit system.

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The third element of border security is interior enforcement. While we always need to give ICE the necessary resources to enforce our immigration laws within our country, it is just as important to give employers the tools needed to make sure the person they are hiring has a legal status in this country. While we have made significant strides in this area, it is still short of a fully verifiable real-time electronic system. This should be our goal. When a non-U.S. citizen considers all the risks and expense of illegal entry, and also realizes that once in the country they will not be able to work, that person will be less inclined to attempt illegal entry.

When this type of capability is deployed, the magnet will lose its drawing power. In other words, attempts to illegally enter and exploit the United States will not be worth the risks. Our border resources can then be deployed more efficiently and we can focus on the greatest threats to our nation.

I want to thank the leadership of this Committee in the U.S.'s efforts to secure the border. Without the continued commitment of individual members on this panel, the progress made to date would not have been realized. And without your future leadership, we will not achieve the control of our borders that a nation founded on the rule of law deserves.

Finally, it is important to recognize the dedication and sacrifice of those brave and patriotic border patrol agents who risk their lives to secure our country each day. Border Patrol Agent Brian Terry recently gave his life in the line of duty at the border, and for this his family deserves our gratitude and support.

Thank you.

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MIGRATION POLICY INSTITUTE

Testimony of

Doris Meissner

Director, U.S. Immigration Policy Program

Migration Policy Institute

Hearing on "Securing the Border: Building on the Progress Made"

before the Committee on Homeland Security and Governmental Affairs

U.S. Senate

Washington, D.C.

March 30, 2011

Migration Policy Institute, www.migrationpolicy.org, 202-266-1940

Mr. Chairman and Members of the Committee, thank you for the invitation to appear before you today on a subject that is of critical importance to the security of the nation and to the viability of our immigration system. My name is Doris Meissner and I am a Senior Fellow and Director of the U.S. Immigration Policy Program at the Migration Policy Institute (MPI), an independent, non-partisan policy research organization in Washington, D.C. I served as Commissioner of the U.S. Immigration and Naturalization Service (INS) from 1993-2000 and have been engaged in immigration matters for more than 35 years in government and now in non-governmental policy research roles.

My core message today is to urge the administration and the U.S. Department of Homeland Security (DHS), working with Congress, to define what constitutes effective border control and establish measures of effectiveness for managing and assessing border-control efforts. Clear definitions and indicators of what constitutes effective border control are essential as a basis for promoting a more informed public discussion and broader consensus about the effectiveness of border enforcement, especially along the Southwest border.

Let me explain. The need for effective border enforcement and control may be the most widely shared point of agreement in the national immigration debate. For more than 15 years, and particularly since Sept. 11, 2001, both Democratic and Republican administrations and Congresses have allocated unprecedented levels of resources to strengthen border enforcement, particularly at the Southwest land border with Mexico. Yet, we have very little basis for assessing the return on that investment, and it would seem that many Americans have yet to grasp how much enforcement at the border has been strengthened.

The buildup began in earnest in the mid-1990s. I remember well its origins and driving the border enforcement agenda. I had hardly adjusted the height of my desk chair as INS Commissioner when Attorney General Janet Reno returned from a trip to the U.S.-Mexico border and told me to "do something about the border" as my first and highest order of priority.

What she had seen was the 12-mile stretch of the border south of San Diego between the Otay mountains and the Pacific Ocean. Every day at dusk, hundreds of would-be illegal crossers assembled on the Mexican side of the international boundary, amid food vendors and smugglers (*coyotes*) who made a living from the daily traffic, sometimes with sinister consequences. As darkness came, large groups would run across a wide earthen bowl known as the soccer field, rushing the small number of Border Patrol agents positioned on the U.S. side. The agents caught some crossers, but many more got past them, making their way to Los Angeles, to California's vast agricultural valleys and to points far beyond.

This section of the border also regularly witnessed banzai runs, when northbound cars filled with smuggled migrants sped dangerously through inspection lanes at the San Ysidro port of entry, racing onto the interstate to evade law enforcement. That same interstate was the scene of countless deaths of migrants attempting to cross multiple lanes of highway without understanding the danger of speeding freeway traffic.

The Attorney General's directive underscored my own concerns and experience. My confirmation hearings in fall 1993 took place on the heels of a special operation in El Paso carried out by then-Border Patrol Sector Chief Silvestre Reyes, whom we now all know as Congressman Reyes. As chief, he devised a special operation that directed the bulk of the

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sector's personnel, equipment and attention to high-visibility forward positions directly at the border. He demonstrated that it was possible to largely prevent illegal crossings before they took place, instead of pursuing and attempting to apprehend individuals once they had entered the United States, which was the modus operandi of the Border Patrol at that time. Members of the Judiciary Committee and others in Congress urged me to support the El Paso operation on a sustained basis.

Within weeks, working with the Office of Management and Budget and the White House, INS and the Department of Justice reconfigured the INS fiscal year (FY) 1995 budget request and soon forwarded to Congress the first of what has become more than 15 years of major infusions of people, equipment and technology that Congress has supported for border enforcement, most directed at the U.S.-Mexico border. We followed up that budget with Operation Gatekeeper, which began in fall 1994 in the San Diego sector, and then Operation Hold the Line in El Paso, which built on Chief Reyes' earlier efforts.

The deep institutional experience and expertise of the Border Patrol drove the design of these strategies to gain control of the border. The operations and resource allocations were grounded in a new doctrine of border enforcement, known as deterrence through prevention [of entry]. The core idea, which continues today, has been to build the size of the Border Patrol to permit the positioning of agents in sizeable numbers as close as possible to the border in high-crossing areas — and providing them the necessary technology, equipment and other forms of support to establish and maintain deterrence of illegal crossings of every kind, whether illegal immigration, narcotics or other forms of criminal activity.

Today, the Southwest border is a dramatically different place. The soccer field is gone and in its place — as in many other border locations — are many miles of Border Patrol vehicle roads and fences, stadium lighting and substantial contingents of agents, backed up by air support, sophisticated intelligence, ground sensor systems and other technology-based tracking and detection techniques.

The San Diego and El Paso sectors, the two highest crossing corridors that historically had accounted for almost 60 percent of apprehensions, now experience only about 20 percent of apprehension activity. Moreover, apprehension levels that had reached historic highs of more than 1.6 million in 2000 have now dipped to below 450,000 last year, lows not experienced since the 1970s. These are dramatic, positive changes.

At the same time, the changes have brought with them important lessons learned and new challenges; some were anticipated, others not. Among the more consequential are the following:

- Smugglers of migrants and illegal drugs have shifted and adapted their crossing patterns in response to enforcement strategies far more quickly than the Border Patrol has been able to check against. The new routes, albeit across ever more remote and generally dangerous terrain, have become high-volume crossing corridors, particularly in Arizona.
- Border enforcement has made it increasingly difficult, more expensive and dangerous to cross the Southwest border illegally. The result is that once unauthorized immigrants arrive, they are more likely to remain because of the cost, danger and risk of apprehension of frequent crossing. Known as "locking-in," this

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dynamic has led to the more rapid growth of the size of the resident unauthorized population.

- In an often overlooked fact, about 35 to 40 percent of the unauthorized population in the United States stems from visa overstayers — individuals who came to the U.S. with properly issued visas and did not depart as required. No matter how effective enforcement is at the Southwest border, it is inadequate to deal with this sizeable segment of illegal immigration. (Analytics on this part of the illegal immigration phenomenon were first developed in the 1990s and need to be updated and made public.)
- Until the recent recession, border enforcement swam against the tide of a booming economy, especially during the 1990s when the United States experienced the longest sustained period of job and economic growth since World War II and perhaps before. There are significant limits to what conventional law enforcement can achieve in the face of the laws of economic supply and demand.

However, by far the overarching new dynamic has been the Sept. 11, 2001 terrorist attacks and the imperative for effective border control in the face of a greater threat of terrorism. The task is a daunting one, when one considers that protecting the nation's borders involves geography that includes nearly 7,500 miles of land borders with Mexico and Canada, 12,380 miles of U.S. coastline and a broad array of functions at land ports, seaports, airports and the visa-issuing activities at U.S. consulates abroad.[1] During FY 2010, customs and border officials cleared the entry of $2 trillion in goods,[2] and on an average day process nearly 1 million passengers and pedestrians.[3]

As this Committee knows well, creation of DHS in the aftermath of 9/11 was driven in part by the need to establish an integrated approach to border security as an indispensable element of U.S. national security. Accordingly, substantial levels of new resources have flowed to the parts of the immigration system that involve border security. Customs and Border Protection (CBP), the new agency within DHS charged with securing U.S. borders, has been allocated the largest share of those resources.

CBP includes the air, sea and land ports-of-entry inspections mission, which is complex and has traditionally received proportionately less attention and resources than has the Border Patrol mission. Although resource enhancements for ports of entry have been more modest than those for the Border Patrol, despite the fact that the 9/11 hijackers came to the United States through ports of entry — in most cases with legitimate visas — major investments have been made in United States Visitor and Immigrant Status Indicator Technology (US-VISIT), a technology initiative that is not part of the CBP budget but that represents a long-needed and essential tool for inspectors in carrying out their key role in providing border security.

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[1] Central Intelligence Agency (CIA), "The World Factbook," www.cia.gov/library/publications/the-world-factbook/geos/us.html#Geo.
[2] U.S. Customs and Border Protection (CBP), *Import Trade Trends Fiscal Year 2010 Year-End Trade Report* (Washington, DC: CBP, 2010), www.cbp.gov/linkhandler/cgov/trade/trade_programs/trade_trends/itt.ctt/itt.pdf.
[3] CBP, "Snapshot: A Summary of CBP Facts and Figures," http://cbp.gov/linkhandler/cgov/about/accomplish/snapshot.ctt/snapshot.pdf.

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Thus, the missions of both Border Patrol agents in their work between ports of entry and the inspectors at air and land ports of entry have been recognized as being essential to national security, as well as to immigration and crime control, in a post-9/11 era. Successive administrations and Congresses have backed up that understanding with substantial resource investments with the goal of achieving effective border control

Defining What Constitutes Effective Border Control

The United States has made dramatic progress in improving border security over the past 15 years, and at an accelerated pace since 9/11. Today, the Border Patrol employs 20,700 agents, more than double the number from 2004, and CBP's budget exceeds $11 billion, an amount that has grown at a comparably rapid rate.

Yet what constitutes *effective* border control has not been meaningfully defined or debated. As a result, we have little basis for assessing the return on investment of substantial multi-year border enforcement expenditures or for conducting an informed debate on the adequacy of today's border enforcement strategies and results.

In addition, disagreements about border control that are based on unexamined assertions about the adequacy or inadequacy of current efforts have contributed to a continuing stalemate in Congress over the broader immigration reform agenda.

Opponents of comprehensive immigration reform legislation argue that control of the border must be established as a *pre-condition* for broader reforms. Reform proponents maintain that effective border control can only be achieved *with* broad immigration reform. In both cases, "border control" is undefined.

Moreover, lawmakers "keep moving the goalpost," as Homeland Security Secretary Janet Napolitano has observed.[4] Secretary Napolitano has also argued that DHS will never be able to "seal the border" in the sense of preventing *all* illegal migration.[5]

In making that point, she has presented an alternative view of border control from the one set out in the *Secure Fence Act*, which Congress enacted in 2006. That statute calls for "operational control" of the border, defining it as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."[6]

From a professional law enforcement standpoint, her point is well taken. Zero tolerance is unrealistic and is not a standard to which we hold law enforcement in other, comparable realms. Instead, overall effectiveness — established through a combination of metrics and other factors — is the appropriate goal and assessment for which to strive.

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[4] Ivan Moreno, "Janet Napolitano in Denver: Divided Congress Keeps Obama from Overhauling Immigration," The Huffington Post, June 24, 2010, www.huffingtonpost.com/2010/06/24/janet-napolitano-in-denve n 624757.html.
[5] Press conference with Homeland Security Secretary Janet Napolitano et. al., U.S. Immigration and Customs Enforcement (ICE) headquarters, October 6, 2010.
[6] *Secure Fence Act of 2006*, Public Law 109-367, U.S. Statutes at Large 120 (2006): 2638.

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CBP has determined that national security and public safety are its highest priorities. It has adopted a risk-management approach to border security, seeking to secure and maintain control of U.S. borders and to "detect and prevent the entry of dangerous people."[7] It has not embraced blanket enforcement — in the sense of preventing *all* illegal entries — as a goal. Rather, it seeks to establish "effective control" of the border, by which it means being able to detect illegal entries, to identify and classify them based on the threat they present, to respond to them and to "bring each event to a satisfactory law enforcement resolution."[8]

In a recent speech on the administration's Southwest border strategy, Secretary Napolitano argued that the approach is working:

> *[I]t is inaccurate to state, as too many have, that the border is overrun with violence and out of control. This statement — often made only to score political points — is just plain wrong. Not only does it ignore all of the statistical evidence, it also belittles the significant progress that effective law enforcement has made to protect this border and the people who live alongside it.*[9]

This speech represented an important step in sparking a responsible debate about border control. Still, without greater rigor and broader consensus about what constitutes effective border control, public confidence and immigration reform initiatives will remain vulnerable to assertions of inadequate control.

The administration and DHS, working with Congress, can play a pivotal role in breaking the stalemate by providing a realistic definition and sound measures of effective border control, particularly on the Southwest border, as the basis for a more informed, honest debate on the issue and the substantial investments the nation has made, over now many years, to establish a sound border control infrastructure and strategies.

What Is "Effective Control?"

Historically, apprehension numbers have served as the Border Patrol's answer to the question of what constitutes effective control. From a high of more than 1.6 million in FY 2000, apprehensions fell to 463,382 in FY 2010, the lowest level since the early 1970s — when large-scale illegal immigration to the United States began in earnest — and less than half the number as recently as 2006.[10]

The dramatic reduction in apprehensions, particularly at a time of record numbers of Border Patrol agents, represents a valid measure of effectiveness of border control. However, apprehensions are insufficient and misleading as the primary method for assessing enforcement effectiveness for several reasons:

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[7] CBP, *Secure Borders, Safe Travel, Legal Trade: US Customs and Border Protection Fiscal Year 2009-2014 Strategic Plan* (Washington, DC: CBP, 2009), 12-16, www.cbp.gov/linkhandler/cgov/about/mission/strategic_plan_09_14.ctt/strategic_plan_09_14.pdf.
[8] Ibid., 13-14.
[9] Napolitano, "Remarks on Border Security at the University of Texas at El Paso," January 31, 2011, www.dhs.gov/ynews/speeches/sp_1296491064429.shtm.
[10] Transactional Records Access Clearinghouse (TRAC), "Federal Criminal Enforcement and Staffing: How Do the Obama and Bush Administrations Compare?" (Syracuse, NY: TRAC, 2011), http://trac.syr.edu/tracreports/crim/245/; TRAC, "Controlling the Borders" (Syracuse, NY: TRAC, 2006), http://trac.syr.edu/immigration/reports/141/.

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Apprehensions measure activity, not persons.
The same individual can be apprehended — and thereby counted — multiple times. Thus, apprehensions are a useful metric of workload and level of activity, but an inadequate measure of overall effectiveness.

Illegal immigration is in great part a function of job demand and economic growth.
It has not been possible to disentangle the effects of border enforcement from that of weak job demand. The border buildup has made it increasingly difficult to cross the border illegally and has strengthened deterrence. But the record-low apprehension numbers also coincide with an historic recession in which demand for foreign-born workers — especially low-wage workers in the home construction and, to a lesser extent, hospitality sectors — has diminished dramatically. Inflows of migrants are dependent not only on changing enforcement policies and strategies, but also on the availability of jobs and growth in the U.S. economy, along with economic conditions in migrant-sending countries.[11]

Over time, apprehensions have mirrored fluctuations in the U.S. economy more closely than they have tracked border enforcement staffing, resources or strategies. In fact, job fluctuations in the U.S. economy have been shown to mirror apprehensions. One economist has wryly observed that border apprehensions could serve as a leading indicator in assessing U.S. economic growth.

Apprehension surges, as well as decreases, have both been cited by the Border Patrol as evidence of control.
When apprehensions were on the rise in the 1990s, the Border Patrol stated that it was intercepting a greater proportion of potential crossers. At other times, falling numbers have been cited as evidence of deterrence. Both arguments can be legitimate. However, such divergent interpretations throw into question how much to rely on apprehension data as the principal measure of effectiveness.

The reliability of apprehension data as a metric of effectiveness has not been able to be independently corroborated.
In interviews with would-be border crossers and returning unauthorized migrants, independent research has found that while most Mexicans in migrant-sending communities see crossing the border as increasingly difficult and dangerous, these attitudes have little, if any, statistically significant effect on whether or not a person succeeds in migrating illegally to the United States.[12] According to this research, enhanced fencing and other border enforcement measures undertaken since 1994 have had no discernible effect on immigrants' overall ability to cross the border.[13]

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[11] Demetrios G. Papademetriou and Aaron Terrazas, *Immigrants and the Current Economic Crisis* (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/lmi_recessionJan09.pdf
[12] Wayne A. Cornelius and Jessa M. Lewis, eds., *Impacts of Border Enforcement on Mexican Migration: The View from Sending Communities* (Boulder, CO: Lynne Rienner and University of California – San Diego Center for Comparative Immigration Studies, 2007); Wayne A. Cornelius and Idean Salehyan, "Does Border Enforcement Deter Unauthorized Immigration? The Case of Mexican Migration to the United States of America," *Regulation and Governance*, no. 1 (2007): 139-153.
[13] Wayne A. Cornelius, "Reforming the Management of Migration Flows from Latin America to the United States" (working paper 170, Center for Comparative Immigration Studies, San Diego, CA, December 2008), www.ccis-ucsd.org/PUBLICATIONS/WP%20170.pdf.

Apprehension data are one piece of the puzzle. But CBP and DHS collect many other kinds of data. Especially valuable should be the extensive biometric data — now more than 91 million records of fingerprints — that have been collected in CBP's Automated Biometric Identification System (IDENT) on persons apprehended since the mid-1990s, as well as legitimate travelers through the US-VISIT system and persons seeking immigration benefits.[14] These data could be mined for information about crossing patterns, repeat entries, smuggling activity, outstanding orders of removal, applications for benefits and the success of various enforcement strategies.

CBP may be analyzing and relying on these data to inform its operational, resource and policy decisions. However, such information has not been released or made available to the public. Thus, there is at a minimum a lack of transparency of important, relevant data and more likely a lack of serious analysis and efforts to understand information that could more fully substantiate the effectiveness of border enforcement and permit informed review and critique of border-control policies.

Many other government agencies have long-standing, rich relationships with communities of scholars, analysts and experts in an effort to bring the best thinking and insight to bear on understanding data that shed light on important public policy questions. DHS/CBP have not invited dialogue, analysis and insight from independent experts to assist in developing meaningful assessments and standards for determining success.

Establishing Measures of Effectiveness

Examples of measures of effectiveness that are relevant to border control and could be systematically tracked and incorporated into regular assessments would include:

Hot Spots

An indicator of control is even distribution of the proportion of apprehensions and criminal activity across the border, so that no single corridor — such as Arizona — is vulnerable to a disproportionate share of illegal activity. And, when hot spots do arise, CBP should be able to quickly redirect resources in response.

Crime Rates

Border communities across the Southwest border have lower crime rates today than other comparably sized cities.[15] El Paso, for example, won the designation of safest city in America with a population over 500,000 in 2010, despite being directly across the border from Ciudad Juárez, one of the most violent cities in Mexico.[16] Rates of violent crime in Southwest border counties have dropped by more than 30 percent and are among the lowest (per capita) in the United States.[17]

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[14] CBP, "New anti-terror technology produces astounding arrest numbers," *Customs and Border Protection Today* (October/November 2004), www.cbp.gov/xp/CustomsToday/2004/oct_nov/new_anti_terror.xml; Department of Homeland Security (DHS), "DHS Exhibit 300 Public Release BY 10 / NPPD – US-VISIT – Automated Biometric Identification System (IDENT), (public release, April 17, 2009), www.dhs.gov/xlibrary/assets/mgmt/e300-nppd-usvisit-ident2010.pdf.

[15] Associated Press, "US-Mexico Border Safety: Area is One of Safest Parts of America," June 3, 2010, www.msnbc.msn.com/id/37493275/.

[16] Monica Ortiz Uribe, "El Paso, San Diego Among Safest Cities," KPBS, November 22, 2010, www.kpbs.org/news/2010/nov/22/el-paso-san-diego-among-safest-cities/.

[17] Napolitano, "Remarks on Border Security at the University of Texas at El Paso."

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Ports of Entry
Ports of entry, which are staffed by CBP personnel, have traditionally received far less attention and resources than the Border Patrol, which works between ports of entry. Yet, the ports-of-entry mission is arguably the most difficult and complex element of border security. Ports of entry are responsible for facilitation of legitimate trade and travel, which is vital for the economies and social well-being of the United States and most countries around the world, and for preventing the entry of a small but potentially deadly number of dangerous people and lethal goods. As border enforcement *between* ports of entry makes illegal crossing ever more difficult, new pressures are arising as smugglers increasingly attempt to get unauthorized migrants and illicit cargo *through* ports of entry.

Thus, monitoring, resources and information exchange between the Border Patrol and port inspections officials must be seamless to deter illegal entries and contraband. Enforcement metrics must cover the entire border and all aspects of border enforcement if they are to give an accurate picture of true border control.

Community Confidence and Support
Most areas of the border have experienced shifts in public opinion about federal enforcement over the past decade. Some communities acknowledge improvements in crime rates, safety and quality of life. Others have raised serious concerns regarding enforcement strategies developed without local input or reference to community needs, and that can cause disruption and deterioration in the lives of border residents. Still others are angry and vocal in their criticism of inadequate control.

Public attitudes and support of border enforcement activities are important ingredients in ensuring and assessing effective border control.

Census and other Demographic Data
After two decades of steady increases in the size of the unauthorized population, current estimates show a drop since 2007, from 11.8 million to 10.8 million in 2010.[18] In addition, Mexico's 2010 census shows that the numbers leaving Mexico have fallen by more than two-thirds since a peak in the mid-2000s. Mexican analysts are attributing the drop to the U.S. economic downturn and to stepped-up border enforcement.[19]

Such indicators are examples of the kinds of measures of effectiveness that could be established, tracked and regularly reported. There are additional measures that should be developed to get as complete a picture as possible. However, at the present time, the measures that are available point in varying degrees to meaningful positive progress in securing the borders.

Over the longer term, the goal should be to systematically track such measures and allow for open assessment of the substantial investments that the country has made in border security since the mid-1990s. Only then can public debate about border control be honest and informed, and move beyond rhetoric and unexamined assertions that frustrate solutions for fixing a dysfunctional immigration system. In turn, determining how much and

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[18] DHS Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010* (Washington, DC: DHS, 2011), www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf.
[19] Associated Press, "Mexico census: Fewer migrating, many returning," March 3, 2011, www.thestate.com/2011/03/03/1721751/mexico-census-fewer-migrating.html.

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what kind of border enforcement work to keep us safe is essential for building public confidence in the government's ability to enforce the nation's immigration laws and manage its immigration system.

Mr. Chairman and Members of the Committee, thank you. I am happy to respond to your comments and questions.

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United States Government Accountability Office

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BORDER SECURITY

DHS Progress and Challenges in Securing the U.S. Southwest and Northern Borders

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

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Highlights

Highlights of GAO-11-508T, a testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

March 30, 2011

BORDER SECURITY

DHS Progress and Challenges in Securing the U.S. Southwest and Northern Borders

Why GAO Did This Study

As part of its mission, the Department of Homeland Security (DHS), through its U.S. Customs and Border Protection (CBP) component, is to secure U.S borders against threats of terrorism; the smuggling of drugs, humans, and other contraband; and illegal migration. At the end of fiscal year 2010, DHS investments in border security had grown to $11.9 billion and included more than 40,000 personnel. To secure the border, DHS coordinates with federal, state, local, tribal, and Canadian partners. This testimony addresses DHS (1) capabilities to enforce security at or near the border, (2) interagency coordination and oversight of information sharing and enforcement efforts, and (3) management of technology programs. This testimony is based on related GAO work from 2007 to the present and selected updates made in February and March 2011. For the updates, GAO obtained information on CBP performance measures and interviewed relevant officials.

What GAO Recommends

GAO is not making any new recommendations in this testimony. However, GAO has previously made recommendations to DHS to strengthen border security, including enhancing measures to protect against the entry of terrorists, inadmissible aliens, and contraband; improving interagency coordination; and strengthening technology acquisition and deployment plans. DHS generally concurred with these recommendations and has actions underway or planned in response.

View GAO-11-508T or key components. For more information, contact Richard M. Stana at (202) 512-8777 or StanaR@gao.gov.

What GAO Found

CBP significantly increased personnel and resources for border security at and between the ports of entry (POE), and reported some success in interdicting illegal cross-border activity; however, weaknesses remain. At the POEs, for example, CBP reported that deployment of imaging technology to detect stowaways or cargo had increased seizures of drugs and other contraband, and between the POEs, increased staffing, border fencing, and technology have resulted in some success in reducing the volume of illegal migration and increasing drug seizures. However, as GAO reported from 2007 through 2011, weaknesses in POE traveler inspection procedures and infrastructure increased the potential that dangerous people and illegal goods could enter the country; and that currency and firearms could leave the country and finance drug trafficking organizations and sponsors of terrorism. CBP used a performance measure to reflect results of its overall border enforcement efforts, which showed few land border miles where they have the capability to deter or apprehend illegal activity at the immediate border in fiscal year 2010. DHS is developing a new methodology and performance measures for border security and plans to implement them in fiscal year 2012.

As GAO reported in 2010, federal, state, local, tribal, and Canadian law enforcement partners reported improved DHS coordination to secure the border, but critical gaps exist. For example, interagency forums helped in establishing a common understanding of border security threats, while joint operations helped to achieve an integrated and effective law enforcement response. However, significant gaps remained in sharing information and resources useful for operations, such as daily patrols in vulnerable areas, like National Parks and Forests. As GAO reported, and made related recommendations, improved coordination provides opportunity to enhance border security efforts on the southwest and northern borders, including those to deter alien smuggling.

CBP's Border Patrol component is moving ahead with a new technology deployment plan to secure the border, but cost and operational effectiveness and suitability are not yet clear. In January 2011, the Secretary of Homeland Security announced a new direction to deploying technology to assist in securing the border. The decision ended the Secure Border Initiative Network technology program—one part of a multiyear, multibillion dollar effort aimed at securing the border through technology such as radar, sensors, and cameras and infrastructure such as fencing. Under a new plan, called Alternative (Southwest) Border Technology, Border Patrol is to develop terrain- and population-based solutions using existing proven technology, such as camera-based surveillance systems. However, the analysis DHS performed to arrive at an appropriate mix of technology in its new plan raises questions. For example, the analysis cited a range of uncertainties in costs and effectiveness, with no clear-cut cost effective technology alternative among those considered, as GAO reported in preliminary observations in March 2011. GAO will continue to assess this issue and report its results later this year.

United States Government Accountability Office

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

I am pleased to be here today to address the Department of Homeland Security's (DHS) efforts to secure U.S. land borders with Mexico and Canada against threats of terrorism; the smuggling of drugs, humans, and other contraband; and illegal migration since the terrorist attacks of September 11, 2001 (9/11). At the end of fiscal year 2004, the first full year DHS existed as an agency, it had about 10,500 agents assigned to patrol the U.S. land borders and about 17,600 officers inspecting travelers at air, land, and sea ports of entry (POE),[1] amounting to a total of about $5.9 billion (for personnel, infrastructure, and technology) that had been appropriated to secure the entire U.S. border.[2] At the end of fiscal year 2010, both the number of personnel and amount of resources dedicated to border security had significantly increased, with almost 20,000 agents assigned to patrol the U.S. land borders and 20,600 officers assigned to air, land, and sea ports of entry, amounting to about $11.9 billion appropriated to secure the entire U.S. border (for personnel, infrastructure, and technology).[3] DHS has also reported that about $4.4 billion has been invested since fiscal year 2006 in border technology and infrastructure under the Secure Border Initiative (SBI) program—a multiyear, multibillion dollar effort to help secure U.S. borders using a mix of radars, sensors, and cameras (called SBI Network, or SBInet) along with border fencing, roads, and lighting.

DHS reported that the increased resources have resulted in fewer numbers of apprehensions, and that this stronger enforcement presence was one of several reasons fewer people were attempting to illegally cross the border. However, challenges remain at and between the POEs as DHS data show that several hundred thousand violators enter the country illegally and undetected through the nation's POEs and several hundred thousand

[1]POEs are the facilities that provide for the controlled entry into or departure from the United States for persons and materials. Specifically, a POE is any officially designated location (seaport, airport, or land border location) where DHS officers or employees are assigned to clear passengers and merchandise, collect duties, and enforce customs laws.

[2]The number of border agents includes only those assigned to northern and southwest border sectors. The number of officers assigned to POEs does not include those performing trade or agricultural inspections. The $5.9 billion includes all funds appropriated to DHS for border security in fiscal year 2004.

[3]The $11.9 billion is the amount of funds DHS reported as appropriated for border security for fiscal year 2010.

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persons illegally cross the border between the POEs. DHS also remains challenged to stem the increasing threat from smuggling of drugs, firearms, and currency which Mexican drug-trafficking organizations, terrorist organizations, and other groups use with malevolent intent. Overall, DHS reported achieving an acceptable level of border control across less than half of the southwest border and less than 2 percent of the northern border during fiscal year 2010.[4] DHS is in the process of developing a new methodology and performance measures for assessing border security and it expects to complete this effort by fiscal year 2012.

DHS's efforts to secure the border at and between the POEs are the primary responsibility of the U.S. Customs and Border Protection's (CBP) Office of Field Operations (OFO) and Office of Border Patrol (Border Patrol) components, respectively. OFO is responsible for processing the flow of people and goods that enter the country through air, land, and sea POEs where CBP officers inspect travelers and goods to determine whether they may be legally admitted into the country. Border Patrol works to prevent the illegal entry of persons and contraband into the United States between the ports of entry using a "defense-in-depth" approach to border security operations that provides for layers of agents who operate not only at the border, but also in key enforcement zones, such as at traffic checkpoints located 25 miles or more from the border on U.S. roads. Other DHS components also play a role. DHS' U.S. Immigration and Customs Enforcement (ICE) is responsible for investigating cross-border illegal activity and criminal organizations that transport persons and goods across the border. On the northern border, DHS' U.S. Coast Guard executes its maritime security mission on and over major waterways, including the Great Lakes, using marine and air assets. For all borders, CBP's Office of Air and Marine operates a fleet of air and marine assets in support of federal border security efforts. Other federal, state, local, and tribal law enforcement agencies also expend resources for border security. DHS has established various memoranda of understanding and agreement across these multiple levels of government to enhance information sharing and achieve an integrated response among law enforcement agencies operating in common geographic areas.

[4]According to Border Patrol, an acceptable level of border control is established when it has the capability (i.e., resources) to deter or detect and apprehend incursions at the immediate border or after entry.

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Over the years, we have reviewed a variety of DHS border security programs and operations and issued a number of reports. Today I will discuss some of the key issues from these reports as well as recommendations we have made in the following areas:

(1) DHS capabilities to enforce border security at or near the border,

(2) DHS interagency coordination and oversight of border security information-sharing and enforcement efforts, and

(3) DHS management of technology programs.

My statement today is based on our body of work from 2007 to the present that examined DHS efforts to secure the U.S. border (see Related GAO Products at the end of this statement), with selected updates in February and March 2011. Our reports and testimonies incorporated information we obtained and analyzed from officials from various components of DHS, the Department of Justice (DOJ), the Department of Interior (DOI), the Department of Agriculture (USDA), state and local law enforcement agencies, and Canadian law enforcement agencies responsible for border security at and between the ports of entry along the southwest and northern borders. For the updates, we obtained information on CBP's performance measures for POEs and interviewed CBP officials regarding changes in performance goals for detecting illegal entries at land border POEs. More detailed information about our scope and methodology, including data reliability, can be found in our reports and testimonies. Our work was conducted in accordance with generally accepted government auditing standards.

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CBP Reported Some Success in Stemming Illegal Activity, but Improvements to Operations and Infrastructure Could Help Enforce Security Closer to the U.S. Border

CBP has increased personnel—by 17 percent over its 2004 levels—and resources for border security at the POEs and reported some success in interdicting illegal cross-border activity. At the POEs, for example, CBP reported that deployment of imaging technology had increased seizures of drugs and other contraband. Between the POEs, Border Patrol reported that increased staffing and resources have resulted in some success in reducing the volume of illegal migration and increasing drug seizures. However, weaknesses in POE traveler inspection procedures and infrastructure increased the potential that dangerous people and illegal goods could enter the country, and that currency and firearms could leave the country. Border Patrol continues to face challenges in efforts to address the increasing threat from cross-border drug smuggling activity, with many drug seizures and apprehensions occurring some distance from the border. CBP does not have externally reported performance measures that reflect the results of its overall enforcement efforts at the border. In fiscal year 2010, before it discontinued the public reporting of performance measures showing border security progress, Border Patrol reported few border miles where it had the capability to deter or apprehend illegal activity at the immediate border. DHS is developing a new methodology and performance measures for border security and plans to implement them in fiscal year 2012.

Improvements in POE Inspection Programs, Staffing, and Facilities Provide Opportunity to Reduce Risk That Terrorists and Inadmissible Aliens Could Enter the Country but Challenges Remain

CBP reported that $2.7 billion was appropriated in fiscal year 2010 for border security at POEs, with a workforce of 20,600 CBP officers and 2,300 agriculture specialists. These CBP officers inspected 352 million travelers and nearly 106 million cars, trucks, buses, trains, vessels, and aircraft at over 330 air, sea, and land POEs. To facilitate inspections, the Western Hemisphere Travel Initiative (WHTI) generally requires all citizens of the United States and citizens of Canada, Mexico, and Bermuda traveling to the United States as nonimmigrant visitors to have a passport or other accepted document that establishes the bearer's identity and nationality to enter the country from within the Western Hemisphere. CBP also deployed technology to assist officers in detecting illegal activity, providing 1,428 radiation portal monitors to screen for radiological or nuclear materials and mobile surveillance units, thermal imaging systems, and large-and small-scale Non-intrusive Inspection technology imaging systems to detect stowaways and materials such as explosives, narcotics, and currency in passenger vehicles and cargo. CBP reported that these resources have resulted in greater enforcement at the border. For example, CBP reported that deployment of imaging technology at POEs to detect stowaways or materials in vehicles and cargo had resulted in over 1,300 seizures, which included 288,000 pounds of narcotics. In fiscal year

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2010, CBP reported turning away over 227,000 aliens[5] who attempted to enter the country illegally; apprehending more than 8,400 people wanted for a variety of charges, to include serious crimes such as murder, rape, and child molestation; and seizing over 870,000 pounds of illegal drugs, $147 million in currency (inbound and outbound), more than 29,000 fraudulent documents, and more than 1.7 million prohibited plant materials, meat, and animal byproducts.

Despite technology and other improvements in the traveler inspection program, our work has shown that vulnerabilities still exist. We reported in January 2008 that weaknesses remained in CBP's inbound traveler inspection program and related infrastructure which increased the potential that dangerous people and illegal goods could enter the country.[6] For example, CBP analyses indicate that several thousand inadmissible aliens and other violators entered the United States in fiscal year 2006. The weaknesses included challenges in attaining budgeted staffing levels because of attrition and lack of officer compliance with screening procedures, such as those used to determine citizenship and admissibility of travelers entering the country as required by law and CBP policy.[7] Contributing factors included lack of focus and complacency, lack of supervisory presence, and lack of training. In this regard, the extent of continued noncompliance is unknown, and CBP management faces challenges in ensuring its directives are carried out. Another challenge was that CBP headquarters did not require field managers to share the results of their periodic audits and assessments to ensure compliance with the inspection procedures, hindering the ability of CBP management to efficiently use the information to overcome weaknesses in traveler inspections. To mitigate infrastructure weaknesses, such as the lack of vehicle barriers, CBP estimated in 2007 that it would need about $4 billion to make capital improvements at all 163 of the nation's land crossings. CBP was also challenged by the fact that some POEs are owned by other governmental or private entities, adding to the time and complexity in

[5]OFO reported that of the total inadmissible aliens, 78,936 were at the southwest land border and 36,710 were at the northern border. The remaining inadmissible aliens were at sea ports (68,112) and air ports (43,891).

[6]GAO, *Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry*, GAO-08-329T (Washington, D.C.: Jan. 3, 2008).

[7]The Immigration and Nationality Act, implementing regulations, and CBP policies and procedures for traveler inspection at all POEs require officers to establish, at a minimum, the nationality of individuals and whether they are eligible to enter the country. See 8 U.S.C. § 1225(a); 8 C.F.R. § 235.1(a), (b), (f)(1).

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addressing infrastructure problems. DHS concurred with our recommendations that CBP enhance internal controls in the inspection process, establish measures for training provided to CBP officers and new officer proficiency, and implement performance measures for apprehending inadmissible aliens and other violators; and indicated that CBP was taking steps to address the recommendations.

CBP's public outreach campaign has led to a high rate of compliance with WHTI's document requirements, averaging more than 95 percent nationally throughout fiscal year 2010. CBP conducts queries against law enforcement databases for more than 95 percent of the traveling public, up from 5 percent in 2005. We reported in June 2010, however, that CBP officers at POEs are unable to take full advantage of the security features in WHTI documents because of time constraints, limited use of technology in primary inspection, and the lack of sample documents for training.[8] For example, while CBP had deployed technology tools for primary inspectors to use when inspecting documents, it could make better usage of fingerprint data to mitigate the risk of imposter fraud with border crossing cards, the most common type of fraud. We are currently reviewing the training of CBP officers at POEs for the House Homeland Security Committee and the Senate Homeland Security and Governmental Affairs Committee and plan to report the results of this work later this year.

In June 2009 and March 2011, we reported results of our review of CBP's Outbound Enforcement Program intended to stem illegal cross-border smuggling of firearms and large volumes of cash used by Mexican drug-trafficking organizations, terrorist organizations, and other groups with malevolent intent.[9] Under the program, CBP inspects travelers leaving the country at all 25 land ports of entry along the southwest border. On the northern border, inspections are conducted at the discretion of the Port Director. Available evidence indicated that many of the firearms fueling Mexican drug violence originated in the United States, including a number of increasingly lethal weapons, and the U.S. government faced several

[8]GAO, *Border Security: Improvements in the Department of State's Development Process Could Increase the Security of Passport Cards and Border Crossing Cards*, GAO-10-589 (Washington, D.C.: June 1, 2010).

[9]GAO, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges*, GAO-09-709 (Washington, D.C.: June 18, 2009), and *Moving Illegal Proceeds: Opportunities Exist for Strengthening the Federal Government's Efforts to Stem Cross-Border Currency Smuggling*, GAO-11-407T, (Washington, D.C.: Mar. 9, 2011).

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challenges in combating illicit sales of firearms in the United States and stemming their flow to Mexico. DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives and DHS's ICE are the primary agencies implementing efforts to address this issue. However, we reported in June 2009 that these agencies did not effectively coordinate their efforts, in part because the agencies lack clear roles and responsibilities and had been operating under an outdated interagency agreement.[10] Additionally, these agencies generally had not systematically gathered, analyzed, and reported data that could be useful to help plan and assess results of their efforts to address arms trafficking to Mexico. Further, until June 2009, when the administration included a chapter on combating illicit arms trafficking to Mexico in its National Southwest Border Counternarcotics Strategy, various efforts undertaken by individual U.S. agencies were not part of a comprehensive U.S. governmentwide strategy for addressing the problem. DHS agreed with our recommendation that DHS and DOJ, among other agencies, improve interagency coordination, data gathering and analysis, and strategic planning and described steps it was undertaking to implement them. DOJ did not comment on the report.

We previously reported that stemming the flow of bulk cash has been a difficult and challenging task.[11] From March 2009 through February 22, 2011, as part of the Outbound Enforcement Program, CBP officers seized about $67 million in illicit bulk cash leaving the country at land POEs, almost all of which was seized along the southwest border. However, the National Drug Intelligence Center estimates that criminals smuggle $18 billion to $39 billion a year across the southwest border, and that the flow of cash across the northern border with Canada is also significant. CBP challenges we reported included limited hours of operation, technology, infrastructure, and procedures to support outbound inspection operations. For example, as of March 2011, license plate readers were available at 48 of 118 outbound lanes on the southwest border but none of the 179 outbound lanes on the northern border. CBP is in the early phases of this program and has not yet taken some actions to gain a better understanding of how well the program is working, such as gathering data for measuring program costs and benefits.

[10]GAO-09-709 and GAO-11-407T.

[11]GAO-11-407T and GAO, *Moving Illegal Proceeds: Challenges Exist in the Federal Government's Effort to Stem Cross-Border Currency Smuggling*, GAO-11-73 (Washington, D.C.: Oct. 25, 2010).

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Our March 2011 testimony also included information about regulatory gaps related to the stored value industry, including exemptions from anti-money laundering requirements for certain types of financial institutions and the lack of cross-border reporting requirements with regard to the use of stored value, such as prepaid cards.[12] For example, individuals must report transporting more than $10,000 in currency or monetary instruments when crossing the U.S. border, but the Department of the Treasury's Financial Crimes Enforcement Network (FinCen) does not have a similar requirement in place for individuals transporting stored value across U.S. borders. The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) required the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, to issue regulations in final form implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards. In doing so, the Credit CARD Act stated that Treasury may issue regulations regarding the international transport of stored value to include reporting requirements pursuant to the statute applicable to the transport of currency or monetary instruments. CBP and FinCEN concurred with our recommendations that they gather cost-benefit data and develop a plan to better manage rulemaking, respectively, and described actions they were taking to implement them.

[12]GAO-11-407T.

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Border Patrol Reported Some Success in Reducing Illegal Migration, but Challenges Remained in Stemming Cross-Border Smuggling of Illegal Drugs between the POEs

CBP reported that $3.6 billion was appropriated in fiscal year 2010 for border security efforts between the POEs, and that the Border Patrol is better staffed now than at any time in its 86-year history, having doubled the number of agents from 10,000 in fiscal year 2004 to more than 20,500 in fiscal year 2010.[13] CBP also constructed 649 miles of pedestrian and vehicle fencing on the southwest border covering 33 percent of the border,[14] and increased its investment in traffic checkpoints, the last layer of defense in Border Patrol's effort to apprehend illegal activity that has crossed the border undetected. Border Patrol reported that apprehensions had decreased nationwide by 36 percent from fiscal year 2008 (nearly 724,000) to fiscal year 2010 (approximately 463,000),[15] indicating in its view that fewer people were attempting to illegally cross the border. However, during the same time that apprehensions decreased, marijuana drug seizures increased almost 50 percent from over 1.6 million pounds in fiscal year 2008 to about 2.4 million pounds in fiscal year 2010, and CBP has been challenged to link its investments to changes in border control.[16]

We reported in May 2010 that CBP had not accounted for the impact of its investment in border fencing and infrastructure on border security.[17] Border fencing was designed to prevent people on foot and vehicles from crossing the border and to enhance Border Patrol agents' ability to respond to areas of illegal entry. CBP estimated that the border fencing had a life cycle of 20 years and over these years, a total estimated cost of about $6.5 billion to deploy, operate, and maintain the fencing and other infrastructure. According to CBP, during fiscal year 2010, there were 4,037 documented and repaired breaches of the fencing and CBP spent at least

[13]Of the 20,558 agents in place in fiscal year 2010, 17,535 agents were dedicated to the southwest border, 2,263 were dedicated to the northern border, 246 agents were dedicated to the southeast coastal border, and 514 agents were dedicated to other locations.

[14]The length of the border with Mexico is defined by the U.S. International Boundary and Water Commission at 1,954 miles. The length of the land border is 675 miles, while the length of the border along the Colorado and Rio Grande Rivers is 1,279 miles.

[15]Apprehensions decreased on the southwest border from 705,005 to 447,731; on the northern border from 7,925 to 7,431; and on the southeast coastal border from 10,895 to 8,220.

[16]Marijuana drug seizures on the southwest border increased from over 1.6 million pounds to over 2.4 million pounds, on the northern border from over 9,500 pounds to over 12,700 pounds, and on the southeast coastal border from over 730 pounds to nearly 1,300 pounds.

[17]GAO, *Secure Border Initiative: DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border*, GAO-10-651T (Washington, D.C.: May 4, 2010).

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$7.2 million to repair the breaches, or an average of about $1,800 per breach. CBP reported an increase in control of southwest border miles, but could not account separately for the impact of the border fencing and other infrastructure. In our May 4, 2010, testimony, we concluded that until CBP determines the contribution of border fencing and other infrastructure to border security, it is not positioned to address the impact of its investment; and reported that in response to a prior recommendation, CBP was in the process of conducting an analysis of the impact of tactical infrastructure on border security.[18]

Traffic checkpoints contributed to furthering the Border Patrol mission to protect the border. In 2008, they accounted for about 35 percent of Border Patrol drug seizures along the southwest border and 17,000 apprehensions of illegal aliens, including 3 individuals identified as persons linked to terrorism. However, we reported in August 2009 that Border Patrol did not have measures to determine if these checkpoints were operating effectively and efficiently,[19] and weaknesses in checkpoint design and operation increased the risk that illegal activity may travel to the U.S. interior undetected. Border Patrol officials said that several factors impeded higher levels of performance, including insufficient staff, canine teams, and inspection technology. Other challenges included insufficient guidance to ensure that new checkpoints were appropriately sized, lack of management oversight and guidance to ensure consistent data collection practices, and a lack of performance measures to determine if checkpoints were operating efficiently and effectively with minimal adverse impact on local communities. CBP agreed with our recommendations to take several actions to strengthen checkpoint design and staffing, and improve the measurement and reporting of checkpoint effectiveness, including community impact and identified actions planned or underway to implement the recommendations.

[18]GAO-11-651T.

[19]GAO, *Border Patrol: Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, GAO-09-824 (Washington, D.C.: August 2009).

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DHS Performance Measures Show Response to Illegal Border Activity Most Often Occurs after Entry into the United States

As of fiscal year 2011, CBP no longer has externally reported performance goals or measures that reflect its overall success in detecting illegal entries and contraband at and between the POEs, but the measures for fiscal year 2010 showed few land border miles are at a level of control where deterrence or apprehensions of illegal entries occurs at the immediate border. Border Patrol is in the process of developing a new methodology and performance measures, however, for assessing border security between the POEs. Further, OFO has multiple performance measures in place, but it does not have an external measure that captures the results of its overall enforcement efforts at POEs. In fiscal year 2009, however, OFO used a statistical model to report that over 99 percent of travelers in passenger vehicles passing through the southwest and northern land border POEs were compliant with U.S. laws, rules, and regulations. For the less than 1 percent of travelers who comprised the noncompliant population, OFO officials reported in the CBP Fiscal Year 2009 Performance and Accountability Report a goal to apprehend at least 28 percent of serious criminal activities—such as transporting illegal drugs, guns, or other banned substances in fiscal year 2009, the last year this information was publicly available. OFO officials said that they considered this an effective performance measure and that at the end of fiscal year 2009, the land border POEs had achieved that goal.[20]

As we reported in December 2010 and February 2011, and through selected updates, the Border Patrol is in the process of developing new performance measures for assessing border security between the POEs.[21] However, up until fiscal year 2011, Border Patrol used a security performance measure of border miles under control to assess security between the POEs, which reflected its ability to deter or detect and apprehend illegal entries at the border or after they occur. As we testified in February 2011 about our preliminary observations on this measure, Border Patrol indicated that in fiscal year 2010, 873 of the nearly 2,000 southwest border miles and 69 of the nearly 4,000 northern border miles between Washington and Maine were at an acceptable level of control.

[20]OFO's Executive Director of Planning, Program Analysis, and Evaluation said that the results of this performance measure for fiscal year 2009 were designated for official use only, so we could not publicly report the proportion of illegal activity that is apprehended at the border.

[21]GAO, *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border*, GAO-11-374T (Washington, D.C.: Feb. 15, 2011), and *Border Security: Enhanced DHS Oversight and Assessment of Interagency Coordination is Needed for the Northern Border*, GAO-11-97 (Washington, D.C.: Dec. 17, 2010).

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Within this border security classification, Border Patrol further distinguished between the ability to deter or detect and apprehend illegal entries at the immediate border versus after entry—at distances of up to 100 miles or more away from the immediate border—into the United States.[22] Our preliminary analysis of these Border Patrol data showed that the agency reported a capability to deter or detect and apprehend illegal entries at the immediate border across 129 of the 873 southwest border miles and 2 of the 69 northern border miles. Our preliminary analysis also showed that Border Patrol reported the ability to deter or detect and apprehend illegal entries after they crossed the border for an additional 744 southwest border miles and 67 northern border miles.

As we previously observed in December 2010 and February 2011, and through selected updates, Border Patrol determined in fiscal year 2010 that border security was not at an acceptable level of control for 1,120 southwest border miles and 3,918 northern border miles, and that on the northern border there was a significant or high degree of reliance on enforcement support from outside the border zones for detection and apprehension of cross-border illegal activity.[23] For two-thirds of these southwest miles, Border Patrol reported that the probability of detecting illegal activity was high; however, the ability to respond was defined by accessibility to the area or availability of resources. One-fourth of these northern border miles were also reported at this level. The remaining southwest and northern border miles were reported at levels where lack of resources or infrastructure inhibited detection or interdiction of cross-border illegal activity.

In our February 2011 testimony regarding our observations on Border Patrol security measures, and through selected updates, we noted that in fiscal year 2011 DHS discontinued the public reporting of performance measures showing border security progress, while it develops and implements a new methodology and measures for border security.[24] In the meantime Border Patrol is reporting on the number of agents and joint operations on the southwest border and the number of apprehensions. CBP does not have an estimate of the time and effort needed to secure the

[22]These differences stem from Border Patrol's "defense in depth" approach to border security operations that provides for layers of agents who operate not only at the border but also in other areas of a Border Patrol sector.

[23]GAO-11-97 and GAO-11-307T.

[24]GAO-11-374T.

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southwest border; however, the agency expects new border security measures to be in place by fiscal year 2012 which will enable it to make such an estimate. DHS, CBP, and Border Patrol headquarters officials said that the new approach to border security between the POEs is expected to be more flexible and cost-effective, and that Border Patrol officials expect that they will be requesting fewer resources to secure the border.

DHS Law Enforcement Partners Reported Improved Results for Interagency Coordination and Oversight of Border Security Intelligence and Enforcement Operations but Gaps Remained

Federal, state, local, tribal, and Canadian law enforcement partners reported improved DHS coordination to secure the border. For example, interagency forums were beneficial in establishing a common understanding of border security threats, while joint operations helped to achieve an integrated and effective law enforcement response. However, critical gaps remained in sharing information and resources useful for operations, such as daily patrols in vulnerable areas, including National Parks and Forests. Our past work has shown that additional actions to improve coordination could enhance border security efforts on the southwest and northern borders, including those to deter alien smuggling.

DOI and USDA Reported Improved DHS Coordination to Secure Federal Borderlands, but Critical Gaps Remained in Sharing Intelligence and Communications for Daily Operations

Illegal cross-border activity remains a significant threat to federal lands protected by DOI and USDA law enforcement personnel on the southwest and northern borders and can cause damage to natural, historic, and cultural resources, and put agency personnel and the visiting public at risk. We reported in November 2010 that information sharing and communication among DHS, DOI, and USDA law enforcement officials had increased in recent years.[25] Interagency forums were used to exchange information about border issues and interagency liaisons facilitated exchange of operational statistics. However, critical gaps remained in implementing interagency agreements to ensure law enforcement officials had access to daily threat information and compatible secure radio

[25]GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177 (Washington, D.C.: Nov. 18, 2010).

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communications needed to better ensure officer safety and an efficient law enforcement response to illegal activity. This was important in Border Patrol's Tucson sector on the southwest border, where apprehensions on federal lands had not kept pace with the estimated number of illegal entries, indicating that threats caused by drug smugglers and illegal migration may be increasing.

Federal land managers in the Tucson sector said they would like additional guidance to determine when illegal cross-border activity poses a sufficient public safety risk to restrict or close access to federal lands. In Border Patrol's Spokane sector on the northern border, coordination of intelligence information was particularly important due to sparse law enforcement presence and technical challenges that precluded Border Patrol's ability to fully assess cross-border threats, such as air smuggling of high-potency marijuana. The agencies agreed with our recommendations that DOI and USDA determine if more guidance is needed for federal land closures and that DHS, DOI, and USDA provide oversight and accountability as needed to further implement interagency agreements for coordinating information and integrating operations. In January 2011, CBP issued a memorandum to all Border Patrol division chiefs and chief patrol agents emphasizing the importance of USDA and DOI partnerships to address border security threats on federal lands. This action is a positive step toward implementing our recommendations and we encourage DHS, DOI, and USDA to take the additional steps necessary to monitor and uphold implementation of the existing interagency agreements in order to enhance border security on federal lands.

Northern Border Partners Reported Interagency Forums Improved Coordination, but DHS Oversight Was Needed to Resolve Interagency Conflict in Roles and Responsibilities

DHS has stated that partnerships with other federal, state, local, tribal, and Canadian law enforcement agencies are critical to the success of northern border security efforts. We reported in December 2010 that DHS efforts to coordinate with these partners through interagency forums and joint operations were considered successful, according to a majority of these partners we interviewed.[26] In addition, DHS component officials reported that federal agency coordination to secure the northern border was improved. However, DHS did not provide oversight for the number and location of forums established by its components and numerous federal, state, local, and Canadian partners cited challenges related to the inability to resource the increasing number of forums, raising concerns that some

[26]GAO-11-97.

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efforts may be overlapping. In addition, federal law enforcement partners in all four locations we visited as part of our work cited ongoing challenges between Border Patrol and ICE, Border Patrol and Forest Service, and ICE and DOJ's Drug Enforcement Administration in sharing information and resources that compromised daily border security related to operations and investigations. DHS had established and updated interagency agreements to address ongoing coordination challenges; however, oversight by management at the component and local level has not ensured consistent compliance with provisions of these agreements.

We also reported that while Border Patrol's border security measures reflect that there is a high reliance on law enforcement support from outside the border zones, the extent of partner law enforcement resources that could be leveraged to fill Border Patrol resource gaps, target coordination efforts, and make more efficient resource decisions are not reflected in Border Patrol's processes for assessing border security and resource requirements. We previously reported in November 2008 that DHS was not fully responsive to a legislative reporting requirement to identify resources needed to secure the northern border.[27] Specifically, the Implementing Recommendations of the 9/11 Commission Act of 2007 required the Secretary of Homeland Security to submit a report to Congress that addresses the vulnerabilities along the northern border, and provides recommendations and required resources to address them.[28] DHS agreed with our recommendations to provide guidance and oversight for interagency forums and for component compliance with interagency agreements, and develop policy and guidance necessary to integrate partner resources in border security assessments and resource planning documents. DHS also reported that it was taking action to address these recommendations.

[27]GAO, *Northern Border Security: DHS's Report Could Better Inform Congress by Identifying Actions, Resources, and Time Frames Needed to Address Vulnerabilities*, GAO-09-93 (Washington, D.C.: Nov. 25, 2008).

[28]Pub. L. No. 110-53, § 731(a)-(b), 121 Stat. 266, 351.

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Selected Local and Tribal Law Enforcement Agencies Reported Federal Information Sharing Occurred, but Consistent Coordination Could Help Identify Terrorist Threats and Other Criminal Activity at the Border

Information is a crucial tool in securing the nation's borders against crimes and potential terrorist threats. In many border communities, the individuals who are best positioned to observe and report suspicious activities that may be related to these threats are local and tribal law enforcement officers. We reported in December 2009 that 15 of 20 local and tribal law enforcement agencies in southwest or northern communities we contacted during our work said they received information directly from Border Patrol, ICE, or from DOJ's Federal Bureau of Investigation that was useful for enhancing their situational awareness of crimes along the border and potential terrorist threats.[29] However, 5 of the 20 agencies reported that they did not receive information from the federal agencies, in part, because information-sharing partnerships and related mechanisms to share information did not exist. In addition, officials from 13 of the 20 agencies in border communities said that they did not clearly know what suspicious activities federal agencies wanted them to report, how to report them, or to whom because federal agencies had not provided necessary guidance. We recommended that DHS and DOJ more fully identify the information needs of and establish partnerships with local and tribal officials along the borders, identify promising practices in developing border intelligence products, and define the suspicious activities that local land tribal officials in border communities are to report and how to report them. DHS agreed with the recommendations and indicated that it was taking action to implement them. DOJ did not comment.

Leveraging a State Justice Agency's Investigative Strategy Could Provide DHS with Additional Opportunity to Deter Alien Smuggling

Alien smuggling along the southwest border is a growing threat to the security of the United States and Mexico due, in part, to the expanding involvement of Mexican drug trafficking organizations and aliens who illegally enter the region from countries of special interest to the United States such as Afghanistan, Iran, Iraq, and Pakistan. Violence associated with alien smuggling has also increased in recent years, particularly in Arizona. In October 2007, the National Drug Intelligence Center reported that the success of expanding border security initiatives and additional Border Patrol resources are likely obstructing regularly used smuggling

[29]GAO, *Information Sharing: Federal Agencies Are Sharing Border and Terrorism Information with Local and Tribal Law Enforcement Agencies, but Additional Efforts are Needed*, GAO-10-41 (Washington, D.C.: Dec. 18, 2009).

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routes and fueling an increase in violence, particularly against law enforcement officers in Arizona.[30]

We reported in May 2010 and testified in July 2010, that ICE may be missing an opportunity to leverage techniques used by the Arizona Attorney General to disrupt alien smuggling operations.[31] Specifically, an Arizona Attorney General task force seized millions of dollars and disrupted alien smuggling operations by following cash transactions flowing through money transmitters that serve as the primary method of payment to those individuals responsible for smuggling aliens. By analyzing money transmitter transaction data, task force investigators identified suspected alien smugglers and those money transmitter businesses that were complicit in laundering alien smuggling proceeds. An overall assessment of whether and how these techniques may be applied by ICE in the context of disrupting alien smuggling could help ensure that it is not missing opportunities to take additional actions and leverage resources to support the common goal of countering alien smuggling. We recommended that ICE assess the Arizona Attorney General's financial investigations strategy to identify any promising investigative techniques for federal use. ICE concurred with our recommendation and outlined specific steps it was taking to implement it.

[30]U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment 2008* (Johnstown, Pa.: October 2007).

[31]GAO, *Alien Smuggling: DHS Needs to Better Leverage Investigative Resources and Measure Program Performance along the Southwest Border*, GAO-10-328 (Washington, D.C.: May 24, 2010) and *Alien Smuggling: DHS Could Better Address Alien Smuggling along the Southwest Border by Leveraging Investigative Resources and Measuring Program Performance*, GAO-10-919T (Washington, D.C.: July 22, 2010).

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Border Patrol Moving Ahead with New Technology Deployment Plan to Secure the Border, but Cost and Operational Effectiveness and Suitability Are Not Yet Clear

In January 2011, the Secretary of Homeland Security announced a new direction in deploying technology to assist in securing the border, ending the SBInet program as originally conceived because it did not meet cost-effectiveness and viability standards. Since fiscal year 2006, DHS had allocated about $1.5 billion for SBInet that would provide a mix of sensors, radars, and cameras on fixed towers that could gather information along the border and transmit this information to terminals in command centers to provide agents with border situational awareness. Our previous reports on CBP's SBI program have outlined program challenges and delays.[32] Specifically, the initial segment of SBInet technology, Project 28, encountered performance shortfalls and delays, including the following: users were not involved in developing the requirements, contractor oversight was limited, and project scope and complexity were underestimated. Program uncertainties, such as a lack of fully defined program expectations, continued to delay planned SBInet deployments following Project 28. In addition, the deployment of related infrastructure, such as towers and roads, experienced challenges, such as increased costs, unknown life-cycle costs, and land acquisition issues.

As part of her decision to end SBInet, the Secretary of Homeland Security directed CBP to proceed with a new plan to deploy a mix of technology to protect the border called Alternative (Southwest) Border Technology. Under this plan, CBP is to focus on developing terrain- and population-based solutions utilizing existing, proven technology, such as camera-based surveillance systems, for each border region. Accordingly, the plan is to incorporate a mix of technology, including an Integrated Fixed Tower surveillance system similar to that used in the current SBInet system (i.e., a tower with cameras and radar that transmit images to a central location), beginning with high-risk areas in Arizona.

According to this new plan, DHS is to deploy other technologies, including Remote Video Surveillance Systems (RVSS), Mobile Surveillance Systems (MSS), and hand-held equipment for use by Border Patrol agents. For

[32]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); *Secure Border Initiative: Observations on Selected Aspects of SBInet Program Implementation*, GAO-08-131T (Washington, D.C.: Oct. 24, 2007); *Secure Border Initiative: Observations on the Importance of Applying Lessons Learned to Future Projects*, GAO-08-508T (Washington, D.C.: Feb. 27, 2008); *Secure Border Initiative: Observations on Deployment Challenges*, GAO-08-1141T (Washington, D.C.: Sept. 10, 2008); and *Secure Border Initiative: DHS Needs to Address Significant Risks in Delivering Key Technology Investment*, GAO-08-1086 (Washington, D.C.: Sept. 22, 2008).

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fiscal year 2011, DHS plans to use about $159 million to begin buying RVSSs, MSSs, unattended ground sensors, and hand-held devices for Arizona. The President's fiscal year 2012 budget request calls for $242 million to fund three of five planned deployments of the Integrated Fixed Tower systems in Arizona although, depending on funding, the earliest DHS expects the deployments to begin is March 2013 with completion anticipated by 2015 or later. The estimated cost for the overall plan's Arizona component, called the Arizona Technology Plan, is about $734 million, of which $575 million is for the Integrated Fixed Tower component.

To arrive at an appropriate mix of technology in its plan, DHS performed an Analysis of Alternatives (AOA).[33] In March 2011, we provided preliminary observations regarding this analysis.[34] Specifically, we noted that on the basis of our ongoing review of available information to date, there were several areas that raise questions about how the AOA results were used to inform Border Patrol judgments about moving forward with technology deployments, including the Integrated Fixed Tower system. For example, the AOA cited a range of uncertainties in costs related to the operational effectiveness of the four technology alternatives considered (mobile, fixed tower, agent equipment, and aerial alternatives) in each of the four geographic analysis areas, meaning there was no clear-cut cost-effective technology alternative for any of the analysis areas. Yet, the AOA observed that a fixed tower alternative may represent the most effective choice only in certain circumstances. Further, we have questions about how the AOA analyses were factored into planning and budget decisions regarding the optimal mix of technology deployments in Arizona. Specifically, we have not yet examined the Border Patrol's operational assessment to determine how the results of the AOA were considered in developing technology deployment planning in Arizona and, in turn, the fiscal year 2012 budget request. The cost and effectiveness uncertainties noted above raise questions about the decisions that informed the budget formulation process. We are continuing to assess this issue for the House Homeland Security Committee and will report the final results later this year.

[33]Performing an AOA is a key first step in the acquisition process intended to assess the operational effectiveness, costs, and risks of alternative system solutions for addressing a validated mission need.

[34]GAO, *Border Security: Preliminary Observations on the Status of Key Southwest Border Technology Programs*, GAO-11-448T (Washington, D.C.: Mar. 15, 2011).

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Deployment of DHS U.S.-VISIT Program Technology Provides Opportunity to Identify Illegal Migration Through Visa Overstays

DHS took action to better monitor and control the entry and exit of foreign visitors to the United States by establishing the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program, that tracks foreign visitors using biometric information (such as fingerprints) and biographic information. DHS has incrementally delivered US-VISIT capabilities to track foreign entries, and a biometrically enabled entry capability has been fully operational at about 300 air, sea, and land POEs since December 2006. In November 2009, we reported that, according to DHS, US-VISIT entry operations have produced results. For example, as of June 2009, the program reported that it had more than 150,000 biometric hits in entry resulting in more than 8,000 people having adverse actions, such as denial of entry, taken against them.[35]

Since 2004, however, we have identified a range of DHS management challenges to fully deploy a biometric exit capability intended, in part, to track foreigners who had overstayed their visas and remained illegally in the United States. For example, in November 2009 we reported that DHS had not adopted an integrated approach to scheduling, executing, and tracking the work that needs to be accomplished to deliver a comprehensive exit solution.[36] Most recently, in August 2010 we reported that the DHS pilot programs to track the exit of foreign visitors at air POEs had limitations curtailing the ability to inform a decision for a long-term exit solution at these POEs.[37] We made recommendations to ensure that US-VISIT exit was planned, designed, developed, and implemented in an effective and efficient manner. DHS generally agreed with our recommendations and outlined actions designed to implement them.

Chairman Lieberman, Ranking Member Collins, and members of the committee, this concludes my prepared statement. I will be happy to answer any questions you may have.

[35]GAO, *Homeland Security: Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, GAO-10-13 (Washington, D.C.: Nov. 19, 2009).

[36]GAO-10-13.

[37]GAO, *Homeland Security: US-VISIT Pilot Evaluations Offer Limited Understanding of Air Exit Options*, GAO-10-860 (Washington, D.C.: Aug. 10, 2010).

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Post-Hearing Questions for the Record
Submitted to Hon. Asa Hutchinson
From Senator Susan M. Collins

"Securing the Border: Building on the Progress Made"
March 30, 2011

1. In your testimony, you stated that "we should use a combination of physical fences and barriers, human resources, and technology" to secure the border. In January 2011, Secretary Napolitano announced that the Department of Homeland Security was terminating the virtual fence program, known as SBInet, after more than a billion dollars was spent on the project, and directed the initiation of a new plan for adopting border security technology. Having served at the Department of Homeland Security before SBInet, but at a time when the Department sought to deploy new technologies, what lessons learned do you think DHS should take into account as it seeks to better integrate technology into border security?

ANSWER:

As the first Under Secretary for Border and Transportation Security, I was given authority and responsibility for implementing technology solutions that were mandated by Congress. The key to success is having a strong program management or oversight office with clear goals and unobstructed line of authority to a decision maker. In the case of SBInet, the goals were not sufficiently defined and there was insufficient program oversight by U.S. Border Patrol. There are always decisions that have to be made as technology is implemented, and if those decisions are delayed then the whole program will be delayed. A contractor implementing technology must have regular and consistent guidance and decisions being made by the agency. If the agency does not have the expertise on staff, then it must be recruited. The Department of Defense has been able to internally build this expertise, but it is lacking in civilian agencies. It must be recreated if we are going to be successful in implementing technology to the degree that it is needed along the border.

One example of success in implementing success is the U.S. Visit program. This technology was implemented on time and within budget. It was successful in its implementation because Congress gave clear mandates and Secretary Ridge gave me the authority to make decisions. We had a strong program office (that we had to fight very hard for). The ingredients of mission clarity, access to decision maker and strong program office led to the success of U.S. Visit.

Post-Hearing Questions for the Record
Submitted to Hon. Asa Hutchinson
From Senator Mary L. Landrieu

"Securing the Border: Building on the Progress Made"
March 30, 2011

1. During the Bush Administration, a decision was made to conduct enforcement actions at the workplace. These highly publicized incidents often resulted in the apprehension and ultimate removal of individuals who were unauthorized to work and who were in this country illegally. While the most egregious employers were fined, they rarely received jail time. And often the fines were so low; they were referred to as a "cost of doing business". Under the Obama Administration, the focus has shifted from arresting illegal workers to pressuring employers not to hire them. Immigration and Customs Enforcement agents collect and review hiring files, typically I-9 forms, which verify eligibility to work in the U.S. Companies with unauthorized workers can face civil and criminal prosecution. But critics of these audits say that they shift illegal immigrants with good-paying jobs into the underground economy, because they are able to find jobs elsewhere once they're fired. It appears that neither workplace inspections nor I-9 audits have solved the problem. The desire for cheap labor among many U.S. companies remains, and until that is resolved, people will come here illegally to fill these jobs.
    a. How can we most effectively ensure that illegal aliens will be unable to work once they enter the country?
    b. Please share your views on the development of E-Verify, the system that allows employers to electronically check an applicant's immigration status before hiring them.
    c. In the absence of comprehensive immigration reform, which of these enforcement strategies should receive more resources – site visits or document audits?

2. Visa overstays account for approximately 45% of the illegal immigrants in our country, and yet we do not have an effective system to record exits by legal visitors or to monitor and enforce these overstays. Half of all exits are not checked against entries. Several of the 9/11 hijackers overstayed their visas while residing in the U.S. and plotting the attacks, and this seems to be one of the most significant gaps in our current immigration enforcement efforts. You testified that you developed pilot programs at airports and land borders to record exits from the country but faced significant challenges.
    a. Please explain the challenges you experienced in developing an effective exit system and what you believe is needed to overcome those challenges.
    b. Secretary Napolitano has decided not to pursue a biometric exit system. Do you agree that a biometric exit system is cost-prohibitive or infeasible, and if so, what alternatives should we consider?

3. Congress has – on a bipartisan basis – provided an average of $1.7 billion more for homeland security, including border security activities, than requested by Presidents Bush and Obama. This is a significant level of funding and, as is being discussed at today's hearing, these funds have achieved major achievements in border security, including apprehension and removal of illegal aliens. In the current budget environment, however, we will likely see declining budgets for all government activities. There are border security gaps which still need to be filled. As the chairman of the Homeland Security Appropriations Subcommittee, I will have to make informed decisions on how to direct the funds available to my Subcommittee. So the question then

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becomes, how do we prioritize addressing the gaps? Is building more border fencing a higher priority than hiring additional Border Patrol agents? Should we hire more Customs and Border Protection officers to inspect and process passengers and cargo at our ports of entry? Or should we fund more detention beds to hold illegal aliens until they are removed from the United States?

ANSWER:

1. a. To ensure illegal aliens are unable to work once they enter, a mandatory electronic employment verification tool that is easy to use, accurate, thorough, and protects privacy is needed.

b. E-Verify is a vast improvement over the paper Form I-9 process. It has brought ease and more confidence to employers who use the program. Gaps exist, however, that need to be bridged. At a basic level, E-Verify is currently transaction-based, not linked by person. This means that if a person begins a job this week and goes through E-Verify and begins a second job next week and goes through E-Verify, those two E-Verify transactions are not linked. This non-linkage hampers the ability to identify fraud and other business patterns. E-Verify should be re-designed to be a person-centric program.

US-VISIT's IDENT is an example of a person-centric database. Several visa, immigration benefit and enforcement programs are linked to IDENT. As a result, US-VISIT can show a travel/immigration history of an individual, including a visa application with the State Department, an entry via CBP, and an asylum application with USCIS. This provides a portion of a person's immigration status and helps adjudicators decide whether to grant the person a benefit or enforce a law against the person. E-Verify, however, is not linked to IDENT. It should be to fill in an individual's travel/immigration history and status, which leads to more accurate downstream decisions regarding the individual.

Of course identity fraud is the largest gap that E-Verify needs to overcome. Biometrics should be added to the program, but it seems needlessly burdensome to require employers to collect biometrics from new hires to verify employment. Just as employers are not forensic document experts, nor are they biometric experts. The new E-Verify Self-Check portal is a step in the right direction to make E-Verify more employee-centric rather than employer-centric. Technology is developing, and this Administration is encouraging through the National Strategy for Trusted Identities in Cyberspace (NSTIC), the ability to use identity service providers. Instead of requiring employers to collect biometrics, private identity service providers can verify an employee's identity, including the use of biometrics. The employee can authorize the sharing of his/her identity verification held by the identity service provider with the employer. This reduces identity fraud, increases accuracy, increases privacy, removes the employer burden, and employer abuse of the program. In addition, no national ID card is needed. Finally, this type of identity service can be used for many purposes – both commercial (online transactions, health, banking) and government (Social Security, driver's licenses, visas, immigration benefits). Congress is in a good position to catalyze the development and use of identity service

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providers to improve the integrity of programs in which identity matters, such as E-Verify.

2. The air Exit pilots that were tested beginning in 2004 used a combination of kiosks, handheld devices, or both. Adverse issues included travelers' lack of knowledge of the program, poor kiosk location in airports, lack of cooperation by airlines and airports, and low compliance. The Air Exit pilots tested in 2009 were more successful in that CBP officers and TSA agents used handheld and laptop biometric devices in controlled settings – either as part of the TSA security screening process or inside the departure gate by CBP officers. While the equipment cost is manageable, paying CBP officers to perform the exit inspection is expensive. Using kiosks at the departure gates seems like a reasonable alternative.

   Land Exit is the most difficult program to implement. Building a land infrastructure to inspect upon exit is daunting at best and, in some locations, physically implausible. However, technology could make building a physical land infrastructure unnecessary. Just as an identity service provider can help improve employment verification, it might be the answer to land Exit. The U.S. and Canada have long had discussions whether an entry into Canada can serve as an exit from the U.S. However, the sharing of a person's data from one sovereign government to another federal government raises privacy issues. If the individual traveler, however, authorizes an identity service provider to share the exit activity with DHS and authenticates it using a smart phone, perhaps the government-to-government issue can be overcome.

3. It is essential that a biometric Exit system be implemented so we can gain a complete picture of how much illegal immigration this country faces and only with such complete data can the government establish proper immigration policies and appropriation levels.

   By all accounts, more can be done to secure both borders. However, no matter how much money is spent to secure our borders (and at some point the law of diminishing returns would kick in), breaches will occur and people will overstay the terms of their visa. Accordingly, the U.S. should make illegal entry and overstaying unrewarding and unappealing. This can be done by linking current databases such as E-Verify, SEVIS (Student and Exchange Visitor Information Service), and SAVE (Systematic Alien Verification for Entitlements Programs). If each of these programs were improved along the lines of E-Verify as discussed above (made person-centric so records can be searched by person, connecting to IDENT, adding biometrics, and automatically notifying ICE of adverse results), deterrence to illegally reside here would grow substantially. This would certainly require more resources be given to ICE to enforce these laws and programs already on the books.

Post-Hearing Questions for the Record
Submitted to Hon. Doris Meissner
From Senator Mary L. Landrieu

"Securing the Border: Building on the Progress Made"
March 30, 2011

1. The Secure Communities program was created by the Congress to identify - using biometrics - illegal aliens who are already in custody and serving time for a crime they have committed and prepare them for removal from the U.S. upon the completion of their sentence. The program has been implemented in an increasing number of jurisdictions across the country since 2008. The prime focus of Secure Communities in the beginning was identifying and removing the most violent criminals who pose the greatest threat to the community once their incarceration ends. In part, this focus was the result of proper use of limited resources. As the program has matured, however, critics complain that illegal aliens who are otherwise encountered by law enforcement during the course of a criminal investigation are being biometrically identified as illegal and processed for removal, which in turn makes illegal aliens reluctant to cooperate with criminal investigations. I support the purpose of the Secure Communities program. Do you think it is being implemented properly?

Secure Communities (SC) is a very ambitious program. By providing federal criminal and civil immigration violation information electronically to local law enforcement officers and agencies, it will represent the most far-reaching federal-state-local cooperation measure in immigration enforcement when it is fully implemented in 2013. So it is not surprising that there have been implementation problems. Some of the implementation problems raise serious concerns, which Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) have been slow to address.

One problem has to do with the mandatory nature of the program.. Some communities have wished to opt out of the program, which is apparently not possible because the SC agreements are established by ICE with state-level authorities whose data base links with federal agencies provide the technology platform required for the program. However, ICE has given contradictory explanations and answers to the requests made by some communities to opt out. As a result, considerable confusion and misinformation about opting out has surrounded the program and has persisted.

My own view is that some communities, and even states – Illinois, for instance, has passed legislation that declines participation statewide – will continue to choose to opt out. ICE/DHS and the success and credibility of SC overall would be well served if some form of opt out procedures were developed. San Francisco, for example, has established policies governing the way in which its law enforcement agencies will and will not participate in SC. Its approach may provide a way for other communities to tap the advantages of SC, but also be responsive to local law enforcement priorities and community concerns.

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Another problem involves one of the critical characteristics of SC that distinguishes it from the 287(g) program. In SC, the decision whether to take custody or place someone into removal proceedings remains with ICE. Thus, a local arrest triggers a SC database query, but if there is then information of a criminal record, or a civil immigration violation, local officers refer the case to ICE to decide whether the person is of interest for federal enforcement actions. This is an important protection fundamental to the design of the program. However, ICE guidelines for making the determination have not fully spelled out criteria to guide consistent implementation of the program, and prosecutorial discretion guidelines that are to guide SC referral decisions are not consistently implemented at the local level.

Careful guidance and priority-setting by ICE and DHS are important from the standpoint not only of the implications the program has for individuals, their families and immigrant communities, but also for managing downstream detention and removal costs wisely. Such resources are finite and should be used for serious violators. If large numbers of status violators-only are placed into the detention and removal system from a fully-implemented SC program, it could undermine the focus of other ICE and DHS enforcement priorities.

These are examples of important implementation problems in my view. Below I have included the title and a link to a fuller analysis and recommendations of the 287(g) program that was recently completed by a number of my colleagues at MPI. Much of the material in the report also applies to SC and the issues it raises that call for more careful implementation and oversight.

Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement

http://www.migrationpolicy.org/pubs/287g-divergence.pdf

2. Congress has – on a bipartisan basis – provided an average of $1.7 billion more for homeland security, including border security activities, than requested by Presidents Bush and Obama. This is a significant level of funding and, as is being discussed at today's hearing, these funds have achieved major achievements in border security, including apprehension and removal of illegal aliens. In the current budget environment, however, we will likely see declining budgets for all government activities. There are border security gaps which still need to be filled. As the chairman of the Homeland Security Appropriations Subcommittee, I will have to make informed decisions on how to direct the funds available to my Subcommittee. So the question then becomes, how do we prioritize addressing the gaps? Is building more border fencing a higher priority than hiring additional Border Patrol agents? Should we hire more Customs and Border Protection officers to inspect and process passengers and cargo at our ports of entry? Or should we fund more detention beds to hold illegal aliens until they are removed from the United States?

These are questions that I believe can only be answered with better metrics that speak to the performance of the immigration system and some of its key parts, for example border enforcement. In general, it is essential to have proper resourcing of all of the functions you have cited, but in an effective mix, rather than one at the expense of the others.

In the case of border enforcement, people, equipment and technology all play important roles, but they must complement each other. Customs and Border Protection (CBP) and the Border Patrol are a highly professional organization that best knows its needs. At the same time, I believe CBP and DHS must become far more rigorous, data and analytics-driven, transparent organizations. I have provided examples of border enforcement metrics in my statement that would be meaningful to help inform the questions you have raised.

With regard to detention, balance in the detention and removal system, as part of the broader immigration enforcement system, is seriously skewed. The number of cases of individuals in detention and in immigration proceedings has far outstripped the ability of the immigration courts to decide cases in reasonable time periods. In some jurisdictions, the backlog of cases now requires waits of two and three years. So making resource allocations that balance detention with immigration court resources would enable far more efficient and effective use of detention space than simply increasing detention capacity.

3. During the Bush Administration, a decision was made to conduct enforcement actions at the workplace. These highly publicized incidents often resulted in the apprehension and ultimate removal of individuals who were unauthorized to work and who were in this country illegally. While the most egregious employers were fined, they rarely received jail time. And often the fines were so low; they were referred to as a "cost of doing business". Under the Obama Administration, the focus has shifted from arresting illegal workers to pressuring employers not to hire them. Immigration and Customs Enforcement agents collect and review hiring files, typically I-9 forms, which verify eligibility to work in the U.S. Companies with unauthorized workers can face civil and criminal prosecution. But critics of these audits say that they shift illegal immigrants with good-paying jobs into the underground economy, because they are able to find jobs elsewhere once they're fired. It appears that neither workplace inspections nor I-9 audits have solved the problem. The desire for cheap labor among many U.S. companies remains, and until that is resolved, people will come here illegally to fill these jobs.
    a. How can we most effectively ensure that illegal aliens will be unable to work once they enter the country?

The most effective deterrent to individuals working in the country illegally would be to put into place a combination of policies that would do the following: a) provide visas – both temporary and permanent – for people with skills that are needed in the labor force so there would be adequate ways to come to the country legally for work purposes, and b) require all employers to verify the legal status of workers they hire through the use of a reliable, electronic verification system. If such measures were enacted, it would also be necessary to provide a means for those illegally in the country now who are contributing to the economy and communities to obtain legal status. Along with continuing advances in the effectiveness of border enforcement, those are the best ways to reduce illegal immigration to manageable levels.

b. Please share your views on the development of E-Verify, the system that allows employers to electronically check an applicant's immigration status before hiring them.

E-Verify provides an important tool for employers to comply with the requirement to hire only those authorized to work in the U.S. The system has been continuously improved based on employer feedback and on careful evaluations that have been ongoing and built into the implementation and planning procedures for the program. In addition, the social security and immigration data bases on which the system relies have been updated and improved, with the result that error rates have been and continue to be reduced.

The weakness in E-Verify is that it verifies whether someone is authorized to work, but it cannot verify the identity of the person whose name and status are being checked. As such, it is vulnerable to identity fraud. To serve as a simple, reliable system for immigration compliance and enforcement purposes, it should do both: verify legal status and validate identity.

E-Verify program administrators are experimenting with a number of ways identity validation could be incorporated into E-Verify. I think it is important to continue to experiment with various solutions to find the best or alternative ways to resolve the problem of identity validation. Without it, E-Verify – should it become mandatory – would be a partial, but incomplete, answer as an employer compliance system for deterring illegal immigration.

c. In the absence of comprehensive immigration reform, which of these enforcement strategies should receive more resources – site visits or document audits?

Both are valid and have a place in the kitbag of enforcement strategies to use in the absence of broader immigration reform and mandatory electronic verification by employers. One can perhaps best think of them as steps on a ladder of scrutiny and accountability for employers. Document audits represent a first step in surveying hiring practices, which can then trigger a site visit if there are problems or federal officials are not receiving cooperation. However, I am not suggesting site visits that are another term to describe raids. Raids as an enforcement practice fall heavily on the workers, instead of the employer, which is where the emphasis and burden must be placed to discourage and deter illegal hiring, a key driver for illegal immigration. Instead, site visits where immigration enforcement officials have access to an employer's hiring records or carry out an enforcement action against an employer that has violated immigration laws are an effective, defensible tool.

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Post-Hearing Questions for the Record
Submitted to Hon. Doris Meissner
From Senator Susan M. Collins

"Securing the Border: Building on the Progress Made"
March 30, 2011

1. The Border Patrol has used the term "operational control" as its principal metric to evaluate the nation's border security efforts. Recently, however, the Border Patrol has announced an internal review to establish more accurate metrics to measure the efforts of federal, state, and local law enforcement partners to secure the borders. What suggestions do you have for metrics that the Border Patrol should consider as better ways to evaluate the level of border security?

My full statement, and a recent report on which it is based, outline examples of metrics that would be helpful. See **Executive Action on Immigration: Six Ways to Make the System Work Better** http://www.migrationpolicy.org/pubs/administrativefixes.pdf

I have argued that the question should be, " What is effective control?" Historically, apprehension numbers have served as the Border Patrol's answer to that question. However, apprehensions are insufficient as the primary method for assessing enforcement effectiveness.

CBP and DHS collect many other kinds of data. Especially valuable should be the extensive biometric data that now number more than 100 million records of fingerprints collected on persons apprehended since the mid-1990s or coming into contact with the immigration system in other ways. These data could be analyzed to better understand crossing patterns, repeat entries, smuggling activity, and the success of various enforcement strategies.

Examples of measures of effectiveness that are relevant to border control and could be systematically tracked and incorporated into regular assessments would include analyses of hot spots and responses to them; crime rates; Ports of Entry activity as smugglers attempt to compromise legal avenues for entry; border community confidence and support; and census and other demographic data. For example, Mexico's 2010 census shows that the numbers leaving Mexico have fallen by more than two-thirds since a peak in the mid-2000s. Mexican analysts are attributing the drop to both the U.S. economic downturn and to stepped-up border enforcement.

At the present time, available measures point in varying degrees to meaningful, positive progress in securing the borders. However, the goal should be to systematically track such measures and allow for open assessment of the substantial investments that the country has made in border security.

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May 26. 2011

The Honorable Susan M. Collins
Ranking Member
The Honorable Mary L. Landrieu
Committee on Homeland Security and Governmental Affairs
United States Senate

Subject: *Border Security: Responses to Posthearing Questions for the Record*

On March 30, 2011, I testified before your committee on the Department of Homeland Security's (DHS) progress and challenges in securing the U.S. Southwest and Northern borders. This letter responds to three questions for the record that you posed. The responses are based on work associated with our previously issued products and selected updates. Your questions and my responses follow below.

QUESTION FROM RANKING MEMBER COLLINS

1. **What suggestions do you have for metrics that the Border Patrol should consider as better ways to evaluate the level of border security?**

We discuss Border Patrol performance measures in the context of the Department of Homeland Security's (DHS) Fiscal Year 2010-2012 Annual Performance Report, Mission 2: Securing and Managing Our Borders. Under this mission, there are interim Border Patrol performance measures supporting Goal 2.1: Secure U.S. Air, Land, and Sea Borders, defined as preventing the illegal flow of people and goods across U.S. air, land, and sea borders. There are two objectives supporting this goal:

- Objective 2.1.1 Prevent illegal entry of people, weapons, dangerous goods and contraband, and protect against cross-border threats to health, the environment, and agriculture, while facilitating the safe flow of lawful travel and commerce.
- Objective 2.1.2 Prevent illegal export and exit of weapons, proceeds of crime, and other dangerous goods, and the exit of malicious actors.

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DHS stated in its Annual Performance Report that it was currently working to improve the measures used to assess this key goal of the homeland security enterprise. At the time of our review, there were several efforts underway. One of two efforts led by DHS' Customs and Border Protection (CBP) is to develop a Border Security Index (BSI) that is intended to be a new outcome–based measure which is to be used to publicly report progress in meeting border security goals in support of the Government Performance and Results Act (GPRA).[1] The BSI methodology would consider various factors, such as the percentage of illegal entries apprehended, that had not been finalized at the time of our review. The second CBP effort is to create a measure of the change in flow of illegal persons across the southwest border using a statistical model developed by the Homeland Security Institute using data on apprehensions and recidivism rates for persons illegally crossing the border. DHS officials said that it had not yet determined whether results from this model would be used for GPRA reporting in the fiscal year 2011 or 2012 DHS Annual Performance Plan, or used for internal management purposes and reported to Congress in support of the annual budget request. The third effort, led by Border Patrol, is to standardize and strengthen the metrics that had formerly supported the measure of "border miles under effective control" that DHS removed as a GPRA reporting measure in fiscal year 2011. At the time of our review, Border Patrol officials were considering changes in how they use these and other metrics to manage its efforts to secure the border. One change under consideration was to use a different mix of internal management metrics for the southwest, northern and coastal borders. However, since our review, Border Patrol officials have informed us that the agency plans to discontinue the practice of translating various metrics across five levels of operational control that it used in the past to publicly identify the status of border security. As of May 2011 the Border Patrol expected to have new measures for assessing border security in place by fiscal year 2012, but had yet to determine key attributes of these new measures.

We have previously reported on key attributes of successful performance measures consistent with GPRA.[2] Some of these attributes suggest the following in guiding Border Patrol efforts:

- Measures should cover the core program activities that Border Patrol is expected to perform. At the broadest level, the DHS goal suggests measuring Border Patrol outcomes for preventing the illegal flow of people across the border between the ports of entry, as well as the illegal flow of goods. Border Patrol metrics comparing estimated illegal entries to apprehensions may serve to show how its efforts contribute to stemming the illegal flow of people across the border. At the time of our review, Border Patrol did not have a metric for performance related to stemming the illegal flow of goods, such as drugs, between the ports of entry in support of the border security goal.
- Measures should be balanced to cover CBP and DHS priorities. Border Patrol may establish specific performance measures that support CBP and DHS priorities, such as those listed in the objectives supporting the overall goal.

[1] GPRA, P.L. 103-62, was enacted to hold federal agencies accountable for achieving program results.
[2] GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures,* GAO-03-143 (Washington, D.C.: Nov. 22, 2002), Appendix I.

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For example, in measuring the ability to prevent the flow of illegal persons, Border Patrol, in consultation with CBP and DHS, may choose to separately measure the flow of illegal migrants, smugglers and other criminals, or persons linked with terrorism crossing the border between the ports of entry. Similarly, in measuring the ability to prevent the flow of dangerous goods Border Patrol may choose to separately measure the flow of weapons, illegal drugs, or proceeds of crime, such as bulk cash. Border Patrol may also establish separate performance measures for its ability to prevent the entry and exit of persons and goods across the border.

- Measures should link and align with measures of other components and at successive levels of the organization. DHS may ensure that performance measures established by Border Patrol align with measures at the CBP and departmental level, as well as those established by other components that contribute toward the goal to secure our borders, such as CBP's Office of Field Operations (OFO), which has responsibility for securing the border at the ports of entry. For example, Border Patrol metrics estimating the flow of illegal entries between the ports of entry aligns with OFO metrics to measure for flow of illegal persons through the ports of entry,[3] and metrics of both components could be aligned with an overall effort by CBP to measure the overall flow of persons illegally crossing the southwest border. DHS may also choose to establish a performance measure informing on the flow of illegal persons in the United States due to visa overstays or other means that may similarly link to the overall DHS estimate of illegal persons in the United States. Linking performance measures such as these across the organization informs on how well each program or activity is contributing toward the overall goal to prevent illegal entry of persons, reinforces accountability, and ensures that day-to-day activities contribute to the results the organization is trying to achieve.
- Measures should reflect government wide priorities, such as quality, timeliness and cost of service. Border Patrol may establish performance measures that are consistent with any measures developed by CBP and DHS to reflect the timeframes and cost efficiencies in securing the border across locations. For example, CBP and DHS may establish measures that reflect the overall cost or timeframe to secure the border as indicated by changes in the flow of illegal persons or goods relative to its investment across components and programs. At the Border Patrol level, such a measure may compare the relative cost efficiencies achieved across border locations that use a different mix of personnel, technology, or strategies to secure the border.
- Measures should have a numerical goal, be reasonably free from significant bias or manipulation, and reliable in producing the same result under similar conditions. At the time of our review, Border Patrol was working to improve the quality of its border security measures to reflect a more quantitative

[3] OFO uses a statistical program (model), COMPEX, which estimates the total amount of illegal activity passing undetected through U.S. ports of entry–including persons transporting illegal drugs, guns, or other banned substances—to calculate the apprehension rate and gauge the effectiveness of Customs and Border Protection officers to interdict them. At the time of our review, OFO officials said COMPEX was used at air and land ports of entry, but not sea ports of entry, and at land ports of entry it was used for passenger vehicles, but not cargo vehicles or pedestrians.

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methodology to estimate the number of illegal entries across the border compared to apprehensions, and other metrics. However, Border Patrol officials said that comparable performance measures may not be applied to the northern or coastal borders, providing an inconsistent picture of security for the majority of U.S. border miles. We reported that in circumstances where complete information is not available to measure performance outcomes, agencies may need to use intermediate goals and measures to show progress or contribution to intended results.[4] For example, Border Patrol may lack the detection capability necessary as a first step to estimate illegal entries across most of the northern border and some other border locations. In these circumstances, Border Patrol may choose to establish performance measures tracking progress in establishing this detection capability. Once Border Patrol achieves the ability to detect illegal activity across its borders, it may then transition to measures for reducing the flow of illegal activity and interdiction. On the southwest border, Border Patrol may also choose to establish intermediate measures in reaching southwest border security goals. Such intermediate performance measures may include those that use Global Positioning System data for each apprehension to show Border Patrol progress in apprehending persons at or close to the border compared to enforcement tiers located miles away.

QUESTIONS FROM SENATOR LANDRIEU

2. How far along is the Department of Homeland Security (DHS) in its efforts to develop a system to quantify relative costs and tactical effectiveness of alternative infrastructure and technology choices along the Southwest border?

As part of her January 2011 decision to end the Secure Border Initiative Network (SBInet) technology program, the Secretary of Homeland Security directed CBP to proceed with a new approach to deploy technology to protect the border called Alternative (Southwest) Border Technology. Under this approach, CBP is to focus on developing terrain- and population-based solutions utilizing existing, proven technology, such as camera-based surveillance systems, for each border region. Accordingly, the approach is to incorporate a mix of technology, including an Integrated Fixed Tower surveillance system similar to that used in the current SBInet system (i.e., a tower with cameras and radar that transmit images to a central location), beginning with high-risk areas in Arizona. To arrive at the appropriate mix of technology in its approach, DHS performed an Analysis of Alternatives (AOA).[5] Specifically, in May 2010, CBP asked the Homeland Security Studies and Analysis Institute (HSI) to conduct an AOA as part of its assessment of SBInet. The AOA, conducted in three phases, was intended to evaluate the cost and operational

[4] GAO, *Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decision makers,* GAO/GGD/AIMD-99-69 (Washington, D.C.: Feb. 26, 1999).

[5] The AOA process is a key first step in the acquisition process intended to assess the operational effectiveness, costs, and risks of alternative system solutions for addressing a validated mission need. AOAs are required by DHS Acquisition Management Directive 102-01 (Jan. 20, 2010)—which provides the overall policy and structure for acquisition management within DHS—as a means for identifying alternative solutions and analyzing and comparing these alternatives based on cost, risk, and capability.

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effectiveness of planned SBInet deployments, as well as alternatives such as mobile, aerial, and hand-held technologies.

In March 2011, we provided preliminary observations regarding this analysis. Specifically, we noted that on the basis of our ongoing review of available information to date, there were several areas that raised questions about how the AOA results were used to inform Border Patrol judgments about moving forward with technology deployments, including the Integrated Fixed Tower system.[6] For example, the AOA cited a range of uncertainties in costs related to the operational effectiveness of the four technology alternatives considered (mobile, fixed tower, agent equipment, and aerial alternatives) in each of the four geographic analysis areas, meaning there was no clear-cut cost-effective technology alternative for any of the analysis areas. Yet, the AOA observed that a fixed tower alternative may represent the most effective choice only in certain circumstances. Further, we questioned how the AOA analyses were factored into planning and budget decisions regarding the optimal mix of technology deployments in Arizona. The cost and effectiveness uncertainties noted above raise questions also about the decisions that informed the budget formulation process. We concluded that for a program of this importance and cost, the process used to assess and select technology needs to be transparent. In this regard, our internal control standards for the federal government and those set forth by the Office of Management and Budget require that transactions and significant events are promptly recorded and clearly documented to maintain their relevance and value to management in controlling operations and making decisions and to ensure that agency objectives are met. The standards also require that documentation be readily available for examination.[7]

Separately, an independent review of the AOA process in March 2011[8] concluded that while this process yielded analyses and insights in terms of cost and operational effectiveness that should be useful to DHS and CBP, it remained unclear how these insights would be used to increase overall border protection capability. The review concluded that the AOA fell short in identifying solutions to achieve the mission objective of situational awareness. It recommended that DHS consider a more comprehensive evaluation that includes all aspects of border security and considers all solution components (i.e., mixes of technology, personnel, and infrastructure). The review noted that such an analysis would need to consider, among other things, the motivations and adaptive behaviors of alien and drug smugglers; and analyze environmental and legal constraints, as well as other operational realities and risks in greater detail. Further, the review commented that by limiting the alternatives it examined, the AOA team could not conduct an analysis to determine the most effective combinations of technologies by area and concluded that increasing the

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[6]GAO, *Border Security: Preliminary Observations on the Status of Key Southwest Border Technology Programs*, GAO-11-448T (Washington, D.C.: Mar. 15, 2011).

[7]GAO, *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999) and Office of Management and Budget, OMB *Circular A-123, Management's Responsibility for Internal Control* (Washington, D.C.: Dec. 21, 2004).

[8] The independent review was conducted by a team of senior subject matter experts with expertise in border security, operations testing, acquisition, performance measurement, and the management and execution of AOAs. The team members were engaged as subcontractors to the Homeland Security Studies and Analysis Institute, which is a federally funded research and development center.

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number of alternatives and their mixes would have resulted in additional credibility as to the thoroughness of the analyses.

3. Describe the infrastructure in place along the border and your assessment of which elements have proven their value and which ones have not.

DHS has deployed various types of technology and tactical infrastructure (fencing, roads and lighting) to secure the nation's land borders. In terms of technology, the Border Patrol utilizes a range of technology to augment its agents' ability to patrol the border. These include, among other things, unattended ground sensors, mobile night vision scopes, directional listening devices, unmanned aerial vehicles, and various database systems. Under the Alternative (Southwest) Border Technology approach, DHS is to deploy other technology, including Remote Video Surveillance Systems (RVSS), Mobile Surveillance Systems (MSS), and hand-held equipment for use by Border Patrol agents. During fiscal year 2011, DHS plans to use about $159 million to begin buying RVSSs, MSSs, unattended ground sensors, and hand-held devices for Arizona. The President's fiscal year 2012 budget request calls for $242 million to fund three of five planned deployments of the Integrated Fixed Tower systems in Arizona. Depending on funding, the earliest DHS expects the deployments to begin is March 2013 with completion anticipated by 2015 or later. The estimated cost for the overall plan's Arizona component, called the Arizona Technology Plan, is about $734 million, of which $575 million is for the Integrated Fixed Tower component.

In terms of tactical infrastructure, CBP has constructed 649 miles of pedestrian and vehicle fencing on the southwest border covering 33 percent of the border.[9] CBP estimated that the border fencing had a life cycle of 20 years and over these years, a total estimated cost of about $6.5 billion to deploy, operate, and maintain the fencing and other infrastructure. According to CBP, during fiscal year 2010, there were 4,037 documented and repaired breaches of the fencing and CBP spent at least $7.2 million to repair the breaches, or an average of about $1,800 per breach. We reported in May 2010 that CBP had not accounted for the impact of its investment in border fencing and infrastructure on border security.[10] Border fencing was designed to prevent people on foot and vehicles from crossing the border and to enhance Border Patrol agents' ability to respond to areas of illegal entry.

CBP reported an increase in control of southwest border miles, but could not account separately for the impact of the border fencing and other infrastructure. In our May 2010 testimony, we concluded that until CBP determines the contribution of border fencing and other infrastructure to border security, it is not positioned to address the impact of its investment; and reported that CBP was in the process of conducting an analysis of the impact of tactical infrastructure on border security. This effort was in response to our September 2009 recommendation that in order 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

[9]The length of the border with Mexico is defined by the U.S. International Boundary and Water Commission at 1,954 miles. The length of the land border is 675 miles, while the length of the border along the Colorado and Rio Grande Rivers is 1,279 miles.
[10]GAO, *Secure Border Initiative: DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border*, GAO-10-651T (Washington, D.C.: May 4, 2010).

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cost-effectiveness evaluation of the impact of tactical infrastructure on effective control of the border.[11] According to CBP, that analysis is ongoing.

As our work proceeds, we will further address the questions raised about the AOA process, test and evaluation results, and CBP's proposed new acquisition strategy. Specifically, we are currently examining the Border Patrol's operational assessment to determine how the results of the AOA were considered in developing technology deployment planning in Arizona and, in turn, the fiscal year 2012 budget request for Integrated Fixed Tower systems. We will also continue to assess the status of the SBInet program, in light of the Secretary's cancellation decision; as well as monitor the status of the assessment of the fencing's effectiveness

If you have any questions about this letter or need additional information, please contact me at (202) 512-8777 or StanaR@gao.gov

Richard M. Stana

Director, Homeland Security and Justice Issues

[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).

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United States Senate
Committee on Homeland Security and Governmental Affairs
Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
"Securing the Border: Progress at the Local Level"
Homeland Security and Governmental Affairs Committee
April 7, 2011
As Prepared for Delivery

Good afternoon, I thank the witnesses for being here. Today's hearing is the second in a series that the Committee is holding to examine the progress made over the past decade as a result of the infusion of substantial federal support to secure our borders - particularly our border with Mexico - and how we can build on the current level of border control.

At our first hearing, the panel of experts outlined the significant increases in manpower and resources that have been sent to the border over the past decade. They all agreed that progress has been made toward securing the border but that of course much more still needs to be done before we can say we've done everything we can do.

Last week's hearing also raised important questions about how we define and gauge border control and about the inadequacy of our current measurements of what is inherently a difficult question. Our witnesses agreed that the metrics collected and disseminated about border security must be improved to provide us with the best possible understanding of how well our border is being secured.

Right now, for example, apprehensions of illegal border crossers are at their lowest levels since the early 1970s—with 465,000 people apprehended last year compared to 1.6 million in 2000. This is interpreted by many as a clear sign of progress because substantially decreasing apprehensions means that Border Control operations are deterring people from crossing illegally. I guess it also assumes the same basic percentage of apprehensions as compared to the total number of people attempting to go over.

But at various points in the last decade, the Border Patrol itself has turned this formula upside down and pointed to increases in apprehensions of illegal crossers as evidence of progress, arguing that increasing apprehensions meant that agents were targeting their efforts better. Apprehensions are obviously one indicator of border security. But we need to find a better, more direct way to compare the number of people being apprehended to how many people are trying to enter the country illegally.

I realize that this is not an easy undertaking, but some Border Patrol sectors—including the Tucson Sector—are already using cameras, sensors, and footprint analysis to conclude how many illegal entries are occurring. It gives them a little more data to make a conclusion that, in the end, is an estimate, but we're trying to make it as educated an estimate as possible. We need to expand this across the entire border in order to give us a better idea about whether our border security strategies are succeeding and to help the Border Patrol marshal its resources more effectively.

The panel we heard last week also agreed that the apprehension rate of illegal border crossers cannot be the only way we measure border security. Other factors, they said, must be considered as well, including a subjective factor: public perception. That is, can we measure and consider how secure people in border communities believe they are?

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In confronting the problem of illegal immigration, we must also take into consideration a statistic that would probably surprise most people: Nearly half – 35 to 45 percent - of the people now in this country illegally originally entered the U.S. on valid visas that subsequently expired. In other words, these people were legal immigrants who became illegal. Most of these people did not enter the U.S. across our border with Mexico.

To help us get beyond the statistics and understand the situation on the ground, we have called a panel of witnesses today with real first-hand experience along our entire southern border—from Texas to California. They are the people who confront illegal immigration and border-related crime every single day in their jobs as sheriffs and judges.

The Committee is very interested in the status of control of the border closest to them. I am particularly interested in their thoughts on the violence in Mexico and the degree to which it has or hasn't spilled over into their communities. I would like to know whether the FBI statistics on decreased rates of violence in a lot of their border communities reflect their experiences, and if not, why not? I hope our witnesses will shed light on what they think it will take for people living and working on the border to feel safe.

Last week, we heard testimony that border security cannot be achieved in isolation from our immigration game plan, and that hundreds of thousands of people will continue to risk their lives illegally crossing our borders unless and until we reform our immigration laws, presumably to create a system that allows immigrants to enter legally for temporary work opportunities and then to return. So, I will ask our witnesses today to address the relationship between immigration reform and border security.

The ultimate aim of these hearings is: One, to do oversight on what we're getting in return for the considerable federal investment in border security; two, to see what we can do to improve it; and three, to look at the political equation here that has to do with the relationship between border security and our current immigration system, which just about everyone agrees is broken.

With answers to these questions, I hope we can get a picture that the numbers don't begin to explain about whether the billions in taxpayer dollars that we have invested in securing the border are dollars that have been spent wisely, and what we must do in the future to improve security for all our citizens, particularly those living and working along the border.

Senator McCain?

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STATEMENT OF SENATOR JOHN MCCAIN
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
APRIL 7, 2011

Thank you for calling this hearing today. I believe that it is appropriate that we hear from our state and local officials that work every day to secure their communities along the southern border.

The deadly violence in Mexico has fundamentally changed the jobs of law enforcement along the border. They are now asked not only to serve eviction notices, assist courthouses with the transport of prisoners and execute and service process of civil litigation matter; but also to serve as our nation's first line of defense in defending our homeland. The job of sheriff or sheriff's deputy is more difficult, more challenging and more dangerous than ever before. And unfortunately, this is a direct result of the Federal Government's inability or unwillingness to secure our borders.

I am sure that all of you are aware of the challenges that Arizona has been facing – many or your communities face the same problems – and understand why many people in southern Arizona feel like they are living in a no-man's-land, abandoned by the Federal government and this Administration.

Regardless of some administration officials claims that, "the border itself is more under control than it has ever been," Border Patrol in the Tucson sector apprehends over 500 illegal border crossers each day, and over 210,000 illegal border crossers were apprehended last year. According to estimates from border patrol agents, only one-third to one-fifth of illegal border crossers are actually apprehended. I don't think anyone living in the region would consider this to be a border that is 'under control.'

Americans living anywhere, but especially along the border, must feel safe and secure in their homes and on their property. They cannot while close to a million illegal border crossers, many with criminal records, enter through the southwest each year.

With an increase in illegal border crossers and an increase in Mexican drug cartel violence, we have seen record amounts of drugs crossing the border. Ninety percent of the cocaine seized in the United State comes through Mexico and much of it is smuggled though Arizona, Texas, New Mexico and California to points throughout the country. Arizona leads the southwest border states in the seizure of marijuana with nearly 1.7 million pounds of marijuana being seized last year in Arizona (with 1.2 million of those pounds being seized in the Tucson sector), a 43% increase from 2008. No other border sector has ever reached the one million pound threshold.

But, these drug seizures do not affect only southwest border law enforcement. The drug smuggling operations are active in more than 230 U.S. cities and every region of our country. Drug smuggling through our borders is reported to generate as much as $38 billion annually in revenues for the Mexican drug cartels.

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As many of the witnesses have noted in their written testimony, there are a number of key programs still in need of funding that are critical to our border security. Congress has not provided nearly enough funding for Operation Streamline to assist in prosecuting illegal border crossers, or Operation Stonegarden, a grant program that funds many of the activities sheriffs are asked to take on to help defend our homeland. These programs are crucial to ensuring our courts and state and local law enforcement have the resources necessary to support efforts to protect people in the border region and beyond.

Again, thank you for being here today and most importantly, thank you for all you do to keep Americans safe and secure each and every day. I will continue to work each day to support your efforts to secure our homeland and serve our country.

# # #

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VERONICA ESCOBAR
El Paso County Judge

April 7, 2011

I have the honor of being the County Judge for El Paso, Texas, the greatest community in the U.S. In Texas, the County Judge is the Chief Executive of the County. In this administrative capacity, I preside over a five-member commissioners court, which has budgetary and administrative authority over county government operations. The County Judge is elected county-wide. That means, as of the 2010 Census, I represent 800,000 people in the world's largest bi-national metropolitan community.

El Paso also happens to be the safest city of our size in America, and we've consistently been ranked among the top three safest communities for well over a decade. Not only do we have some of the lowest crime rates in the nation, but a recent poll of our citizens shows that we know we are safe and we feel safe.

I appreciate the opportunity to share the border experience with all of you. It's sometimes frustrating when policies created and laws passed in D.C. do not address the realities that border residents live.

Residents who live on the U.S.-Mexico Border have seen their communities used as a convenient backdrop to heated debates and political posturing about immigration and drug policies. Incredibly, it's been said by some elected officials—two from our own state—that there are bombs going off in the streets of El Paso. That is absolutely untrue. As a border community, we have challenges, no doubt, but exploding bombs are not among them.

What happens when the rhetoric escalates and the facts get lost? It hurts my local economy; it hurts our ability to recruit talent; it negatively affects our convention business; and it doesn't solve the real problems.

We are all concerned about and devastated by the tragedies occurring every day on the other side of our river – the drug war raging on the streets of Ciudad Juárez. I am glad for the assistance being given Mexico, and I hope there is more to come, including discussions about our own contributions to the drug war that is devastating Juárez and El Paso families. In the mean time illegal drugs continue to flow north to feed Americans' insatiable appetite for them; U.S. guns used in that bloodshed continue to move south; and El Paso, like other border cities, is a corridor caught in the middle of that north/south activity as well as the rhetoric that emanates from our state's and nation's capitols.

My local law enforcement agents are dealing with transnational gang activity; my jail houses them; our prosecutors are pursuing charges against them in court; and my local property tax base is shouldering much of that burden.

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The federal government has been aware of the costs associated with the challenges we face on the border and the burden carried by local property taxpayers; your financial assistance is very much appreciated, especially through the State Criminal Alien Assistance Program (SCAAP) and High Intensity Drug Trafficking Area (HIDTA) funds. However, according to the El Paso County Sheriff's Office, HIDTA funds have remained relatively stable since the program's inception over 10 years ago. Meanwhile, salaries, benefits and equipment costs have all increased over time; we either have to scale back operations or fund increases on the backs of local property taxpayers. SCAAP funds are also very much appreciated but only cover a small portion (10-15%) of the costs of housing these offenders. And, unfortunately, in the 2012 budget, SCAAP funds are being reduced by 60%, which would mean yet another increased burden on my residents.

Federal grants offer a supplement that we appreciate, but they can be inflexible. For example, the 2010 Operation Stonegarden grant did not allow us to purchase vehicles, which we badly needed. That significantly diminishes our capacity to effectively patrol the County of El Paso, which consists of over 1,060 square miles, 47 miles of which are adjacent to our international border.

We need help with investments that supplement our ability to recruit and hire more officers. The COPS grants have poured money into Texas but the El Paso County Sheriff's Office has been passed over for two years. The El Paso Police Department likewise has been ignored. Meanwhile cities like San Antonio, Dallas, Houston, and Austin have received funding for as many as 50 new officers. These are not border cities. Let me repeat: These are not border cities. My Sheriff's office needs "boots on the ground." While receiving funding for overtime is helpful, our officers are getting burned out.

We are concerned that with the talk of slashing budgets and cutting support to our communities, we will erode the gains we have made in getting the federal government to assist us as we assist you.

When the war between cartels began to reach a critical level in Ciudad Juárez, we saw a pattern emerge that we never predicted and hasn't stopped. Our county hospital district, which houses the only Level 1 trauma center in our region—the next closest center is 275 miles away—began seeing victims of the violence who were rushed though our ports of entry and into our ER. Since 2008, we've spent $4.9 million in trauma care specifically for these victims; to date, we've been compensated for only $1.2 million, leaving local property taxpayers to pick up $3.7 million in uncompensated costs. We've repeatedly requested funding from the Merida initiative to help off-set the costs borne by local property taxpayers because we just don't see that financial burden diminishing – unless the U.S. changes its drug policies or the cartels suddenly declare a cease fire.

Where has some of the federal funding gone, if not to my trauma facility or increasing my law enforcement capacity? It's gone to a wall. While federal law enforcement has gone on the record to praise the border wall, it is to me and others an example of considerable federal dollars being spent on a rusting monument that makes my community look like a junk-yard.

The vast majority of border crossers are not criminals, but economic migrants; and as you know, a significant amount of illegal drugs are funneled through our ports of entry.

A true fix to undocumented immigration could come from comprehensive immigration reform that would create a path for the undocumented to regularize their status, institute migrant worker visas, and, in general, offer a realistic, common-sense approach to a complicated challenge. And comprehensive immigration reform will finally take away the platform used by state politicians who want local police and sheriffs departments to enforce federal immigration laws. For the record, the El Paso County Sheriff, the El Paso Police Chief, the El Paso Mayor, Congressman Reyes and I all oppose having local law enforcement officers enforce federal immigration laws.

Community policing, the strategy utilized so effectively by local law enforcement in El Paso, involves building trust and relationships between law enforcement and citizens that helps solve crimes and keep neighborhoods crime-free. If my sheriff's deputies are required by the Texas legislature to enforce federal immigration laws, and if they become de-facto immigration officers, that trust disappears, families become afraid to report crime, and we become a less safe community.

Another facet of an overall fix should focus on our border ports. Our ports of entry should be as modern as our cell phones are. Unfortunately, they are not. They lack significant investment in staff and infrastructure, and what should be a point of opportunity becomes simply a point of obstruction. Every year, $30 billion of commerce comes across El Paso's ports, but a minimum of at least an hour wait for vehicles and up to 2 – 3 hour wait times for pedestrians during peak periods, creates a disincentive. Consider what that wait feels like, especially for pedestrians, in the sweltering summer southwest sun.

To help be a part of the solution, El Paso County has partnered with our Metropolitan Planning Organization (MPO) to access FHWA funds for a Southwest Border Trade Demonstration Project (SBTDP) that will use the latest technology to track trucks coming across our ports of entry. It's a solution that, if successful, will help ease the congestion and help create smarter, more secure and efficient ports of entry that keep people and goods moving. We more need solutions like this for our ports of entry so that they are not complete bottlenecks where cars and trucks idle for hours, polluting our air and harming our economy.

I live in a thriving, safe and wonderful border community. I am fiercely loyal to and very proud of El Paso. While some politicians like to use caricatures of the border for purposes of political rhetoric—rhetoric that portrays our communities as dangerous, volatile, and unsafe—the reality for us couldn't be more different. Don't get me wrong. We have challenges, but those challenges can be addressed much more effectively by more responsible burden-sharing by the Federal government, whose mission it is to secure our borders and, by extension, our public safety, our commerce, and our immigrant population. We are indeed on the front-lines and a safe border means a safe nation. But vilifying immigrants, building expensive, ugly walls, and encouraging hysteria and xenophobia only hurts our border communities, our commerce, and the economy of the nation.

Veronica Escobar
El Paso County Judge

VERONICA ESCOBAR
El Paso County Judge

April 15, 2011

Honorable Joseph Lieberman
United States Senator
Chairman, Senate Committee on
Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Lieberman,

Enclosed is a copy of an article published by the *Arizona Republic* on April 10, 2011 entitled "Statistics don't support Pinal Sheriff Babeu's statement on trafficking." It was written by Dennis Wagner, who analyzed statistics for Pinal County after the Sheriff's testimony at the Senate Committee on Homeland Security & Governmental Affair's "Securing the Border: Security at the Local Level" hearing on April 7, 2011.

I would respectfully ask that the article be included in the record for the hearing.

Thank you again for the opportunity to discuss border issues and needs with the committee.

Sincerely,

Veronica Escobar
El Paso County Judge

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Statistics don't support Pinal Sheriff Babeu's statement on trafficking

by **Dennis Wagner** - Apr. 10, 2011 12:00 AM
The Arizona Republic

In mid-February, officers from more than a dozen police agencies swarmed the drug-trafficking corridor in western Pinal County's notorious Vekol Valley.

They got into wild vehicle chases, arrested 102 suspected smugglers, illegal immigrants and drug traffickers, and seized 3,200 pounds of marijuana.

When it was over, Sheriff Paul Babeu issued a news release declaring that Pinal County is "the No. 1 pass-through county in all of America for drug and human trafficking."

It's a line the sheriff has used countless times - most recently on Thursday in testimony before the U.S. Senate Committee on Homeland Security - as he criticizes the federal government for failing to secure the border.

There's just one problem: There is no data to support the assertion.

In fact, an *Arizona Republic* analysis of statistics from local, state and federal sources found that, while sheriff's officials do bust smugglers and seize pot, Pinal County accounts for only a fraction of overall trafficking.

The newspaper also found that other headline-grabbing claims by Babeu are contradicted by statistical evidence or greatly exaggerated.

For example, the charismatic first-term sheriff raised eyebrows two months ago when he predicted that his deputies would get into a gunbattle with cartel members in the desert during the next 30 to 60 days. The forecasted encounter did not happen.

Although critics, including the Department of Homeland Security and some border mayors, have challenged Babeu's veracity and questioned his motives, the sheriff shows no sign of tempering his claims.

In an undated letter seeking donations for a legal battle against the federal government, Babeu says "things are just going from bad to worse now that our own federal government has sided with the criminals instead of law enforcement."

Babeu, through a spokesman, declined to be interviewed, saying he was too busy. He did, however, respond to questions sent via e-mail. He wrote that Pinal County residents have reported such rampant increases in smuggling activity that they are terrified to leave their homes.

By contrast, DHS Secretary Janet Napolitano and others in the Obama administration point to statistical evidence that America's border is more secure than ever. They have drawn support from some border officials who publicly accuse Babeu of conducting a fear campaign.

Some county residents are concerned that the sheriff is overstating the crime rates in Pinal County. A group called Pinal County Residents of Responsible Leadership has been making

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automated phone calls in the area, with a male speaker criticizing Babeu's "irresponsible" rhetoric about border-related crime. Listeners who want to lodge a complaint with the sheriff's "political office" are transferred to the Arizona Republican Party.

Extent debated

No one disputes that Pinal County, which lies 70 miles from the border, emerged as a smuggling channel during the past decade.

Up until the 1990s, smugglers and illegal immigrants could enter the United States almost anywhere without worry.

Then, gradually, border enforcement increased. Routes into California and Texas were squeezed until crime syndicates began relocating to the Sonora-Arizona line.

At first, crossings concentrated near Nogales, Douglas and other municipalities where roads were relatively accessible. As the crackdown expanded into those areas - with more agents, technology and fencing - smugglers were forced deep into the outback, trekking several days to evade an enforcement gantlet.

Federal officials say the plan all along was to make illegal crossings more difficult.

Today, much of the traffic moves through the Tohono O'odham Reservation and north into Pinal County, where smugglers and illegal immigrants can meet waiting vehicles near Interstate 8.

Now, federal officials say, the final squeeze points are under assault by task forces in places like Vekol Valley, where hundreds of human trails zigzag through the jagged mountains and thorny desert and where bandits sometimes prey on those who enter.

For years, a single deputy was assigned to patrol the entire western part of the county. Then, last year, Babeu, who oversees 700 full-time employees, including 210 deputies, announced a dramatic increase, telling KGUN9 TV in Tucson, "We're sending out three different teams of eight to 15 deputies in each that are heavily armed, even with sniper teams, out to the desert at all hours of the day and night."

Besides those deputies, law- enforcement task forces have flooded the area with agents and officers from the Border Patrol, Bureau of Land Management, Immigration and Customs Enforcement, Drug Enforcement Administration, Arizona Department of Public Safety and police from Casa Grande, Eloy and the Tohono O'odham Nation.

But is Pinal, an area larger than Connecticut with about 341,000 residents, "the No. 1 pass-through county in all of America" as Babeu claims?

The data showing amounts of drugs seized and numbers of illegal immigrants arrested in Arizona does not support his assertion - unless Babeu does not consider border counties "pass-through" areas.

DHS records for last year show that the Border Patrol seized 18 times as much marijuana and arrested 15 times as many illegal immigrants in Pima County as in Pinal. In Santa Cruz County last year, the agency seized nearly 10 times as much marijuana and arrested six times as many illegal immigrants as it did in Pinal. The agency also says 90 percent of all drug interdictions

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occur within 5 miles of the border and says only 3 percent of marijuana seizures made in its Tucson Sector occur in Pinal County.

In his e-mail, Babeu responded that "DHS and U.S. Border Patrol should expect to see higher numbers of drug seizures anywhere they have increased manpower, which historically has been along the border."

Claim check

To assess Babeu's claims, *The Arizona Republic* obtained public records from the Pinal County Sheriff's Office, DHS and other federal agencies.

Among the findings:

- Babeu told the *Berkshire* (Mass.) *Eagle* in February, "Out of the 3,000 counties in the nation, Pinal County ranks No. 1 when it comes to smuggling drugs and humans across the border."

That claim appears to be incorrect.

Although Babeu is often identified as a border sheriff, his jurisdiction is 70 miles removed from the Mexico line. Moreover, DHS records show Pinal County accounts for a tiny fraction of drug and immigrant captures, fewer than any of the three border counties within the Tucson Sector.

Last year, for example, agents recovered 527,667 pounds of marijuana in Pima County. That's 18 times as much marijuana as they captured in Pinal County. They also made 15 times as many arrests in Pima County. In Santa Cruz County, the Border Patrol reported nearly 10 times as much marijuana seized and six times as many arrests as in Babeu's jurisdiction.

Jeffrey Self, head of the Border Patrol's new Joint Field Command office in Tucson, said nine out of 10 undocumented-immigrant arrests in Arizona occur within 5 miles of the border. Only 2 percent of all illegal crossers are captured in Pinal County.

In his e-mail, Babeu said federal enforcement is stronger along the border, so arrest and seizure totals are higher there.

- On Fox News, the sheriff told host Greta Van Susteren he's facing "one of the highest crime rates in America" and crime is "literally off the charts in Arizona."

That claim also appears to be inaccurate.

Pinal County does not have the highest crime rate in Arizona, which is listed 16th among the states for violent offenses, according to the Statistical Abstract of the United States.

An analysis of U.S. Census data and Department of Public Safety records shows 11 of Arizona's 15 counties have crime rates higher than Pinal County's. Residents of Maricopa County are victimized nearly twice as frequently as their neighbors to the south.

Pinal County records show violent crime plummeting over the past few years in every major category except homicides, where numbers are too small for statistical significance. Aggravated assaults in Pinal County decreased 29 percent since 2007. Armed robberies are down 41 percent. Border Patrol records indicate that illegal-immigrant apprehensions in Pinal County have declined every year since 2008.

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In his e-mail, Babeu acknowledged that crime is down in the area but said that decrease would be greater if the border was protected.

- In his letter to border mayors, and elsewhere, Babeu has said that federal intelligence analysts identified "75 to 100 mountains or high-terrain features that are occupied by Mexican drug cartels" in Pinal County.

According to Self, that tally represents the number of possible vantage points, not locations manned at any one time by cartel scouts.

In his e-mail, Babeu agreed with that clarification.

Critics say some of Babeu's other claims spread fear unnecessarily.

Babeu says the Arizona border is so porous that national security is in jeopardy, based on arrests in Pinal County of undocumented immigrants from terrorist-linked nations.

In the past decade, there is no known record of a terrorist entering the United States via Arizona's border. Since 2008, according to DHS and sheriff's records, only one undocumented immigrant - a Cuban - was detained from a nation on the State Department's list of state-sponsored terror nations. Three others were from Afghanistan and Sudan, countries with significant terrorism issues.

In his e-mail, Babeu said he is concerned that the entire border of nearly 2,000 miles remains open to intruders. "Even if only a few (non-Mexicans) were caught, how many more got through undetected?" he asked.

Still work to be done

Babeu, who says cartels have put a green light out for his assassination, is hardly alone in bemoaning federal efforts along the border. Napolitano constantly complained about the same issue during her tenure as governor of Arizona.

Security has improved under her watch, though: The U.S. Government Accountability Office reported last year that control of the border has grown by 126 miles per year. Border Patrol staffing has more than doubled since 2004. Arizona now has 4,900 agents, plus 900 Customs and Border Protection officers and 561 National Guard troops. The result, according to DHS: a nearly 40 percent drop in the number of immigrants caught entering Arizona unlawfully.

But there is still work to be done. The same GAO report said 56 percent of the U.S.-Mexico line is still not under "operational control."

Babeu said in his e-mail that having less than half of the border controlled amounts to "a failing grade," and government efforts are too little, too late.

"If this administration was truly committed to securing the border, they would have already implemented the . . . 10-Point Border Security Plan" advocated by Republican Sens. John McCain and Jon Kyl of Arizona. That proposal calls for more National Guard units, fences and other deterrents.

Independent experts say rhetorical exchanges and media sound bites often preclude rational approaches to border security.

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Rick Van Schoik, director of the North American Center for Transborder Studies at Arizona State University, said Babeu may sincerely see Pinal County in a public-safety crisis based on his personal law-enforcement experience. At the same time, he said, "the border really is safer than it has been in a long time."

Van Schoik complained that vital issues, such as border trade and the threat of smuggled nuclear materials, get lost amid political posturing. He added that enforcement has improved, illegal crossings are down, drug seizures are up and border communities are generally safer. "By almost any metrics, CBP and DHS have accomplished a lot."

In Nogales, the biggest border city leading into Pinal County's smuggling pathway, no murders were reported in 2010 or 2009. In February, Mayor Arturo Garino and his counterparts in Douglas and San Luis wrote to Babeu, asking him to stop painting the border as crime-infested.

"Creating panic where only vigilance is warranted helps nobody," they wrote. "While your misstatements about efforts to keep communities along the U.S.-Mexico border may keep national media coming to Arizona, at the same time your consistent inaccuracies hurt cities and towns like ours" by sabotaging commerce.

Weymouth Fogelberg, who generated the automated phone calls criticizing Babeu, said he's 92 and tired of seeing elderly residents frightened by false rhetoric. "He's a very charming, intelligent man," Fogelberg said of the sheriff. "But he's using us for the furtherance of his political career."

Thayer Verschoor, communications director for the state Republican Party, said the phone strategy didn't work. "We've gotten some calls," he noted, "but most of them are actually pretty positive" about the sheriff.

Babeu said in his e-mail that he represents the people who elected him. "The citizens of Pinal County and Arizona have demanded help" in combating border-related crime, he wrote, adding that smugglers in his jurisdiction "will be met with a heavy law-enforcement presence."

Read more: http://www.azcentral.com/arizonarepublic/news/articles/2011/04/10/20110410pinal-sheriff-babeu-trafficking.html#ixzz1JXYxpXiw

Statement of Sheriff Raymond Loera
Imperial County, California

"Securing the Border: Progress at the Local Level"
April 7, 2011

Issues:

The Imperial County Sheriff's Office (ICSO) is located in Imperial County, CA, which extends 4,597 square miles, bordering Baja California, Mexico; Yuma County, Arizona and San Diego County, California. The county contains 7 incorporated cities and 10 unincorporated cities. The population is estimated at 172,672. There are 3 ports of entry in Imperial County. Two of the ports of entry are in Calexico and the third one is in Andrade, California. Mexicali, Mexico is Calexico, California's sister city to the south.

Imperial County is a rural, agricultural community. The current unemployment rate is 24.7 per cent. A review of local crime statistics indicated that crime levels remain stable, though larceny, burglaries and assaults are high.

The Mexicali-Imperial Valley corridor is a significant, lucrative drug smuggling corridor. The Customs and Border Protection Agency reports that during FY2010, the Calexico ports of entry led with the most cocaine seized, as compared to seizures at other ports of entry along the southwest border. For FY2011, this trend continues and for FY2011 the Calexico ports of entry also lead in crystal methamphetamine seizures along the southwest border.

STATISTICS

Seized by CBP (POES/Pounds)	FY2009	FY2010	FY2011 (through March)
Cocaine	7,348	6546	2,595
Marijuana	105,324	61,088	11,768
Methamphetamine	881	1,186	203
Heroin	42	237	3
Currency	$3,736,614	$4,353,768	$1,962,921

Drug seizures between the ports and at the United States Border Patrol (USBP) Checkpoints increased from FY2009 to FY2010, with the exception of marijuana. However, during the first 6 months of FY2011, marijuana totals exceeded what was seized in FY2010. This is due to increased manpower of the USBP, remote video surveillance systems, four USBP Checkpoints and an increase in seizures from ultralight smuggling activity. In the past, the Imperial Sand Dunes were the favored location for smuggling marijuana, from Mexico into the United States. Once successfully in the United States, load drivers utilized Interstate 8 to further transport the load. The Imperial Sand Dunes was the location where USBP Agent Robert Rosas was killed by drug smugglers in July 2008.

STATISTICS

Seized by USBP (Pounds)	FY2009	FY2010	FY2011 (through 3/15/11)
Cocaine	**174**	**1383**	**131**
Marijuana	**17,418**	**10,882**	**12,930**
Methamphetamine	**37**	**119**	**92**
Heroin	**25**	**67**	**26**
Currency	**$25,037**	**$720,403**	**$223,162**

Traffickers must transport their drugs from Mexico into the United States, despite increased border security and counterdrug efforts. They have resorted to using tunnels and ultralight aircraft to get their drugs into this country. Since September 2003, 11 tunnels have been discovered in the Imperial Valley border area, with the latest one discovered on March 6, 2011. Ultralights are used to air drop marijuana loads into agricultural areas, in Imperial Valley, where couriers await to retrieve the loads. Since December 2010, there have been 27 ultralight incursions into Imperial Valley, resulting in 10 seizures totaling approximately 3,090 pounds of marijuana. To date, only marijuana has been seized from the ultralights in this area.

Mexicali has not experienced the degree of violence reported in other areas along the border, such Tijuana and Juarez. Intelligence has indicated for some time that Mexicali is a neutral zone, a safe haven, due to the plaza having been controlled for several years by the Joaquin "Chapo" Guzman-Loera drug trafficking organization (DTO).

Recently, there are indications that this is changing. This is evidenced by the killing of five individuals on January 24, 2011 at La Resaca Bar in Mexicali, Mexico. Intelligence reflects that the Beltran-Leyva organization may be vying for the control of the Mexicali Plaza. If this is true, an escalation in violence in Mexicali is expected, as rival drug cartels seek to win over the Plaza. Other intelligence sources have also indicated that violence will be escalating in Mexicali. The degree to which this will impact Imperial County is an unknown factor at this time.

According to the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), weapon smuggling is also an issue in the Imperial Valley. The "Imperial County Corridor" serves as a major pipeline of firearms for organized crime entities operating in Northwestern Mexico and members of the Sinaloa Cartel. The points of entry into Mexico for this corridor are primarily through U.S. Ports of Entry in Andrade, CA and Calexico, CA. Trends and intelligence indicate firearms are usually purchased in neighboring source states and trafficked into Imperial County, CA, where they are held in suspected stash houses, disassembled and trafficked into Mexico, in various appliances and furniture. Firearm traffickers have also requested military grade weaponry, such as grenade launchers, high explosive rounds, grenades and fully automatic firearms. Further, suspects have offered to trade illegal drugs for firearms. ATF has identified one specific operative demand for firearms within this corridor which consist of 7.62mm rifles, 5.56mm rifles and other high-caliber firearms that will be used to support criminal organizations or gangs associated with narcotics trafficking and other serious violent crime.

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Alien smuggling is also a problem along this portion of the border. Out of the nine United States Border Patrol sectors, the El Centro sector ranked fifth in Illegal Alien Apprehensions. During FY09, 33,521 aliens were apprehended in this area and 32,562 during FY10. This is a huge decrease as compared to FY1999, when 225,279 illegal aliens were apprehended. Illegal alien apprehensions along the southwest border have decreased across the board. This may be due to increases in manpower by USBP, improved equipment and technology, border fences, as well as the state of the economy.

The Federal Bureau of Investigation (FBI) reported that kidnappings, excluding parental/custody situations, are rare in this area, on the United States side of the border. Rather, the victim is usually involved in drug trafficking and the captors wait in Mexico or lure the person into Mexico, where the kidnapping takes places. These cases generally go unreported.

Efforts to combat the threat:

The ICSO is part of the Imperial Valley Drug Coalition (IVDC), comprised of 20 participating law enforcement agencies. The IVDC board oversees the Imperial Valley Law Enforcement Coordination Center (IVLECC), a multiagency environment supporting this High Intensity Drug Trafficking Area (HIDTA) initiative. This HIDTA is administered by the Southern California HIDTA, called the California Border Alliance Group. These agencies communicate on a regular basis, intelligence is routinely shared and the agencies come together to support various operations.

The IVLECC specifically houses the following initiatives: the Intelligence Support Unit, the Street Interdiction Team, the Imperial County Narcotics Task Force, Major Mexican Traffickers and the California Department of Justice's Major Narcotics and Violence Team (formerly known as BIT). Although not currently housed at the IVLECC, the IVLECC supports the Border Enforcement Security Team (BEST) and the Federal Bureau of Investigation's (FBI) Safe Street Task Force, which are also HIDTA initiatives. These task forces and the Intelligence Support Unit are made up of various state, local and federal agents, officers and analysts, to include Deputies from the ICSO. Four Deputy District Attorney's are also located at the IVLECC.

The Intelligence Unit is comprised nine Intelligence Analysts, which provide case support, operational, tactical, and strategic intelligence services for Imperial County law enforcement.

ATF established an office within Imperial County in 2009, as a component of ATF's Southwest Border Strategy, which includes both an International Strategic Component and a Domestic Strategic Component. The Domestic Component is known as Project Gunrunner and is the primary focus of ATF El Centro's efforts within Imperial County. ATF El Centro partnered with the California Department of Justice (DOJ) Bureau of Firearms (BOF) in 2010, as members of a Firearms Trafficking Task Force to implement the domestic component. Given Imperial Valley's location along the U.S. Border, both components are utilized. The international component primarily deals with firearms tracing and reporting by Mexican counterparts in Mexicali and Algodones, Baja California, Mexico. Once firearms are encountered and recovered by Mexican authorities, the information is then provided to ATF for tracing.

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Since the inception of the Firearms Trafficking Task Force, it has generated more than sixty Southwest Border firearms trafficking interdiction investigations that target straw purchasers and firearms traffickers, in known trafficking corridors, such as Imperial County. The task force also concentrates its efforts on gun shows with known firearms trafficking activities and targeting previously identified firearm traffickers that are trafficking firearms from source states, such as Arizona and Nevada, into Imperial County, California and through to Mexico.

The BEST team, a Homeland Security Investigations-(HSI/ formerly known as ICE) led team, targets the use of tunnels to smuggle drugs as well as ultralight incursions and southbound weapons. In response to the ultralight threat, an ad hoc multiagency group was formed, with oversight by the BEST Executive Board.

Individual cases are supported by the Intelligence Unit, as well as various operations, such as Operation Aftershock, where the various participating agencies came together in May 2010 and saturated the county with law enforcement, in an effort to stave off potential violence from Mexico, as it has filtered into other parts of the country.

Another example where member agencies came together was in support of Operation United Force in November 2010, an HSI-led operation reflecting a show of force and officer presence, in response to threats against HSI agents and other federal agents and state officers.

Most recently in February 2011, HSI led Operation Gadsden, as part of Operation Fallen Hero, again a multiagency operation focused on the Ports of Entry in Imperial County, this time in response to the murder of HSI agent Jaime Zapata in Mexico.

In summary, Imperial County is a significant drug smuggling corridor and poses a potential security threat to Imperial County, as rival DTOs seek to take over the Mexicali Plaza. Violence is expected to escalate in Mexicali. The Mexican DTOs have adjusted their smuggling methods to counteract law enforcement efforts, such as the utilization of tunnels and ultralights. High unemployment in Imperial County and the familial ties between residents of Mexicali and residents of Imperial County makes the DTO's chances of success in recruiting individuals to join in drug trafficking activities and other crimes, very high; making law enforcement's job extremely challenging. The sharing of intelligence between agencies is critical in order to plan for and tackle these challenges. In Imperial County the IVLECC is the primary resource to provide this service in support of state, local and federal agencies and serves as a hub for all agencies to come together.

To: The United States Senate Committee on Homeland Security and Governmental Affairs

Fm: Raymond Cobos, Luna County Sheriff, Deming, New Mexico

Re: Written Statement

Luna County Profile

Approx. 27,000 Population approx. 46-47% Hispanic
2997 Square Miles in area
Terrain: Few mountains relatively flat
excellent radio & wireless service for 95 to 98% of the area

54 miles of border shared with Republic of Mexico
2 Incorporated Municipalities:
Deming 17,000 (County Seat)
Columbus 1800
Location: In the Southwest corner of the State of New Mexico
110 Miles west of El Paso TX
Major Highways: Interstate 10, US 180, NM State Rds 26, 11, & 9
Adjoining Counties: Hidalgo County (West) Grant County (North & West) Dona County (East) Otero (Northwest)
Economy: Light Manufacturing, Food Processing, Tourism, Livestock and Agriculture
Approximately 20% unemployment

Border Security History

Prior to 2005, the area along the southern Luna County border with Mexico was relatively free of violence. However, illegal cross-border activity of drug and human smuggling was rampant. The local Deming U.S. Border Patrol station consisted of approximately 250 plus or minus. There has always been a very close relationship between the Federal law enforcement agencies and local/state agencies along the border but inconsistent collaboration. Each agency had been focused on its own role in border law enforcement.

All of this changed in 2005 when a significant number of violent incidents in the form of broad daylight assassinations took place in the Mexican town of Puerto Palomas, in Northern Chihuahua, directly across the border from the Columbus, NM United States Port of Entry. Vehicles with wounded, dead and dying occupants arrived at the Columbus POE requiring Federal, State and Local Agencies to respond. The appearance of dead individuals required the response of the New Mexico Medical Examiner's Office. The wounded required the response of the Emergency Medical Services from Deming and Columbus Fire/Rescue Departments and Air Ambulance Services from Thomason General Hospital in El Paso, Texas, the nearest Trauma Center. Those occupants not injured required the response of Federal agencies including Customs & Border Protection (CBP), Immigration and Customs Enforcement (ICE) and other agencies for immigration processing.

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In August of the 2005, New Mexico Governor Bill Richardson recognized that the eruption of violence along the New Mexico-Mexico border put a tremendous strain on local and state public safety agencies. He declared a "State of Emergency" in a proclamation and also made some 1.75 Million dollars available to border counties to enhance their capabilities in the form of personnel, vehicles, equipment, and operational expenses.
Recognizing the need for collaboration with area law enforcement, the Luna County Sheriff's Department initiated a Memorandum of Understanding with four surrounding counties, Dona Ana (Las Cruces), Otero (Alamogordo), Grant (Silver City), and Hidalgo (Lordsburg) and after all signed on, Governor Richardson also signed off on the agreement. Under terms of this agreement, all the Sheriffs agreed to cross-commission deputies from each other's department. Each Sheriff agreed to collaborate and work together to obtain funding, support, and cooperation from area State and Federal agencies. The local Border Patrol station administration in which they had a station responded immediately and began collaboration with local and state agencies in recognition of the need to deal with increasing border violence along the New Mexico-Mexico border. Thus, the New Mexico Border Sheriff's Coalition was established.

As a result of the declaration of emergency, Luna County hired 4 additional deputies, bought 3 patrol vehicles, and budgeted funds for ongoing operational costs of patrolling the southern county area. Luna County set up a "Farm & Ranch Patrol" to visit with every farmer and rancher and resident along the border. The purpose was to be a highly visible presence of local law enforcement along the border to help deter confrontations between smugglers and illegal immigrant groups and county residents. Protocols were put in place to address the safety of responding Fire and EMS along the border. The local public safety agencies united and trained to secure the safe arrival and departure of ambulances transported individuals arriving in the U.S. after surviving assassination attempts. The local Deming hospital cooperated in training to secure that facility once a wounded patient arrived for treatment. The local airport administration also cooperated in protocols to secure its facility pending arrival of air ambulance to remove survivors of border violence to El Paso TX.

Incidents of violence continued in Puerto Palomas and the surrounding area with ever increasing ferocity. There was and continues to be a fierce struggle for control of the Puerto Palomas plaza since if represents a relatively ideal location for staging drug and human smuggling activity by organized Drug Trafficking Organizations (DTOs) and in Palomas it appears the battle is between the "Chapo" Guzman or Sinaloa Cartel and the "Juarez" Cartel of which "La Linea" is the local enforcement arm. As the violence increased in Puerto Palomas, sophistication gave way to more subtle forms of violence. Assassinations of intended targets in vehicles were conducted on streets paralleling the border to prevent the victims from driving to the safety of the U.S. Columbus POE. Later, victims were abducted and their bodies would be found later in isolated areas further south of Puerto Palomas. It is worth noting that some 410 to 415 students that are U.S. Citizens are transported to Deming Public Schools (from elementary to high school) by school bus every day that school is in session. Some 10 to 11 buses pick up the students at the Columbus POE for school and disembark them at the end of each school day. In 2008 in Puerto Palomas, a daylight shooting resulting in the death of two individuals at a gas station occurred shortly before school buses began disembarking children at the border. The gunfire continued as the first bus unloaded some 40 students. The Sheriff's Department with the assistance of a Border Patrol Special Response Teams joined up to provide protection for the remaining students

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and directed the buses back to the Columbus Elementary School some three miles north. The Sheriff's Department shut down NM State Highway 11 to prevent unknowing travelers to drive into the shooting zone. The road remained shut down until the POE Port Director received communications from Mexican law enforcement and military authorities that all shooting had ceased and the area in Palomas, Chihuahua was declared secure.

Spillover Violence

Some border law enforcement agencies report there is no spillover violence from Mexico into their jurisdictions. Luna County can cite only two specific events which we would classify as spillover. In both instances, it involved attempts to kidnap two different individuals to take them across the border into Mexico. Fortunately for both victims, the Sheriff's deputies were patrolling in the area, responded quickly and were able to effectively foil the effort of the kidnappers. Unfortunately but predictably, neither victim would cooperate and prosecution could not move forward.

Constant patrol of the border area, constant patrol of the Columbus Village area is the key to deterring the street violence we see across the border. Monitoring public events in and around Columbus and maintaining high visibility is a major part of the Sheriff's Department ongoing Border Security Mission.

Village of Columbus

The Village of Columbus is a microcosm of much of the problems facing effective control over Border Violence. The population of 1800 is mostly Hispanic with most of the households having family members on both sides of the border. Tourism is the main industry. It is a destination for many people looking for retirement homes. Land is relatively inexpensive and services such as pharmacies, barbershops, eye clinics, dental clinics and dining are available three miles to south across the border in Puerto Palomas at a fraction of the cost in the United States. People from Arizona, Texas, Colorado and northern New Mexico travel to Palomas for those services. This activity has declined probably by 50 to 70% over the last 5 years because of the violence and the perception of violence. The climate is basically mild winters and very dry warm summers.

From the perspective of County Government and the Sheriff's Department, the Columbus Village government is dysfunctional at best. The Village has gone through at least 9 Police Chiefs in the last 5 years. Village Administrators have a reputation of ignoring EEOC hiring practices, proper procurement procedures, and failing to establish a culture of ethical and professional government. Village Officials generally regard the Sheriff, County Officials, State Officials and Federal Government Officials as "Big Brother" types and bullies seeking to substitute outside control over local control. When outside agencies assist in hiring panels, their recommendations are usually ignored or rejected. Consequently, when using arbitrary hiring, promotion, or disciplinary authority, the Village ends up with frequent litigation. In 2009, the litigation liability resulted in the Municipal League withdrawing liability insurance for the law enforcement. The Municipal League is a non-partisan and non-profit organization of cities and towns in New Mexico. Their principal mission is to be advocates for city government to include insurance, training, legislative, and advocacy services. Their Police Department was shut down

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until the Village could secure liability insurance through the State of New Mexico. The Sheriff's Department stepped in and provide the Village with 24 hour coverage until a few week later when the Police Department was restarted. The Village Government refused to reimburse Luna County and forced it to obtain the reimbursement from funding allocated to Columbus by the Governor's Office.

The most recent Police Chief hired was a Mr. Angelo Vega with a very checkered past and held in very low esteem by area Federal, State, County and Municipal agencies. The Luna County Undersheriff served on the hiring panel and subsequent to Mr. Vega's interview, submitted a written opinion to the Village representatives. In his letter, the Undersheriff (Allen Carter) strongly and adamantly urged the Village NOT to hire Mr. Vega. Mr. Vega was hired anyway.

Operation Stonegarden

For FY 2009 Homeland Secretary Janet Napolitano announced the Operation Stonegarden grants totaling $60,000,000.00 for 13 border states and the Territory of Puerto Rico. Its intent was to enhance the capabilities of federal, state, local and tribal law enforcement agencies to jointly secure U.S. borders and territories. New Mexico was awarded $3,981,414. This was a substantial and most welcome tangible support for local agencies and the Luna County Sheriff's Department began immediate implementation of the program closely following the guidelines. A Grant Administrator (Lt. John Mooradian) set to work immediately to set up policies and procedures to make the program effective and transparent. The Department placed great emphasis on accountability and documentation. We wanted to not only account for every penny placed in our stewardship but also to justify expenditures. At a subsequent meeting of the Southwest Border Sheriff's Coalition meeting Tucson AZ we were very pleased to see the Border Patrol program representatives holding up forms they expected every agency to use in administering the program. Our pleasure resulted from observing that the forms were virtually the same forms our staff had developed at the program's inception. We used the funding to buy police vehicles, pay for operational expenses, other police equipment (such as night vision gear), and overtime for the deputies. We have also used the funding in part to purchase and install laptops in patrol vehicles to enable deputies to remain in the field longer, increase their productivity, utilize "silent dispatch" (inquiries into vehicles, licenses, warrants, etc. go over wireless network) and make voice radio time more available for true emergency traffic. In 2009, we brought the Village of Columbus Police as a sub-grantee into the program with generally disastrous results.
In 2010, we brought the City of Deming Police Department into the program along with the New Mexico State Police (in the Deming District). These two agencies have shown diligent and professional management of the funding awarded to them.

Columbus Police Chief Angelo Vega ignored directions from Luna County Sheriff's staff to present his specifications for a police vehicle to the staff for approval prior to reimbursement. Vega purchased a vehicle totally unsuitable for Stonegarden purposes and was denied reimbursement. Vega had to take the vehicle back to the dealer after installing police communication and emergency equipment in it. The dealer was forced to sell the new vehicle at auction to mitigate his loss. A few months later, Vega applied for overtime reimbursement promising to provide documentation that he as a Police Chief was permitted to receive overtime payment. Luna County Human Resources/Personnel Department opined Vega was not entitled to

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overtime. Reimbursement was then halted at that time in September of 2010. In November 2010, Columbus Mayor Eddie Espinoza reported to the Sheriff's Department that Vega had falsified time sheets and payroll documents to show him working overtime when in fact he had not put in any overtime hours and in instances not even worked at all. At this time, the only Stongarden-purchased vehicle was taken by the Sheriff's Department and all reimbursements were stopped. Vega never produced any documentation allowing him to receive overtime. In December 2010, the Sheriff's Department sent a letter to the Village stating their participation in Stonegarden was halted and laid out the terms for their reinstatement. To this date, the letter has not been answered.

On March 10, 2010, Mayor Eddie Espinoza, Village Trustee Blas Gutierrez, Chief Angelo Vega and some five other Columbus residents were arrested for allegedly violating Federal Firearms Statutes. The eight were indicted and had allegedly conspired to purchase firearms and ammunition and other equipment in order to sell those items to a drug cartel in Mexico. Allegedly Mexican authorities had U.S. ATF agents trace the weapons back to that group. Allegedly at least two bodies recovered from a secret burial site in Mexico were found with firearms traced back to the group. Police vehicles were allegedly used to transport the firearms to a safe house in El Paso TX.

The Sheriff's Department took immediate action and denied the Columbus Police Department the use of its frequency and denied Luna County Central Dispatch to use the SO frequency to interact with the Columbus Police. The remaining ranking member of the Columbus Police Department was roommate of long standing with Chief Vega. That individual, Sgt. Robert Valenzuela had a prior arrest for Drunk Driving and is currently under indictment in Dona Ana County (NM) for 4th Degree Felony Stalking. Chief Vega has given information to the Federal Prosecutors that he would use the police radio to identify suspicious vehicles in the Columbus area to determine whether or not the vehicles were law enforcement. As Sheriff, I refused to allow any corrupt elements in the Columbus Police Department to compromise the integrity of the Stonegarden Program under our management.

Stonegarden remains the one truly effective program which brings local, state, and federal law enforcement together along the border.

Relationships with Federal Agencies

The Luna County Sheriff's department has strived to maintain excellent and utile relations with our State and Federal partners. The Border Patrol's under Stonegarden is to share intelligence with their local and agencies in order to address cross border activity and use the locals to interdict traffic that gets by the agents on the border. The Border Patrol typically informs the Sheriff's Department of areas they would like to have patrolled and monitored based on their information at the time. The Border Patrol reviews and approves of the local agency's "Operational Orders" which include plans for patrolling, allocating funds for overtime, equipment purchases and other allowed expenses (and their justification) then forward the documentation up the chain to Homeland Security and FEMA. Once the approval has been obtained the Border Patrol conveys the documented approval to the agencies for implementation.

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Deputies frequently accompany Border Patrol agents on ATV operations and receive training from them.

Luna County Sheriff's Department belongs to the Border Area Task Force funded by HIDTA. The Task Force represents three border counties, two police departments, and several State and Federal agencies. The Task Force has recently been reactivated and will be operational within a few weeks. The Department avails itself of the First Responders and Counter-Terrorism training at the Playas Training and Research Center in Playas, New Mexico in adjoining Hidalgo County. It is part of the Department of Homeland Security and the New Mexico Institute of Mining and Technology partnership. Among its broad mission is to provide law enforcement with training. Continuing development and nurturing of relationships with our federal partners is daily priority.

Summary

Changes in the last 10 years: Luna County Specific

1. Doubling of the number of Border Patrol agents in the Deming Station from plus or minus 250 to plus or minus 500.
2. Increased technological infrastructure along the border to include additional sensors, cameras, fencing, border vehicle barriers, and the construction and completion of the Forward Operating Base along Border Highway State Road 9. This supplemented by the incorporation of National Guard personnel to monitor sensor, camera, and communications systems and free Border Patrol agents for the field.
3. Partnering with local law enforcement in ATV operations. Coordination in checkpoint operations where Border Patrol checkpoints and Sheriff's traffic program enforcement takes place simultaneously in close proximity.
4. Noting the citizen complaints or comments about Border Patrol activity has changed significantly from "too few Border Patrol agents" to "too many Border Patrol agents" which strongly indicates the effectiveness of Border Patrol strategy. The presence of Border Patrol agents is the most visible sign of the Federal Government's efforts at practical control of the border.
5. Luna County crime statistics which have plunged along with the apparent numbers of apprehensions of undocumented persons in the El Paso Sector which includes Luna County. The following numbers are for your consideration:

FY 2010	12251
FY 2009	14990
FY 2008	30312
FY 2007	75464
FY 2006	122245
FY 2005	122655

6. Narcotics seizures have also gone down accordingly in the El Paso Sector:

FY 2010	$70,462,880
FY 2009	$81,273,120
FY 2008	$78,458,796
FY 2007	$119,278,767
FY 2006	$150,982,767
FY 2005	$164,563,359

7. There are many other factors affecting the decline in numbers of persons crossing illegally into the United States. The state of our economy, the state of social stress in Mexican society, increased Federal, State, and Local enforcement on the U.S. side, and possibly cooperation from law enforcement counterparts in Mexico in some instances.

67122.081

8. Greater unity among levels of government agencies outside of law enforcement has increased. HUD and the FBI often notify local agencies of residents in HUD housing with outstanding warrants.

9. In Luna County's case, one cannot overlook the quality of leadership of Federal law enforcement agencies. I would have to credit the close support from El Paso Sector Chiefs, Patrol Agents in Charge-Deming Station Mr. Daniel Serrato, Former PAIC Rick Moody, and Chris Mangusing PAIC Lordsburg Station. The perception of the Sheriff's Department is that whenever we develop a close working relationship with Border Patrol leadership, that particular individual ended up promoted to other Patrol Stations resulting in increase networking benefits. I have to acknowledge that the first trained responder at a traffic accident on our major highways is most likely to be a Border Patrol agent.

10. I cannot praise the implantation of the Stonegarden Program enough. Where many people constantly criticize The President, Congress, the Supreme Court, and the Federal Government in general, I and my deputies are providing services to our constituents, we could only dream of ten years ago because of Federal grants and assistance. I do not expect much increase in the programs, but please do not entertain ideas of cutting it. The unity it has brought to law enforcement could not have been achieved without it.

11. We have been blessed in Luna County with relatively flat terrain, good radio and wireless communication, good working relationships with our sister agencies, a dedicated county government, and wide community support. I do have one overriding concern. Successes should be reinforced, not squandered away by concluding the problem has been solved.

12. Thank you for this honor and privilege of coming before this committee.

Respectfully,

Raymond Cobos
Luna County Sheriff
Deming, New Mexico

Pinal County Sheriff's Office

Paul Babeu
Sheriff

April 5, 2011

To: U.S. Senate Committee on Homeland Security and Governmental Affairs,

Pinal County, Arizona is the fastest growing county in all of America. Located between Phoenix and Tucson we also have another not so favorable title. Pinal County is the "Number One Pass Through County for Drug and Human Trafficking in all of America." Over half of the illegals entering America come through Arizona. According to U.S. Border Patrol, last year alone they captured 219,300 in the Tucson sector. U.S. Border Patrol has acknowledged this number does not take into account another conservative estimate of 2.7 illegals that made it into the United States undetected. Of those illegals that were caught, 17 to 30 percent of them already have a criminal record in the United States.

According to the latest GAO report, 56% of the border is NOT under "Operational Control." In my opinion, and the opinion of most people, 44% is a failing grade. Arizona has four counties which share the border with Mexico. Yuma County is under operational control at this time. The other three border counties (Pima, Santa Cruz and Cochise County) are not. America can secure the border if we replicate the success of what was accomplished in the Yuma Sector. The Yuma Sector has now attained a 96% reduction of illegal border crossings. The Senator McCain/Kyl 10-Point Border Security Plan is developed largely from the learned successes of the Yuma Sector during Operation Jump Start. The Senator McCain/Kyl 10-Point Border Security Plan needs to be implemented to attain a secure border with Mexico.

The short coming of recent plans by DHS cannot be sustained without three key elements of the Senator McCain/Kyl Plan. Immediately deploy 6,000 armed soldiers for a period of two years to immediately secure the border. While armed soldiers are deployed, the double barrier fence is completed with the supportive surveillance paltforms, lighting, sensors and supportive roads to support rapid deployment of US Border Patrol. Thirdly, fully enforce the law without any diversion option for illegals. This compromise of "catch and release" has undermined the rule of law.

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Main (520) 866-6800 * Fax (520) 866-5195 * TDD (520) 868-6810

While we keep hearing information from Washington, D.C. that the "Border is More Secure Then Ever" I would strongly disagree. Statistics in Pinal County during the past two years have shown dramatic increases in totals tied to drug and human trafficking. Our calls to U.S. Border Patrol to turn over illegal aliens have increased, 2007-(188), 2008-(169), 2009-(270) and 2010-(370) **Vehicle Pursuits have increased,** 2007-(142), 2008-(140), 2009-(289) and 2010-(340) **and Marijuana Seizures have also surged,** 2008-(19,619 pounds), 2009-(44,963 pounds) and 2010-(45,500 pounds). **Just last year, we had a cartel member executed in a quiet Casa Grande, AZ neighborhood. We have had two other cartel members killed during the middle of the night in Vekol Valley after they were shot each with a single bullet. Below is a photo of one of the 15 billboard signs which had been erected in Pinal County. The signs were recently taken down and replaced with "Visitor Information" signs.**

Citizens of Pinal County are now met with "Normandy" style barriers which are located 70 miles north of the U.S. - Mexico Border. According to U.S. Homeland Security they have identified approximately 100 Scout Locations in Pinal County, Maricopa County and on the Tohono O'Odham Reservation. These locations are used by the Drug Cartels of Mexico to support their 40 billion dollar a year industry.

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During the past two multi-agency enforcement details (four days each), worked in this drug and human trafficking corridor, more than 200 suspects were arrested. This clearly shows the border is not secured. We need immediate help to protect our citizens. We can no longer wait for action. Until we get Federal support and the U.S. - Mexico border is secured, I have directed my deputies to take cartels on directly. In order to protect our citizens, it has now become the job of my office to directly engage those responsible for drug and human trafficking. We are conducting operations on a weekly basis to dismantle, and disrupt drug and human trafficking operations and reduce the crimes associated with their activity.

Respectfully,

Paul R Babeu

Paul Babeu, Sheriff
Pinal County

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EXHIBITS REFERENCED BY SHERIFF BABEU

DANGER - PUBLIC WARNING
TRAVEL NOT RECOMMENDED

- Active Drug and Human Smuggling Area
- Visitors May Encounter Armed Criminals and Smuggling Vehicles Traveling at High Rates of Speed
- Stay Away From Trash, Clothing, Backpacks, and Abandoned Vehicles
- If You See Suspicious Activity, Do Not Confront! Move Away and Call 911
- BLM Encourages Visitors To Use Public Lands North of Interstate 8.

For more information, call (623) 580-5500.

NATIONAL SYSTEM OF PUBLIC LANDS

TRAVEL CAUTION
SMUGGLING AND ILLEGAL
IMMIGRATION MAY BE
ENCOUNTERED IN THIS AREA

Tsvan Lopez
OC4MC

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Florence, Arizona 85132 • 520-866-5199 • Fax: 520-866-5195

Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Friday June 11, 2010

CONTACT: Media Relations, Lieutenant Tamatha Villar, 520-705-4245

TWO MEN KILLED IN SMUGGLING CORIDOR

On Sunday, June 6th 2010 Pinal County deputies located the bodies of two Hispanic males in a remote desert area near Interstate 8 and milepost 150. This area is a known smuggling corridor and the area where, just five weeks before, Deputy Louie Puroll was shot and wounded after tracking six individuals who were smuggling drugs. The drug smugglers ambushed Deputy Puroll with a handgun and two AK-47 automatic rifles from different tactical positions.

At approximately 7:30 pm on June 6th, PCSO Communications Center received a 911 call from a Spanish speaking male who reported that he and his "partner" had been shot. The caller advised the dispatcher, "I am right here, where they shot the sheriff, on this side." The dispatcher continued to attempt to identify the caller, his injuries and exact location as he repeatedly referenced Dep. Puroll's earlier shooting incident.

The initial call and several subsequent calls were dropped and communication repeatedly re-established. Dispatch remained in contact through a series of calls that lasted approximately 28 minuets when the final call was dropped; the communications dispatcher was unable to re-establish communication with the caller.

Deputies located the men, both deceased, several hours after the initial call. Deputies also located a Bushmaster .223 Automatic Rifle with one of the decedents. The autopsies were performed by the Pima County Medical Examiner and preliminary reports confirm the victims were each struck once by what appears to be an AK-47 type round and evidence collected at the scene supports this. Documents located at the crime scene and information provided by the victim on 911 strongly suggests both men are Mexican Nationals. Investigators are working with ICE and the Mexican Consulate to attempt to confirm the men's identities and notify next of kin.

Investigators believe this incident is likely the result of the ongoing violent battle between Mexican drug cartels. Investigators have not been able to confirm if the two men are part of the drug trade or just what they were doing at the camp.

The Sinaloan drug cartel, a super drug cartel, is now controlling the region from Rocky Point, Sonora, Mexico to Nogales, Sonora, Mexico. They are the main drug cartel operating in western Pinal County and it is unknown whether these men are associated with this or another competing drug cartel.

PCSO Investigators say the bodies were located approximately 500 yards from a migrant camp in Antelope Pass an area commonly known for drug and human smuggling.

Sheriff Paul Babeu said, "The violence in Mexico from the drug cartels continues to spill over the border and deep into the heart of Arizona. The drug and human smugglers continue to control this area of America with para-military sized squads armed with semi and fully automatic weapons. Pinal County is not a border county, yet nearly all of the illegal aliens and much of the drug smuggling comes through Pinal County. Local law enforcement can't handle this on our own – we need help. We need the National Guard on the border to stop the drug cartels and the nearly one million illegal immigrants who cross into Arizona every year. This crisis will not end until the troops are deployed, the double barrier fence completed and we end catch and release." Sheriff Babeu continued, "We have seen kidnappings, rapes, murders and countless vehicle pursuits in our county, all connected to drug and human smuggling. The violence in Arizona is getting worse – not better. When will President Obama send the troops he has promised?"

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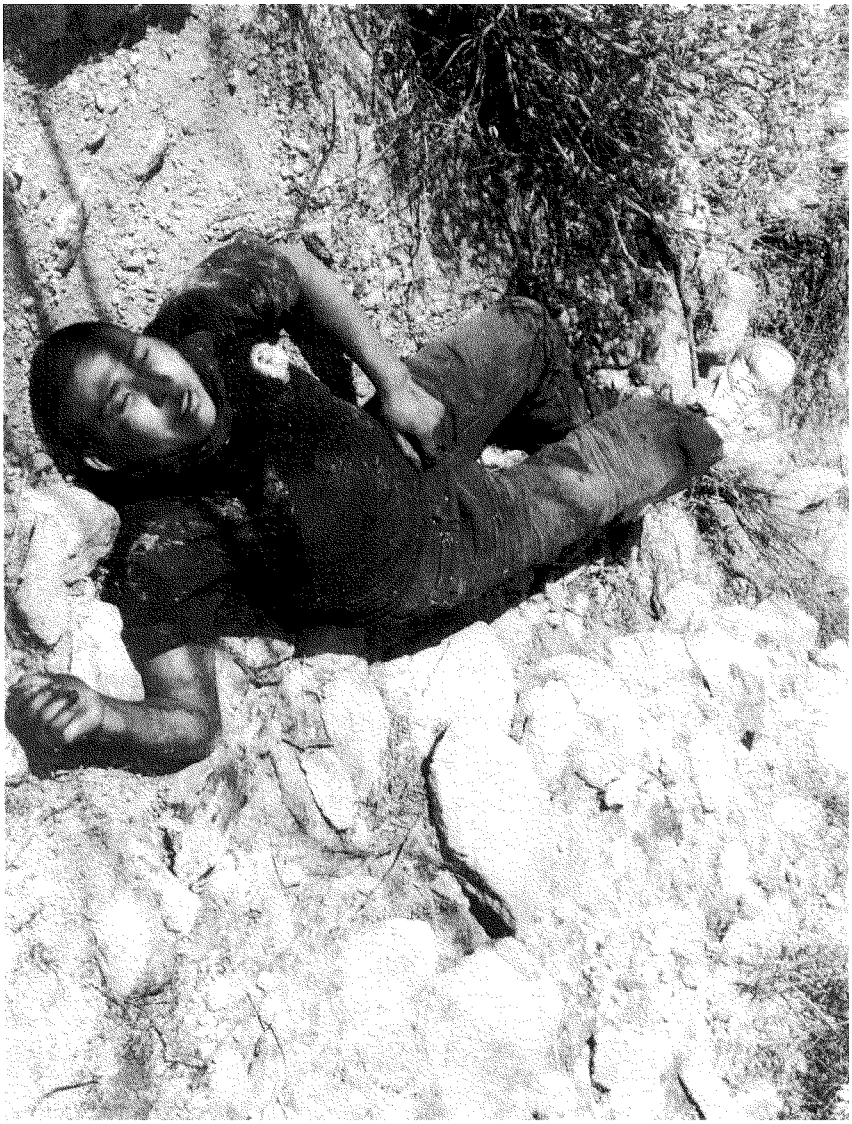

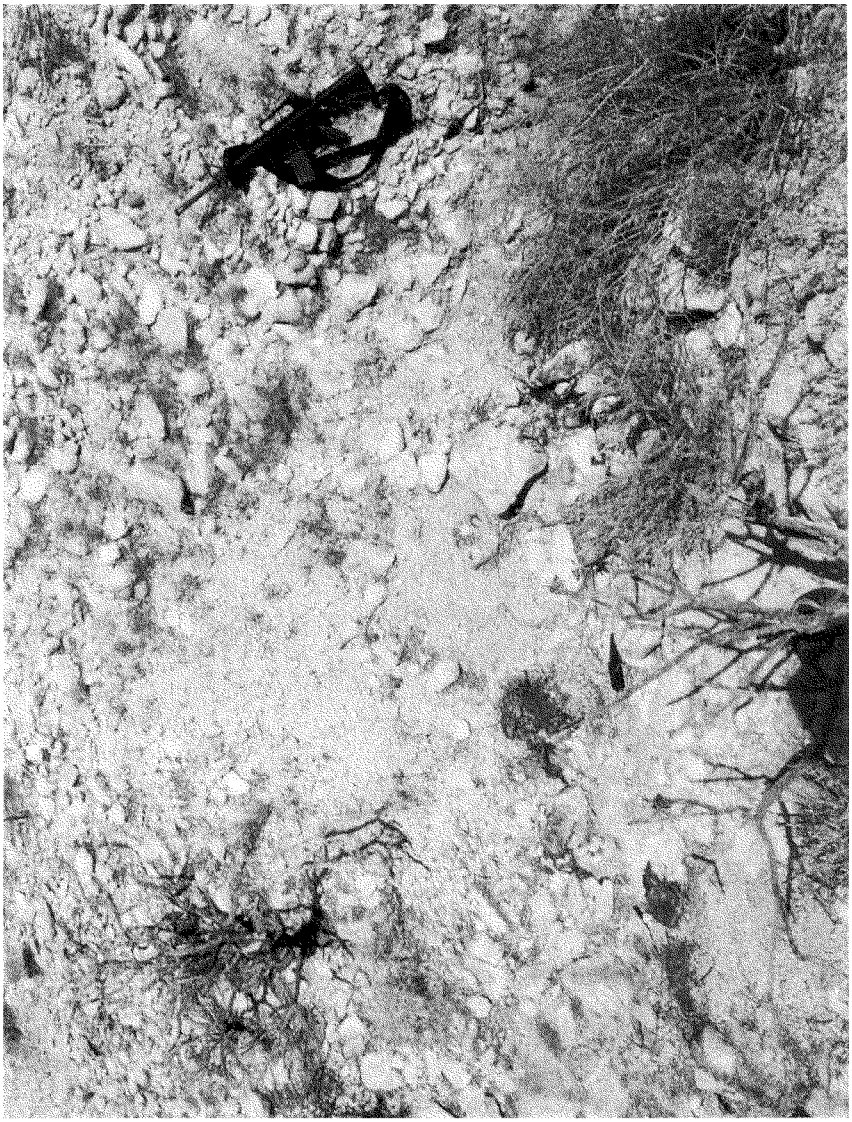

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Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Friday, October 15th, 2010

CONTACT: Media Relations, Tim Gaffney, 520-705-8124

Assassins Sent to "Take Out" Bandits in Vekol Valley

On May 13th, 2010 the Department of Homeland Security sent out an email to several law enforcement agencies regarding intelligence information they had developed. The information was not disseminated to the general public as it was deemed "law enforcement sensitive." On October 14th, the Pinal County Sheriff's Office was contacted by a local news entity that had the information contained in the email regarding "assassins being sent to take out bandits in Vekol Valley" which is located in western Pinal County. The news entity had confirmed the information through other law enforcement agencies both on a local and federal level. Below is the information we are sending out in an effort to inform the public about the dangers associated with the drug cartels operating in Pinal County.

> *"We just received information from a proven credible confidential source who reported that last weekend, a meeting was held in Puerto Penasco in which every smuggling organization who utilized the Vekol Valley was told to attend. This included rival groups within the Guzman cartel.*
>
> *It was decided that the cartel would send a group of fifteen, very well equipped and armed sicarios complete with bullet proof vests, into the Vekol Valley. The Cartel has a map of where the most bandit activity has been occurring. The group will walk into the valley taking four days to get into LPOP positions and communicate back to Penasco. Penasco will then send groups of simulated backpackers carrying empty boxes covered with burlap into the Vekol Valley to draw out the bandits. Once the bandits have been identified, the sicarios will take out the bandits.*
>
> *Incidentally, the night of the Vekol Valley shooting, we received information from a source who reported that the scouts in the valley (the Cartel has 23 scout locations with rolling encryption) were reporting that bandits had shot two sheriff's deputies and the area was covered with cops."*

The above paragraph was referring to April 30th when Deputy Louie Puroll was ambushed in Vekol Valley by armed smugglers.

Sheriff Paul Babeu stated, "This information came from Homeland Security Director Janet Napolitano's office. She knows exactly what the citizens of Arizona are faced with yet she continues to publicly state how much safer we all are. I once again ask her to please put politics aside and secure the border or give us the resources we need so that we can protect our Arizona families."

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Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Tuesday, October 26, 2010

CONTACT: Media Relations, Tim Gaffney, 520-705-8124

Roberto Raya-Ortiz Murdered in Casa Grande

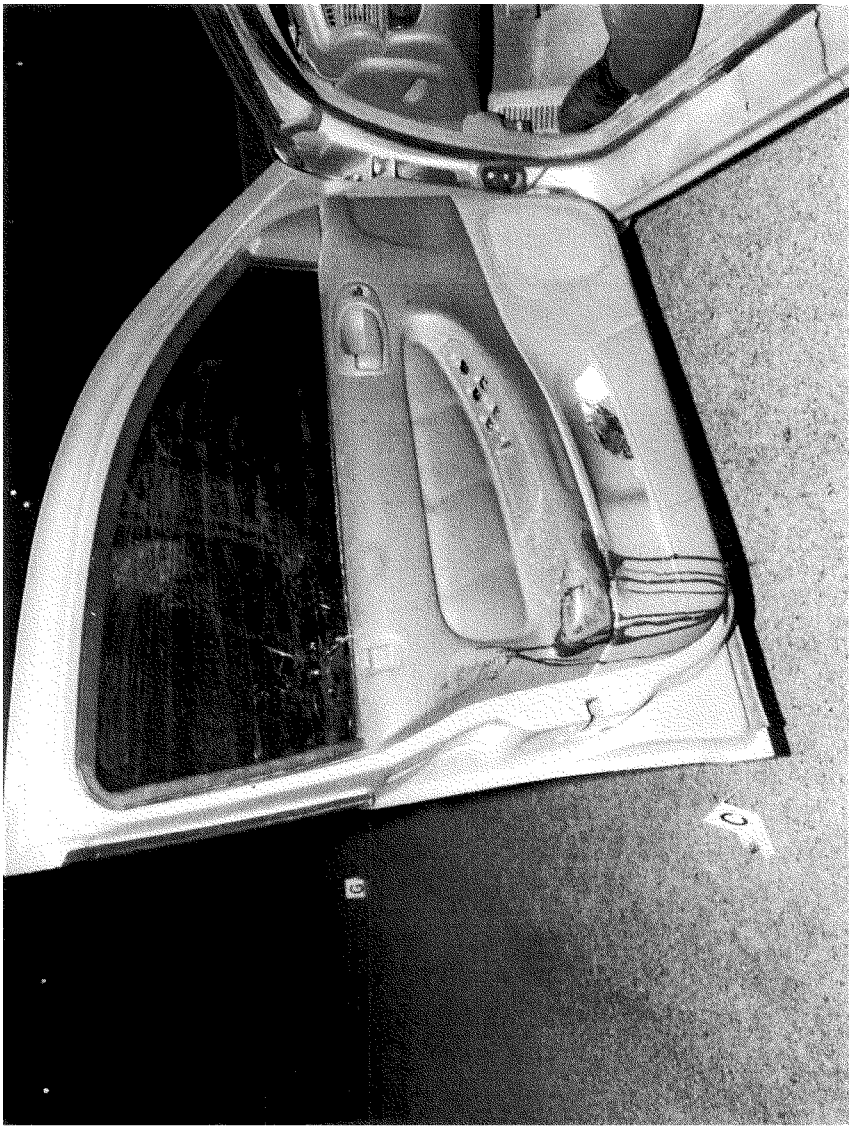
On Monday, October 25th, 2010 at 11:30 p.m. the Pinal County Sheriff's Office received several 9-1-1 calls regarding shots being fired in the 26000 block West Sherbundy Drive, Casa Grande. Deputies arrived on scene and located a Dodge Status parked in the middle of the roadway. Inside of the vehicle, PCSO Deputies discovered a male subject identified as Roberto Raya-Ortiz (age 31) shot to death. Raya-Ortiz had been shot multiple times.

Witnesses observed an early 2000 model Chevrolet Impala pull up next to the vehicle Raya-Ortiz was driving and then several shots being fired. The suspect vehicle sped away westbound on Sherbundy. The suspect vehicle description was sent out to law enforcement agencies in the area but it was never located.

Next of kin were notified of the incident involving Raya-Ortiz. Relatives told investigators; Raya-Ortiz was involved with drug trafficking from Mexico. According to relatives, Raya-Ortiz was responsible for transporting "scouts" to various locations in Pinal County. Prior to his death, Raya-Ortiz had told relatives he was fearful for his safety because cartels felt he was "a snitch." Raya-Ortiz is a citizen of Mexico and was in the United States illegally. He was awaiting a deportation hearing according to relatives.

If anybody has any information regarding this case, they are asked to please contact the Pinal County Sheriff's Office.

-30-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Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Monday, December 13, 2010

CONTACT: Media Relations, Tim Gaffney, 520-705-8124

"Rip Crew" Conducting Traffic Stops in Vekol Valley

On December 11th, 2010 at 10:01 p.m. a Pinal County Sheriff's Deputy was patrolling along Interstate 8 near Vekol Valley. The deputy observed a white Ford Crown Victoria which appeared to be disabled on the south shoulder. As the deputy got closer, he discovered the vehicle was stuck in the loose dirt, the trunk was partially open and the rear passenger windows were down. In front of the Crown Victoria, the deputy observed a tan Ford Taurus. The Taurus was approximately 20 ft in front of the Crown Victoria and had apparently crashed into a barbed wire fence. The occupants of both vehicles fled the scene. Both vehicles contained packaged bales of marijuana.

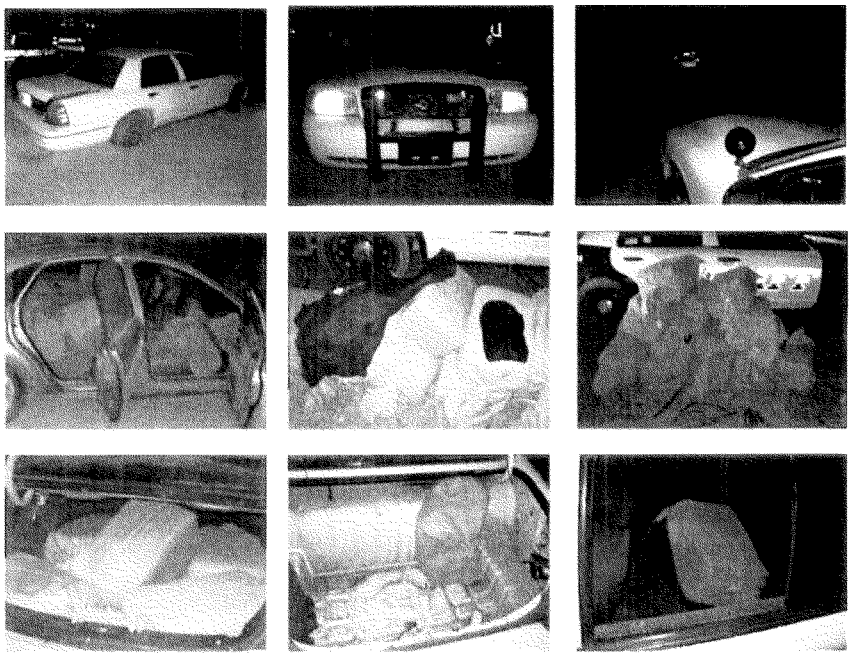
During the investigation, it was discovered the Crown Victoria had been outfitted to represent a law enforcement vehicle. The vehicle had red and blue strobe lights, orange and white strobe lights, a siren, spotlight and front push bar.

It is believed that based upon the positioning of the vehicles, the fact the rear windows of the Crown Victoria were rolled down, the trunk open with a bale of marijuana in it, a black ski mask and black hoodie sweater found next to the driver's seat, that this was an attempted rip of the marijuana in the Ford Taurus by a "rip crew".

It appears the Crown Victoria had attempted to conduct a traffic stop on the Taurus, which veered off of the road, hit the fence and then the occupants fled. Some of the marijuana had already been loaded from the Taurus into the Crown Victoria. The engines for both vehicles were still running when deputies discovered the vehicles. Fourteen bales of marijuana were recovered, which weighed a total of 319 pounds. The street value of the seized marijuana is $159,500.

Sheriff Paul Babeu stated, "Drug and human trafficking is a crime my deputies deal with on a daily basis. This case shows how those responsible for drug and human trafficking are attempting to conduct their business under the disguise of law enforcement. This tactic not only puts law enforcement at risk but also the citizens of Pinal County."

Below are photos of both vehicles and the marijuana seized.



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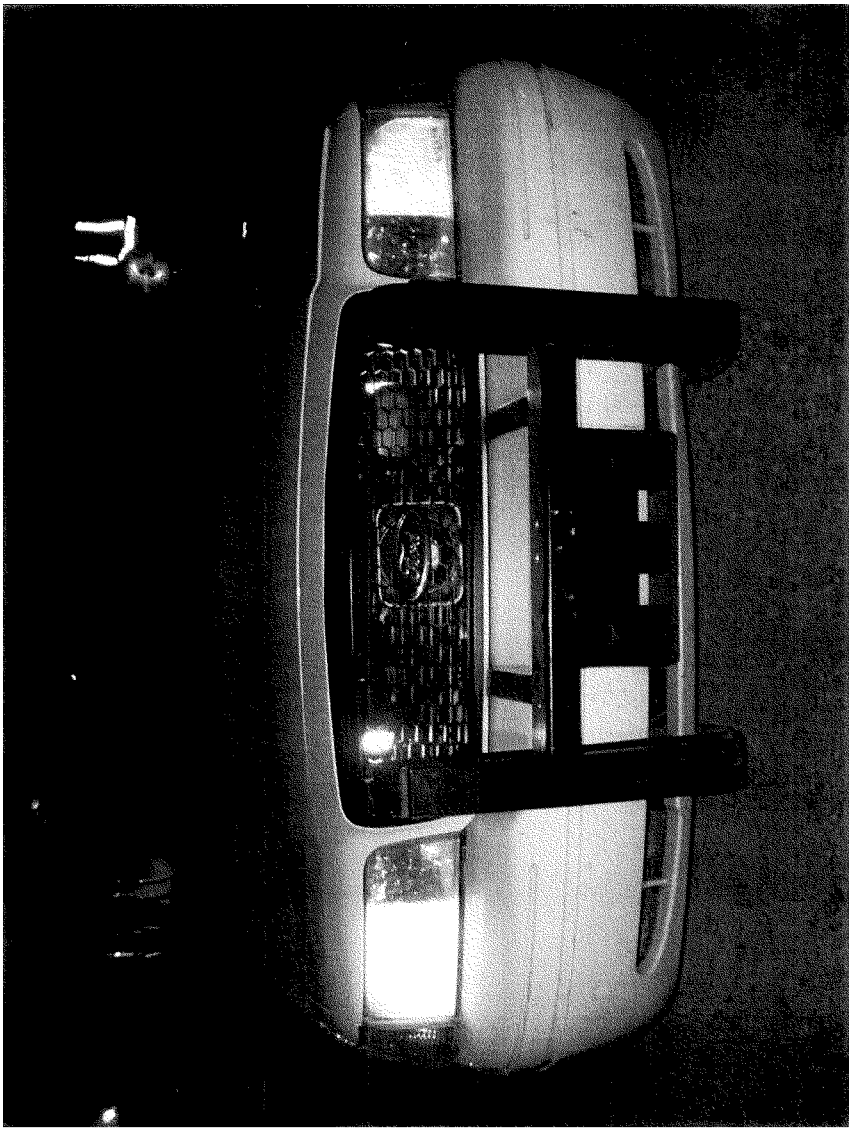

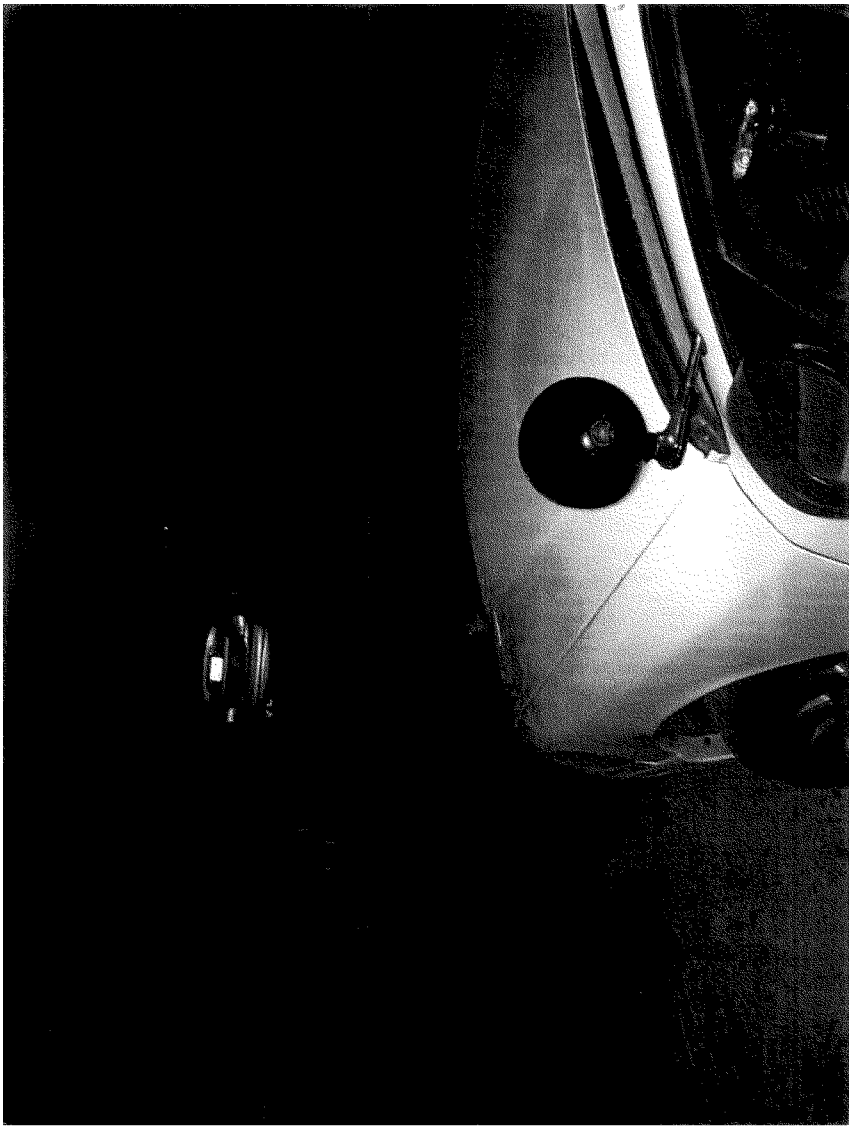

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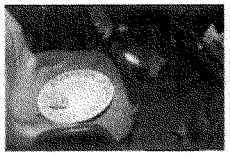
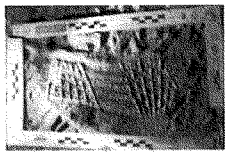
Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Thursday, February 03, 2011

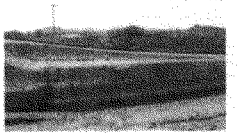
CONTACT: Media Relations, Tim Gaffney, 520-705-8124

Humberto Hernandez-Hernandez Jr. Arrested for Murder

On January 22nd, 2011 at 11:21 p.m. the Pinal County Sheriff's Office received a 9-1-1 call regarding a possible kidnapping which had just taken place at Lamoreaux Farms located near East Greene Reservoir Road and South Picacho Highway, Eloy. The reporting party told investigators, his employee Mauricio Gonzales (age 21) who works at the farm had called a coworker earlier in the evening around 10 p.m. and told him he had been kidnapped. Patrol Deputies responded to the farm and located the victims work vehicle abandoned, his jacket and dinner plate. They also observed the victims footprints and another set which did not belong to any of the other workers.

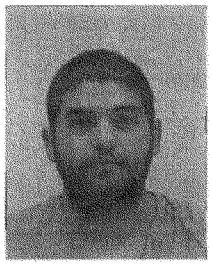
On January 27th, 2011 at 10:21 a.m. the Pinal County Sheriff's Office received a 9-1-1 call regarding a body in a canal located near East Baumgartner Road and four miles east of Picacho, Red Rock. The body was later identified as Mauricio Gonzales. Gonzales had been beaten and bound with duct tape. An autopsy was conducted and the death was ruled a homicide by drowning.



Through the course of the investigation, detectives learned the possible suspect was the cousin of the victim Humberto Hernandez-Hernandez (age 18 of Douglas). The two had an ongoing dispute over money.

On January 28th, 2011 Detectives developed information that Hernandez was at 300 W. 14th Street, Douglas. The Douglas Police Department responded and contacted Hernandez who was found to be in possession of marijuana. Hernandez was arrested and detectives from the Pinal County Sheriff's Office responded to question him regarding this homicide. Hernandez admitted to the murder and kidnapping of Gonzales. Hernandez was booked into the Cochise County Adult Detention Center for Possession of Marijuana and also held for Kidnapping and First Degree Murder.

On February 2nd, 2011Humberto Hernandez-Hernandez was picked up from the Cochise County Adult Detention Center and booked into the Pinal County Adult Detention Center for one count each or 1st Degree Murder and Kidnapping. He is currently being held on a $2,000,000 bond.



ML 118-01

Sheriff Judge Veronica Escobar

NEWSRELEASE

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Paul Babeu, Sheriff

2- 4day OPS
- 212 Arrests
- 16 Vehicles/weapon
- 10,700 lbs of Pot

FOR IMMEDIATE RELEASE
Wednesday, February 23rd, 2011

CONTACT: Media Relations, Tim Gaffney, 520-705-8124

Multi-Agency Operation Yields More than 3200 Pounds of Marijuana

Pinal County, Ariz. – Multi-agency operations concluded Saturday in the Vekol Valley and Silver Bell Mountain areas, which include Pinal, Pima, and Maricopa Counties. This operation was conducted as part of the Alliance to Combat Transnational Threats (ACTT) and yielded more than 3200 lbs of marijuana with an estimated street value of more than $2.5 million.

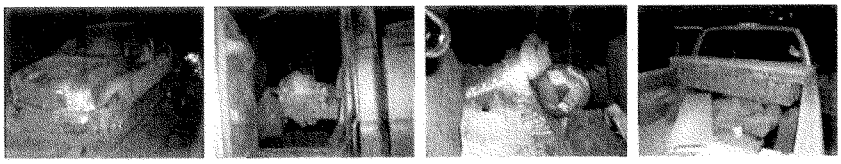
The ACTT Partners conducted a four day operation which was aimed at impacting the criminal element that is exploiting the Vekol Valley and Silver Bell Mountain Area. The operation displayed the unprecedented level of cooperation, coordination and communication that is taking place between agencies across Arizona to deny, degrade, disrupt and dismantle smuggling organizations.

The multi-agency operation involved the Bureau of Land Management (BLM), Sheriffs Offices' from Pinal County (PCSO), Pima County (PCSD), and Maricopa County (MCSO), Immigration and Customs Enforcement Removal Operations (ICE ERO) and Homeland Security Investigations (ICE HSI), Customs and Border Protection Office of Field Operations (OFO) and Office of Border Patrol (OBP). The Arizona Department of Public Safety (DPS), Police departments from Casa Grande (CGPD), Eloy (EPD), Marana (MPD), Oro Valley (OVPD), the Tohono O'odham Nation (TOPD), and the Ak-Chin Indian Community (AKPD) also participated in the operation which concentrated efforts in Vekol Valley and the Silver Bell Mountains. The operation displayed the unprecedented level of cooperation, coordination and communication that is taking place between agencies across Arizona to deny, degrade, disrupt and dismantle smuggling organizations. Intelligence gathered and shared between the agencies led to 102 arrests, 7 stolen vehicles recovered, and the seizure of 12 firearms and more than 3200 pounds of marijuana.

Below are examples of some of the cases law enforcement investigated during this detail.

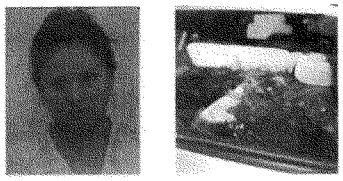
- February 16th, a Ford pickup truck was being driven blacked out (no lights visible) near the Sawtooth Mountains. The vehicle fled at a high rate of speed when law enforcement tried to stop it. The vehicle could not be pursued because of the reckless manner in which it was being driven.

- February 16th, a Ford pickup truck was being driven blacked out near Sunland Gin Road. Law enforcement tried to stop the truck but it fled. Stop Sticks were used and the vehicle became disabled. Several occupants fled the vehicle into the desert and were not located. This vehicle was being used as a resupply truck and had been stolen out of Phoenix only hours prior.

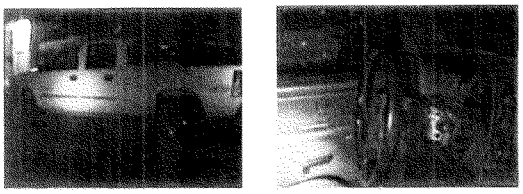


- February 16th, a Chevy Avalanche was being driven blacked out near the Sawtooth Mountains. Law enforcement tried to stop the vehicle but it fled. The vehicle could not be pursued because of the reckless manner in which it was being driven.

- February 16th, a Chevy Blazer was being driven on Interstate-8 near Stanfield. The vehicle was traveling very slowly and weaving. Law enforcement stopped the vehicle and observed eight bundles of marijuana in plain view. The driver Erica Katherine Armstrong (age 32 of Casa Grande) was arrested for Possession of Marijuana for Sale, an outstanding Assault warrant and for Driving on a Suspended License. The marijuana weighed 191 pounds and had a street value of $95,500. Armstrong is currently being held on a $20,000 bond.



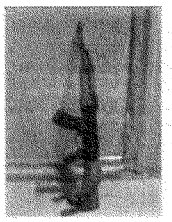
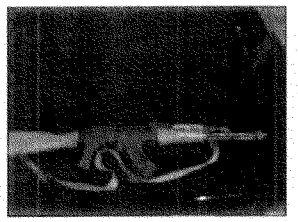
- February 17th, law enforcement observed two trucks traveling in tandem near the Sawtooth Mountains. Both vehicles stopped and the occupants got out and began to talk. The occupants had night vision equipment, rifles and were wearing outer carrier bullet proof vests. The individuals then got back into their vehicles and continued driving. When law enforcement attempted to stop them, both vehicles fled. The vehicles could not be pursued because of the reckless manner in which they were being driven. A short time later one of the vehicles a 2004 GMC truck was found abandoned. The vehicle had been reported stolen out of Peoria earlier in the week.



- February 18th, law enforcement stopped a vehicle near the Sawtooth Mountains. The driver of the vehicle Rogelio Salazar Gastelum (age 45) was arrested for Possession of Cocaine, Possession of Methamphetamine for Sale and Possession of Drug Paraphernalia. The passenger Gordon Lee Encinas (age 49 – pictured below) was arrested for our outstanding felony warrant and Possession of Marijuana.

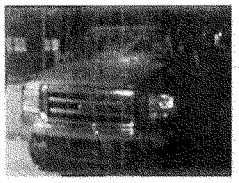
- February 18th, law enforcement tried to stop a stolen Ford pickup truck on Interstate-8. Law enforcement tried to stop the vehicle but it fled. The vehicle could not be pursued because of the reckless manner in which it was being driven.

- February 19th, law enforcement tried to stop a Dodge pickup truck traveling eastbound Harmond Road which was traveling blacked out. When law enforcement tried to stop the vehicle it fled into the desert toward the Sawtooth Mountains. Spikes were successfully deployed and the occupants bailed out and abandoned the truck. Inside of the vehicle, law enforcement located an AK-47 and a large supply of food and other survival supplies.

- February 19th, a citizen in Silverbell Estates called in a suspicious group of people in the area. Law enforcement responded and four illegal aliens they were turned over to U.S. Border Patrol.

- February 19th, law enforcement located a stolen truck hidden underneath a pile of brush. The vehicle had been reported stolen out of Peoria.



- February 19th, law enforcement stopped a vehicle near the Sawtooth Mountains. The driver was Lucinda Lopez (age 30 – pictured below). She was smuggling three illegal aliens, one of which was wanted for a previous sexual assault.

Sheriff Paul Babeu stated, "Pinal County has been labeled the Number One Pass Through County in All of America for Drug and Human Trafficking. I am very appreciative of the efforts of all of our law enforcement partners in helping us with this fight. As you can tell from this multi-agency detail and past details, the criminal activity level is not decreasing. This area needs a heavy and continuous law enforcement presence if we are to defeat those responsible for drug and human trafficking and the crimes associated with it.."

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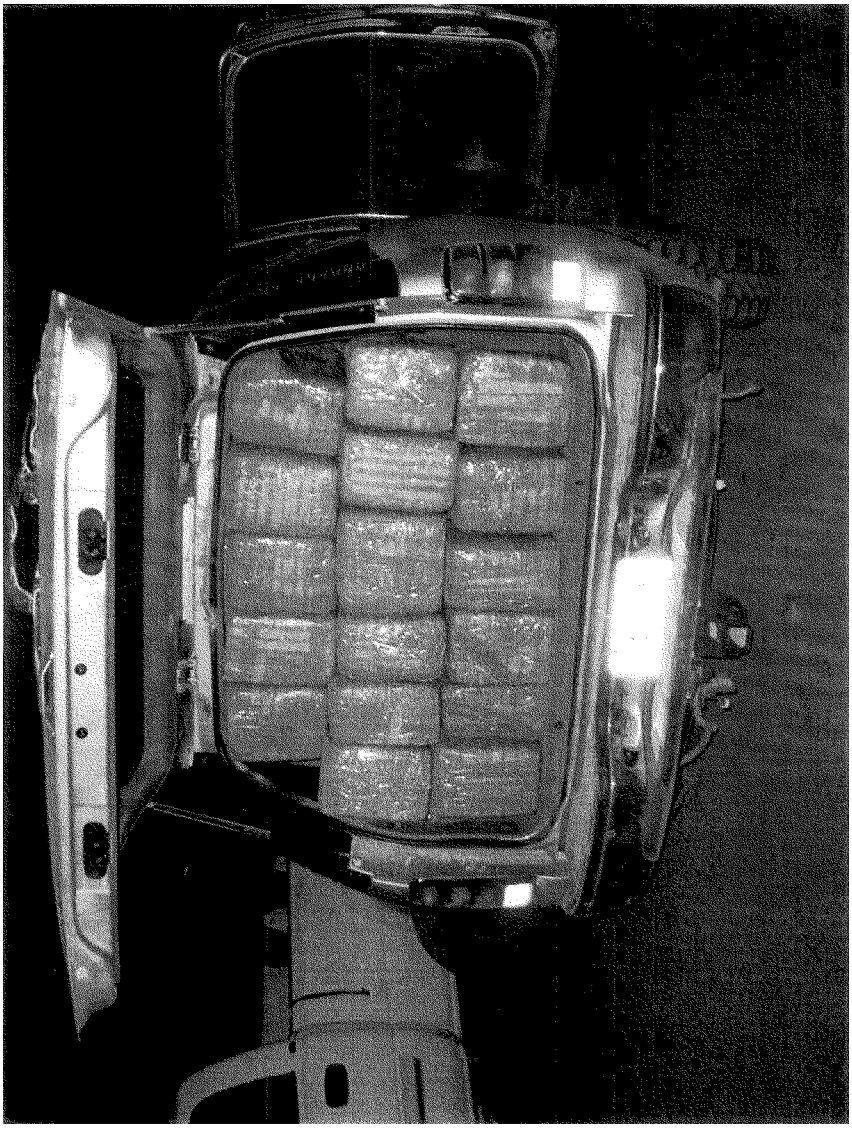
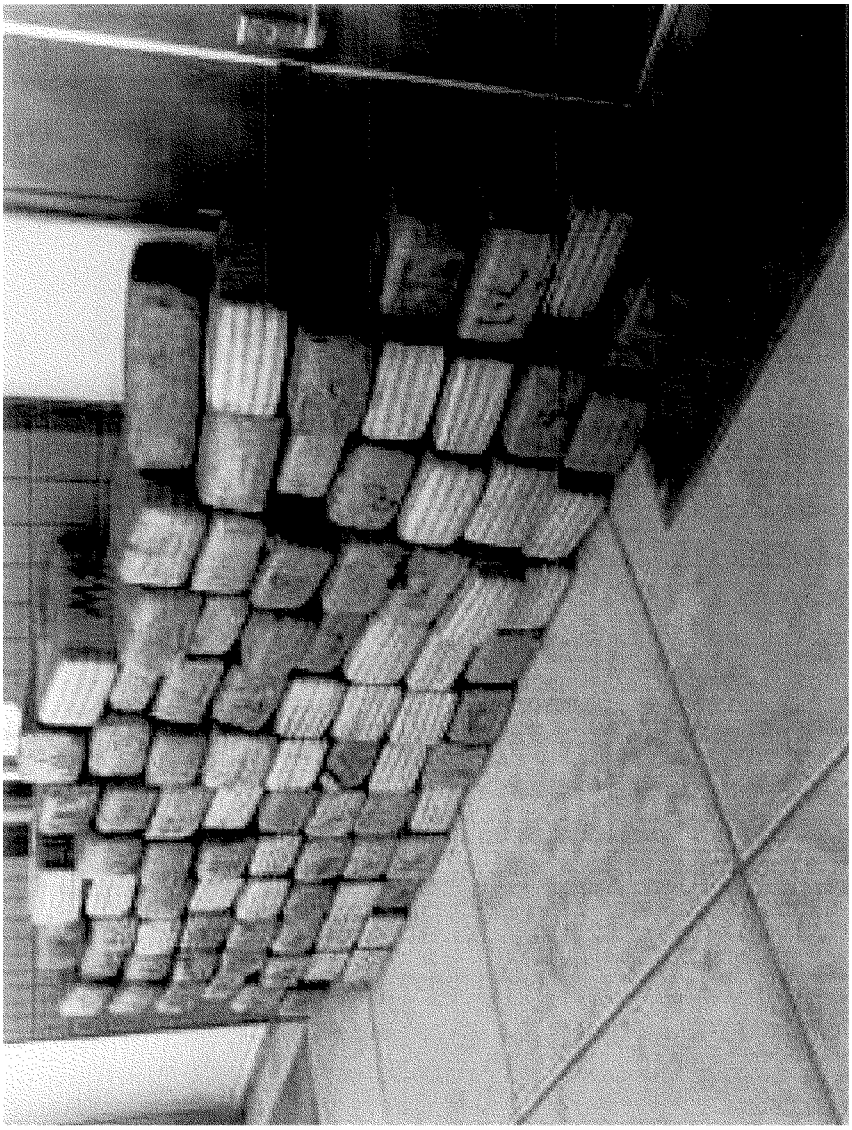




NEWSRELEASE

Pinal County Sheriff's Office • 971 Jason Lopez Circle
Florence, Arizona 85132 • 520-866-5174 • Fax: 520-866-5195

Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Friday, February 25, 2011

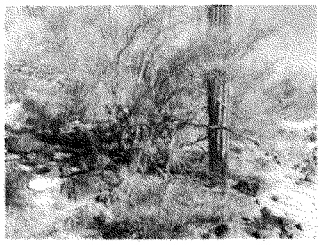
CONTACT: Media Relations, Tim Gaffney, 520-705-8124

Pinal County Investigating Dead Body in Vekol Valley

On February 21st, 2011 at 9:42 p.m. the Pinal County Sheriff's Office responded to an agency assist with the U.S. Bureau of Land Management (BLM). A BLM Ranger reported he had located the body of a deceased subject in the desert that appeared to be a possible illegal immigrant. The body was located south of Interstate-8 in the desert area near Vekol Valley.

The BLM Ranger reported he was in the desert area assisting the U.S. Border Patrol who were tracking a group of armed suspects carrying drug backpacks when they came upon the deceased body. The male was laying face down on top of a fully loaded AK-47 assault rifle. The body was that of an adult Hispanic male. The individual appeared to have died approximately one week prior. Additional survival supplies and ammunition were located on his person.

The body was taken to the Medical Examiner's Office to determine the cause of death.



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NEWSRELEASE

Pinal County Sheriff's Office • 971 Jason Lopez Circle
Florence, Arizona 85132 • 520-866-5174 • Fax: 520-866-5195

Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Tuesday, March 29, 2011

CONTACT: Media Relations, Tim Gaffney, 520-705-8124

Carlos Lopez Arrested for Kidnapping

On March 28th, 2011 at 1:20 a.m. deputies from the Pinal County Sheriff's Office responded to the Eloy Police Department regarding a possible kidnapping. The victim (age 41 of Mexico) alleged he had been kidnapped at gunpoint by Carlos Ernesto Cervante-Lopez (age 23 of Mexico).

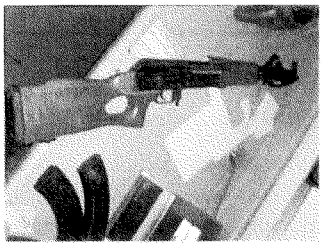
Officers from the Eloy Police Department told Deputies they had stopped the vehicle the victim was driving on a traffic stop earlier in the evening. Immediately upon stopping the vehicle, the victim exited out of the driver's door and ran back to the officers alleging he had been kidnapped.

Inside of the vehicle officers located an AK47 Assault Rifle and Lopez. Lopez was detained and later taken to the Eloy Police Department for further investigation.

The investigation revealed the victim and Lopez had met at "Eddie's Bar" in Eloy earlier in the evening. The victim told deputies, as he was leaving the bar, Lopez retrieved the rifle from a location outside of the bar. Lopez pointed the rifle at the victim and demanded he drive him to Phoenix. The victim got into his vehicle and Lopez got into the passenger's seat. Lopez ordered him at gunpoint to drive.

A short time later, the victim said he "feared for his life" so he jumped out of his vehicle while it was moving and landed on his tailbone. Lopez stopped the vehicle and once again ordered him back into the vehicle and told him to drive. A short time later they were stopped by the Eloy Police Department.

Lopez was booked into the Pinal County Adult Detention Center for one count each of Kidnapping, Aggravated Assault and Misconduct Involving a Weapon. He is currently being held on a "No Bond" status.



SUBMITTED BY SENATOR COBURN

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 1 2011

The Honorable Tom Coburn
United States Senate
Washington, DC 20510

Dear Senator Coburn:

Thank you for your letter of August 6, 2010, regarding efforts on the part of the Department of the Interior to manage public lands while assuring a secure border with Mexico. Secretary Salazar has asked me to respond on his behalf.

As you acknowledged in your letter, our working relationship with the Department of Homeland Security continues to improve. The Department has coordinated with the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management to provide the enclosed response to your request. I believe this information demonstrates the Department's commitment to preserve the Nation's natural and cultural resources while working with our partners at the Department of Homeland Security to secure its borders.

Should your staff require any further information, please have them contact the Department's Interagency Borderlands Coordinator, Mr. Jon Andrew, at (202) 208-7431. Similar letters are being sent to Senators John McCain and Jon Kyl.

Sincerely,

Rhea Suh
Assistant Secretary
Policy, Management and Budget

Enclosures

1. ***To accomplish the mission of operational control of the U.S./Mexico border, the Department of Homeland Security (DHS) needs access to public lands. Much of the public lands adjacent to or in close proximity to the border are designated wilderness areas under the Wilderness Act of 1964. What are the controlling and overarching legal considerations affecting DHS access (including routine motorized patrols, surveillance infrastructure, and emergency access) to wilderness areas? What legal effect did the Secure Fence Act of 2006 (P.L. 109-367) or the provision passed last year in the Interior appropriations bill (section 126 of P.L. 111-88) have on the application of the Wilderness Act and in wilderness areas specifically?***

   Congress has given the DHS a clear mandate to secure our international borders and deter illegal border related activity, and we work cooperatively with the DHS, including U.S. Customs and Border Protection (CBP), to accomplish our respective missions on Federal lands near the border. In working cooperatively, the overarching legal consideration is compliance with applicable laws, including without limitation, the Wilderness Act, the Secure Fence Act, the Endangered Species Act, and the various laws applicable to lands managed by the Department of the Interior (DOI) bureaus, the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS).

   In 2006, DHS, DOI, and the U.S. Department of Agriculture (USDA) entered into a Memorandum of Understanding (MOU) titled "Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders." This MOU (see attached) provides an important framework for the agencies to address and resolve issues associated with access to wilderness areas for routine and motorized patrols, as well as siting and installation of border security infrastructure.

   The Secure Fence Act authorized the DHS to waive Federal laws, including the Wilderness Act, to allow for the placement of border infrastructure and expedited construction of vehicle and pedestrian barriers. To aid in securing the border, DHS Secretary Michael Chertoff exercised this authority on several occasions. We believe that the Secure Fence Act, in combination with Section 126 of the FY 2010 Interior and Environment Appropriations Act, has provided adequate guidance to allow for the expedited placement of border infrastructure and access for border security purposes. In addition to these authorities, the 2006 MOU has provided for the coordination of day-to-day operations of CBP, DOI, and USDA to allow for the necessary border security work in Wilderness areas and on Federal lands in general.

2. ***Please identify each Arizona wilderness area (or study area, lands managed for wilderness characteristics or other similar designation) within 100 miles of the U.S.-Mexico border where US Customs and Border Protection (CBP) does not currently have access for routine motorized patrols or is required to consult with federal land managers for permission to access the land.***

   The 2006 MOU between DHS, DOI, and USDA provides operational guidelines for CBP's access to Federal lands along the border, designated Wilderness areas, Wilderness Study Areas and other lands managed for wilderness values. Depending on the means of access (motorized or non-motorized) and the circumstances at the time, little or no consultation may be required. On

any Federal lands at any time, CBP may patrol on foot or horseback. At any time, CBP may conduct motorized patrols on public and administrative roads and/or trails, and in areas previously designated by the land management agency for off-road vehicle use. Under exigent or emergency circumstances, including pursuit of suspected cross-border violators (CBV), no consultation is required for CBP to use motorized vehicles to access any Federal lands. We believe the guidelines contained in the MOU have been effective in providing the access needed by CBP, and have allowed us to strike a balance between the need for environmental protection and securing the border.

3. ***Both Department of Interior (DOI) and DHS staff seemed concerned about potential litigation that might arise if the CBP had access to wilderness areas for routine patrols and surveillance infrastructure construction. Please explain if or how litigation risk is factored in your Departments' decisions regarding access for routine patrols and surveillance infrastructure construction. Does the current policy of allowing for emergency access to wilderness areas outlined in the 2006 Memorandum of Understanding raise similar litigation risk concerns? Why or why not?***

Our goal is to provide flexibility and realistic options for patrol and infrastructure access to DOI lands by CBP while continuing to maintain an emphasis on protection of Federal trust resources such as endangered species, tribal interests, national wildlife refuges, national parks, public lands, and designated wilderness. These are the concerns that inform the decisions of DOI land managers, rather than the possibility of litigation. Litigation risk is reduced by close adherence to the terms of the various federal laws DOI is required to implement and use of the 2006 MOU. DOI and its bureaus have not been the subject of any litigation as a result of the 2006 MOU.

4. ***DOI and U.S. Forest Service (USFS) employees remarked that DHS security efforts had resulted in positive environmental benefits. Would you agree with DHS that CBP "operations [on DOI & USFS lands close to the southern border] are generally functionally equivalent to mitigation"? If not, why not?***

By reducing cross-border illegal activity, CBP operations have reduced the environmental impacts of illegal activity in a number of areas. Illegal activities have damaged Federal lands along the border due to accumulations of trash, establishment of illegal roads and trails, graffiti, and overall degradation of the environment. The CBP has the most effect when there is a consistent physical presence; illegal activity seems to increase in direct correlation to a lack of coverage and decreased staffing levels. By reducing the environmental impacts of cross-border activity, CBP operations have reduced the need for mitigation of those environmental impacts.

Although CBP's enforcement efforts reduce cross-border illegal activity, they do not come without environmental impacts. Many of these impacts require their own mitigation. Some examples include vehicle-based operations, disturbance of endangered species, ecological impacts resulting from pedestrian and vehicle fencing, and the placement of various types of surveillance infrastructure such as towers or use of mobile surveillance systems. Thus, we do not consider CBP operations on the southern border to be functionally equivalent to mitigation.

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5. ***Recent news reports have highlighted the fact that some lands managed by DOI have been closed to the public because of border-related concerns. How many acres of land managed by DOI and USFS within 100 miles of the southern border have been closed to the public? How many acres have DOI and USFS determined are potentially unsafe for visitors due to cross border traffic or related criminal activity?***

The FWS closed a small portion (roughly 3,500 acres, or three percent) of Buenos Aires NWR in southern Arizona to all public access on October 6, 2006, due to human safety concerns. At that time there was a marked increase in violence along the border due to human and drug trafficking. The closed area extends north from the international border roughly three-quarters of a mile. However, the remainder (97 percent) of the Refuge's 118,000 acres is open to the public for recreational activities such as hiking, camping, bird-watching, and seasonal hunting. Since 2006, the Refuge has experienced a significant decline in violent activity in the area thanks to ongoing cooperation between the U.S. FWS and CBP. However, there are no plans to reopen this portion of the Refuge at this time. Any decision on the status of public access will be made in coordination with CBP.

No BLM lands are currently closed within the 100-mile borderlands zone due to border activity. The BLM has posted informational signs within the Sonoran Desert National Monument and the Ironwood Forest National Monument advising visitors of increased smuggling and other illegal activity. Some Federal lands are closed for other reasons. For example, the Tucson FWS Field Office has closed and fenced 289 acres of land at Saginaw Hill outside of Tucson due to hazardous materials. The Lower Sonoran Field Office has closed approximately 65,000 of BLM public lands in Arizona near Ajo to entry during the Sonoran Pronghorn lambing season from March 15 to July 15.

The NPS has closed approximately 68 percent (226,050 acres) of Organ Pipe National Monument due to safety concerns. A small area in Amistad National Recreation Area consisting of 5 acres below the dam and 45 miles of the Rio Grande River channel, from Box Canyon to the upper boundary, are also closed.

Thank you for your interest in the challenges we face on the southwest border. We have made great progress in assuring that the natural resources found on public lands in the Southwest will be conserved and made available to the public as much as possible while still providing for a secure border with Mexico.

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Memorandum of Understanding
Among
U. S. Department of Homeland Security
and
U. S. Department of the Interior
and
U. S. Department of Agriculture
Regarding
Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders

I. Purpose and Scope

A. This Memorandum of Understanding (MOU) is made and entered into by the Department of Homeland Security (DHS), including and on behalf of its constituent bureau U.S. Customs and Border Protection (CBP) and the CBP Office of Border Patrol (CBP-BP); the Department of the Interior (DOI), including and on behalf of its constituent bureaus, the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR); and the Department of Agriculture (USDA), including and on behalf of its constituent agency the U.S. Forest Service (USFS). Throughout this MOU, these three Departments, including their constituent agencies, may be referred to as "the Parties." Any reference to a bureau, agency, or constituent component of a Party shall not be deemed to exclude application to any appropriate bureau or constituent component of that Party. DHS recognizes that the BIA enters into this agreement only on its own behalf and not on behalf of any Indian tribe.

B. The geographic and jurisdictional scope of this MOU is nationwide. The Parties recognize the national security and counterterrorism significance of preventing illegal entry into the United States by cross-border violators (CBVs), including but not limited to the following: drug and human smugglers and smuggling organizations, foreign nationals, and terrorists and terrorist organizations. The Parties further recognize that damage to DOI and USDA-managed lands and natural and cultural resources is often a significant consequence of such illegal entry. The Parties are committed to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and - where possible - preventing adverse impacts associated with illegal entry by CBVs.

C. This MOU is intended to provide consistent goals, principles, and guidance related to border security, such as law enforcement operations; tactical infrastructure installation; utilization of roads; minimization and/or prevention of significant impact on or impairment of natural and cultural resources; implementation of the Wilderness Act, Endangered Species Act, and other related environmental law, regulation, and policy across land management agencies; and provide for coordination and sharing information

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on threat assessments and other risks, plans for infrastructure and technology improvements on Federal lands, and operational and law enforcement staffing changes. This MOU provides guidance in the development of individual agreements, where appropriate, between CBP and land management agencies to further the provisions contained herein.

D. This MOU is entered into pursuant to the governing statutory authorities of each of the Parties.

E. The Parties acknowledge that CBP operation and construction within the sixty-foot "Roosevelt Reservation" of May 27, 1907 (along the US-Mexico border) and the sixty-foot "Taft Reservation" of May 3, 1912 (along the US-Canada border) is consistent with the purpose of those reservations and that any CBP activity (including, but not limited to, operations and construction) within the sixty-foot reservations is outside the oversight or control of Federal land managers.

F. This MOU supersedes any conflicting provision of any prior MOU or Memorandum of Agreement between the Parties or their subordinate bureaus or components.

II. Background

A. DHS, through its constituent bureaus (including CBP and its CBP-BP), is statutorily mandated to control and guard the Nation's borders and boundaries, including the entirety of the northern and southern land and water borders of the United States.

B. DOI and USDA, through their constituent bureaus, are statutorily charged as managers of Federal lands throughout the United States, including DOI and USDA lands in the vicinity of international borders that are administered as wilderness areas, conservation areas, national forests, wildlife refuges, units/irrigation projects of the Bureau of Reclamation, and/or units of the national park system. Tribal governments have primary management roles over tribal lands; however, the United States, through the BIA, may also have a stewardship or law enforcement responsibility over these lands. Many of these Federal and tribal lands contain natural and cultural resources that are being degraded by activities related to illegal cross-border movements.

C. The volume of CBVs can and has, in certain areas, overwhelmed the law enforcement and administrative resources of Federal land managers. In order to more effectively protect national security, respond to terrorist threats, safeguard human life, and stop the degradation of the natural and cultural resources on those lands, DOI and USDA land managers will work cooperatively with CBP to benefit from the enforcement presence, terrorist and CBV interdiction, and rescue operations of CBP.

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III. Common Findings and Affirmation of the Parties

A. The Parties to this MOU recognize that CBP-BP access to Federal lands can facilitate rescue of CBVs on Federal lands, protect those lands from environmental damage, have a role in protecting the wilderness and cultural values and wildlife resources of these lands, and is necessary for the security of the United States. Accordingly, the Parties understand that CBP-BP, consistent with applicable Federal laws and regulations, may access public lands and waterways, including access for purposes of tracking, surveillance, interdiction, establishment of observation points, and installation of remote detection systems.

B. The Parties recognize that DOI and USDA have responsibility for enforcing Federal laws relating to land management, resource protection, and other such functions on Federal lands under their jurisdiction.

IV. Responsibilities and Terms of Agreement

A. The Parties Agree to the Following Common Goals, Policies, and Principles:

1. The Parties enter into this MOU in a cooperative spirit with the goals of securing the borders of the United States, addressing emergencies involving human health and safety, and preventing or minimizing environmental damage arising from CBV illegal entry on public lands;

2. The Parties will strive to both resolve conflicts at and delegate resolution authority to the lowest field operational level possible while applying the principles of this MOU in such manner as will be consistent with the spirit and intent of this MOU;

3. The Parties will develop and consistently utilize an efficient communication protocol respecting the chain of command for each of the Parties that will result in the consistent application of the goals, policies, and principles articulated in this MOU, and provide a mechanism that will, if necessary, facilitate the resolution of any conflicts among the Parties. If resolution of conflict does not occur at the local level, then the issue will be elevated first to the regional/sector office; if not resolved at the regional/sector level, then the issue will be elevated to the headquarters level for resolution;

4. The Parties will cooperate with each other to complete, in an expedited manner, all compliance that is required by applicable Federal laws not otherwise waived in furtherance of this MOU. If such activities are authorized by a local agreement as described in sub-article IV.B below, then the DOI, USDA, and CBP will complete the required compliance before executing the agreement;

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5. The Parties will cooperate with each other to identify methods, routes, and locations for CBP-BP operations that will minimize impacts to natural, cultural, and wilderness resources resulting from CBP-BP operations while facilitating needed CBP-BP access;

6. The Parties will, as necessary, plan and conduct joint local law enforcement operations consistent with all Parties' legal authorities;

7. The Parties will establish a framework by which threat assessments and other intelligence information may be exchanged, including intelligence training to be conducted by all parties so that the intelligence requirements of each may be identified and facilitated;

8. The Parties will establish forums and meet as needed at the local, regional, and national levels to facilitate working relationships and communication between all Parties;

9. The Parties will develop and share joint operational strategies at the local, regional, and national levels, including joint requests for infrastructure and other shared areas of responsibility;

10. The Parties will share the cost of environmental and cultural awareness training unless otherwise agreed; and

11. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. §1535 when one party is to furnish materials or perform work or provide a service on behalf of another party.

B. Responsibilities and Terms Specific to DOI and USDA. The DOI and the USDA hereby recognize that, pursuant to applicable law, CBP-BP is authorized to access the Federal lands under DOI and USDA administrative jurisdiction, including areas designated by Congress as wilderness, recommended as wilderness, and/or wilderness study areas, and will do so in accordance with the following conditions and existing authorities:

1. CBP-BP agents on foot or on horseback may patrol, or pursue, or apprehend suspected CBVs off-road at any time on any Federal lands administered by the Parties;

2. CBP-BP may operate motor vehicles on existing public and administrative roads and/or trails and in areas previously designated by the land management agency for off-road vehicle use at any time, provided that such use is consistent with presently authorized public or administrative use. At CBP-BP's request, the DOI and the USDA will provide CBP-BP with keys, combinations, or other means necessary to

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access secured administrative roads/trails. CBP-BP may drag existing public and administrative roads that are unpaved for the purpose of cutting sign, subject to compliance with conditions that are mutually agreed upon by the local Federal land manager and the CBP-BP Sector Chief. For purposes of this MOU, "existing public roads/trails" are those existing roads/trails, paved or unpaved, on which the land management agency allows members of the general public to operate motor vehicles, and "existing administrative roads/trails" are those existing roads/trails, paved or unpaved, on which the land management agency allows persons specially authorized by the agency, but not members of the general public, to operate motor vehicles;

3 CBP-BP may request, in writing, that the land management agency grant additional access to Federal lands (for example, to areas not previously designated by the land management agency for off-road use) administered by the DOI or the USDA for such purposes as routine patrols, non-emergency operational access, and establishment of temporary camps or other operational activities. The request will describe the specific lands and/or routes that the CBP-BP wishes to access and the specific means of access desired. After receiving a written request, the local Federal land manager will meet promptly with the CBP-BP Sector Chief to begin discussing the request and negotiating the terms and conditions of an agreement with the local land management agency that authorizes access to the extent permitted by the laws applicable to the particular Federal lands. In each agreement between CBP-BP and the local land management agency, the CBP-BP should be required to use the lowest impact mode of travel and operational setup reasonable and practicable to accomplish its mission. The CBP-BP should also be required to operate all motorized vehicles and temporary operational activities in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands. However, at no time should officer safety be compromised when selecting the least impactful conveyance or operational activity. Recognizing the importance of this matter to the Nation's security, the CBP-BP Sector Chief and the local Federal land manager will devote to this endeavor the resources necessary to complete required compliance measures in order to execute the local agreement within ninety (90) days after the Federal land manager has received the written request for access. Nothing in this paragraph is intended to limit the exercise of applicable emergency authorities for access prior to the execution of the local agreement. The Secretaries of the Interior, Agriculture, and Homeland Security expect that, absent compelling justification, each local agreement will be executed within that time frame and provide the maximum amount of access requested by the CBP-BP and allowed by law;

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4. Nothing in this MOU is intended to prevent CBP-BP agents from exercising existing exigent/emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CBVs at any time, including in areas designated or recommended as wilderness, or in wilderness study areas when, in their professional judgment based on articulated facts, there is a specific exigency/emergency involving human life, health, safety of persons within the area, or posing a threat to national security, and they conclude that such motorized off-road pursuit is reasonably expected to result in the apprehension of the suspected CBVs. Articulated facts include, but are not limited to, visual observation; information received from a remote sensor, video camera, scope, or other technological source; fresh "sign" or other physical indication; canine alert; or classified or unclassified intelligence. For each such motorized off-road pursuit, CBP-BP will use the least intrusive or damaging motorized vehicle readily available, without compromising agent or officer safety. In accordance with paragraph IV.C.4, as soon as practicable after each such motorized off-road pursuit, CBP-BP will provide the local Federal land manager with a brief report;

5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources, or if other significant issues warrant consultation, then the Federal land manager and the CBP-BP will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;

6. CBP may request, in writing, that the land management agency authorize installation or construction of tactical infrastructure for detection of CBVs (including, but not limited to, observation points, remote video surveillance systems, motion sensors, vehicle barriers, fences, roads, and detection devices) on land under the local land management agency's administrative jurisdiction. In areas not designated as wilderness, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency. In areas designated or managed as wilderness, the local Federal land manager, in consultation with CBP, will promptly conduct a "minimum requirement," "minimum tool," or other appropriate analysis. If supported by such analysis, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency;

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7. The DOI and USDA will provide CBP-BP agents with appropriate environmental and cultural awareness training formatted to meet CBP-BP operational constraints. The DOI and USDA will work with CBP-BP in the development and production of maps for use or reference by CBP-BP agents including, as appropriate, site-specific and resource-specific maps that will identify specific wildlife and environmentally or culturally sensitive areas;

8. The DOI and USDA will, as applicable, provide CBP-BP with all assessments and studies done by or on behalf of DOI or USDA on the effects of CBVs on Federal lands and native species to better analyze the value of preventative enforcement actions;

9. The DOI and USDA will assist CBP-BP in search and rescue operations on lands within the respective land managers' administration when requested;

10. The CBP-BP and land management agencies may cross-deputize or cross-designate their agents as law enforcement officers under each other agency's statutory authority. Such cross-deputation or cross-designation agreements entered into by the local land management agency and the field operations manager for the CBP-BP shall be pursuant to the policies and procedures of each agency; and

11. DOI and USDA will work at the field operations level with affected local CBP-BP stations to establish protocols for notifying CBP-BP agents when DOI or USDA law enforcement personnel are conducting law enforcement operations in an area where CBP-BP and DOI/USDA operations can or will overlap.

C. Responsibilities and Terms Specific to the CBP. DHS hereby agrees as follows:

1. Consistent with the Border Patrol Strategic Plan, CBP-BP will strive to interdict CBVs as close to the United States' international borders as is operationally practical, with the long-term goal of establishing operational control along the immediate borders;

2. If the CBP-BP drag any unpaved roads for the purpose of cutting sign under provision IV.B.2 above, then CBP-BP will maintain or repair such roads to the extent that they are damaged by CBP-BP's use or activities;

3. If CBP-BP agents pursue or apprehend suspected CBVs in wilderness areas or off-road in an area not designated for such use under

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paragraph IV.B.5, then the CBP-BP will use the lowest impact mode of travel practicable to accomplish its mission and operate all motorized vehicles in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands, provided officer safety is not compromised by the type of conveyance selected;

4. CBP-BP will notify the local Federal land manager of any motorized emergency pursuit, apprehension, or incursion in a wilderness area or off-road in an area not designated for such use as soon as is practicable. A verbal report is sufficient unless either CBP-BP or the land managing agency determines that significant impacts resulted, in which case a written report will be necessary;

5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources as determined by a land manager, or if other significant issues warrant consultation, then the CBP-BP and Federal land manager will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;

6. CBP will consult with land managers to coordinate the placement and maintenance of tactical infrastructure, permanent and temporary video, seismic and other remote sensing sites in order to limit resource damage while maintaining operational efficiency;

7. CBP-BP will ensure that current and incoming CBP-BP agents attend environmental and cultural awareness training to be provided by the land management agencies;

8. CBP-BP will provide land management agencies with appropriate and relevant releasable statistics of monthly CBV apprehensions, search and rescue actions, casualties, vehicles seized, drug seizures and arrests, weapons seizures and arrests, and other significant statistics regarding occurrences on the lands managed by the land manager;

9. CBP-BP will consult with land managers in the development of CBP-BP's annual Operational-Requirements Based Budgeting Program to ensure affected land managers can provide input and are, in the early stages of planning, made aware what personnel, infrastructure, and technology the CBP-BP would like to deploy along the border within their area of operation; and

10. CBP-BP will work at the field operations manager level with affected local land management agencies to establish protocols for notifying

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land management agency law enforcement officers when BP is conducting special operations or non-routine activities in a particular area.

V. Miscellaneous Provisions

A. Nothing in this MOU may be construed to obligate the agencies or the United States to any current or future expenditure of funds in advance of the availability of appropriations, nor does this MOU obligate the agencies or the United States to spend funds for any particular project or purpose, even if funds are available.

B. Nothing in this MOU will be construed as affecting the authority of the Parties in carrying out their statutory responsibilities.

C. This MOU may be modified or amended in writing upon consent of all Parties, and other affected Federal agencies may seek to become a Party to this MOU.

D. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOU with respect to, *inter alia*, pay, personnel benefits, injuries, accidents, losses, damages, and civil liability. This MOU is not intended to change in any way the individual employee status or the liability or responsibility of any Party under Federal law.

E. The Parties agree to participate in this MOU until its termination. Any Party wishing to terminate its participation in this MOU shall provide sixty (60) days written notice to all other Parties.

F. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person, party, or entity. This MOU is not and shall not be construed as a rule or regulation.

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In witness whereof, the Parties hereto have caused this Memorandum of Understanding to be executed and effective as of the date of the last signature below.

Date: 3/24/06 — Secretary of Homeland Security

Date: 3/31/06 — Secretary of the Interior

Date: 3/29/06 — Secretary of Agriculture

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Statement for Record
Larry A. Dever
Sheriff of Cochise County, Arizona
April 7, 20011

Mr. Chairman, members of the Committee, thank you for the opportunity to submit this testimony for the record. I regret not being able to attend this hearing in person, as I believe what I have to say has significance and the chance to answer your questions under further examination would be invaluable.

This is the 10th time over the past 15 years that I have offered Congressional testimony relative to the state of affairs on our Nation's southwest border, specifically the border with the Republic of Mexico. I have lived in this environment for almost 60 years and worked as a deputy sheriff for over 20 years. I am now serving in my 15th year as Sheriff in Cochise County, Arizona which has been part of the most active drug and human smuggling areas in our entire nation for at least the past 13 years. I tell you this so you may understand that I know something of what I speak.

SITUATION--GROUND ZERO:

U.S. Customs and Border Protection is divided, as far as Border Patrol is configured, into 9 Sectors. The Tucson, Arizona Sector "boasts" if you can use that word to be the most active sector along the entire border. In fact, it accounts for almost 50% of all illegal alien arrests and half the marijuana seizures **in the entire nation.** Cochise County sits in the southeast corner of this sector, with 83.5 miles of international boundary with Mexico.

Since 1997 we have seen a tremendous proliferation of federal law enforcement assets in our area in an attempt to counter burgeoning drug and human smuggling activity. As law enforcement has become more effective, in one sense, smugglers have become more creative, more competitive, more determined and more dangerous. This is the core of my testimony today.

JUST THE FACTS, M'AM:

Our current Secretary of Homeland Security and many Department of Homeland Security employees have been and are still making statements that, and I quote, "The border is more secure than it has ever been." "You need not be concerned about the border." "Cities along the border are among the safest in the country." In support of these declarations, we have been presented with statistical evidence that includes reduced or flat crime rates, diminishing numbers of illegal alien arrests and increasing drug seizures. What I will try to convey to you, is that while the numbers are interesting, they are not probative as presented of "border more secure than it has ever been," and certainly not demonstrative of community safety and welfare.

When defining border security, statements from multiple levels of DHS employees make

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it clear that they do not have a definitive idea of what that means. I quote Secretary Napolitano, "If I knew what securing the border means, that would be one thing." And the Chief of the Border Patrol, a great guy I must say, recently publicly stated that "We are still trying to define what securing the border means", or words to that effect. Well, my question to all is, how can you meaningfully assign assets to a task for which you have no clear objective? And again, the Secretary recently made a statement when discussing asset requirements that "there comes a time when enough is enough." Excuse me and my crudeness, but that attitude is akin to suggesting that as long as there are long as we have elderly among us, we will just have to put up with a certain amount of exploitation, identity theft and abuse. Sorry. You can try to sell that, but the people I work for aren't buying. Such an attitude should never be allowed to influence our determination to stamp out crime and that includes drug and human smuggling.

DEFINNING A SECURE BORDER:

The reality is that currently, in spite of all the efforts at deterrence, anyone who wants to cross the southern border can. Communities all over our nation are suffering as a consequence and the threat to our homeland security is huge. Every day in cities, towns and rural areas there is untilled damage and destruction and lives are destroyed or forever changed at the hands of people who should never have been allowed into our country. We do not know the intentions of people who enter our country illegally until they act out, but we can measure the consequences and it is not a pretty picture.

So where do you start with border security. We simply need to be able to detect through the application of technology and human observation every single incursion across our border. Those who say this is impossible are wrong; it has been done in certain areas and is achievable if we have the will along our entire border. Then we must have the ability to launch a predictable interdiction and finally apply sanctions to those who have been caught.

Now you can throw up all the numbers you want to demonstrate progress or declare victory, but the true test of whether our borders are secure and safe or not is and will be heard in the voices and seen through the eyes of those who live here. How do you quantify that? You can't, but you will know it when they see it and you hear it. We are talking quality of life issues.

Recently, Senator McCain and several U.S. House of Representatives members toured our southern Arizona border. They heard, they saw and they know of what I speak. It is not up to Congress, any Presidential Administration or any Sheriff to tell when that quality life has returned. The people we work for will tell us, the smile will return to their faces and they will be most appreciative. In the words of almost every Border Patrol agent that works this problem every day, "We've made some progress, but we still have a long way to go."

So, in the words of Larry the Cable Guy, "get 'er done!"

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Post-Hearing Questions for the Record
Submitted to Sheriff Raymond Loera
From Senator Tom Coburn

"Securing the Border: Progress at the Local Level"
April 7, 2011

1. Are you aware of federal land management policies that prohibit regular motorized access for border patrol agents?
    a. What effect do you believe this policy has on your job?
    b. Would it be helpful for law enforcement for Congress to ensure border patrol has motorized patrol access to these lands?

Response: The only restriction I am aware of as to federal land is in protected areas. These are closed to all vehicular traffic. I am unaware of the degree of illegal activity in these areas and have not received any complaint from law enforcement agencies needing access and not being allowed to do so. If in fact this would be or is a problem, it would be advantageous for all law enforcement to be exempted in these areas.

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Post-Hearing Questions for the Record
Submitted to Sheriff Raymond Cobos
From Senator Tom Coburn

"Securing the Border: Progress at the Local Level"
April 7, 2011

1. Are you aware of federal land management policies that prohibit regular motorized access for border patrol agents?
   a. What effect do you believe this policy has on your job?
   b. Would it be helpful for law enforcement for Congress to ensure border patrol has motorized patrol access to these lands?

ANSWER

1. No.
   a. I am not aware of any federal land management policies that prohibit regular motorized access to public lands within my county (Luna) at this time. Yes. A wilderness study area adjoins the southeast corner of Luna County. Most of the Wilderness Study Area is in adjoining Dona County, New Mexico, to the east. The area is well patrolled by the local border patrol station personnel. We seldom enter that area because of limited resources.

   b. Any policy allowing motorized access to the Border Patrol and no other state or local law enforcement agency would be counterproductive to our joint border security effort. We work hand in hand with the Border Patrol in my county to include joint ATV operations in rugged terrain. If the federal government restricts motorized access to those areas under its control only to the Border Patrol, I would have to assume the federal government proposes to enforce applicable local and state laws in those areas. It would be more helpful than not to allow the Border Patrol motorized access to restricted public lands adjoining the border with Mexico.

Pinal County Sheriff's Office

Paul Babeu
Sheriff

May 27, 2011

Re: Post-Hearing Questions for the Record from Senator Tom Coburn

Dear Senator Coburn,

I received your request for additional information from my testimony on April 7th, 2011. In this letter, I have responded to your request for additional information regarding problems in Pinal County related to drug and human trafficking. I want to thank you for this opportunity and extend to you an invitation to come to Pinal County to see the problems our citizens and my office are faced with on a daily basis because of an unsecured border with Mexico.

If the majority of regular illegals enter the US without much effort, what do we think the likelihood of success of people from countries of interest, who possess military training and may have deliberate plans against America? What about possible terrorist sleeper cells that we have been warned at great length, who plan to slip into America and wait for commands to coordinate their mayhem? The 9-11 Commission warned us to remain vigilant, yet the daily statements, press conferences and staged immigration summits suggest that there is hardly a problem at all. In fact, DHS Secretary Janet Napolitano says, "the border is more secure than ever" and dismisses anyone who disagrees and labels them fear mongerers. She dispatches her top aides to publicly attack elected border sheriffs in an effort to silence dissent and refers to Sheriffs as liars.

If 219,300 illegals were apprehended by the US Border Patrol last year in the Tucson Sector and they figure that they apprehend approximately one out of every three that illegally cross our unsecured border, how is this a secure border by anyone's measure? It should be no wonder why Secretary Napolitano is changing their metrics of tracking border security. Why change the metrics, after years of gathering comparable data and now Napolitano wants to use crime statistics that are dramatically lower throughout the nation and then attempt to substantiate her erroneous claim that the border is safer now than ever by pointing at the downward trend in crime stats.

It is clear to the American people that there is an agenda behind this blatant attempt to deceive us into believing that everything is just fine and motivating the President's false statement that the border fence is now complete. It is evident that President Obama is

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working to provide a path to citizenship or outright amnesty to nearly 12 million illegals. I am against any path towards citizenship and will fight any form of amnesty. Our proud nation is built upon the rule of law. In America, the King is NOT the rule of law…the rule of law is King. We must not undermine the law by rewarding foreigners who have knowingly disrespected our law and our nation and then reward this conduct with citizenship. What about the millions of foreign citizens who have followed our laws and process and have waited their turn for visa's or citizenship. Should they be treated unfairly and be cut in front of? Citizenship and voting which is afforded to our citizens must be off the table. Before we even get to this discussion of immigration reform, or we decide what happens with nearly 12 million illegals, we must secure the border first. The solution is Senators John McCain and Jon Kyl's 10 Point Border Security Plan.

A great example of this would be what occurred two weeks ago on May 12th within an eight hour time frame. My Tactical Team apprehended a group of 10 smugglers carrying 500 pounds of marijuana. Shortly after that case, we had a fire truck returning to a local fire station and a Cadillac Escalade ran a stop sign in front of the fire truck, causing the truck to swerve to miss a deadly side impact collision. The fire truck rolled over trapping its crew. The Cadillac did not stop to render aide, instead they sped away. My deputies located the Cadillac a few miles away and to no one's surprise – it turned out to be a human smuggling load filled with 9 illegals. And yet another incident occurred in which our heroes in the U.S. Border Patrol were also trying to intercept a group of illegals backpacking loads of marijuana, when their vehicle was struck by a train. Our two brave law enforcement heroes were killed while they were doing their job protecting America.

Senator Coburn, I would be honored to come testify before your committee and show a 40 minute power point presentation recapping many of the events tied to drug and human trafficking in Pinal County during 2010. I feel the power point would give the Senate Homeland Security Committee a more detailed view of what is occurring 70 miles north of the border. Most Americans agree with us, that our unsecured border is no longer just about hundreds of thousands of illegals crossing seemingly unabated into America, but this is now one of the gravest national security threats. If the border is not secured soon, America may be impacted by another major terrorist attack, who will likely use our porous border as an easy route into America.

President Obama continues our wars in Iraq and Afghanistan, even after he led the American people to believe he would remove us from those near decade long wars. We are no closer to leaving than when he made these promises three years ago. Now, we started bombing Libya and the reason President Obama provided our citizens, was for strictly humanitarian reasons. If that truly was the criteria to start bombing a foreign nation, we would need to initiate at least thirty wars across the globe. President Obama's words rings hallow. The President should look south to Mexico and see the daily drumbeat of violence and terror which has been unleashed by the Mexican Drug Cartels. Over 35,000 people have been killed in the war Mexican president Calderon has waged against the cartels. The cartels have destabilized and nearly toppled the Mexican government, yet President Obama does little to meaningfully assist in this war.

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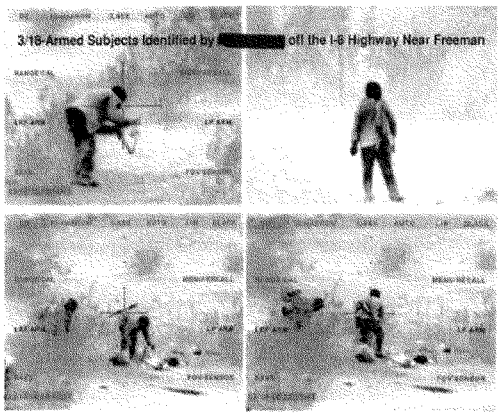
The Mexican government, their leaders and their citizens are not the enemy of America. The drug cartels are the enemy of Mexico, the enemy of their citizens and the enemy of America. Mexico is America's second largest trading partner and the largest trading partner of Arizona. Our economic vitality and strength is tied to Mexico and their prosperity is threatened by the daily mayhem and violence committed by the stronger cartels. We need to have a viable military option to provide enhanced military support by means of equipment, training and possible joint military option to defeat the Mexican cartels within the borders of Mexico.

1. **Are you aware of any pressure from the feds that has been placed on local law enforcement, or the border patrol, to reduce the number of arrests? Is federal funding for border security efforts at all tied to political stances on illegal immigration enforcement or publicly-stated beliefs?**

   Pinal County is the "Number One Pass through County in all of America for Drug and Human Trafficking." We are the number one pass through county because of the roadways and terrain features, which funnel the majority of the known drug trafficking routes from the four border counties through our county. Smugglers then load their drugs or smuggled people into vehicles along Interstate 8 and Interstate 10. Below is a photo taken of armed cartel members along Interstate 8 escorting a marijuana load.



   Regarding your funding question, there have been several federal and at least one state grant which excluded Pinal County from applying because we are "Not a Border County." Pinal County is extremely understaffed as compared to the National average. We have applied for additional deputies under the COPS Hiring program which is run through the U.S. Department of Justice but each year we have had our request denied. The primary responsibility of my deputies is to respond to call for service. I have 142 deputies assigned to work the entire 5,400 square mile county.

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There have been occasions when my tactical team commander has reached out to Border Patrol and asked for assistance with known problem areas related to drug and human smuggling. He has been told their leaders told them they have to stay in areas which are less active.

Cochise County Sheriff Larry Dever swears that he has been directly informed by several US Border patrol supervisors that they have been directed by superiors to scare away illegal crossers, to ensure that the numbers of arrests are less and therefore show less of a problem. Sheriff Dever is one of America's most respected lawmen and a board member of the National Sheriff's Association. I have worked closely with Sheriff Dever consistently over the past three years and know him to be highly credible and honest. I will trust his word over Secretary Napolitano any day of the week.

The current Border Patrol National Union President is George McCubbin and the past Border Patrol National Union President T.J. Bonner could provide additional examples. Both of these men have confirmed that their members have been given orders in the past to reduce the number of apprehensions and turn illegals back south. This practice has reduced the number of apprehensions which some in politics have used as an example to show how the border is "More Secure Now than Ever."

2. **How many bodies found on federal public lands do you recover a year and what type of burden does this place on your department? What other responsibilities do you have for combating crime on public lands?**

In 2009 we had 19 cases per year and in 2010 we had 23 cases. Not only does the investigation of every dead body create a burden for my office but also the countless other search and rescue missions and other cases tied to drug and human trafficking.

One such example was July 3rd, 2010. A "Coyote" abandoned seven slow members he was escorting and they became lost in the desert. They survived by drinking their own urine for days until they finally reached an area where they could get cell phone reception. Included in this group were two children ages six and eleven.

Another example was on June 6th, 2010 at 7:30p.m.. An individual called 9-1-1 saying he and his partner had been shot. We were able to track their location through GPS coordinates to a known drug smuggling area. Before deputies could reach them both men were dead. It is believed they were part of a "Rip Crew." The timing of this incident was just after the Department of Homeland Security sent out the below Law Enforcement Intelligence Bulletin.

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"We just received information from a proven credible confidential source who reported that last weekend, a meeting was held in Puerto Penasco in which every smuggling organization who utilized the Vekol Valley was told to attend. This included rival groups within the Guzman cartel.

It was decided that the cartel would send a group of fifteen, very well equipped and armed sicarios complete with bullet proof vests, into the Vekol Valley. The Cartel has a map of where the most bandit activity has been occurring. The group will walk into the valley taking four days to get into LPOP positions and communicate back to Penasco. Penasco will then send groups of simulated backpackers carrying empty boxes covered with burlap into the Vekol Valley to draw out the bandits. Once the bandits have been identified, the sicarios will take out the bandits.

Incidentally, the night of the Vekol Valley shooting, we received information from a source who reported that the scouts in the valley (the Cartel has 23 scout locations with rolling encryption) were reporting that bandits had shot two sheriff's deputies and the area was covered with cops."

An example of a homicide would be on October 25th, 2010, we investigated a "Cartel Hit" which took place in a quiet Casa Grande neighborhood. A Cartel was upset because one of their members was giving law enforcement information regarding their activities. They called to meet with him and then executed him while he sat in his vehicle.

An example of a kidnapping/shooting would be October 4th, 2010 where two victims were kidnapped in Phoenix, Arizona. The victims (both illegal aliens) could not come up with the ransom money so they were brought to Pinal County to be killed. Both men jumped from their kidnapper's vehicle and ran for their lives. One of the men was shot two times in the back as he tried to escape.

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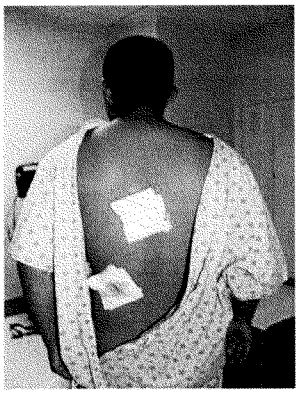
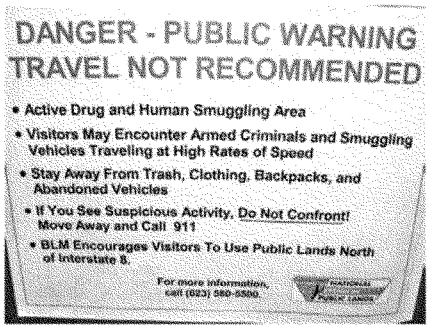


3. **Would you agree with a recent letter I received from DOI that no BLM lands are closed to visitors because of border-related criminal activity, or that only 3% of the Buenos Aires Refuge is closed to visitors, or that only 68 percent of Organ Pipe National Monument is closed to visitors? Are more areas for all purposes closed? What would you estimate is the acreage of public lands effectively closed to Arizonans?**

Below is one of the 15 billboard signs which used to be displayed only in Pinal County, 70 miles north of the US/Mexican border.



These signs have since been taken down and replaced with the below signs. Please note although they claim it is an "Active Federal Law Enforcement Patrol Area" the signs tell people with emergencies to call 9-1-1 which goes to the Pinal County Sheriff's Office.

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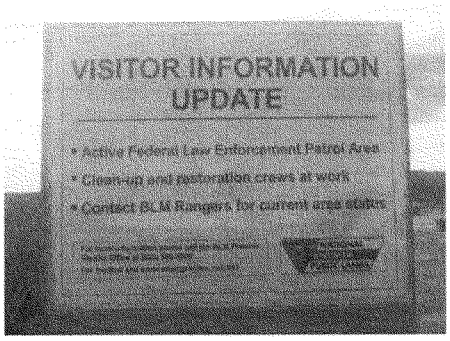

Although our areas are open we have several areas in Pinal County, which is 70 miles north of the border, that have "Normandy" style barriers running through them. I have been told the barriers were put up by the Bureau of Land Management to try and cut down on the cartels carving roadways through our deserts. The cartels have countered this by simply driving around the barriers. Why would our federal government put up these widely publicized billboards if there was no threat and the border was secured. For all intense and purpose…these areas are off limits to most citizens.

4. **Within the Tucson sector, are you aware of any federally owned lands on the border that are used by smugglers and drug cartels to smuggle narcotics and illegal aliens? Could you identify these lands?**

Yes - The Ironwood Forest National Monument (Silverbells/Sawtooths) and Sonoran Desert National Monument (Tabletop/ Vekol) are two areas within our jurisdiction that are heavily used by DTO's/ASO's.

a. **Why are these public lands used for such purposes instead of regular ports of entry and highways?**

They are an open and vast desert area, which at the southern end of our state are adjacent to Mexico. There is low to no population base throughout these areas, which allows the smuggling organizations to essentially travel across an unguarded border into the US, across these areas and into the southern portion of Pinal County. There is a higher rate of success for the smuggling organizations to smuggle larger quantities/numbers due to the unguarded border (many times a cattle guard or barbed wire fence), and due to the lack of population and Law Enforcement presence.

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b. Do you have any anecdotes to share regarding this matter?

The smuggling organizations monitor the activities of Law Enforcement, particularly Border Patrol. They know that these desert areas are vast, and essentially impossible to patrol or interdict in as you would a normal POE or highway. They know that even if spotted, they can flee into areas that are nearly impossible for Law Enforcement to follow in our vehicles, as most often the smugglers are in stolen vehicles. They also know that if reported by citizens, there is a greater response time, and thus it is easy for them to flee the area before Law Enforcement arrives. We have talked to sources that reveal that the smuggling organizations are so confident in these routes, that they will openly conduct their activities in broad daylight.

5. Are you aware of federal land management policies that prohibit regular motorized access for border patrol agents?

By the letter of the law, I believe there are laws that regulate/prohibit any motorized travel in some areas. However, by the spirit of the law, I believe that Law Enforcement is granted an allowance in furtherance of enforcing laws and apprehending criminals.

a. What effect do you believe this policy has on your job?

The policy of no motorized travel even to Law Enforcement would essentially cripple the ability of Law Enforcement to effectively apprehend, disrupt and/or dismantle the criminal organizations utilizing these lands to further their criminal activity.

b. Would it be helpful for law enforcement for Congress to ensure border patrol has motorized patrol access to these lands?

It would be extremely helpful for Congress to define that ALL Law Enforcement has the authority to override such a policy when involved in the disruption, interdiction, and/or apprehension of criminal elements utilizing these lands to conduct criminal activities.

Respectfully,

Paul R Babeu

Paul Babeu, Sheriff
Pinal County, Arizona
President, Arizona Sheriff's Association
America's Sheriff of the Year - 2011

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Pinal County Sheriff's Office

Paul Babeu
Sheriff

May 26, 2011

Mr. President – Protect America First

President Obama says the border is more secure than ever, declared the border fence complete and said, "these people will never be satisfied, until we build a moat and put alligators in the moat." We don't need a moat or alligators in Arizona – we simply need the federal government to do their job and secure the border!

Last year, 219,300 illegal immigrants were apprehended in just one sector of Arizona and many with violent felony criminal records. The US Border Patrol estimates another 400,000 made it safely past them in Arizona and now reside in your community.

If the majority of regular illegal immigrants can sneak into America, what does this say about the ability of terrorist sleeper cells? The porous US/Mexican border is the gravest national security threat facing America. This is no longer just a political fight to stop Barak Obama from giving amnesty to over 12 million illegals, it's also about protecting our nation from terrorist threats. Thousands of illegal entrants hail from State Department countries of interest--Iraq, Iran, Afghanistan, Somalia, Saudi Arabia, Yemen, and others. In some cases, we have confirmed their troubling ties to terrorism. Yet for those we apprehend, how many today live amongst us?

If the border is secure, why did the feds post 15 Billboard signs in Pinal County warning American citizens; Danger – Public Warning – Travel Not Recommended, due to armed drug cartel smuggling? This is 70 miles into Arizona, where Homeland Security confirms that no fewer than 100 of our beautiful mountains have been repurposed as lookouts for the Mexican Drug lords.

America can secure the border if we replicate the success of what was accomplished in the Yuma Sector. The Yuma Sector has now attained a 96% reduction of illegal border crossings. The Senator McCain/Kyl 10-Point Border Security Plan is developed largely from the learned successes of the Yuma Sector during Operation Jump Start.

This plan calls for immediate deployment of 6,000 armed soldiers for a period of two years. While soldiers are deployed, the double barrier fence is completed with video surveillance, lighting, sensors and roads to support rapid deployment of US Border Patrol. Thirdly, fully enforce the law without any diversion option.

We need focus on the solution to secure our border, not on a path to citizenship or amnesty for 12 million. If President Obama were sincere, why did he not pass immigration reform in his first two years, when he had supermajorities in the House and Senate? Instead, in a purely politically and racially divisive manner, he says he'll fight now when there is little hope of passage. The President has failed to fulfill his core constitutional duty to protect America.

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President Obama led us to believe he would end the wars in Iraq and Afghanistan. We're no closer to leaving than when he made these false promises. He bombs Libya for humanitarian reasons and yet ignores the outcry of neighboring Mexico in their war against the drug cartels, which have claimed over 35,000 lives and nearly toppled their government. Mexico is America's second largest trading partner and we share nearly 2,000 miles of porous border, which presents a far graver national security threat than anything we face in the middle east.

Mexico is not our enemy. The cartels are the enemy of Mexico and America. They have brought their violence here to America. Local Sheriffs can't fight them alone. We can address this growing threat, or we can make jokes, laugh and believe the border is more secure than ever.

Respectfully,

Paul R Babeu

Paul Babeu, Sheriff
Pinal County, Arizona
President, Arizona Sheriff's Association
2011 National Sheriff of the Year

(Sheriff Babeu is also a retired Army Major and served as the Commanding Officer for Task Force Yuma)

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Paul Babeu, Sheriff

FOR IMMEDIATE RELEASE
Wednesday, May 25th, 2011
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PCSO Participates in Multi Agency Tactical Detail

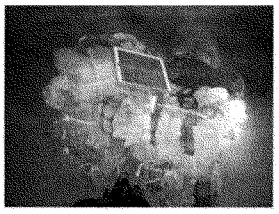
The Pinal County Sheriff's Office Tactical Team attached with U.S. Border Patrol's "BORTAC Team 5" has completed another operation to deny, degrade, disrupt and dismantle drug and human trafficking operations in Pinal County. The latest detail ran from May 11th – 13th and 18th – 20th. The operation was focused in the Vekol Valley area.

Participating in the detail were law enforcement members from the Pinal County Sheriff's Office, Maricopa County Sheriff's Office, Yuma County Sheriff's Office, Arizona Department of Public Safety, U.S. Border Patrol Tucson and Yuma Sectors, Bureau of Land Management, Immigration and Customs Enforcement – Homeland Security Investigations, Immigration and Customs Enforcement – Enforcement and Removal Operations, CBP Office of Air and Marine, Tohono O'odham Police Department, Gila River Police Department, Eloy Police Department, U.S. Attorney's Office District of Arizona and the Arizona National Guard.

During the six day operation agencies combined arrested 60 suspects, the seizure of 5,433 pounds of marijuana, $115,630 in cash, and 4 firearms. In addition, 5 stolen vehicles were recovered, 7 suspects were prosecuted federally and 38 suspects were prosecuted at the state level. Below are some examples of the cases we were involved with.

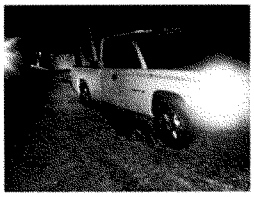
May 11th at 1:40 a.m. a group of 12 people were spotted carrying backpacks believedto be containing Marijuana just south of Interstate 8. The group was followed to a location approximately 30 yards south of Interstate 8 where they stopped underneath some brush.

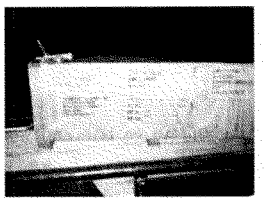
Pinal County SWAT and BORTAC Team 5 moved in and engaged the group Part of the group was taken into custody under trees at that bcation along with 10 backpacks of marijuana. Several of the suspects fled south from that location and were captured with the assistance of air support. A total of 10 suspects were apprehended, along with a total of 10 marijuana backpacks(492 lbs), along with a solar charger and other electronic items used for counter surveillance. The suspects and marijuana were turned over to GITEM for investigation and prsecution.



May 11th at 3:00 a.m. a passenger truck with a flatbed trailer was seen stopped on the south shoulder near milepost 154 on Interstate 8. The driver was observed acting suspiciously, and was observed taking an item from a parked semi trailer at that location and loading it onto his trailer. The truck with the trailer then got back on Interstate 8 and began to travel eastbound. A traffic stop was conducted on the truck on Interstate 8 east of Montgomery Road by AZDPS, Pinal SWAT and Bortac Team 5. The driver was later identified as Hector Armando Quiroz (age 49 of Bonita, California). He was questioned, and subsequently admitted stealing a large crate from the parked semi trailer.

The owner of the semi trailer arrived back at his trailer while this was taking place, and contact was made with him by AZDPS. The semi trailer owner advised that the crate taken contained a turbine worth approximately $10,000. AZDPS then escorted the semi driver to the location of the stop. The semi trailer owner recovered the turbine at the scene of the stop. Quiroz was turned over to PCSO Patrol, and they took the theft case and prosecution on the Quiroz.





May 12th at 11:00 p.m. a group of 8 individuals was observed walking north approximately 3 miles south of Interstate 8. These 8 individuals walked to I-8, and crossed over the interstate. Pinal SWAT, BORTAC Team 5, and Pinal K-9 moved in to apprehend these individuals, with air assistance. The subjects all fled northwest from that location.

At 2:30 a.m., one of the 8 individuals was apprehended and turned over to Border Patrol. The remainder of the individuals was unable to be located.

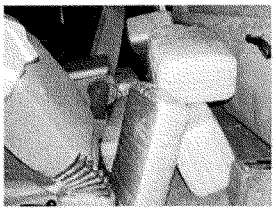
May 13th at 8:53 p.m. AZ DPS was involved in a pursuit with a vehicle which was reported stolen out of Glendale. The pursuit ended near Arizona City, and the driver fled on foot. The driver was apprehended by PCSO after a short fight with the deputies. The driver was turned over to AZ DPS for charging.

May 13th at 11:13 p.m. a truck was observed traveling "blacked out" south of Interstate 8. The vehicle was tracked to a location, where it was parked and a driver and passenger were seen "brushing up" the vehicle and leaving it. The driver and passenger were then seen "bedding down" approximately 100 yards from the vehicle.

With the assistance of air, Border Patrol Agents moved in on the driver and passenger, and one of these subjects was taken into custody. Pinal SWAT with BORTAC Team 5 moved in on the vehicle, a 1999 Ford F250, and secured it. The subject in custody was turned over to GITEM for prosecution. The registration on the vehicle came back to a false address, and the vehicle was seized. The vehicle was a "supply" vehicle used to resupply scout locations with food, etc.

May 18th at 10:35 p.m. units spotted bodies loading into a car on I-8 east bound. The vehicle then proceeded eastbound on I-8. Pinal SWAT members set up ahead of the vehicle to deploy spikes if needed, and AZDPS initiated a traffic stop. Gila River PD and Pinal SWAT/Bortac Team 5 backed up the DPS unit. The vehicle contained 4 Hispanic males believed to be "scouts". These subjects were turned over to AZDPS GIITEM and Border Patrol for prosecution.

May 19th at 8:40 p.m. ICE Detention saw multiple subject loading "packs" into a large truck that was also accompanied by two small sedans. These vehicles traveled east on I-8 from that location. With the assistance of ICE and Air, units were able to catch up to the vehicles. A high risk traffic stop was conducted by Gila River PD, BORTAC Team 5 / PCSO SWAT, ICE Agents and AZDPS GIITEM on all three vehicles at approximately milepost 158 on I-8. The passenger of the truck fled, and was quickly apprehended by BORTAC Team 5 K-9. All occupants (total of 8 bodies) were taken into custody, and it was discovered that the cab of the truck had 8 bundles of marijuana weighing approximately 174 lbs.



May 19th at 9:45 p.m. the air unit advised that it had located bodies south of I-8 between Russell Rd and Murphy Rd.. Pinal SWAT and BORTAC Team 5 moved into the location with the assistance of air. No bodies were discovered, and it is believed that the heat signatures were residual from bodies that had been in that location, but made it out before ground units could move in.

May 19th at 10:32 p.m. Pinal SWAT and BORTAC Team 5 had a "blacked out" Ford truck pass one of our elements near Stanfield Road. After passing our personnel, the vehicle immediately fled at a high rate of speed west of Stanfield Rd., and into the desert area. Ground units were unable to maintain a visual on the truck as it traveled further south west into the desert area. Pinal/Bortac attempted to track the vehicle, but eventually lost sign as it traveled toward the gas pipeline road.

Sheriff Paul Babeu stated, "These multi agency details have a much greater impact than just in Pinal County. Pinal County is the number one pass through county in America for drug and human trafficking because of the roadways and terrain. The cartels of Mexico have between 75 to 100 lookout posts through this known drug and human smuggling corridor. They use these high vantage points to ensure their loads, whether they are humans or drugs, make it through. Some of these loads stop in Phoenix but many of them are sent throughout the United States. I appreciate the assistance provided by all of these law enforcement agencies to disrupt the cartels activities. We need this continuous law enforcement presence to help protect America until the border is truly secured."

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United States Senate
Committee on Homeland Security and Governmental Affairs
Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
"Securing the Border: Progress at the Local Level"
Homeland Security and Governmental Affairs Committee
May 4, 2011

Welcome everybody to this hearing, "Securing the Border: Progress at the Federal Level." This is the third in a series of hearings we've been having on border security, focused particularly on our southern border, but just as history changed on 9/11/01, history had a turning point on Sunday with the killing of Osama bin Laden. I would be remiss not to say a word of thank you to you, Madam Secretary, and all the people who work with you in the Department of Homeland Security, and to all the people in the security sector of our government who performed so brilliantly, bravely, and together to bring about the extraordinary results that were achieved Sunday in Pakistan.

The teamwork that was so pervasive in the successful assault on that compound in Pakistan is precisely what this committee hoped for when we worked so hard, first to establish the Department of Homeland Security in 2002, and then to introduce and bring forth the legislation that created the 9/11 Commission, and then to consider in two phases and advance through the committee, and ultimately to enactment, their recommendations. I think all of us are both very grateful and very proud of the work that was done. Since this is the first opportunity I've had to see you in public, I want to thank you and ask you to thank all those who work with you. I hope you'll say a few words about that in your opening statement.

As good as we feel about what happened Sunday in Pakistan and as much as we know it makes us safer, and the world safer, we know the war against Islamist terrorism is not over. The enemy is still out there and will continue to try and attack us here at home.

Let me come back to the topic of the day. The security of our borders in all its manifestations is important. One of the great achievements since 9/11 is the extent to which we have secured our borders against those who would come in to do us harm. The focus of these hearings has been on a different kind of border security, related to illegal immigration, but also to the drug cartel violence in Mexico, and the extent to which is may come over our border into the United States. In this regard, too, I want to thank you for all you've done. You have faced really significant challenges, both in terms of all kinds of border security and, of course, natural disasters. You've handled your job with real strength and effectiveness and common sense and I appreciate it.

Witnesses at two previous hearings on border security largely agreed that the situation along the southern border has improved significantly over the past decade. The best statistics available bear this out. The one that seems to be most commonly used is that apprehensions of illegal aliens along the border are down 73 percent since 2000, the lowest levels in three decades.

This is good news. But we spent a fair amount of time in previous hearings on the metrics, the statistics. We know they're just a piece of the picture and can be misleading. At different times, for example, the Border Patrol has cited increases in apprehensions as proof of progress, but other times decreases in apprehensions, on the theory that the fewer people trying to get over into the U.S., the fewer the apprehensions. We have got to try our best to know how many people are actually trying to cross over the border and compare that to the number of

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those who succeed. I understand the Border Patrol has been trying to collect this information through footprints, video footage, and sensors, but that its methods are not 100 percent up to the challenge. It's a difficult challenge, because we're trying to measure the people who we have not apprehended. I hope you will find ways to improve the collection of this information and consider making it public so we can more accurately assess the extent of the problem and our progress on it.

The second point that has come out of these hearings is that the focus on the southern border has often overshadowed vulnerabilities that continue elsewhere in our immigration enforcement system. One statistic which reveals such a vulnerability--and would be very surprising to most Americans--is the fact that 40 percent of undocumented immigrants – illegal aliens - living and working in the United States today, illegally, came into this country legally and then over-stayed the terms of their visas. So in terms of the problem of illegal immigration, about 40 percent of the problem is not people who come over the border and into our country illegally. It is people who have come in legally and stayed. This both undercuts the legitimacy of the law that we have about temporary visas and also threatens our security.

The most illustrative number to me still comes from the 9/11 Commission, which reminds us five of the terrorists who attacked the United States on 9/11 entered the U.S. legally and then intentionally overstayed their visas. In 2009, Hosam Maher Husein Smadi, arrested in Dallas, on suspicion of planning terrorist attacks, was originally on the United States on a student visa and then overstayed.

A new GAO report, which just came out yesterday, concludes that of the roughly 400 people who have been convicted of any terrorism-related crimes since September 11, 36 had overstayed their visas. In other words, almost 10 percent of the people who have been convicted of terrorism related activities in the decade since 9/11 were legal immigrants who overstayed their visas and became illegal.

Despite a lot of congressional effort and DHS effort, we still lack an exit system that will effectively identify people who have overstayed their visas in real time. The reality is that U.S. VISIT - the DHS program that is supposed to identify visa overstays based on visitor entry and exit information - remains a troubled and ineffective program.

DHS officials have told the Committee that U.S. VISIT processes less than half of all potential overstays identified by automated matching of entry and exit records, and GAO, in this just-released report, found that the program has an overall backlog of 1.6 million potential overstay records that have not yet been processed. I'm sure part of this is that we haven't given you the resources to do this, but it's a real problem.

Identifying individuals who overstay is a crucial component of securing our borders and making our immigration system credible and real to the law. It is simply unacceptable that we are still unable to systematically identify people who overstay.

I ask you, Secretary Napolitano, to update the Committee today on current efforts within the Department to close this dangerous vulnerability.

One final point. As we began this series of hearings on border security, I had the goal of dealing with the current state of border security, how are we doing at keeping our borders secure, particularly with regards to illegal immigration. The presumption was border security could lead not only to better border security, but to building a political consensus to deal with the continuing problem of illegal immigration. It seems to me now that the inverse is also true - that there are forms of smart immigration reform that also can enhance border security, or there are kinds of smart immigration reform that can significantly reduce the flow of illegal immigrants into America.

Senator Collins?

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Statement of
Senator Susan M. Collins

"Securing the Border: Progress at the Federal Level"

May 4, 2011

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I am pleased that Secretary Napolitano is before our Committee again. With the welcome news that Osama bin Laden has been killed, I want to join the Chairman in thanking everyone involved, especially the Navy SEALs who bravely carried out this mission, and the many other members of our military, intelligence, and homeland security forces whom we may never know. This was the kind of successful collaboration of intelligence and operational aspects that we envisioned in reforming our capabilities and intelligence community in the wake of the attacks of 9-11-01.

This successful operation demonstrates the importance of sharing of intelligence information across the agency silos -- the opposite of our disjointed pre-September 11 experience.

I appreciate that the Department of Homeland Security immediately issued a Situational Awareness Alert to key state and local homeland security officials and law enforcement personnel at midnight on Sunday sharing intelligence information and including a call for heightened vigilance.

Today's hearing is particularly timely. Border security is critical not only to prevent individuals from entering the U.S. illegally for whatever reason, but also to stop - at the border, at the visa issuing post, or on the U.S. bound flight -- those determined to harm us.

The first two hearings in this series emphasized the challenges along the Southwest Border, while earlier the Committee held a hearing on the Northern Border. When we consider the Southwest region, we should all pause to honor the sacrifice of Border Patrol Agent Brian Terry, who was murdered last December, and ICE Agent Jaime Zapata, who was killed by members of a drug cartel in February.

These fallen heroes and the horrific news reports continuing to stream out of Mexico reveal the brutality of the cartels. Recently, nearly 300 bodies were discovered in mass graves -- some just 90 miles from Brownsville, Texas.

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Just last month, FBI Director Robert Mueller observed that "drug cartels transport kilos of cocaine and marijuana, gangs kidnap and murder innocent civilians; traffickers smuggle human cargo; and corrupt public officials line their pockets by looking the other way." He concluded that, taken together, these issues "constitute a threat not only to the safety of our border communities, but to the security of the entire country."

This backdrop explains why many were perplexed to hear Security Napolitano state in late March that security on the southern U.S. border is "better now than it ever has been" and that violence from neighboring Mexico has not edged north.

The National Border Patrol Council, the union representing Border Patrol agents, has countered that crime indeed is spilling over from Mexico. They point to the murder of three Border Patrol agents by the cartels in the last three years, ranchers and citizens who have been gunned down in border communities, and the Phoenix area which has risen to become a cartel-related crime hotspot. The Council concluded: "The U.S.-Mexico border is unsafe and to say anything else is not true."

While the Secretary's data on apprehensions on the border are useful, there are contributing factors that should not be ignored when we look at the numbers about declining interdictions.

For instance, are some of the declining numbers a result of our slow economy? Is the persistent cartel violence deterring others? To put it bluntly, individuals will not be arrested at the border, or north of it, if they are too frightened to run a gauntlet of terror that may end in a mass grave.

These and other factors should be considered as we evaluate the effectiveness of the Administration's policies.

While the Southwest Border is much more likely to make the evening news, we must not forget the Northern Border. According to a report released by the GAO earlier this year, the Border Patrol was aware of all illegal border crossings on only 25 percent of the 4,000-mile Northern Border. The Border Patrol was able to make an immediate arrest on less than 2 percent or 69 miles of the 4,000 mile border. This is especially troubling, because, as GAO has observed: "DHS reports that the terrorist threat on the northern border is higher [than the southern border], given the large expanse of area with limited law enforcement coverage."

The Administration's proposal to limit Operation Stonegarden to the Southwest Border is ill-advised and has been rejected by Congress. Operation Stonegarden grants should be used to help secure both our Northern and

Southern Borders by funding joint operations between the Border Patrol and state and local law enforcement. These joint operations can act as a force multiplier in areas that would otherwise be unguarded.

To cite one example of the program's success from my state, Stonegarden funds were instrumental in the arrest and conviction of an individual involved in smuggling cash. During a Stonegarden Operation, a Fort Kent, Maine, police officer caught this criminal attempting to smuggle $137,000 across the border. The officer was patrolling an area well outside Fort Kent, where he would not have been patrolling without Stonegarden funding.

Finally, the effort to secure our borders is not limited to the borders themselves. It involves preventing those who would do us harm from reaching our shores in the first place, as well as interior enforcement of the immigration laws. For this reason, two recent GAO reports are cause for concern.

One report examined the Visa Security Program, which deploys ICE Special Agents to foreign visa issuing posts to help identify terrorist and criminal threats. According to the report, the U.S. has VSP offices at only 19 of the 57 high-risk posts. The report also found ongoing turf battles between ICE and the State Department's Diplomatic Security at some consular posts.

According to another GAO report released yesterday, ICE should do a better job identifying the people in the United States who have illegally stayed past the date of their visa expiration.

According to the Pew Hispanic Center, there are an estimated 12 million individuals here illegally, and between four million and 5.5 million of those came here legally, but their visas have since expired. I understand that only three percent of ICE efforts are focused on this group of illegal residents. That seems insufficient and shortsighted as more than a third of all unauthorized residents fall into that category.

I look forward to a robust discussion on these and other issues and thank the Secretary for being here today.

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Testimony of

Secretary Janet Napolitano

U.S. Department of Homeland Security

Before the

United States Senate Committee on Homeland Security and Governmental Affairs

May 4, 2011

Chairman Lieberman, Senator Collins, and members of the Committee: Thank you for this opportunity to testify today about the unprecedented resources that have been dedicated to securing the Southwest border over the past two years, the progress that has been made as a result, and the metrics we can use to better assess future progress.

Over the past two years, this Administration has dedicated more resources to securing the Southwest border than ever before, in terms of manpower, technology, and infrastructure. Our partnership with Mexico is strong, and we continue to support Mexico's efforts to combat the drug cartels that are headquartered in that country. The actions being taken at the border are occurring alongside strong, serious, and strategic enforcement of immigration laws in the interior of the United States, focused on removing illegal immigrants who have violated our criminal laws as well as those who pose other threats to public safety, and on employers who repeatedly or egregiously violate the law. Using Recovery Act funds in addition to other resources, the federal government has also made critical investments in improving and expanding outdated port infrastructure at the Southwest border to enhance enforcement while facilitating the flow of legal travel and trade. As a person who grew up in New Mexico and spent most of my adult life in Arizona, and who has walked the border, flown it, ridden it on horseback, and worked with border communities from Brownsville to San Diego, I can say from personal experience that these steps constitute the most comprehensive and dedicated effort to strengthen border security that our country has ever deployed.

These efforts are leading to significant progress on the Southwest border. In the past two years, seizures of contraband have risen in all categories – in terms of illegal drugs, weapons, and bulk cash. Furthermore, illegal immigration attempts, as measured by Border Patrol apprehensions of illegal aliens, have decreased by 36 percent in the last two years and are less

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than one third of what they were at their peak a decade ago. In addition, Federal Bureau of Investigation (FBI) crime statistics demonstrate that crime rates in border communities have remained steady or dropped in recent years, continuing a decade-long trend.

These dramatic improvements would not have been possible without the bipartisan support of Congress – particularly the $600 million supplemental appropriation for border security passed last summer – and I thank you for your continued support of the Department and of our border security mission.

Our efforts over the past two years, carried out with tireless and too-often overlooked dedication by thousands of men and women on the front lines, have achieved major and historic results. Nonetheless, we still face challenges, and we must continue to build upon the progress we have made. We remain deeply concerned about the drug cartel violence taking place in Mexico. We know that these drug organizations are seeking to undermine the rule of law in Mexico, and we must guard against spillover effects into the United States. The murders of Border Patrol Agent Brian Terry in Arizona and of ICE Special Agent Jaime Zapata in Mexico underscore the risks our men and women face every day as they work to protect our borders and our country, as well as the tremendous sacrifices they make on our Nation's behalf. I know Congress and the Committee share my commitment to do everything we can to ensure the safety of our law enforcement officers in the field by providing them with the resources they need to protect our borders and our communities. I look forward to continuing work with you to enhance the security and prosperity of the border region.

Our shared goal with every American border community is to have a safe and secure border region where communities and families can grow and prosper. This goal recognizes that the Southwest border is not simply a line on a map. It is part of a border region that extends into

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both countries. Security along the border starts by utilizing every available law enforcement asset and recognizing that our approach in El Paso may differ from the tactics used in Nogales or San Diego. A safe and secure border region requires vigorous interior enforcement of our Nation's immigration laws. This enforcement must be robust and smart — targeting criminals, threats to public safety, and employers who knowingly hire illegal workers. Enforcement must be conducted in a manner consistent with our values and our priorities. Finally, our border policy should foster legitimate trade, travel, and immigration, accommodating the movement of commerce across our borders and supporting hundreds of thousands of jobs.

While our efforts over the past two years have led to progress on every significant metric we currently have, we continue to focus on new ways to more comprehensively measure results along the border, including how the investments we've made in border security are improving the lives and livelihoods of the people who live in the region. Ultimately the success of our efforts along the border must be measured in terms of the overall security and quality of life of the border region.

Accordingly, U.S. Customs and Border Protection (CBP) has begun the process of developing an index, supported by both CBP and third party data, to comprehensively measure security along the Southwest border and the quality of life in the region. These measures will also help guide future investments, helping to target resources to more cost-effective programs that have the biggest impact on improving border security. As part of this process, CBP will be convening a group of independent, third-party stakeholders from a diverse cross-section of critical areas of civic life – to include law enforcement officials, representatives from border-communities, former members of Congress, experts from independent think-tanks – to evaluate and refine this index as we move forward.

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This index will help us measure progress along the Southwest border comprehensively and systematically, rather than by anecdote. Any violent crime that occurs along the Southwest border – or anywhere in our country – is unacceptable, and this Administration is fully committed to addressing such tragedies with the full force of the law. But individual crimes do not tell the whole story. Border cities like San Diego, Nogales, and El Paso are among the safest cities in the Nation, according to FBI crime statistics.

False and unsupported claims about the state of the Southwest border feed a misperception that American border communities are wracked by violence, an assertion which has damaging consequences to their economies. Border community leaders tell me that misperceptions about the border are driving away business and potential visitors. With the reliable and trusted measures of border security that we are developing and validating with third-party experts, we can provide an accurate picture of the state of the Southwest border, prevent misperceptions about these communities, and more precisely guide future border security investments.

The border, as a whole, is simply not the same as it was two years ago, or even one year ago – in terms of the manpower, resources, and technology; the relationships we have built with our federal, state, local and tribal partners; and our partnership with Mexico. The progress at the Southwest border has been unmistakable, as you, Mr. Chairman, and Senator McCain have both noted in recent hearings.[1] Today I would like to focus the remainder of my statement on describing the unprecedented resources this Administration has dedicated to the Southwest border, our strategic approach to immigration enforcement in the interior of the country, and the current state of our work to develop more refined measures of border security and quality of life

[1] Member statements, as prepared for delivery, "Securing the Border: Building on the Progress Made," March 30, 2011, Committee on Homeland Security and Governmental Affairs.

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in the border region.

Unprecedented resources at the Southwest border

In March 2009, the Obama Administration launched the Southwest Border Initiative to bring focus and intensity to Southwest border security, coupled with a reinvigorated, smart and effective approach to enforcing immigration laws in the interior of our country. We are now more than two years into this strategy, and based on previous benchmarks set by Congress, it is clear that this approach is working.

Under the Initiative, we have increased the size of the Border Patrol to more than 20,700 agents, which is more than double the size it was in 2004. We have doubled personnel assigned to Border Enforcement Security Task Forces, which work to dismantle criminal organizations along the border. We have increased the number of ICE intelligence analysts along the border focused on cartel violence. In all, a quarter of ICE's personnel are now in the region, the most ever. We have quintupled deployments of Border Liaison Officers to work with their Mexican counterparts, and we are now screening all southbound rail traffic and a random number of other vehicles for illegal weapons and cash that are helping fuel the cartel violence in Mexico.

In terms of border infrastructure, we have constructed a total of 649 miles of fencing out of nearly 652 miles where Border Patrol field commanders determined it was operationally required, including 299 miles of vehicle barriers and 350 miles of pedestrian fence. The remaining few miles will be completed by this fall. With $600 million provided in the 2010 Emergency Border Security Supplemental Appropriation Act, we are adding more technology, manpower, and infrastructure including 1,000 new Border Patrol Agents by the end of FY 2011;

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250 new CBP officers at ports of entry; and 250 new ICE special agents investigating transnational crimes.

We are also improving our tactical communications systems, adding two new forward operating bases and two more CBP unmanned aircraft systems. For the first time, we now have Predator Unmanned Aircraft System coverage along the Southwest border from California to Texas. These investments are augmenting the additional non-intrusive inspection systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, mobile license plate readers, and other technologies that we have deployed to the Southwest border over the past two years along with the mobile surveillance equipment that will be purchased with FY 2011 funding.

Furthermore, President Obama authorized the temporary deployment of up to 1,200 National Guard personnel to contribute additional capabilities and capacity to assist law enforcement agencies as a bridge to longer-term enhancements in the efforts to target illicit networks' smuggling of people, drugs, illegal weapons, money, and the violence associated with these illegal activities. That support has allowed us to bridge the gap and hire the additional agents to support the Southwest Border, as well as field additional technology and communications capabilities that Congress so generously provided. The Departments of Defense and Homeland Security agreed to equally fund this support; however, Congress did not approve DHS' reprogramming requests. Consequently, the Department of Defense has been funding the full cost of this National Guard support.

To support jurisdictions along the border, DHS has directed a record $123 million in Operation Stonegarden funds in 2009 and 2010 to state and local law enforcement agencies in Southwest border states to pay for overtime costs and other border-related expenses.

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Furthermore, in partnership with the Drug Enforcement Administration (DEA) and the Department of Defense, DHS has achieved initial operational capability for the new Border Intelligence Fusion Section integrated into the DEA-led El Paso Intelligence Center (EPIC). This new section will provide a comprehensive Southwest border Common Intelligence Picture, as well as real-time operational intelligence, to our law enforcement partners in the region, further streamlining and enhancing our operations. We are continuing to work with Mexico to develop an interoperable, cross-border communications network that will improve our ability to coordinate law enforcement and public safety issues between the United States and Mexico.

In recent months we have also undertaken actions to bring greater unity to our enforcement efforts by expanding coordination with the Departments of Defense and Justice. We are also initiating joint commands within CBP to unite the activities of the Border Patrol, Air and Marine, and Field Operations under a single reporting chain, with a single commander. This unified command structure is now in place in Arizona.

Using the resources from the Southwest border supplemental, CBP is developing new Mobile Response Teams involving up to 500 agents to provide new surge capabilities to areas of the border on an as-needed basis.

Because partnerships with federal, state, local, and tribal law enforcement agencies, as well as the private sector, remain critical to our overall success, we have also initiated new programs to increase collaboration, enhance intelligence and information sharing, and develop coordinated operational plans.

One example of a significant interagency partnership is the Border Enforcement Security Task Force (BEST). Led by ICE, the BEST teams incorporate personnel from ICE, CBP, and the U.S. Coast Guard within DHS; the DEA, FBI, Bureau of Alcohol, Tobacco, Firearms and

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Explosives, and U.S. Attorney's Offices within the Department of Justice; as well as other key federal, state, local and foreign law enforcement agencies. BEST teams leverage federal, state, local, tribal, and foreign law enforcement and intelligence resources in an effort to identify, disrupt, and dismantle organizations that seek to exploit vulnerabilities along our borders and threaten the overall safety and security of the American public. As I said earlier, under the Southwest Border Initiative, we have doubled personnel assigned to BEST teams. As of Fiscal Year 2011, BEST is comprised of approximately 690 members representing various federal, state, local, and foreign law enforcement agencies who work jointly in a variety of capacities to investigate transnational criminal activity along our shared land borders and in major seaports. Currently there are over 64 state and local law enforcement agencies participating in the 21 BESTs along the Southwest and Northern borders, at seaports, and in Mexico City.

Another example is the Alliance to Combat Transnational Threats (ACTT). ACTT utilizes a collaborative enforcement approach to leverage the capabilities and resources of DHS in partnership with more than 60 law enforcement agencies in Arizona and the Government of Mexico to deter, disrupt, and interdict individuals and criminal organizations that pose a threat to the United States. Since its inception in September 2009 through April 14 of this year, ACTT resulted in the seizure of more than 1.8 million pounds of marijuana, 4,400 pounds of cocaine, and 1,400 pounds of methamphetamine; the seizure of more than $15 million in undeclared U.S. currency and more than 300 weapons; nearly 15,000 aliens denied entry to the United States at Arizona ports of entry due to criminal background or other disqualifying factors; and approximately 306,000 apprehensions between ports of entry.

We have a number of programs focused on enforcement consequences in certain Border Patrol sectors. While Operation Streamline, which is run in conjunction with the Department of

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Justice, is most well known, there are a number of others I would like to highlight for the committee. Operations such as the Alien Transfer Exit Program (ATEP) and Operation Against Smugglers Initiative on Safety and Security (OASISS) are focused on delivering targeted consequences to offenders and to breaking the smuggling cycle by separating apprehended aliens from smuggling networks.

ATEP is an ongoing program whereby the Office of Border Patrol, in collaboration with ICE's Enforcement and Removal Operations (ERO), moves Mexican nationals apprehended in one Border Patrol Sector to another ERO Area of Responsibility before removing them to Mexico. ATEP breaks the smuggling cycle by repatriating aliens into regions further east or west of their entry location and, thus, preventing them from immediately coordinating with their smugglers for re-entry. ATEP was initiated in the San Diego, Yuma, and El Centro Sectors in February 2008, and has since expanded to the Tucson, Del Rio, Laredo, Rio Grande Valley, and El Paso Sectors. As of February, 18,257 apprehensions have been transferred as part of ATEP, and the rate of encountering subjects after illegally re-entering the United States is less than 24 percent.

OASISS is a bi-national effort that allows for alien smugglers apprehended in the United States to be prosecuted by the Government of Mexico, as a way of helping to share the burden that border crime puts on our courts. Since 2004, OASISS has expanded from a pilot program to one that is operational across the entire Southwest border. OASISS generated 598 cases in Fiscal Year 2010, and more than 1, 200 cases have been generated so far this fiscal year.

Operation Streamline, a DHS partnership with the Department of Justice, is a geographically focused operation that aims to increase the consequences for illegally crossing the border by criminally prosecuting illegal border-crossers. In the twelve months from April 1,

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2010 to March 31, 2011, there were more than 30,000 prosecutions under Operation Streamline across the border, with more than half of these occurring in the Tucson Sector.

In addition, the Mexico Interior Repatriation Program (MIRP) is a joint CBP and ICE initiative, established in coordination with the Government of Mexico, that works to break the smuggling cycle. Under MIRP, aliens apprehended during the summer months in high-risk areas of the Sonoran Desert in Arizona are voluntarily repatriated to the interior of Mexico. This program targets at-risk illegal aliens during the season when outdoor temperatures are at their highest and exposure-related deaths peak, both to save lives and to disrupt the pattern of human smuggling. Illegal aliens with records of violent criminal convictions are not eligible for MIRP. In FY10, 23,384 Mexican nationals were repatriated under MIRP, and only 11 percent, or 2,614, were re-apprehended.

As we have taken all of these steps to enhance border security, we are also bringing greater fiscal discipline to our operations. The SBI*net* program began in 2005 as an attempt to provide a single one-size-fits-all technology solution for the entire Southwest border. Throughout its existence, this program was consistently over budget, behind schedule, and simply did not provide the return on investment needed to justify it.

Last year, I directed an independent, quantitative assessment of the SBI*net* program, which combined the input of Border Patrol agents on the front lines with the Department's leading science and technology experts. This assessment made clear that SBI*net* could not meet its original objective of providing a one-size-fits-all border security technology solution. As a result, earlier this year, I directed CBP to redirect SBI*net* resources to other, proven technologies – tailored to each border region – to better meet the operational needs of the Border Patrol.

This new border security technology plan – which is already well underway – will provide faster deployment of technology, better coverage, and a more effective balance between cost and capability. It includes non-intrusive inspection equipment at the ports of entry and tested, commercially available technologies for immediate use between the ports.

Results

Taken as a whole, the additional manpower, technology and resources we have added over the past two years represent the most serious and sustained action to secure our border in our Nation's history. And it is clear from every measure we currently have that this approach is working.

As I mentioned earlier, illegal immigration attempts, as measured by Border Patrol apprehensions have decreased 36 percent in the past two years, and are less than one third of what they were at their peak. We have matched decreases in apprehensions with increases in seizures of cash, drugs, and weapons. As we have worked to combat illegal crossings, violent crime in U.S. border communities has remained flat or fallen in the past decade. Indeed, four of the biggest cities in America with the lowest rates of violent crime – San Diego, Phoenix, Austin, and El Paso – are on or near the border. Violent crimes in Southwest border counties have dropped by more than 30 percent and are currently among the lowest per capita in the Nation. Crime rates in Arizona border towns have remained essentially flat for the past decade, even as drug-related violence has dramatically increased in Mexico.

Strong, strategic interior enforcement

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Security along our borders is inseparable from immigration enforcement in the interior of our country, and both are critical to an effective immigration system. Our approach to immigration enforcement is guided by a common-sense premise based on sound prosecutorial practice: implement the measures that best protect public safety and produce the most significant results.

Over the past two years, our approach has focused on identifying criminal aliens and those who pose the greatest threat to our communities, and prioritizing them for removal. We also have worked to ensure that employers have the tools they need to maintain a legal workforce, and face penalties if they knowingly and repeatedly violate the law.

Like our actions at the border, our interior enforcement efforts are achieving unprecedented results. In Fiscal Years 2009 and 2010, ICE removed more illegal aliens from our country than ever before, with more than 779,000 removals nationwide. Most importantly, more than half of those removed last year – upwards of 195,000 – were convicted criminals, the most ever removed from our country in a single year. This surge in these criminal removals did not happen by accident. It is the result of a targeted enforcement strategy designed to identify and remove those who present the greatest danger to our communities.

A major part of this success can be attributed to the expansion of Secure Communities, a program that permits federal law enforcement agents to identify and remove tens of thousands of criminal aliens in state prisons and local jails by running their fingerprints against federal immigration databases. Secure Communities does not ask that local law enforcement change their operations, but instead lets ICE know when a removable alien is taken into police custody. With this information, ICE is able to take appropriate steps. Since 2008, ICE has expanded

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Secure Communities from 14 jurisdictions to more than 1,200 today, including every jurisdiction along the Southwest border. We expect to reach complete nationwide deployment by 2013.

We have also stepped up worksite enforcement, last year arresting and sanctioning a record number of employers who knowingly hire illegal labor. Since January 2009, ICE has audited more than 4,600 employers suspected of employing unauthorized workers, debarred more than 315 companies and individuals, and imposed approximately $59 million in financial sanctions – more than the total amount of audits and debarments during the entire previous administration. Last fiscal year, ICE also criminally arrested 196 employers accused of violations related to employment, an agency record.

As a corollary, we have strengthened the efficiency and accuracy of E-Verify – our Web-based employment verification system managed by U.S. Citizenship and Immigration Services (USCIS) and designed to assist employers in abiding by the law. As of today, more than 258,000 employers are enrolled in E-Verify, representing more than 881,000 locations. More than 1,300 new employers enroll each week and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007. In FY 2010, E-Verify processed 16.4 million employment queries. In March of this year, USCIS launched the new E-Verify Self-Check feature, an innovative service that allows individuals in the United States to check their own employment eligibility status before formally seeking employment. This voluntary, free, fast, and secure service gives users the opportunity to submit corrections of any inaccuracies in their DHS and SSA records before applying for jobs, thereby making the process more efficient for employees and employers. E-Verify self-check is now available to users in Arizona, Idaho, Colorado, Mississippi, Virginia, and the District of Columbia, and will be expanded to the rest of the country on a rolling basis.

USCIS has continued to improve E-Verify's accuracy and efficiency, enhance customer service, and reduce fraud and misuse in a number of additional ways. To improve E-Verify's accuracy, USCIS reduced mismatches for naturalized and derivative U.S. citizens by adding naturalization data and U.S. passport data to E-Verify. Because of this enhancement, in FY 2010 more than 81,000 queries that previously would have received an incorrect mismatch were automatically verified as employment authorized. In June 2010, E-Verify launched improved navigational tools to enhance ease-of-use, minimize errors, and bolster compliance with clear terms of use. USCIS also has increased its staffing dedicated to E-Verify monitoring and compliance, adding 80 staff positions since the beginning of FY 2010. Finally, to more effectively address identity theft, USCIS now allows for the verification of passport photos through the E-Verify.

Developing measures for progress on the border

As we assess the marked improvements in border security over the past two years, it is important to focus on how we can best measure progress in the future. Significant improvement has occurred since 2007 in all the major metrics used to describe capabilities and results. Border Patrol apprehensions decreased from nearly 724,000 in FY 2008 to approximately 463,000 in FY 2010, a 36 percent reduction, less than one third of what they were at their peak. In fiscal years 2009, 2010, and the first half of 2011, CBP and ICE have seized 75 percent more currency, 31 percent more drugs, and 64 percent more weapons along the Southwest border as compared to the last two and a half years of the previous administration. The Border Patrol had fewer than 13,300 agents at the Southwest border at the end of FY2007, and 15,442 as of September 30, 2008, while there were 17,535 at the end of FY2010. In 2007, CBP had 154.7 miles of fence,

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which increased to 279 by end of FY2009 and is now at 649 miles. However, above all of these measures of improvement, it is clear we must also focus on more comprehensive and accurate measurements of border security.

As I mentioned earlier, CBP is developing, and is consulting with independent, third-party experts and stakeholders, on a new comprehensive index that will more holistically represent what is happening at the border and allow us to measure progress. This process is still in its early stages and I look forward to updating the Committee as the new measures are developed.

In developing these border metrics, it is important to keep in mind our ultimate goals. Combating transnational crime, while promoting legal travel and trade, makes border communities more secure, which in turn provides a basis for economic prosperity and an improved quality of life. Illegal traffic diminishes quality of life in a number of ways, such as increased property crime. On the other hand, the "success stories" in border security are the communities where enforcement efforts have supported and enhanced the quality of life.

We need more comprehensive, empirical ways to measure this kind of progress. That is why CBP is creating a new comprehensive index drawing on data gathered both from their own operations as well as from third parties.

This index would take into account traditional measures such as apprehensions and contraband seizures, state and local crime statistics on border-related criminal activity, and overall crime index reporting. But to fully evaluate the condition of the border and the effectiveness of our efforts, this index would also incorporate indicators of the impact of illegal cross-border activity on the quality of life in the border region. This may include calls from hospitals to report suspected illegal aliens, traffic accidents involving illegal aliens or narcotics

smugglers, rates of vehicle theft and numbers of abandoned vehicles, impacts on property values, and other measures of economic activity and environmental impacts. CBP is currently working with outside experts and stakeholders to further guide what data to include.

These new measures are also critical to evaluating existing resources and guiding future federal investments in personnel, technology, and infrastructure. They are key to determining how best to apply limited resources to gain the most impact on border security.

Defining success at the border is critical to how we move forward, and how we define success must follow a few guidelines: it must be based on reliable, validated numbers and processes, tell a complete and transparent statistical story, and draw heavily upon the values and priorities of border communities. The approach currently underway is designed to meet all of these criteria. I look forward to working with the Committee on this issue.

Conclusion

Our country has made significant progress securing the Southwest border over the past two years. The goal that we share with every border community is to have a safe, secure border region that fosters legal trade, travel and immigration – and every metric that we have shows we have made substantial progress toward these goals.

It is also clear, however, that we must continue to build on this progress. We must develop border security metrics that can describe the situation on the ground across our country's Southwest border region thoroughly and accurately.

Chairman Lieberman, Senator Collins, and members of the Committee: Thank you again for this opportunity to testify. I am now happy to take your questions.

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United States Government Accountability Office

GAO

Report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate

April 2011

OVERSTAY ENFORCEMENT

Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs

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Highlights

Highlights of GAO-11-411, a report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate

April 2011

OVERSTAY ENFORCEMENT

Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs

Why GAO Did This Study

According to Pew Hispanic Center estimates, approximately 4 million to 5.5 million unauthorized immigrants in the United States entered the country legally on a temporary basis but then overstayed their authorized periods of admission—referred to as overstays. As requested, GAO examined the extent to which the Department of Homeland Security (DHS) (1) takes action to address overstays and its reported results; and (2) identifies overstays and shares this information among its border security and immigration enforcement components. GAO reviewed relevant documents, such as standard operating procedures, DHS guidance, and overstay investigations data from fiscal years 2006 through 2010; interviewed officials from DHS components; and visited 6 DHS field offices and 12 ports of entry based on geographic dispersion, among other factors. The results of these visits are not generalizable, but provided insights into DHS operations.

What GAO Recommends

GAO recommends, among other things, that DHS establish a time frame for completing overstay enforcement planning, performance measurement mechanisms, and, if benefits outweigh costs, a mechanism for collecting departure forms at land borders and alerts for additional categories of overstays. DHS concurred with our recommendations.

View GAO-11-411 or key components. For more information, contact Richard Stana at (202) 512-8777 or stanar@gao.gov.

What GAO Found

DHS takes actions to address a small portion of the estimated overstay population due to, among other things, competing priorities; however, these efforts could be enhanced by improved planning and performance management. Since fiscal year 2006, U.S. Immigration and Customs Enforcement (ICE), the principle DHS component responsible for overstay enforcement, has allocated about 3 percent of its investigative work hours to overstay investigations and its Counterterrorism and Criminal Exploitation Unit (CTCEU), which prioritizes and investigates possible overstays, has arrested approximately 8,100 overstays. ICE is considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which has responsibility for apprehending and removing illegal aliens from the United States. However, ERO does not plan to assume this responsibility until ICE assesses the funding and resources doing so would require. ICE has not established a time frame for completing this assessment. By developing such a time frame and utilizing the assessment findings, as appropriate, ICE could strengthen its planning efforts and be better positioned to hold staff accountable for completing the assessment. In addition, CTCEU does not have mechanisms to assess program performance in accordance with leading performance management practices. By establishing such mechanisms, CTCEU could better ensure that managers have information to assist in making decisions for strengthening overstay enforcement efforts and assessing performance against CTCEU's goals.

In the absence of a biometric entry and exit system, DHS uses various methods for identifying overstays, primarily biographic data, and sharing of overstay information; however, DHS faces challenges in collecting departure data and does not share information about all categories of suspected overstays among its components. For example, U.S. Customs and Border Protection (CBP), the DHS component charged with inspecting all people who enter the United States, does not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. These forms contain information, such as arrival and departure dates, used by DHS to identify overstays. CBP officials stated that establishing such a mechanism could help the agency increase its collection of departure data, but could also result in costs related to, for example, physical modifications to land ports of entry. If the benefits outweigh the costs, such a mechanism could help DHS obtain more complete and reliable departure data for identifying overstays. DHS also shares overstay information among its components through various mechanisms. For example, DHS creates electronic alerts for certain categories of overstays, such as those who overstay by more than 90 days, but does not create alerts for those who overstay by less than 90 days to focus efforts on more egregious overstay violators, as identified by CBP. Expanding the categories of overstays assigned an alert to the extent that benefits outweigh costs could improve the chance that these individuals are identified as overstays during subsequent encounters with federal officials, such as when they apply for readmission to the United States.

United States Government Accountability Office

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Abbreviations

CBP	U.S. Customs and Border Protection
CTCEU	Counterterrorism and Criminal Exploitation Unit
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
POE	port of entry
USCIS	U.S. Citizenship and Immigration Services
US-VISIT	U.S. Visitor and Immigrant Status Indicator Technology
VWP	Visa Waiver Program

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GAO
Accountability • Integrity • Reliability
United States Government Accountability Office
Washington, DC 20548

April 15, 2011

The Honorable Joseph Lieberman
Chairman
The Honorable Susan Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays.[1] These are individuals who were admitted to the country legally on a temporary basis—either with a visa, or in some cases, as a visitor who was allowed to enter without a visa—but then overstayed their authorized periods of admission.[2] The overstay population is comprised of individuals from various global regions, including Europe, South America, Asia, and the Middle East. In February 2008, we reported that most overstays are likely motivated by economic opportunities to stay in the United States beyond their authorized periods of admission.[3] Individuals overstaying their authorized periods of admission could pose homeland security concerns. For example, in some instances overstays have been identified as terrorists or involved in terrorist-related activity, such as 5 of

[1]Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

[2]Visitors who are allowed to seek admission without a visa include citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) under certain circumstances, as well as Visa Waiver Program participants. This program allows nationals from certain countries to apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad. In order to qualify for the Visa Waiver Program, a country must meet various requirements, such as entering into agreement with the United States to report lost or stolen passports within a strict time limit and in a manner specified in the agreement. Currently, 36 countries participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. We will be reporting on the status of the Visa Waiver Program later this year.

[3]GAO, *Visa Waiver Program: Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals*, GAO-08-458T (Washington, D.C.: Feb. 28, 2008).

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the 19 September 11, 2001, hijackers.[4] In addition, according to Department of Homeland Security (DHS) data, of approximately 400 individuals reported by the Department of Justice as convicted in the United States as a result of international terrorism-related investigations conducted from September 2001 through March 2010, approximately 36 were overstays.[5]

DHS has primary responsibility for identifying and taking enforcement action to address overstays, and several of its components and programs contribute to these efforts. U.S. Customs and Border Protection (CBP) is tasked with, among other duties, inspecting all people applying for entry to the United States to determine their admissibility to the country and screening Visa Waiver Program (VWP) applicants to determine their eligibility to travel to the United States under the program. U.S. Immigration and Customs Enforcement (ICE) is the lead agency for enforcing immigration law in the interior of the United States and is primarily responsible for overstay enforcement. The United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) within DHS's National Protection and Programs Directorate supports the identification of nonimmigrant overstays. U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudicating applications and petitions for immigration and citizenship benefits and the Office of Policy Development is responsible for policy and oversight of the VWP. In addition, the Department of State is responsible for issuing visas to foreign nationals seeking admission to the United States.

In light of the potential homeland security risk posed by overstays, you asked us to review DHS efforts to identify, address, and share information on overstays. This report addresses the following questions:

- To what extent do federal agencies take action against overstays, and what have been the reported results?
- To what extent does DHS identify and share information on overstays among its components and with federal, state, and local agencies?

[4]In this report we include out of status students—student visa holders who fail to meet certain requirements, such as enrolling in a qualified education program—in our definition of overstays.

[5]For more information on these convictions, see Department of Justice, *National Security Division Statistics on Unsealed International Terrorism and Terrorism-Related Convictions* (Washington, D.C.: March 2010).

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To determine the extent to which federal agencies take action against overstays, we analyzed ICE documentation, such as policy manuals, regarding its processes for identifying and investigating possible overstays located within the United States. We obtained and analyzed data from ICE on the investigations of its Counterterrorism and Criminal Exploitation Unit (CTCEU), which is primarily responsible for overstay investigations, from fiscal years 2004 through 2010 and ICE's overstay investigative work hours from fiscal years 2006 through 2010 to determine the extent to which ICE has dedicated investigative resources to overstay investigations.[6] To assess the reliability of these data, we reviewed documentation on ICE's data system internal controls and interviewed knowledgeable agency officials about the source of the data and the quality assurance steps performed to help ensure data reliability. We determined that the data were sufficiently reliable for the purposes of our report. To evaluate ICE's overstay enforcement efforts, we assessed the extent to which CTCEU's program practices adhered to standard practices for program management and internal control standards.[7] Furthermore, we interviewed ICE officials from CTCEU and Enforcement and Removal Operations (ERO) headquarters, and conducted site visits to 6 of ICE's 26 Special Agent in Charge field office locations—Seattle, Wash.; Los Angeles and San Diego, Calif.; Miami, Fla.; New York, N.Y.; and Newark, N.J. We selected these locations based on a mix of criteria, including the number of completed overstays investigations, geographic location, and locations near CBP ports of entry (POE).[8] Although the results from our interviews with officials at these locations cannot be generalized to officials at all field offices, the site visits provided us with useful insights into the experiences of ICE officials responsible for investigating overstays, including their views on the processes ICE has established for conducting these investigations. In addition, we obtained data and interviewed officials from CBP and the State Department regarding their actions against overstays attempting to obtain a new visa or gain admission to the

[6]We analyzed the results of CTCEU overstay investigations starting in fiscal year 2004 because CTCEU, formerly called the Compliance Enforcement Unit, was established by ICE in 2003 and fiscal year 2004 is the first year for which complete data are available. We obtained data on ICE's overstay investigative work hours from fiscal years 2006 through 2010 in order to focus our analysis on a 5-year period.

[7]See, for example, GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1, 1999); and the Project Management Institute's *The Standard for Program Management* © (2006).

[8]A POE is a location by which individuals and merchandise may seek legal entry into the United States. There are 327 air, sea, and land POEs in the United States.

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United States after having previously overstayed. In particular, we analyzed data from CBP on the number of overstays it determined to be inadmissible from fiscal years 2005 through 2010, and from the State Department on the number of visas it refused due to prior overstay violations from fiscal years 2005 through 2010.[9] We assessed the reliability of these data by interviewing officials familiar with the processes used to collect, record, and analyze the data, and determined that the data were sufficiently reliable for the purposes of our report.

To determine the extent to which DHS identifies and shares information on overstays, we analyzed the processes DHS and its components, particularly CTCEU and US-VISIT, use to evaluate suspected overstay records and collect nonimmigrant arrival and departure information. We compared DHS processes to internal control standards; analyzed US-VISIT and CTCEU program documentation, such as guidance for evaluating overstay records; and analyzed data on the number of overstay leads identified and reviewed by US-VISIT from fiscal years 2005 through 2010 and by CTCEU from fiscal years 2004 through 2010.[10] We assessed the reliability of these data by interviewing US-VISIT and CTCEU officials who were familiar with the data systems and by reviewing program documentation and data systems' internal control procedures, and we determined that these data were sufficiently reliable for the purposes of our report. Further, we interviewed officials from US-VISIT, CTCEU, and the DHS Office of Immigration Statistics about the processes and systems used to analyze arrival and departure information and other immigration records for the purpose of identifying overstays. We also interviewed officials at CBP Office of Field Operations headquarters and conducted site visits to three land POEs, four sea POEs, and five air POEs to observe and obtain officials' views on the processes and systems used by CBP to inspect passengers and collect nonimmigrant arrival and departure information. We selected the POEs to visit based on their geographic proximity to other types of POEs (i.e., land, sea, or air) and to include POEs dispersed throughout the country, as well as their proximity to ICE field offices we visited. Although we cannot generalize the information obtained during the site visits to the experience of CBP officials at all

[9]We analyzed CBP and State Department data from fiscal years 2005 through 2010 because fiscal year 2005 is the first year for which complete CBP data are available.

[10]GAO/AIMD-00-21.3.1. We analyzed these data from US-VISIT starting in fiscal year 2005 and from CTCEU starting in fiscal year 2004 because those are the first years for which US-VISIT and CTCEU have complete data.

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POEs, these visits provided us with useful insights into the processes CBP uses to inspect travelers and collect nonimmigrant information at POEs, as well as the mechanisms DHS uses to share information about overstays. Additionally, to assess DHS's efforts to share overstay information, we interviewed officials from US-VISIT, ICE, and USCIS about their respective roles in sharing overstay information with DHS components and other federal, state, and local agencies, and also reviewed program documentation about the information sharing activities administered by these agencies.[11]

We conducted this performance audit from February 2010 through April 2011, in accordance with generally accepted government auditing standards. Those 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 and conclusions based on our audit objectives. A more detailed discussion of our scope and methodology is contained in appendix I.

Background

Process for Gaining Admission to the United States

Each year, millions of visitors come to the United States legally on a temporary basis. From fiscal year 2005 through fiscal year 2010, the State Department issued over 36 million nonimmigrant visas.[12] Approximately 82 percent of these visas were issued to nonimmigrants for business travel, pleasure, tourism, medical treatment, or for foreign and cultural exchange student programs. In addition, from fiscal year 2005 through fiscal year 2010, over 98 million visitors were admitted to the United States under the VWP.

Generally, nonimmigrants wishing to visit the United States gain permission to apply for admission to the country through one of two ways.

[11]During the course of our review we determined that state and local law enforcement actions against overstays were limited and consequently would not be a primary focus of this report.

[12]Temporary visitors to the United States generally are referred to as "nonimmigrants." For a listing and descriptions of nonimmigrant categories, see 8 U.S.C. § 1101(a)(15); see also 8 C.F.R. § 214.1(a)(1)-(2).

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First, those eligible for the VWP apply online to establish eligibility to travel under the VWP prior to departing for the United States.[13] Second, those not eligible for the VWP and not otherwise exempt from the visa requirement must visit the U.S. consular office with jurisdiction over their place of residence or, in certain circumstances, the area in which they are physically present but not resident, to obtain a visa.[14] Upon arriving at a POE, nonimmigrants must undergo inspection by CBP officers, who determine whether or not they may be admitted into the United States. A CBP primary inspection officer first collects biographic and biometric information from a nonimmigrant. If during this process the officer has any concerns regarding the nonimmigrant's admissibility to the United States, the primary officer refers him or her for more in-depth, secondary inspection. If CBP determines a nonimmigrant is admissible, he or she is granted an authorized period of admission. In addition, visitors traveling on nonimmigrant visas are issued a Form I-94, and visitors from the VWP countries are issued a Form I-94W while in transit to or upon their arrival to a United States POE.[15] Each visitor is to give the top half of the form to a CBP officer and to retain the bottom half, which should be collected when the visitor departs the country to record their exit. See figure 1 for the process by which nonimmigrants enter and exit the United States.

[13]Nonimmigrants eligible for the VWP that seek admission to the United States at a land POE do not apply online to establish eligibility.

[14]In certain circumstances citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) traveling to the United States as nonimmigrants do not require a visa. See 22 C.F.R. § 41.2(a)-(f).

[15]CBP is in the process of automating the I-94W so that it will be a paperless process. As of February 2011, the I-94W process was automated for travelers who apply online to establish their eligibility to travel under the VWP at all airports and most seaports. The I-94W process has not yet been automated at land POEs and a paper-based I-94W process is used. In addition to collecting individual information via the I-94/I94W process, CBP requires air and sea carriers to provide passenger manifest information for passengers entering and exiting the United States.

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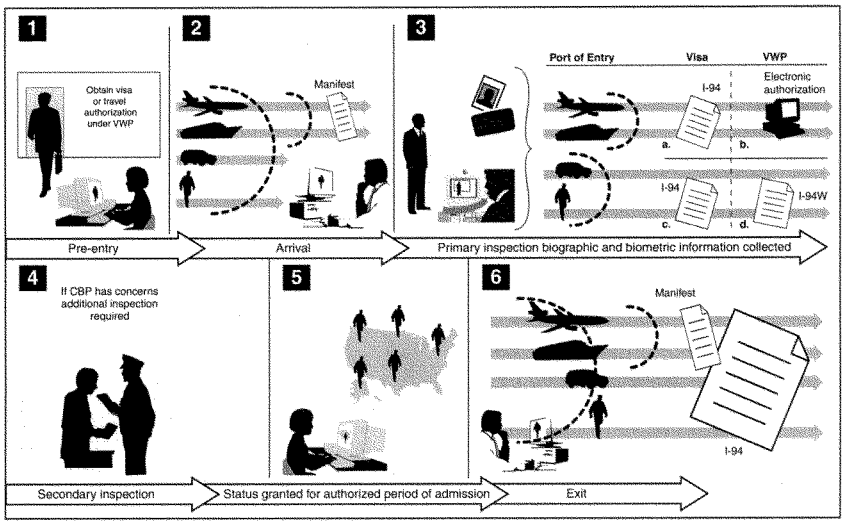
Figure 1: Process for Nonimmigrant Entry to and Exit from the United States



Source: GAO analysis of DHS information; and Art Explosion (clipart).

Definition and Regulatory Overview of Overstays

An overstay is a nonimmigrant who is legally admitted to the United States for an authorized period but remains in the country illegally after that period expired without obtaining an extension of stay or a change of

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status or meeting other specific conditions, such as claiming asylum.[16] In-country overstays refer to nonimmigrants who have exceeded their authorized periods of admission and remain in the United States without lawful status, while out-of-country overstays refer to individuals who have departed the United States but who, on the basis of arrival and departure information, stayed beyond their authorized periods of admission. As shown in table 1, nonimmigrants who overstay generally fall into one of three categories. The statute establishes consequences for nonimmigrant visa holders, foreign students and exchange visitors, and nonimmigrants admitted without a visa, such as VWP nonimmigrants, who overstay their authorized periods of admission.[17]

Table 1: Overstay Categories and Legal Consequences for Nonimmigrants Overstaying Their Authorized Periods of Admissions

Overstay category	Description of category	Legal consequence for overstaying
Nonimmigrant visa holders	Nonimmigrants, such as those traveling under temporary visas for business or pleasure (which includes medical treatment), including nonimmigrants required to register under the National Security Entry-Exit Registration System—a program that requires certain visitors or nonimmigrants to register with DHS for national security reasons.[a] Most nonimmigrant visa holders admitted for business, pleasure, or medical treatment generally are allowed to travel up to 6 months in the United States, after which they must depart the country unless granted an extension of stay.	In general, aliens who were unlawfully present in the United States for a period of more than 180 days but less than 1 year and voluntarily departed the United States prior to the commencement of legal proceedings to remove them from the country are inadmissible for 3 years. In addition, aliens who were unlawfully present in the United States for 1 year or more, and who again seek admission within 10 years of the date of their departure or removal from the United States, are inadmissible.[b] For nonimmigrants whose overstay violations fall below 180 days, their visas are void and the State Department has the discretion to determine whether to issue them new visas and CBP has the discretion to readmit them into the country.

[16]Although overstays are sometimes referred to as visa overstays, we do not use that term in this report for two reasons. First, many visitors are allowed to seek admission to the United States without visas and to remain for specific periods, which they may overstay, such as visitors who enter using the VWP. Second, nonimmigrants can overstay an authorized period of admission set by a CBP officer at the border even though that authorized period may be shorter than the period of the visitors' visas. For example, although the State Department may issue nonimmigrants visas that are valid for 6 months, CBP inspectors might issue them only a 6-week period of admission when they enter the United States. In such instances, if the nonimmigrants remain in the United States for 7 weeks they have overstayed their authorized periods of admission, and thus overstayed, even though their visas have not expired.

[17] 8 U.S.C. § 1182(a)(9)(B)(i), (ii).

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Overstay category	Description of category	Legal consequence for overstaying
Foreign students or exchange visitor visa holders	In general, foreign students remain "in status" and therefore eligible to stay in the United States under their student visas as long as they are enrolled in a qualified education program. Individuals traveling on student visas are not generally issued a specific date until which they are authorized to remain in the United States, but instead are admitted for what is referred to as "duration of status."[c] This means that they may remain in the country until their visa expires so long as they maintain their student status (e.g., by enrolling in an academic program), and must depart within a specified period after completing their studies. Exchange visitors and vocational students generally are admitted for a specified period, although extensions are possible.	In general, if students and exchange visitors fail to maintain their student or exchange status or to depart on time, they are considered out of status and begin to accrue unlawful presence either on the day after USCIS or an immigration judge determines that they are out of status or on the day after their authorized period of admission expires (if given a specified date). They are subject to 3 and 10 year bars on their re-admission to the country, respectively, if they accrue more than 180 days or 1 year of unlawful presence.
Nonimmigrants admitted to the United States without a visa	Nonimmigrants who are admitted without a visa, including those traveling under the VWP. Nonimmigrants traveling to the United States through the VWP are admitted for up to 90 days.	If nonimmigrants traveling under the VWP stay beyond the authorized 90-day limit, they must obtain a visa from the U.S. consulate in their country of residence or physical presence in order to visit the United States again. They are subject to 3 and 10 year bars on their re-admission to the country, respectively, if they accrue more than 180 days or one year of unlawful presence.

Source: GAO analysis of DHS and State Department information.

[a]The visa categories provided to nonimmigrants traveling for these reasons are B-1 (temporary work), B-2 (pleasure or medical treatment), and B-1/B-2 (work and pleasure visa). Nonimmigrants may also travel under various other types of visas, such as for temporary religious and agricultural work.

[b]8 U.S.C. §1182(a)(9)(B). For many overstays, unlawful presence generally begins to accrue once an alien remains in the United States beyond his or her authorized period of admission without authorization.

[c]Because DHS components identify and take enforcement action to address out-of-status students through the same processes as overstays, out-of-status students are included in the definition of overstays for the purpose of this report.

Comprehensive Biometric Entry and Exit System

The Immigration and Naturalization Service Data Management Improvement Act of 2000 required implementation of an integrated entry and exit data system for foreign nationals.[18] This act replaced in its entirety a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that had required an automated system to record and then match the departure of every foreign national from the United States to the individual's arrival record.[19] The Immigration and

[18]8 U.S.C. § 1365a.

[19]Pub. L. No. 104-208, div. C, § 110, 110 Stat. 3009-546, 3009-558 to 59.

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Naturalization Service Data Management Improvement Act instead required an electronic system that would provide access to and integrate foreign national arrival and departure data that are authorized or required to be created or collected under law and are in an electronic format in certain databases, such as those used at POEs and consular offices. In 2002, DHS initiated the US-VISIT program to develop a comprehensive entry and exit system to collect biometric data from aliens traveling through United States POEs. In 2004, US-VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States. The Intelligence Reform and Terrorism Prevention Act of 2004 required the Secretary of Homeland Security to develop a plan to accelerate full implementation of an automated biometric entry and exit data system that matches available information provided by foreign nationals upon their arrival and departure from the United States.[20] In August 2007, we reported that while US-VISIT biometric entry capabilities were operating at air, sea, and land POEs, exit capabilities were not, and that DHS did not have a comprehensive plan or a complete schedule for biometric exit implementation. In addition, we reported that DHS continued to propose spending tens of millions of dollars on US-VISIT exit projects that were not well-defined, planned, or justified on the basis of costs, benefits, and risks.[21] Since 2004, we have made numerous recommendations to address US-VISIT weaknesses, including that DHS ensure that US-VISIT expenditure plans fully disclose what system capabilities and benefits are to be delivered, by when, and at what cost, as well as how the program is being managed.[22] DHS has reported taking action to address them.

With regard to a biometric exit capability at land POEs, we reported in December 2006 that US-VISIT officials concluded that, for various reasons, a biometric US-VISIT exit capability could not be implemented without

[20] 8 U.S.C. § 1365b.

[21] GAO, *Homeland Security: U.S. Visitor and Immigrant Status Program's Longstanding Lack of Strategic Direction and Management Controls Needs to Be Addressed*, GAO-07-1065 (Washington, D.C.: Aug. 31, 2007).

[22] GAO, *Homeland Security: Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, GAO-10-13 (Washington, D.C.: Nov. 19, 2009); GAO-07-1065; and *Homeland Security: First Phase of Visitor and Immigration Status Program Operating, but Improvements Needed*, GAO-04-586 (Washington, D.C.: May 11, 2004).

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incurring a major impact on land facilities.[23] Specifically, we reported that an interim nonbiometric technology test using radio frequency identification to collect departure information at land POEs did not meet the statutory requirement for a biometric exit capability and could not ensure that visitors who entered the country were those who departed. In December 2009, DHS initiated a land exit pilot to collect departure information from temporary workers traveling through two Arizona land POEs. Under this pilot, temporary workers who entered the United States at these POEs were required to register their final departure by providing biometric and biographic information at exit kiosks located at the POEs. DHS plans to use the results of this pilot to help inform future decisions on the pedestrian component of the long-term land exit component of a comprehensive exit system.

With regard to air and sea POEs, in April 2008, DHS announced its intention to implement biometric exit verification at air and sea POEs in a Notice of Proposed Rule Making.[24] Under this notice, commercial air and sea carriers would be responsible for developing and deploying the capability to collect biometric information from departing travelers and transmit it to DHS. DHS received comments on the notice and has not yet published a final rule. Subsequent to the rule making notice, on September 30, 2008, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, was enacted, which directed DHS to test two scenarios for an air exit solution.[25] DHS conducted these pilots in 2009, and we reported on them in August 2010. We concluded that the limitations we identified with the pilots curtailed their ability to inform a decision for a long-term air exit solution and pointed to the need for additional sources of information on air exit's operational impacts.[26] We recommended that the Secretary of Homeland Security identify additional sources of information beyond the pilots, such as comments from the Notice of Proposed Rule Making, to inform an air exit solution decision. DHS agreed with the recommendation and stated that the pilots it

[23]GAO, *Border Security: US-VISIT Program Faces, Strategic, Operational, and Technological Challenges at Land Ports of Entry*, GAO-07-248 (Washington, D.C.: Dec. 6, 2006).

[24]73 Fed. Reg. 22,065 (Apr. 24, 2008).

[25]Pub. L. No. 110-329, 122 Stat. 3574, 3668-70 (2008).

[26]GAO, *Homeland Security: US-VISIT Pilot Evaluations Offer Limited Understanding of Air Exit Options*, GAO-10-860 (Washington, D.C.: Aug. 10, 2010).

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conducted would not serve as the sole source of information to inform an air exit solution decision.

Federal Agencies' Roles and Responsibilities

DHS and its components and programs, including CBP, US-VISIT, ICE, and USCIS are primarily responsible for taking action to identify and address overstays, as shown in table 2. In addition, the State Department is responsible for ensuring that the department's visa issuances follow guidelines related to overstays to ensure that individuals who have overstayed and are ineligible for a visa do not receive one. State Department's responsibilities also include identifying and denying nonimmigrant visas to potential intending immigrants—individuals who intend to remain in the United States for an indefinite period.

Table 2: Roles and Responsibilities of Federal Agencies for Addressing Overstays

Federal agency	Overall role	Overstay responsibilities
CBP Office of Field Operations	Executes policies and procedures at POEs for the screening of travelers and merchandise entering the United States.	• Determines nonimmigrant admissibility based in part on previous overstay violations and provides nonimmigrants an "admit until" date, by which the individual must leave the country to avoid overstaying. • Collects biographic and biometric information to verify nonimmigrant entry into the country and biographic information to verify nonimmigrant exit from the country.
DHS US-VISIT	Provides overstay and other information to various agencies.	• Identifies overstays by matching arrival and departure information collected primarily through the Arrival and Departure Information System. • Provides overstays information primarily to CTCEU and also shares overstay information with USCIS and CBP.
ICE Homeland Security Investigations CTCEU and field offices	Investigate a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States.	• CTCEU: Uses information provided by US-VISIT and databases to identify visa, VWP, and national security registrant overstays, and out of status students, then assigns leads for further investigation by field offices. • Field offices: Investigate overstay cases and determine appropriate action to be taken, including initiating administrative procedures to remove an individual from the country, if appropriate.
ICE ERO	Identifies and apprehends aliens who are subject to removal from the country, detains these individuals when necessary, and removes illegal aliens from the United States.	• Contributes indirectly to overstay investigation and enforcement efforts through various programs, such as (1) the Criminal Alien Program, (2) the Fugitive Operations Support Center, (3) Secure Communities, and (4) the 287(g) program.[a] • Responsible for the removal of deportable aliens from the United States.

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Federal agency	Overall role	Overstay responsibilities
USCIS	Adjudicates applications and petitions for immigration and citizenship benefits, including applications for nonimmigrant benefits and statuses.	• Adjudicates immigration benefit petitions, which if pending or approved, may preclude individuals from being classified as overstays.
State Department Bureau of Consular Affairs	Adjudicates visa applications to determine if an individual is required to obtain or is eligible for a visa, and if so, issuing a visa.	• Responsible for ensuring that visas are issued in accordance with applicable overstay laws. For instance, overstay violations may make an applicant ineligible for a visa.

Source: GAO analysis of DHS and State Department information

*The Criminal Alien Program identifies, processes, and removes criminal aliens incarcerated throughout the United States, focusing on those that pose a risk to public safety. The Fugitive Operations Support Center operates under the National Fugitive Operations Program and reviews and monitors certain overstay leads generated by CTCEU to determine if any pertain to individuals that are fugitives or that become fugitives. Secure Communities is an initiative to modernize the criminal alien enforcement process, including the improvement of information sharing between federal agencies and state and local law enforcement agencies. The 287(g) program allows state and local law enforcement agencies to enter into a partnership with ICE in order to receive delegated authority for immigration enforcement within their jurisdiction.

Federal agencies use various databases to determine whether nonimmigrants have overstayed their authorized periods of admission to the United States. As shown in table 3, these databases provide information on foreign nationals' arrival to and departure from the United States, foreign nationals' applications to change status once in the United States, and the status of foreign students.

Table 3: Key Federal Databases Used for Identifying Overstays

Database	Agency responsible for managing the database	Information maintained in the database related to overstays
Arrival and Departure Identification System	US-VISIT	Nonimmigrant arrival and departure information, the date until which an individual may remain in the United States, and various other information (e.g., the address where the individual will reside in the United States).
Automated Biometric Identification System	US-VISIT	Biometric information collected from nonimmigrants upon their entry into the United States (i.e., fingerprints and photographs).
TECS	CBP	Used at POEs to verify traveler information and contains lookouts—electronic alerts—for certain individuals (e.g., overstays). TECS also interfaces with other agencies' databases to share this information.
Student and Exchange Visitor Information System	ICE	Immigration status information for nonimmigrant foreign students and exchange visitors.
National Security Entry-Exit Registration System	ICE	Arrival, departure, and other information on nonimmigrants who are required to register with immigration authorities either at a POE or at a designated ICE office for national security reasons.

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Database	Agency responsible for managing the database	Information maintained in the database related to overstays
Computer-Linked Application Information Management System 3	USCIS	Status of foreign nationals' petitions for extensions of stay or changes of immigration status (e.g., to convert from a tourist to a student).

Source: GAO analysis of DHS information

Federal Agencies Take Actions against a Small Portion of the Estimated Overstay Population, but Strengthening Prioritization and Assessment of Overstay Efforts Could Improve Enforcement

ICE CTCEU is the primary federal entity responsible for taking enforcement action to address in-country overstays, but it investigates and arrests a small portion of the estimated in-country overstay population due to, among other things, ICE's competing priorities. While ICE reports allocating a small percentage of its resources to overstay investigations since fiscal year 2006, the agency has expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. Currently, CTCEU prioritizes in-country overstay leads based on various factors that consider the potential risks overstays may pose to national security and public safety, and field offices investigate those leads that CTCEU identified as a priority. CTCEU has not yet established mechanisms for assessing its performance in meeting program goals. In addition to ICE's overstay enforcement activities, State Department and CBP also take action to prevent out-of-country overstays from returning to the United States and to deny nonimmigrant visas to potential intending immigrants.

ICE Investigates Few In-Country Overstays, but Its Efforts Could Benefit from Improved Planning and Performance Management

CTCEU Efforts Result in Enforcement Action against a Small Portion of the Estimated In-Country Overstay Population

ICE CTCEU is the primary federal entity responsible for taking enforcement action to address in-country overstays, but it investigates and arrests a small portion of the estimated in-country overstay population. CTCEU identifies leads for overstay cases; takes steps to verify the accuracy of the leads it identifies by, for example, checking leads against multiple databases; and prioritizes leads to focus on those the unit identifies as being most likely to pose a threat to national security or public safety. CTCEU then requires field offices to initiate investigations on all priority, high-risk leads it identifies. For example, in 2009 CTCEU

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identified a suspected overstay from the United Kingdom who, intelligence indicated, may have been a suspected terrorist. CTCEU referred this overstay lead to a field office for investigation, which resulted in an arrest of the suspected overstay in August 2010. According to CTCEU data, as of October 2010, ICE field offices had closed about 34,700 overstay investigations that CTCEU headquarters assigned to them from fiscal year 2004 through 2010.[27] These cases resulted in approximately 8,100 arrests, relative to a total estimated overstay population of 4 million to 5.5 million.[28] Although the percentage of CTCEU overstay investigations that resulted in arrest varied by the fiscal year in which they were initiated, Homeland Security Investigations field offices arrested from 20 to 27 percent of nonimmigrant overstays who were subjects of those investigations, as shown in figure 2.

[27]CTCEU also investigates suspected VWP overstays, out-of-status students and National Security Entry-Exit Registration System violators. For the purpose of this discussion, these investigations are referred to collectively as "overstay" investigations.

[28]ICE is unable to provide data on the number of overstays arrested by CTCEU who were detained or deported due to the configuration of its information systems. While CTCEU tracks overstay arrests, prior to fiscal year 2011 it did not track the outcomes of overstay cases following arrest because ERO, not CTCEU, is responsible for the detention and deportation of overstays. While ERO tracks the detention and deportation of individuals by the section of law they violate, overstays fall under a section of law that includes other nonimmigrant violations, and thus overstay cases cannot be easily identified. CTCEU officials reported that the office is planning to modify its database in order to track these data going back to fiscal year 2010. In addition, prior to fiscal year 2011, CTCEU did not track how many of its investigations resulted in criminal versus non-criminal arrests, and therefore, cannot quantify how many of the approximately 8,100 overstay arrests it made based on cases initiated in fiscal year 2004 through 2010 were criminal or civil (i.e., administrative) arrests. The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays. Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

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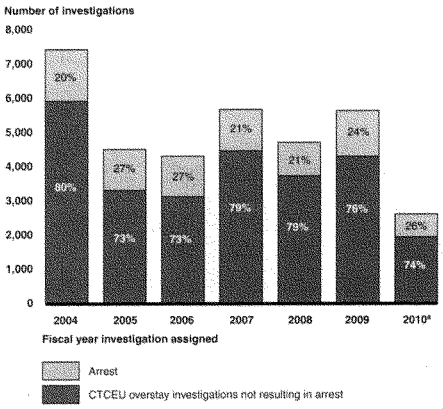
Figure 2: Percentage of Closed CTCEU In-Country Overstay Investigations Resulting in Arrest (as of Oct. 2010)



Source: GAO analysis of CTCEU data.

[a]According to CTCEU officials, fewer cases that were initiated in fiscal year 2010 have been closed relative to other years because a case that is assigned to a field office by CTCEU headquarters during one fiscal year may not be closed until a subsequent fiscal year. As such, field offices are working to close overstay cases that CTCEU assigned to them in fiscal year 2010. According to CTCEU data, as of October 2010, approximately 4,000 overstay investigations assigned to field offices from fiscal year 2004 through 2010 had not yet been closed by field offices.

Note: Data presented in this table include outcomes of CTCEU investigations of suspected visa overstays, VWP overstays, National Security Entry-Exit Registration System overstays, and out-of-status students. These data do not include overstays arrested through ERO programs. ERO personnel may encounter overstays in the course of their work but they do not directly focus on overstay enforcement.

In addition to overstay investigations that CTCEU headquarters assigns to ICE field offices, the offices can open their own overstay investigations. For example, CTCEU agents at all six field offices we visited stated that their offices have initiated their own overstay investigations. Also, ICE agents may encounter and arrest overstays during investigations they conduct through ICE's other investigative programs, such as worksite enforcement. Because ICE codes these investigations differently in its information systems, they are not included in the arrest data in figure 2.

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CTCEU overstay investigations that do not lead to an arrest result in one of three outcomes: (1) evidence is uncovered indicating that the suspected overstay has departed the United States; (2) evidence is uncovered indicating that the subject of the investigation is in-status (e.g., the subject filed a timely application with USCIS to change his or her status and/or extend his or her authorized period of admission in the United States); or (3) CTCEU investigators exhaust all investigative leads and cannot locate the suspected overstay.[29] Of the approximately 34,700 overstay investigations assigned by CTCEU headquarters that ICE field offices closed from fiscal year 2004 through 2010, about 8,100 (or 23 percent) resulted in arrest and about 26,700 (or 77 percent) resulted in one of these three outcomes.[30] Among these approximately 26,700 cases, 31 percent resulted in a departure finding; 32 percent in an in-status finding; and 37 percent in all leads being exhausted, as presented in figure 3.

[29]With regard to the second outcome, that the subject is found to be in-status, under certain circumstances, an application for extension or change of status can temporarily prevent a visitor's presence in the United States from being categorized as unauthorized. See Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the [Immigration and Nationality] Act," memorandum, Washington, D.C., May 6, 2009.

[30]Investigations resulting and not resulting in arrest do not total 34,700 due to rounding.

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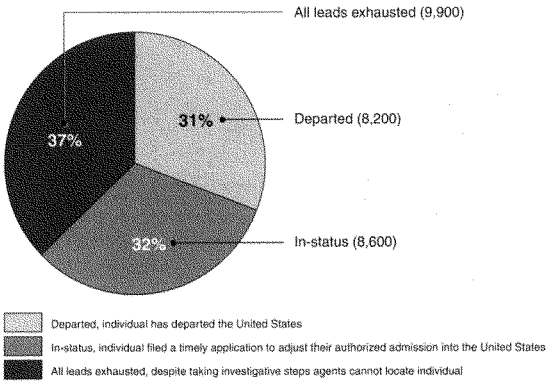
Figure 3: Fiscal Years 2004-2010 Outcomes of CTCEU Overstay Cases Not Resulting in Arrest



Source: GAO analysis of CTCEU data.

Note: Data presented in this table include outcomes of CTCEU investigations of suspected visa overstays, VWP overstays, National Security Entry-Exit Registration System overstays, and out-of-status students.

ICE officials attribute the significant portion of overstay cases that result in a departure finding, in-status finding, or with all leads being exhausted generally to three issues: difficulties associated with locating suspected overstays, data timeliness, and data completeness.

- *Difficulties locating suspected overstays.* ICE agents reported locating suspected overstays as challenging because the address ICE has on file for a suspect may be outdated or inaccurate, and if ICE agents are unable to locate the suspect after taking recommended investigative steps, they will close the case with an all leads exhausted outcome. CTCEU agents in two of the six offices we visited identified locating suspected overstays as the most challenging aspect of conducting overstay investigations. They explained that, although CTCEU headquarters only assigns investigations to field offices if there is a last known address for the subject, the subject may have moved to a new address or have never resided there in the first place. For example, the address available to CTCEU agents may be the one that the nonimmigrant provided on his or her Form I-94/I-94W when he or

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she was admitted to the United States, and the nonimmigrant may have subsequently moved.[31] Prior to closing a case and reporting that all leads have been exhausted, CTCEU recommends that agents perform several steps to try to obtain additional leads for the case, including contacting relatives or other known associates, searching Internet sites (e.g., Google and Facebook), and contacting other law enforcement agencies. If an agent performs such steps and still cannot identify a valid address for a suspected overstay, the case will be closed with an outcome of all leads exhausted. These cases are subsequently monitored by a system that automatically queries various databases, such as Lexis-Nexis, on a weekly basis for new information relating to the location of the suspected overstay. If such information is identified, CTCEU will reopen the investigation.

- *Data timeliness.* With regard to data timeliness, new information may be entered in DHS systems between the time CTCEU headquarters assigns an investigation to a field office and the time that the office undertakes the investigation that permits the field office to close the investigation. CTCEU agents in four of the six field offices we visited told us that additional data entered in this manner contributes to the frequency with which they close cases with a departure or in-status finding. For example, when a CTCEU headquarters analyst reviews an overstay lead, the analyst is to check USCIS electronic information systems to see if the suspected overstay has filed a benefit application with USCIS that places him or her in-status. Although the suspected overstay may have done so, the application may not yet appear in USCIS's systems because the agency is still processing it and has not posted its receipt. When a field office agent opens an investigation, the first task the agent is to perform is to check DHS information systems for any new information related to the suspected overstay under investigation. If USCIS has subsequently posted that the suspected overstay has a pending application in its systems, the field office agent may see this information, determine that the suspected overstay under investigation is in-status, and close the investigation with an in-status outcome.

- *Data completeness.* Incomplete data in DHS systems contribute to investigations resulting in departure findings when ICE field agents

[31]Visitors traveling on nonimmigrant visas are issued a Form I-94 and visitors from the VWP countries are issued a Form I-94W while in transit to or upon their arrival to a United States POE. The Form I-94/I-94W, among other things, records the date a nonimmigrant's authorized period of admission expires and the address where the nonimmigrant reports he or she will be staying in the United States.

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uncover evidence that the subject of a CTCEU investigation departed even though DHS systems contain no record of their departure. CTCEU agents in four of the six offices we visited cited missing departure data as a cause of cases resulting in a departure finding. For example, if the suspected overstay under investigation exited the United States through a land POE and did not submit an I-94/I-94W form to record his or her departure, there will be no indication in DHS systems that the suspected overstay has left the country, and CTCEU may open an investigation of the individual. Through ensuing investigative efforts, such as attempting to contact the suspected overstay by telephone or electronic mail, or asking Canadian authorities to review their records to determine if the suspected overstay entered Canada, CTCEU field agents may secure evidence that the suspected overstay has departed the United States and close the investigation accordingly.[32]

In addition to CTCEU investigative efforts, other ICE programs within ERO may take enforcement action against overstays, though none of these programs solely or directly focus on overstay enforcement. For example, if the ERO Criminal Alien Program identifies a criminal alien who poses a threat to public safety and is also an overstay, the program may detain and remove that criminal alien from the United States. Further, ERO's National Fugitive Operations Program may undertake efforts to locate a nonimmigrant who was ordered removed based on various immigration violations, including an overstay violation, but did not surrender for removal. ERO cannot reliably quantify the results of its in-country overstay enforcement efforts because in its case management system, ERO does not separately track overstay cases. Rather, ERO's cases are coded by the section of law that the subject violated, and these sections apply to violations that are broader than exclusively overstay violations. For example, 8 U.S.C. § 1227(a)(1)(C)(i) makes any alien who has failed to maintain or comply with the conditions of his or her nonimmigrant status deportable. In addition to overstay violations, this could include remaining in the United States while no longer working as a foreign diplomat, religious worker, or temporary agricultural worker, among other possible violations. ERO officials told us that ERO plans to develop metrics for tracking the results of its in-country overstay enforcement efforts, pending

[32]In February 2011, the United States announced plans to work with Canada on border security and other issues, including working towards an integrated United States-Canada entry-exit system. This effort would include working towards the exchange of relevant entry information in the land environment so that documented entry into one country serves to verify exit from the other country.

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the outcome of an ongoing internal ICE review of whether to shift more overstay enforcement responsibilities to ERO in the future.

ICE Allocates a Small Percentage of Resources to Overstay Enforcement, but Plans to Augment Overstay Enforcement Resources

ICE has reported allocating a small percentage of its resources in terms of investigative work hours to overstay investigations since fiscal year 2006, but the agency has expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. According to DHS, ICE received approximately $1.7 billion in funding and about 8,000 full time equivalent positions in fiscal year 2010 for domestic investigations, which include overstay investigations.[33] From fiscal years 2006 through 2010, ICE reported devoting from 3.1 to 3.4 percent of its total field office investigative hours to CTCEU overstay investigations, as shown in figure 4.

[33]DHS Congressional Budget Justification for Fiscal Year 2012.

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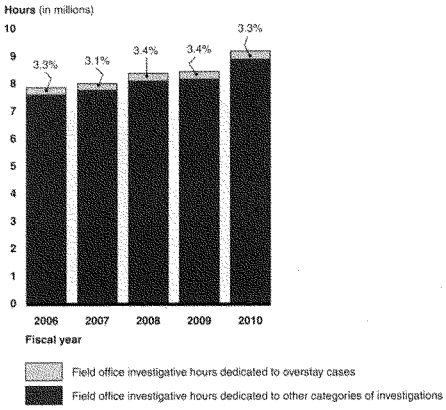
Figure 4: ICE Reported Percentage of Field Office Investigative Hours Dedicated to Overstay Cases



Source: GAO analysis of ICE data.

Note: These data do not include ERO work hours, which may include some hours spent taking enforcement actions to address overstays. These data also do not include hours related to administrative activities associated with ICE investigations.

In addition to CTCEU investigative efforts, other ICE programs within ERO may dedicate resources to overstay enforcement, such as ERO's Criminal Alien Program and National Fugitive Operations Program. According to ERO officials, because overstay enforcement is not a specific focus of any of ERO's programs, ERO does not track the number of work hours it dedicates to enforcement actions pertaining to overstays, but intends to do so if it is assigned additional overstay enforcement responsibilities as a result of ICE's ongoing internal review.

ICE attributes the small percentage of investigative resources it reports allocating to overstay enforcement efforts primarily to competing enforcement priorities. According to the ICE Assistant Secretary, ICE has resources to remove 400,000 aliens per year, or less than 4 percent of the estimated removable alien population in the United States. In light of the large number of immigration violators the agency is responsible for

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addressing and its finite enforcement resources, in June 2010, the Assistant Secretary stated that ICE must prioritize the use of its resources to ensure that its efforts to remove aliens reflect the agency's highest priorities, namely nonimmigrants, including suspected overstays, who are identified as high risk in terms of being most likely to pose a risk to national security or public safety. In addition, the Assistant Secretary stated that the level of resources ICE dedicates to overstay enforcement efforts reflects the distribution of its resources among its competing enforcement requirements. As a result, ICE dedicates its limited resources to addressing overstays it identifies as most likely to pose a potential threat to national security or public safety and does not generally allocate resources to address suspected overstays that it assesses as non-criminal and low risk.

ICE has indicated it may allocate more resources to overstay enforcement efforts moving forward, and that it plans to focus primarily on suspected overstays who ICE has identified as high risk or who have recently overstayed their authorized periods of admission. For example, the ICE Strategic Plan Fiscal Year 2010-2014 states that the agency plans to invest more resources to identify and remove aliens soon after they overstay in those fiscal years. Further, according to ICE's Assistant Deputy Director, ICE intends to put more resources towards identifying and removing aliens who were admitted to the United States in the current fiscal year and overstayed their authorized period of admission than aliens who entered the country 10 years ago and overstayed. This official explained that ICE prioritizes recent overstays in part because they have generally established fewer ties in U.S. communities, and as a result, are more likely to be eligible for removal under law. However, regardless of the length of time a nonimmigrant has overstayed in the United States, ICE can take enforcement action against the overstay, including in cases when ICE encounters an overstay through other investigative programs or efforts, according to this official. In addition, the Assistant Secretary of ICE stated in March 2010 that it is imperative to expand the nation's enforcement efforts concerning overstays and other status violations, and ICE is reviewing its policies, programs, and procedures concerning overstays.

According to senior ICE officials, as of January 2011, ICE is considering expanding ERO's overstay enforcement role by proposing the development of teams of officers within ERO dedicated specifically to enforcement action against civil (non-criminal) overstays and transferring some or all CTCEU overstay programming from Homeland Security Investigations to ERO. According to senior ERO officials, ICE senior management is reviewing an ERO proposal to create 5 to 7 teams of about

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16 officers each devoted exclusively to overstay enforcement. According to ICE's Assistant Deputy Director, ICE and DHS management concur with this proposal and are considering requesting additional funds to support these teams in a future budget request.[34] According to ERO officials, these teams would be located in the largest U.S. tourist destinations, such as New York and Los Angeles, and would each be projected to close approximately 600 cases per year. Although it is too early to tell what impact, if any, ICE's plans for allocating additional resources would have on the results of its overstay enforcement activities, the creation of ERO teams dedicated to taking enforcement action against overstays would represent an expansion of ICE's overstay enforcement efforts. In addition, ERO officials told us that ICE is considering transferring at least part of CTCEU's efforts for addressing overstays from Homeland Security Investigations to ERO, although no decision has been reached. According to ICE's Assistant Deputy Director, it is ICE's intention for ERO to focus on civil immigration enforcement and Homeland Security Investigations to focus on taking enforcement actions to address criminal violators and violators who pose a threat to national security; as overstaying is a civil violation, civil overstay enforcement falls within ERO's area of responsibility.

As an intermediate step, in the summer of 2010, CTCEU began to provide all overstay leads it identified as low risk in terms of posing a threat to national security or public safety to the ERO Criminal Alien Program. However, according to the Acting Unit Chief, the Criminal Alien Program does not have sufficient resources to investigate these leads, and the program is still in the process of determining how to most efficiently and effectively utilize its resources to address civil, low-risk overstay violators. According to senior ERO officials, although there has been discussion within ICE about augmenting ERO resources for investigating overstays through programs such as the Criminal Alien Program, no specific plans for doing so have been established.

According to ERO officials, ERO does not plan to assume responsibility for a portion of civil overstay enforcement until ICE assesses the funding and resources that doing so would require. ERO officials stated that ERO and Homeland Security Investigations have begun to assess these requirements but have not established a time frame for completing this assessment because ICE is considering transferring some overstay

[34]DHS did not request funds for this purpose in its fiscal year 2012 budget request.

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programming from CTCEU to ERO concurrently with considering the transfer of other Homeland Security Investigations functions to ERO. Program management standards state that successful execution of any program includes developing plans that include a time line for program deliverables. By developing a time frame for completing a resource and funding assessment and utilizing the assessment findings, as appropriate, ICE would be better positioned to hold its staff accountable for completion of efforts as management intended, thereby strengthening its planning efforts for executing its overstay enforcement activities moving forward.

CTCEU Considers Various Risk-Based Factors in Prioritizing Its Overstay Leads

CTCEU prioritizes investigation of in-country overstay leads based on the perceived risk each lead is likely to pose to national security and public safety as determined by threat analysis. CTCEU investigations focus on suspected overstays it identifies as most likely to engage in activities that may pose a threat to national security or public safety. In order to prioritize investigation of overstay leads, CTCEU uses an automated system to assign each overstay lead a priority ranking based on threat intelligence information. The specific criteria CTCEU uses to rank the priority level of leads are determined tri-annually based on current threat information by the Compliance Enforcement Advisory Panel, an interagency panel of intelligence experts assembled by ICE for the purpose of determining these criteria.[35] Although the threat-related criteria identified by the Compliance Enforcement Advisory Panel and used by CTCEU to prioritize overstay investigations are not publicly available, they center on country of birth, age, and gender. For example, CTCEU may assign all females within a specific age range who were born in a particular country the same priority ranking. In addition, if other threat information indicates that an individual or group of suspected overstays that do not fit within the specific criteria determined by the Compliance Enforcement Advisory Panel are high risk for engaging in activity that may pose a threat to national security or public safety, CTCEU will assign them as high priority for investigation. For example, upon receiving intelligence indicating that a suspected VWP overstay who did not fit within CTCEU's priority criteria was wanted by Argentinean authorities for drug smuggling, CTCEU prioritized the case for investigation. If a review by CTCEU analysts indicates that there is sufficient information associated

[35]Compliance Enforcement Advisory Panel members include representatives from the National Counterterrorism Center, the Federal Bureau of Investigation, CBP, the State Department, and the DHS Office of Intelligence and Analysis, and other intelligence community stakeholders.

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with a priority lead (e.g., an address for the alien in question) to make it viable for investigation, CTCEU assigns the lead to a field office for mandatory investigation.

CTCEU Could Benefit from Establishing Mechanisms for Assessing Performance to Address Overstays

CTCEU has not yet established mechanisms for assessing its performance in meeting program goals. We have previously reported that leading organizations promote accountability by establishing results-oriented, outcome goals and corresponding performance measures by which to gauge progress.[36] In addition, *Standards for Internal Control in the Federal Government* and the Office of Management and Budget call for agencies to have performance measures and indicators that are linked to mission, goals, and objectives to allow for comparisons to be made among different sets of data so that corrective actions can be taken if necessary. Measuring performance allows organizations to track the progress they are making toward their goals and gives managers critical information on which to base decisions for improving their progress. According to DHS training materials, information and data gathered from performance measurement is in part to be used to plan for future resource allocations, to better manage programs, and to communicate to stakeholders the value the program is delivering.

Although CTCEU has established an output program goal and target and tracks various performance measures, it does not have a mechanism in place to assess the outcomes of its efforts, particularly the extent to which the program is meeting its mission as it relates to overstays—to prevent terrorists and other criminals from exploiting the nation's immigration system.[37] CTCEU's program goal is to prevent criminals and terrorists from exploiting the immigration system by proactively developing cases

[36]See, for example, GAO, *Combating Gangs: Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, GAO-09-708 (Washington, D.C.: July 24, 2009); and GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996).

[37]OMB Circular A-11 states that output measures describe the level of activity that will be provided over a period of time, including a description of the characteristics (e.g., timeliness) established as standards for the activity. Outputs refer to the internal activities of a program (i.e., the products and services delivered). CTCEU's mission is to prevent terrorists and other criminals from exploiting the nation's immigration system and to expand the resource equities within the various intelligence community and federal agencies. As CTCEU's efforts to address overstays most closely contribute to its mission to prevent terrorists and other criminals from exploiting the nation's immigration system, we are focusing on this aspect of its mission for the purpose of this discussion.

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for investigation, and its performance target is to send 100 percent of verified priority leads to field offices as cases.[38] CTCEU also tracks a variety of output measures, such as the number of cases completed and their associated results (i.e., arrested, departed, in-status, or all leads exhausted) and average hours spent to complete an investigation. While CTCEU's performance target permits it to assess an output internal to the program—the percentage of verified priority leads it sends to field offices for investigation—it does not provide program officials with a means to assess the impact of the program in terms of preventing terrorists and other criminals from exploiting the immigration system. According to senior CTCEU officials, the unit measures its progress against an output performance goal and target because the unit has not identified a means by which to measure program outcomes. Specifically, the unit has not identified any means to assess CTCEU's progress in meeting its mission other than to point out retroactively whether or not terrorists or criminals have exploited the nation's visa programs. If no status violators, including overstays, attack the United States or otherwise compromise homeland security, officials stated that they view this as an indication that the unit is performing well. However, CTCEU cannot directly attribute the fact that no overstays have attacked or compromised U.S. homeland security to its overstay enforcement efforts, as various other factors could affect or contribute to this outcome.

We and the Office of Management and Budget have acknowledged the difficulty in developing outcome measures for programs that aim to deter or prevent specific behaviors, and have reported that in such an instance proxy measures—or indirect indicators—should be designed to assess the effectiveness of program functions.[39] CTCEU officials agreed that the use of proxy measures with associated performance targets could better enable the unit to gauge its performance in meeting its mission and to measure the effectiveness of its overstay enforcement efforts. For example, a proxy measure for CTCEU could be the number of cases resulting in all leads exhausted per investigative hours worked, and the

[38]Verified leads are leads that CTCEU has determined to be accurate and viable by analyzing information from government and commercial databases containing information related to immigration status. For example, these procedures are intended to verify that an individual suspected of overstaying has not departed the country or been granted an extension of stay by USCIS.

[39]GAO, *Supply Chain Security: Examinations of High-Risk Cargo at Foreign Seaports Have Increased, but Improved Data Collection and Performance Measures Are Needed*, GAO-08-187 (Washington, D.C.: Jan. 25, 2008).

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target could be to have fewer than an established number of cases per investigative hours worked result in this outcome. By undertaking efforts to develop performance goals and targets for outcome-oriented measures—or proxy measures if program outcomes cannot be captured—CTCEU could be positioned to track its performance in meeting its mission. This performance information, in turn, could provide CTCEU managers with information on which to base decisions for improving its efforts and performance to prevent terrorists and other criminals from exploiting the nation's immigration system.

The State Department and CBP Have Taken Action to Prevent Ineligible Out-of-Country Overstays from Returning to the United States

In addition to ICE's activities, the State Department and CBP have taken action to prevent ineligible out-of-country overstays from returning to the United States, and the State Department also has acted to deny nonimmigrant visas to potential intending immigrants. In general, foreign nationals who have departed the United States after having remained in the country beyond their authorized periods of admission are ineligible to return to the United States for 3 years if they overstayed by 181-364 days, and 10 years if they overstayed by 365 or more days. The State Department and CBP are responsible for, respectively, preventing ineligible violators from obtaining a new visa or being admitted to the country at a POE.

According to State Department data, the department denied about 52,800 nonimmigrant visa applications and about 114,200 immigrant visa applications from fiscal year 2005 through fiscal year 2010 due, at least in part, to applicants having previously been unlawfully present in the United States for more than 180 days, according to statute.[40] These numbers equate to, on average, approximately 8,800 nonimmigrant visa refusals and 19,000 immigrant visa refusals per year from fiscal year 2005 through 2010.[41] According to State Department officials, although a small portion of these refusals refer to actions taken against people that illegally entered the United States without inspection or unlawfully remained in the country after having their status terminated, most of these visa refusals

[40]State Department data indicate that a total of about 36.5 million nonimmigrant visas and about 2.7 million immigrant visas were issued from fiscal year 2005 through 2010.

[41]Some of these visa refusals were ultimately overcome based on the availability of evidence that showed the applicant's ineligibility no longer applied, the approval of a waiver, or by other relief as provided by law. According to State Department data, from fiscal year 2005 through 2010, a total of about 4,500 nonimmigrant visa application refusals and about 60,800 immigrant visa application refusals based on the applicant having been unlawfully present for more than 180 days were ultimately overcome.

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were due to applicants having overstayed their authorized periods of admission to the United States by more than 180 days.[42] Similarly, CBP reported that it refused admission to about 5,000 foreign nationals applying for admission to the United States from fiscal year 2005 through 2010 (an average of about 830 per year) specifically due to the applicants' previous status as unlawfully present in the United States for more than 180 days.[43] The State Department may also deny applications for nonimmigrant visas if there is reason to suspect that the applicants do not intend to abide by the terms of the visas and are likely to remain in the United States beyond their authorized periods of admission. In effect, by denying intending immigrants nonimmigrant visas the State Department is acting to prevent these nonimmigrants from having the opportunity to overstay were they to be admitted to the United States.[44] Although the manner in which the State Department tracks nonimmigrant visa refusal data does not allow it to isolate the number of refusals specifically targeting intending immigrants, State Department officials reported that this is a common reason for nonimmigrant visa applications to be refused.

[42]According to State Department officials, the State Department records the results of adverse actions taken against aliens applying for a new visa based on the section of law under which the alien is inadmissible. As a result, the State Department is unable to isolate the number of visas denied due to applicants having accrued at least 181 days of unlawful presence by overstaying their authorized periods of admission from those that accrued unlawful presence through other means (e.g., entering without inspection). Also, since U.S. law does not explicitly render aliens that overstayed by 180 days or less inadmissible to the country, actions taken against these aliens are recorded under other broader grounds of inadmissibility that may apply to, but are not limited to, overstays. Consequently, the State Department is unable to quantify the number of visas it has denied on the basis of applicants having overstayed by 180 days or less.

[43]CBP data indicates that, in total, about 1.3 million foreign nationals were determined to be inadmissible to the United States by the CBP Office of Field Operations from fiscal year 2005 through 2010. As is the case with the State Department, CBP is unable to isolate and quantify the number of aliens it has determined to be inadmissible due to the aliens having overstayed by 180 days or less, because actions taken against these aliens are recorded under grounds of inadmissibility that may apply to, but are not limited to, overstays.

[44]State Department consular officers regularly conduct targeted validation studies to evaluate the results of a sample of their visa issuance decisions in various visa categories. The results of these studies are used to help refine and improve the consulate's future visa issuance decisions, and determining the extent to which nonimmigrant visa recipients overstay their authorized period of admission in the United States is one factor that is considered in these validation studies. In order to conduct these studies, the State Department works with US-VISIT to obtain, among other types of information, arrival and departure data for the recipients of the visas being studied.

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More Reliable, Accessible Data Could Improve DHS's Efforts to Identify and Share Information on Overstays

In the absence of a comprehensive biometric entry and exit system for identifying overstays DHS relies on two components—US-VISIT and CTCEU—to identify overstays primarily through analysis of biographic information. However, DHS's efforts to identify and report on overstays are hindered by unreliable data. Further, DHS has established a variety of mechanisms, such as overstay lookouts, or electronic alerts, to share information pertaining to overstays with its components and with federal, state, and local agencies that may encounter overstays as part of their law enforcement or other activities. DHS creates lookouts for certain categories of overstays, and expanding the categories of overstays assigned these lookouts could help improve CBP's ability to determine if these nonimmigrants should be re-admitted to the United States. Additionally, while CBP officers at POEs have reported facing challenges in obtaining information from USCIS to help make admissibility decisions regarding suspected overstays, USCIS has long-term plans to help address these challenges.

Improved Data Reliability Could Strengthen DHS Processes to Identify Overstays

DHS Identifies Overstays Primarily Based on Biographic Entry and Exit Data

In the absence of a comprehensive biometric entry and exit system for identifying and tracking overstays, US-VISIT and CTCEU primarily analyze biographic entry and exit data collected at land, air, and sea POEs to identify overstays. US-VISIT identifies both in-country and out-of-country overstays by analyzing biographic data maintained in the Arrival and Departure Information System—a database that contains information on aliens' entry, exit, and change of status—and electronically and manually comparing Arrival and Departure Information System records to information in other databases to find matches that demonstrate that a nonimmigrant may have, for instance, departed the country or filed an application to change status and thus is not an overstay (see figure 5). For cases in which US-VISIT's analysis shows that a nonimmigrant may be an in-country overstay, DHS sends the lead to CTCEU for further analysis and possible investigation. For cases in which US-VISIT's analysis shows that a nonimmigrant visa holder departed the United States—an out-of-country overstay—but the departure was more than 90 days after the nonimmigrant's authorized period of admission expired, US-VISIT creates a lookout that CBP officers at POEs and State Department officials at overseas consulates can access to determine whether that nonimmigrant

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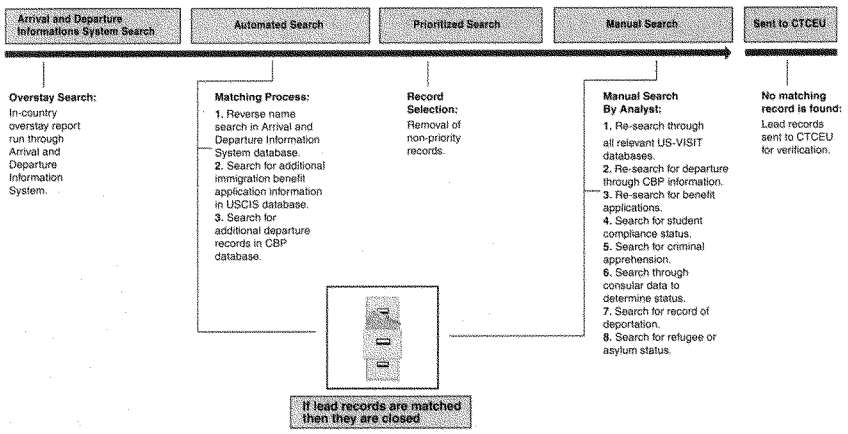
is eligible for re-admission at POEs or can receive a new visa upon application at a U.S. consulate. Appendix II provides more detailed information on US-VISIT's processes for analyzing in-country and out-of-country overstay leads.

Figure 5: US-VISIT Review Process for Identifying In-Country Overstay Leads



Source: GAO analysis of US-VISIT information; and Art Explosion (clipart).

In addition to US-VISIT's process for identifying in-country and out-of-country overstays, CTCEU conducts its own analysis to identify in-country overstays. Specifically, CTCEU analyzes (1) in-country visa overstay leads provided by US-VISIT, (2) in-country VWP overstay leads provided by US-VISIT, (3) out-of-status students based on Student and Exchange Visitor Information System data, and (4) overstay leads based on National Security Entry-Exit Registration System data. CTCEU refers viable leads—that is, leads for which CTCEU can identify a last known address—to ICE Homeland Security Investigations field offices for investigation, as shown in figure 6. CTCEU analysts conduct automated and manual checks to compare leads from the four sources against records in other databases that contain information on, for example, nonimmigrants' applications to change status, to determine whether nonimmigrants have overstayed and

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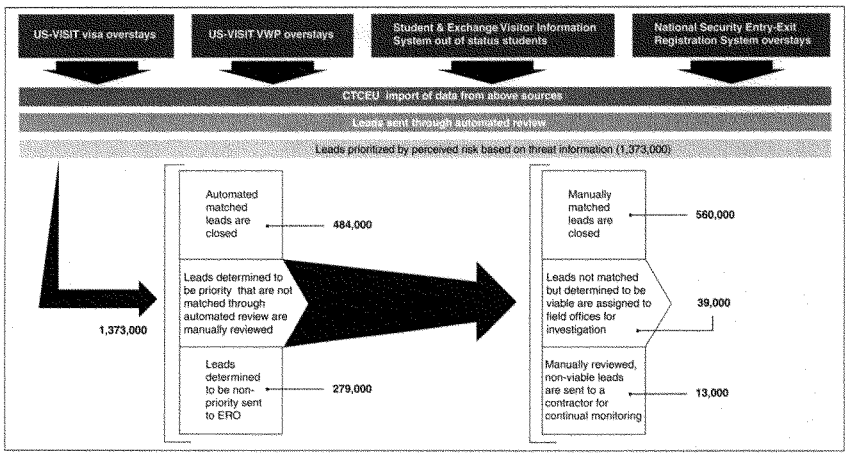
are likely still present in the United States.[45] As shown in figure 6, the majority of leads from fiscal years 2004 through 2010 were closed through automated and manual checks, meaning that the nonimmigrants were found to have departed the United States or were determined to be in status. After the completion of manual checks, about 3 percent of leads were considered to be priority with viable addresses and sent to ICE field offices for investigation from fiscal years 2004 through 2010. Appendix II provides more detailed information on CTCEU's process for analyzing overstay leads.

Figure 6: CTCEU Processing of Overstay Leads from Fiscal Years 2004-2010



Source: GAO analysis of CTCEU data.

Note: Leads do not total 1,373,000 because CTCEU revised its procedures for sending leads for continual monitoring in fiscal year 2009, which resulted in these leads being double-counted in CTCEU's data system as both closed and continually monitored.

[45]CTCEU also searches for overstays using Internet search engines and Web sites such as Bing, Facebook, and Google.

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Unreliable Data Hinder DHS Efforts to Identify Overstays and Report Overstay Rate Information to Congress and other Stakeholders

DHS's efforts to identify and report on overstays are hindered by unreliable data. Specifically, we identified four main challenges DHS faces in identifying overstays: (1) incomplete collection of departure data at POEs, (2) Student and Exchange Visitor Information System database limitations, (3) lack of mechanisms for assessing the quality of leads that CTCEU sends to the field offices for investigation, and (4) US-VISIT's backlog in analyzing potential overstay leads.

Unreliable Collection of Departure Data at POEs

Without a comprehensive biometric entry and exit system, DHS relies on biographic information that nonimmigrants provide to CBP when entering and exiting the United States, including information on I-94/I-94W arrival and departure forms. CBP faces two challenges in collecting accurate and complete biographic information from nonimmigrants departing the United States through land POEs. First, CBP requires nonimmigrants leaving the United States through land POEs to remit their I-94/I-94W arrival and departure forms to record their exit if they do not plan to return within 30 days. However, CBP does not inspect travelers exiting the United States through land POEs, including collecting their biometric information, and CBP does not have a consistent mechanism in place at land POEs to provide nonimmigrants with the means to turn in these forms.[46] Nonimmigrants departing the United States through land POEs turn in their I-94/I-94W forms on their own initiative. According to CBP officials, at some POEs, CBP provides a box for nonimmigrants to drop off their I-94/I-94W forms, while at other POEs departing nonimmigrants may park their cars, enter the POE facility, and provide their forms to a CBP officer. Remitting these forms represents the only method for recording that nonimmigrants left the country if they exit via a land POE. If departing nonimmigrants do not take the initiative to turn in their forms, DHS does not have complete information that the nonimmigrants departed the United States, hindering DHS's efforts to determine whether those nonimmigrants were overstays. Second, CBP faces challenges in ensuring the accuracy of the I-94/I-94W forms that nonimmigrants submit when

[46]While the I-94 is a paper document, CBP collects this form and manually inputs the departure information into the TECS database, after which US-VISIT and CTCEU use the data to determine if nonimmigrants have departed the United States. CBP conducts some outbound inspections at land POEs to search for illegal bulk cash and weapons. For further information, see GAO, *Moving Illegal Proceeds: Challenges Exist in the Federal Government's Effort to Stem Cross Border Currency Smuggling*, GAO-11-73 (Washington, D.C.: Oct. 25, 2010).

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departing through land POEs. In particular, at two of three land POEs we visited, CBP officials told us that there have been instances in which an individual other than the person listed on the I-94/I-94W form remitted the form to CBP. In such a case, CBP cannot be sure whether the nonimmigrant listed on the I-94/I-94W form actually departed the United States, as someone else turned in his or her form. As a result of these challenges, DHS faces difficulties in determining whether nonimmigrants have actually departed the United States through land POEs and identifying whether they overstayed their authorized periods of admission.

Internal control standards call for agencies to develop control activities to help ensure that data are completely and accurately recorded.[47] CBP officials at two land POEs we visited stated that because of the configuration of some land POEs—such as there being only one lane to accommodate all automobile traffic exiting the United States—establishing a mechanism for collecting I-94/I-94W forms at these areas could greatly impede the flow of traffic. The CBP Director for Traveler Entry Programs stated that establishing a national policy for collecting I-94/I-94W forms at land borders could yield benefits, including to help DHS more reliably identify overstays, but would need to be weighed against costs, such as determining the indirect cost for travelers to stop in line to turn in I-94/I-94W forms and the potential impact on Canadian and Mexican border crossing processes, which relate to CBP's current border crossing procedures. This official also noted that the submission of these forms would not ensure the accuracy of the biographical information collected from nonimmigrants departing through land POEs because nonimmigrants could still fraudulently remit I-94/I-94W forms that belong to others. From August 2005 to November 2006, CBP studied the feasibility of using radio frequency technology to record biographic departure information from I-94/I-94W forms at land POEs. Through tests of this technology, CBP determined that it was too immature to meet the requirements of a land exit solution. While CBP studied a technological mechanism for recording biographic departure information at land POEs, CBP officials stated that the agency has not studied the costs and benefits of providing a mechanism for nonimmigrants departing the United States at land POEs to turn in their forms, such as a drop box. In 2006, DHS released a guide to help DHS components conduct cost-benefit analyses to identify the superior financial solution among competing alternatives. This guide identified cost-benefit analyses as a proven management tool for

[47]GAO/AIMD-00-21.3.1.

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managing costs and risks.[48] By analyzing the costs and benefits of developing a mechanism to provide nonimmigrants departing land POEs with a way to turn in their I-94/I-94W forms, CBP could more effectively determine if doing so presents a viable means for the agency to obtain more complete departure information for identifying overstays for possible investigation.

In addition to these challenges in collecting complete and accurate departure information at land POEs, CBP has faced difficulties in ensuring the accuracy of departure information collected from air and sea POEs. Specifically, regulations require air and sea carriers to submit electronic passenger departure manifests—containing, among other things, the names and other identifying information of passengers—before the airplane or vessel departs from the United States.[49] The regulations also specify that the carrier collecting the manifest information is responsible for comparing the travel document presented by the passenger with the travel document information it is transmitting to CBP to ensure that the information is correct, the document appears to be valid for travel purposes, and the passenger is the person to whom the document was issued.[50] However, carriers may elect to verify that a passenger matches the travel document he or she presented at a check-in counter prior to the individual entering the boarding area rather than doing so as passengers board the airplanes or vessels, and CBP does not have a process to perform this verification at boarding. CBP officials told us that, as a result, the current system for verifying air and sea departures is vulnerable to fraud. Specifically, a nonimmigrant could fraudulently make it appear as if he or she departed when in fact the nonimmigrant has not because another individual may have taken his or her place on the outbound plane or vessel. For example, one nonimmigrant could present identification when checking in to board a plane and to go through inspection at an airport's passenger checkpoint. However, once that nonimmigrant has passed the airport's security checkpoint, he or she could exchange a boarding pass with someone else and not board the plane. That

[48]DHS: *Cost-Benefit Analysis Guidebook, Version 2.0* (2006).

[49]19 C.F.R. §§ 122.75a(b), 4.64(b). Carriers are to submit the electronic departure manifest no later than 60 minutes prior to departure for vessels, and for airplanes, either no later than 30 minutes prior to the securing of the aircraft or no later than the securing of the aircraft, depending on the type of electronic transmission system used.

[50]19 C.F.R. §§ 122.75a(d), 4.64(d).

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nonimmigrant could then leave the airport and the other person could use the boarding pass to board the plane, thereby making it appear as if the nonimmigrant who did not board the plane departed the United States, potentially posing a homeland security risk. CBP officials stated that they could not estimate how often or if this scenario occurs, but stated that it is a vulnerability. As a result, CBP may not have accurate information on nonimmigrants departing through air and sea POEs, hindering DHS's efforts to reliably identify overstays.

In addition, we have previously reported on weaknesses in DHS processes for collecting departure data, and how these weaknesses impact the determination of overstay rates. The Implementing Recommendations of the 9/11 Commission Act required that DHS certify that a system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports in order for DHS to expand the VWP.[51] In September 2008, we reported that DHS's methodology for comparing arrivals and departures for the purpose of departure verification would not inform overall or country-specific overstay rates because DHS's methodology did not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of admission.[52] Rather DHS's methodology started with departure records and matched them to arrival records. As a result, DHS's methodology counted overstays who left the country, but did not identify overstays who have not departed the United States and appear to have no intention of leaving. We recommended that DHS explore cost-effective actions necessary to further improve, validate, and test the reliability of overstay data. DHS reported that it is taking steps to improve the accuracy and reliability of the overstay data, by efforts such as continuing to audit carrier performance and work with airlines to improve the accuracy and completeness of data collection.

In addition, to help address these issues with the accuracy and reliability of departure data, DHS has tested biometric methods for positively identifying passengers before they board airplanes. For example, CBP and the Transportation Security Administration within DHS, conducted two test pilots for collecting biometric information from nonimmigrants at two

[51] 8 U.S.C. § 1187(c)(8).

[52] GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, GAO-08-967 (Washington, D.C.: Sept. 15, 2008).

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airports in 2009. Under the CBP pilot, CBP officers collected biometric exit data at departure gates at Detroit Metropolitan Wayne County Airport. Under the Transportation Security Administration pilot, Transportation Security Administration officials collected biometric exit data at security checkpoints at Hartsfield-Jackson Atlanta International Airport. DHS issued an evaluation report on these pilots in October 2009 that, among other findings, reported that the location of officers in the CBP pilot provided a high level of confidence of departure, as all travelers encountered the CBP process and then had to immediately board the aircraft. As a result, they could neither circumvent the process to board the aircraft nor attempt to remain in the United States without raising immediate suspicion. In August 2010, we reported on this evaluation report, noting that the pilot data provided insight into traveler impacts, biometric capture procedures, traveler compliance, and staffing needs, and would support further economic analysis for an air exit solution decision, but that the scope and approach to the pilot tests restricted the pilots' ability to inform a decision for a long-term air exit solution.[53] We recommended that DHS identify additional sources for the operational impacts of air exit not addressed in the pilots' evaluation and incorporate these sources into its air exit decision making and planning. DHS concurred with this recommendation and stated that the pilots it conducted would not serve as the sole source of information to inform its decision making.

Limitations with the Student and Exchange Visitor Information System Database

The Student and Exchange Visitor Information System database, which maintains biographical and immigration status information on foreign students and exchange visitors, has two gaps that hinder DHS efforts to identify foreign students or exchange visitors who are out of status for possible investigation. First, according to CTCEU officials, the Student and Exchange Visitor Information System is not an account-based system, meaning that it does not link all of a nonimmigrant's records. For example, a student's activities—including applying to several schools, being dismissed from a school, or transferring to another school—are not linked together, making it difficult for ICE officials to determine a student's complete school enrollment history. Without this history, ICE officials stated that they face challenges determining whether a student has

[53]GAO-10-860.

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complied with the terms of his or her visa requirements, such as requirements for foreign students to be continually enrolled in a school while in the United States. Second, school officials are responsible for inputting student status information into the Student and Exchange Visitor Information System, and ICE officials stated that school officials may record student biographical information incorrectly or incompletely. For example, ICE officials told us that there have been instances of school officials not inputting a graduation date for a student. In such a case, if the student graduates and no longer meets the requirements for maintaining a student visa status, ICE would not be aware that the student is actually out of status. Further, according to ICE officials, school officials have inputted student information fraudulently into the Student and Exchange Visitor Information System. Specifically, officials from four of the six ICE field offices we visited told us they had initiated student fraud cases, including cases in which schools were knowingly reporting that students were fulfilling their visa requirements, such as maintaining a full course load, when students were not attending the school or only attending intermittently. For example, in 2008 ICE agents from the Los Angeles field office investigated and arrested an English language school operator who, in exchange for cash payments, assisted nonimmigrants to fraudulently obtain student visas and reported them as enrolled in his schools even though they were not attending classes. ICE officials said that the agency does not have the personnel and funding resources necessary to collect and update biographical and educational information directly from the more than 1 million nonimmigrant students, exchange visitors, and their dependents in the Student and Exchange Visitor Information System rather than relying on school officials at each institution to input this information. As a result of these weaknesses, the Student Exchange and Visitor Information System is vulnerable to fraud and data inaccuracies, hindering ICE's efforts to obtain accurate student status information, identify students who may be overstays, and refer viable leads for further investigation by ICE field offices.

According to ICE officials, DHS is developing an updated version of the Student and Exchange Visitor Information System, which is expected to be implemented by the end of fiscal year 2011. Among other improvements, the updated version is to be an account-based system, allowing DHS to better monitor student activity. Further, ICE officials have established a new analysis unit within the CTCEU called the Student and Exchange Visitor Information System Exploitation Section to help address these vulnerabilities by, for example, analyzing Student and Exchange Visitor Information System data and referring school fraud criminal investigation leads to field offices. ICE officials said that because this section is new, it

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is too early to tell what effect the new section will have on strengthening efforts to identify student overstays and instances of school fraud.

Assessing the Quality of Overstay Leads

While CTCEU has a method for collecting and tracking overstay leads it sends to the field offices for investigation, CTCEU lacks performance measures for assessing the quality of overstay leads it provides to ICE field offices. CTCEU officials stated that while it does not have performance measures associated with its analyses or identification of overstay leads, the unit developed an internal audit program for assessing its efforts. Under this program, CTCEU supervisors check 1 percent of leads reviewed by CTCEU analysts to determine whether analysts correctly processed leads. Based on its audit program checks, CTCEU reported that from November 2007 through April 2010, the unit found 12 material errors—defined by CTCEU as leads that should have been identified as viable for investigation but were not or conversely should have been identified as not viable but were identified as viable—in analysts' review and identification of about 2,200 overstay leads. In addition, among the 2,200 overstay leads reviewed, the unit found about 1,700 nonmaterial errors—defined as errors that did not impact whether or not a lead was assigned to a field office for investigation, such as analysts not correctly recording information included in the leads, like nonimmigrants' identification numbers. This internal audit program can help CTCEU determine the extent to which it is correctly identifying viable overstay leads for investigation, and according to the audit program's concept document, is intended to help ensure that the CTCEU lead review process functions effectively. However, this program does not help ICE assess the extent to which the leads it identifies as viable for investigation ultimately result in an enforcement outcome, such as arrests. From fiscal years 2004 through 2010, 23 percent of leads investigated by ICE field offices resulted in arrests; the other 77 percent of leads resulted in a finding of departed, in-status, or all leads exhausted. CTCEU officials stated that there are various reasons that leads do not result in an arrest. For example, officials said that databases used to verify leads may not have the most current information, such as a petition for an immigration benefit. ICE officials also stated that it can be difficult to locate overstays in cases when there is not a last known address, as overstays can move to other locations.

Internal control standards require that agencies develop control activities as an integral part of planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results. Control activities can include, for example, establishing

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and reviewing performance measures and indicators. While CTCEU does not have such performance measures, US-VISIT—which performs a similar function to CTCEU by providing overstay leads for investigation—has established an outcome measure based on the credibility rate of its leads becoming investigative cases. Specifically, US-VISIT measures the percentage of suspected overstay leads it forwards to CTCEU that are currently in the United States and have overstayed their authorized periods of admission, based on the information in the databases US-VISIT checks at the time of its review of those leads. US-VISIT officials stated they have found establishing this performance measure beneficial because it provides them with information that is helpful for improving the quality of its analyses to identify overstay leads. US-VISIT officials also stated that the credibility rate is helpful for training its analysts in areas where consistent errors were made, such as in reviewing refugee and asylee benefits information. CTCEU collects data on the results of its overstay investigations, such as the number of arrests resulting from leads sent to field offices for investigation, but does not use this type of information to assess the quality of its leads because it had not identified doing so as necessary. By using data such as this to assess the quality of its leads against performance measures and monitoring the results of those measures, CTCEU could obtain information to adjust its approach in identifying and assigning leads, thereby strengthening its overall overstay investigative efforts.

Addressing US-VISIT's Backlog of Potential Overstay Records

US-VISIT has a backlog of several hundred thousand unreviewed nonpriority in-country overstay leads, which could impede US-VISIT's efforts to identify possible overstay leads for CTCEU to investigate. At the end of fiscal year 2009, US-VISIT reported a total backlog of about 959,000 in-country overstay leads, and program officials attributed this backlog to resource constraints and US-VISIT's focus on reviewing leads that meet ICE's investigative priorities.[54] The conference report accompanying the fiscal year 2010 Department of Homeland Security Appropriations Act noted congressional concerns regarding this backlog, stating that the backlog in overstay records was troubling and represented a major

[54]Since the backlogged leads have not undergone review by US-VISIT or CTCEU, it can be expected that many of the leads would be closed during the automatic and manual review processes performed by these agencies and thus may not represent overstays. In addition, any nonpriority leads would be forwarded by CTCEU to ERO.

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vulnerability.[55] In response to this concern, DHS reprogrammed $5 million from fiscal year 2009 to help address these backlogged leads, and US-VISIT officials reported processing approximately 587,000 of the backlogged leads in fiscal year 2010. However, as of January 2011, US-VISIT computer systems identified having a backlog of 1.6 million potential overstay records. According to US-VISIT officials, the 1.6 million potential overstay records include prior nonpriority overstay leads that have not yet been reviewed, nonpriority leads that continue to accrue on a daily basis, and leads generated in error as a result of CBP system changes. Specifically, CBP system changes resulted in multiple arrival or departure records being inadvertently created for a single individual. US-VISIT officials stated that they are currently in the process of addressing the impact of these CBP system changes by working with CBP to prevent multiple records from inadvertently being created in the Arrival and Departure Information System, which can subsequently cause some overstay leads to be generated in error. As of December 2010, US-VISIT was considering ways to improve the efficiency of its current operations so that it can process the remaining backlogged leads once its reprogrammed funds are fully expended by, for example, increasing the required number of leads contractors review. However, according to US-VISIT officials, as of February 2011, the unit had spent $3.7 million of the $5 million in reprogrammed funds and would not be able to prevent further backlogged leads from accumulating without additional resources.

These four challenges—unreliable collection of departure data at POEs, Student and Exchange Visitor Information System database limitations, lack of mechanisms for assessing the quality of leads that CTCEU sends to the field offices for investigation, and US-VISIT's backlog in analyzing potential overstay leads—hinder DHS's efforts to identify possible overstays in the United States for investigation by ICE. They also impede DHS from annually reporting overstay estimates and overstay rates, as required by statute. Specifically, by statute, DHS is required to submit an annual report to Congress providing numerical estimates of the number of aliens from each country in each nonimmigrant classification who overstayed an authorized period of admission that expired during the fiscal year prior to the year for which the report is made.[56] DHS officials stated that the department has not provided Congress annual overstay estimates regularly since 1994 because officials do not have sufficient

[55]H.R. Rep. No. 111-157, at 101 (2009).

[56]8 U.S.C. § 1376(b).

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confidence in the quality of the department's overstay data—which is maintained and generated by US-VISIT. As a result, DHS officials stated that the department cannot reliably report overstay rates in accordance with the statute. Further, by statute DHS is to determine a disqualification rate for each country that participated in the VWP during the previous fiscal year—that is the percentage of a VWP country's nationals who applied for admission under the program during the previous fiscal year who were denied admission at the time of arrival (including those allowed to withdraw their application for admission at the POE or violated the terms of their admission, which would include overstaying the 90-day period of admission.[57] According to statute, if DHS determines that a VWP country's disqualification rate is between 2 and 3.5 percent, the country is to be placed in probationary status for no more than two full fiscal years, with termination as a program country to follow if the rate continues to be 2 percent or more. If DHS determines that the disqualification rate is 3.5 percent or more, the country's designation as a VWP country is to be terminated at the beginning of the second fiscal year following the fiscal year in which the determination is made.[58] Because DHS is not reporting overstay rates for countries participating in the VWP, decision makers do not have complete information for determining policy for probation or removal of countries from the program. In September 2008, we recommended, among other things, that the Secretary of Homeland Security designate an office with responsibility for developing overstay rate information for the purpose of monitoring countries' compliance with the statutory requirements of the VWP, and direct that office and other DHS components to explore cost-effective actions to further improve the reliability of overstay data.[59] DHS stated that it was taking steps to implement these recommendations through actions such as working with airlines to improve the completeness of data collection.

[57]8 U.S.C. § 1187(c)(3)(A), (f).

[58]There is an exception to this termination provision if the total number of nationals from that country who were denied (or withdrew their application for) admission or violated the terms of their admission was 100 or less.

[59]GAO-08-967.

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Broadening the Scope of Electronic Lookouts in Federal Information Systems Could Enhance Overstay Information Sharing

DHS Uses Various Mechanisms and Alerts to Provide Overstay Information to Federal, State, and Local Agencies

DHS has established a variety of mechanisms to share immigration information—including information pertaining to overstays—among its component entities and with other federal, state, and local agencies. We have previously reported on the importance of effectively sharing information between different agencies and across levels of government, and in 2008 DHS acknowledged that the department continued to face barriers in this area.[60] Responsibility for administering and enforcing the nation's immigration policies is divided between various components within DHS and across the federal government, and state and local law enforcement agencies can request immigration status information from ICE on nonimmigrants they encounter, including whether those nonimmigrants are overstays.

DHS has taken several steps to provide its component entities and other federal agencies with information to identify and take enforcement action on overstays. Whereas some of these mechanisms are designed specifically to share overstay information, other mechanisms are broader in scope but also communicate information that can be used to support federal overstay identification and enforcement efforts. Table 4 provides information about these information sharing activities.

[60]See, for example, GAO, *Information Sharing: Practices That Can Benefit Critical Infrastructure Protection*, GAO-02-24 (Washington, D.C.: Oct. 15, 2001); *Information Sharing: Federal Agencies Are Sharing Border and Terrorism Information with Local and Tribal Law Enforcement Agencies, but Additional Efforts Are Needed*, GAO-10-41 (Washington, D.C.: Dec. 18, 2009); *Information Sharing: DHS Could Better Define How It Plans to Meet Its State and Local Mission and Improve Performance Accountability*, GAO-11-223 (Washington, D.C.: Dec. 16, 2010); and Department of Homeland Security, *Department of Homeland Security Information Sharing Strategy* (Washington, D.C., 2008).

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Table 4: Primary DHS Information Sharing Activities that Contribute to Federal Overstay Enforcement Actions

Activity description	Contribution to overstay efforts	Responsible DHS entity	Primary users of information[a]
Biometric and biographic lookouts on the records of overstay subjects are recorded in the Automated Biometric Identification System and TECS, respectively.[b]	Overstay lookouts alert officials if a nonimmigrant has previously overstayed or is the subject of an ICE investigation. Subsequently, officials may deny entry or refuse to issue a visa or grant an immigration benefit to the nonimmigrant due to the overstay violation.	US-VISIT creates lookouts for out-of-country overstay records generated by the Arrival and Departure Information System. CBP creates lookouts for overstay violators encountered at POEs. CTCEU creates lookouts for the subjects of its overstay investigations.	CBP, State Department, and USCIS.
Arrival and departure information about foreign citizens who travel to the United States is shared through the Arrival and Departure Information System.	Using Arrival and Departure Information System records, federal agencies can determine if a foreign national has overstayed beyond his or her authorized period of admission.	US-VISIT	CBP, ICE, State Department, and USCIS.
USCIS uses various electronic data systems to share information about a nonimmigrant's immigration status and the results of applications to change status or extend nonimmigrant stays.[c]	Federal agencies use information provided by USCIS to help determine the immigration status of suspected overstay violators.	USCIS	CBP, ICE, State Department, and US-VISIT.
ICE field offices share information about their overstay investigations to support deconfliction efforts.[d]	ICE may share information about overstays who are also subjects of separate federal, state, or local investigations. Sharing this information helps to prevent ICE agents from coming into conflict with law enforcement actions being taken or considered by another agency targeting the same nonimmigrants.	ICE	Federal, state, and local agencies participating in the same deconfliction activities as the field office.
ICE Law Enforcement Support Center, among other duties, responds to queries for immigration status information.	In response to a query regarding a nonimmigrant's immigration status, the Law Enforcement Support Center informs federal, state, and local law enforcement agencies if the nonimmigrant appears to have overstayed his or her authorized period of admission based on available arrival and departure records.[e]	ICE	Federal, state, and local law enforcement agencies.

Source: GAO analysis of DHS information

[a]Although numerous federal agencies may have access to the shared information presented in this table, CBP, ICE, USCIS, and the State Department are the primary federal agencies with authority to use this information to take action directly based on overstay violations.

[b]Biometric and biographic lookouts are electronic alerts that are linked to a subject's record in the Automated Biometric Identification System and TECS and automatically appear when the subject's information is run through these databases in the future.

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[5]According to USCIS officials, the Central Index System, Computer-Linked Application Information Management System 3, and Computer-Linked Application Information Management System 4 are the primary USCIS data systems other agencies access for information about an alien's immigration status.

[6]Examples of ICE's deconfliction activities include participating in task forces, coordinating with fusion centers, and sharing basic information about the targets of investigations in regional law enforcement information systems.

[7]Once the Law Enforcement Support Center has provided its response to the requesting law enforcement agency, the local ICE field office is responsible for conducting any follow-up work required to make a final status determination and, if necessary, taking the appropriate immigration enforcement action against the nonimmigrant.

With regard to the use of biometric and biographic lookouts, US-VISIT's efforts to share information about out-of-country overstays have contributed to State Department and CBP actions to deny out-of-country overstays new visas and prevent their return to the United States. In particular, since fiscal year 2006, US-VISIT reported that the State Department has refused 3,250 visa applications from applicants who had overstay lookouts created by US-VISIT, and CBP has refused admission to 3,960 overstay violators applying for admission to the United States at POEs who had US-VISIT overstay lookouts on their records.[61] Furthermore, as shown in figure 7, the number of applicants who had US-VISIT overstay lookouts on their records who were refused a visa or POE admission has generally increased each fiscal year since 2006. US-VISIT officials attributed this increase to the fact that the cumulative number of lookouts is increasing as new lookouts are created, thus expanding the population of overstays that could potentially be caught each year as a result of overstay lookouts.

[61]US-VISIT did not begin to process out-of-country overstay leads until August 2005. As a result, there are no data available for actions taken by the Department of State and CBP based on US-VISIT overstay lookouts in fiscal years 2004 or 2005.

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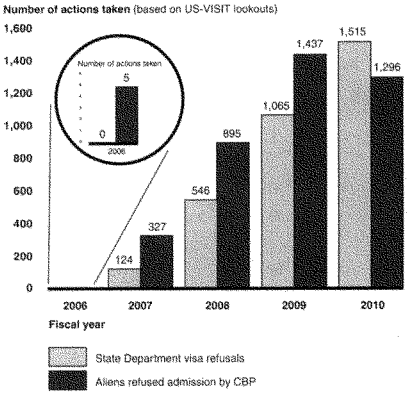
Figure 7: State Department Visa Refusals and CBP Admission Refusals on Records with US-VISIT Overstay Lookouts from Fiscal Years 2006-2010



Source: GAO analysis of US-VISIT data.

Expanding the Scope of Overstay Lookouts Could Improve CBP's Efforts to Identify Overstays Attempting to Return to the United States

Electronic lookouts are one of the primary mechanisms DHS uses to share information about out-of-country overstays, but the current scope of the population to which these lookouts are assigned does not include certain categories of overstays, such as those who overstay by less than 90 days. We have previously reported on the importance of information sharing in a variety of contexts, and internal control standards call for agencies to communicate pertinent information to internal and external stakeholders so that people can perform their duties efficiently.[62] Similarly, DHS has identified fostering information sharing as a core mission of the department, and in 2007 the Secretary of DHS issued a memorandum emphasizing that DHS personnel must have timely access to all relevant

[62]See GAO-02-24, GAO-10-41, GAO-11-223, and GAO/AIMD-00-21.3.1.

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information they need to perform their duties.[63] Biometric and biographic overstay lookouts immediately alert CBP's primary inspection officers at POEs—who generally have approximately 2 to 3 minutes to make admissions decisions—of a nonimmigrant's history as an overstay violator, at which point the officer can refer the nonimmigrant to secondary inspection for a more in-depth review of the alien's record and admissibility. Although CBP can, and does, identify overstays without lookouts through other means during the inspection process—including interviewing the subject and reviewing arrival and departure data in information systems or in the subject's passport—CBP officials stated that overstay lookouts reduce the risk that overstays could be missed during the inspection process. Furthermore, in its fiscal year 2011 budget request, DHS credited the use of overstay lookouts as helping to increase the number of adverse actions taken against overstays at POEs and overseas consular offices. However, DHS does not create lookouts for the following two categories of overstays: (1) temporary visitors who were admitted to the United States using nonimmigrant business and pleasure visas and subsequently overstayed by 90 days or less; and (2) suspected in-country overstays who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety.

US-VISIT is the primary entity responsible for creating biometric and biographic lookouts for suspected out-of-country overstays who were admitted to the United States using nonimmigrant business and pleasure visas.[64] According to US-VISIT officials, the decision to focus US-VISIT's efforts on nonimmigrants who overstayed their authorized period of admission under these visas by greater than 90 days was reached in accordance with its customers—CBP and the State Department—in 2006 in order to focus lookout creation on more egregious overstay violators. Specifically, CBP officials stated that 90 days was selected as the threshold for lookout creation based on the agency's sense that nonimmigrants suspected of overstaying by more than 90 days were more likely to eventually be confirmed as overstays than nonimmigrants whose arrival and departure records indicated they had overstayed by 90 days or less.

[63]See Department of Homeland Security, *Department of Homeland Security Information Sharing Strategy* (Washington, D.C., 2008); and the DHS Secretary's February 1, 2007, *Memorandum to All Department of Homeland Security Components* titled "DHS Policy for Internal Information Exchange and Sharing."

[64]US-VISIT also creates lookouts for suspected out-of-country overstays who were admitted to the United States under the VWP and overstayed by 7 or more days.

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Consequently, US-VISIT does not review the records of, nor create overstay lookouts for, nonimmigrants who were admitted to the country using business and pleasure visas and subsequently overstayed by 90 days or less. According to US-VISIT, a total of 570 nonimmigrant records fell into this category of overstays in fiscal years 2007 through 2010 and were not subject to review by US-VISIT for lookout creation.[65] Although U.S. law does not automatically bar aliens who overstayed their authorized period of admission by 90 days or less from returning to the United States, their ability to be admitted on a subsequent visit to the United States is up to the discretion of CBP. As of January 2011, US-VISIT, CBP, and State Department officials reported that there have been no discussions between their agencies about revising the 90-day threshold for creating overstay lookouts since the original decision to establish this parameter was reached in 2006. According to US-VISIT officials, if the decision was made to do so, reviewing new records from this particular category of out-of-country overstays would be expected to result in a small increase in the number of overstay records US-VISIT would be responsible for reviewing each day. For example, incorporating the fiscal year 2010 out-of-country overstay records of 90 days or less from this nonimmigrant visa class would have resulted in US-VISIT reviewing approximately one additional overstay record each day.

In addition to this category of aliens who overstayed by 90 days or less before departing, other categories of suspected in-country overstays also do not have lookouts assigned to their records. Specifically, neither CTCEU nor US-VISIT posts lookouts for nonimmigrants who are identified as suspected in-country overstays but who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety. CTCEU forwards these nonpriority leads to ERO, and according to CTCEU officials the decision not to create lookouts for these suspected overstays stems from concerns about the amount of resources and time that would be required to create and maintain the lookouts, as well as to respond to inquiries about the

[65]Based on the results of US-VISIT's automated and manual review of other types of overstay records—in which approximately 61 percent of the records received are subsequently closed without being forwarded to ICE or having a lookout created—it can be expected that some of the 570 short-term overstay records would also be closed without having a lookout created were they to undergo the standard automated and manual review processes US-VISIT employs for other overstay records.

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lookouts from other DHS components (e.g., CBP).[66] Alternatively, US-VISIT officials reported that US-VISIT could potentially create lookouts for the nonpriority overstay leads that it sends to CTCEU, many of which are subsequently included in the leads forwarded to ERO. However, the officials said that US-VISIT would need additional personnel in order to be able to also create lookouts for these records. In the meantime, if the subjects of the leads that CTCEU currently sends to ERO depart the United States via an air or sea POE, their departure would be recorded in the Arrival and Departure Information System and transmitted to US-VISIT, which would then be responsible for creating out-of-country overstay lookouts for the aliens. Conversely, if any of these nonimmigrants depart the country by land and do not turn in their I-94/I-94W form to record their departure, US-VISIT would not receive their record from the Arrival and Departure Information System as a potential new out-of-country overstay. As a result, if these nonimmigrants try to apply for a new visa or for admission to the country in the future, they would not have overstay lookouts on their records to help alert the State Department or CBP officials about their previous violation. Nevertheless, it is still possible that the State Department and CBP could determine that these nonimmigrants had previously overstayed their authorized periods of admission by, for example, conducting database searches before determining whether to issue new visas or allow the nonimmigrants into the United States.

CBP Office of Field Operations officials reported that having lookouts created for out-of-country visa overstay violations of 90 days or less and for in-country overstay leads that are sent to ERO could help CBP officers more effectively identify these overstay violators during any future attempts to gain admission to the United States. Similarly, officials from 9 of 12 POEs we visited reported that it would be beneficial to have lookouts created for these categories of overstays, and officials from two of the other POEs we visited stated that creating these lookouts could potentially be beneficial depending on the extent to which they contain detailed information about the factors that establish that the aliens are overstays. Nevertheless, although the CBP Office of Field Operations officials we spoke with expressed interest in having lookouts created for these categories of overstays, they stated that any decision to create these

[66]CTCEU sent about 279,000 nonpriority leads to ERO from fiscal year 2004 through fiscal year 2010. Additionally, US-VISIT's backlog of unreviewed nonpriority leads also contains an unknown number of leads that, if they were to be reviewed and deemed to be valid, would potentially be forwarded to ERO in the same manner as other nonpriority leads.

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lookouts would also need to be weighed against potential costs that may be involved. For example, in the case of lookouts for non-VWP overstays of less than 90 days, there may be a risk that travelers could unnecessarily be referred to secondary inspection only to have CBP discover that they had a legitimate reason to overstay by a few days.[67] Likewise, in the case of in-country overstay leads that are sent to ERO, since these leads are not manually reviewed by CTCEU, there is an increased likelihood that lookouts based on these leads could be inaccurate, which could result in travelers unnecessarily being referred to secondary inspection. State Department officials we spoke with were unsure of the extent to which creating lookouts for these categories of overstays could provide added value to its visa adjudication process, and stated they would need to communicate with DHS about the potential benefits and costs associated with taking this step in order to determine if it would be beneficial.

Being aware that an alien has previously committed an overstay violation is necessary if CBP is to accurately determine whether or not the violator should be re-admitted to the United States. Creating lookouts for these additional categories of overstays would help to alert CBP to these aliens' overstay history, thereby better positioning the agency to accurately identify these aliens as overstays and to incorporate this information into future admissibility decisions involving these nonimmigrants. For example, CBP officials at two POEs we visited stated that creating lookouts for these two categories of overstays would provide another layer of security in targeting overstays and would help to lessen the burden on primary inspection officers attempting to identify overstays seeking to gain admission to the country. Furthermore, to the extent these expanded lookouts help CBP identify overstays encountered at POEs, the lookouts could also help improve CBP's ability to take enforcement action against these overstays, including denying them the opportunity to be admitted to the country and to overstay again. Additionally, officials from three POEs we visited reported that including these overstays on US-VISIT's biometric watch list would help CBP inspection officers positively identify overstays regardless of any efforts taken by the aliens to conceal their violations, such as through the use of fraudulent documents or backdated passport stamps. Although CBP Office of Field Operations officials told us that creating lookouts for these categories of overstays

[67]Examples of legitimate reasons that may cause a foreign traveler to overstay could include situations such as the recent volcanic eruption in Iceland that grounded many international flights.

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would likely be beneficial and could help to reduce the risk that overstays could be missed during inspections, they acknowledged that expanding the scope of overstay lookouts in this manner could also produce unintended costs, such as nonimmigrants being unnecessarily referred to secondary inspection. According to these officials, CBP has not performed an assessment to determine if the benefits of creating these new lookouts would outweigh the potential costs, nor does the agency have plans to conduct this type of assessment. Conducting such an assessment could help CBP determine the benefits that could be gained from the creation of lookouts for these categories of overstays relative to the costs, such as the use of additional resources, which could result from creating the lookouts.

CBP Inspection Officers Face Challenges in Obtaining Information from USCIS to Address Overstays, but USCIS Has Long-Term Plans to Help Address These Challenges

USCIS provides immigration status information to federal agencies responsible for identifying and addressing overstays, but CBP officials from 9 of 12 POEs we visited reported facing challenges on some occasions obtaining information from USCIS. The ability to access USCIS's information about pending or authorized changes to nonimmigrants' status or the length of their stay in the United States is particularly important to agencies seeking to identify and address overstays, and can alter their determination of whether an alien has committed an overstay violation. For example, if USCIS approves a change of status or extension of stay for a nonimmigrant, the alien may be authorized to remain in the country beyond his or her original period of admission without qualifying as an overstay. Likewise, nonimmigrants who have submitted a timely application to change their status or extend their stay do not accrue unlawful presence while their application is pending, and can be allowed to remain in the United States beyond their original period of admission until their case has been adjudicated by USCIS. As a result, even in instances where an alien's arrival and departure dates indicate that an overstay violation has occurred, checking the alien's record with USCIS may show that the alien was authorized to remain in the United States beyond his or her original period of admission.

Given the importance of this information for correctly identifying overstays, being able to access timely, current, and accurate information from USCIS about an alien's immigration status and applications for immigration benefits is important for federal agencies conducting overstay enforcement activities. USCIS has identified ineffective information sharing with its government partners as one of the agency's challenges, and has previously acknowledged that information it shares with other agencies is sometimes difficult to obtain, incomplete, or not current. In order to help share information with other agencies, USCIS has granted several agencies—including CBP, ICE, the State Department, and officials

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from US-VISIT—access to select USCIS databases to allow these agencies to search for and view various immigration records, such as nonimmigrant applications for extensions of stay or changes of status. In particular, USCIS officials identified the Computer-Linked Application Information Management System 3 and the Central Index System as the primary USCIS databases containing information relevant to identifying overstays.[68] Also, in 2007 USCIS deployed the Person Centric Query Service, which helps to streamline the process of searching for information in USCIS's databases by enabling users to search multiple databases with a single query.

However, officials we interviewed at CBP, ICE, and the State Department reported overall mixed views about their ability to obtain information from USCIS in order to make timely and accurate immigration status determinations. Although officials from the State Department and the ICE field offices we visited did not generally raise concerns about their ability to obtain information from USCIS for the purpose of taking enforcement action against overstays, CBP officials at some of the POEs we visited reported experiencing challenges on some occasions with obtaining the information they need from USCIS for the purpose of identifying overstays encountered at POEs. In particular, officials at 9 of the 12 POEs described challenges they have encountered in trying to search for and locate records in USCIS's databases, and officials at 5 of the 12 POEs described instances where it has been challenging to contact USCIS directly for assistance with questions about an alien's immigration status or to obtain information maintained in the alien's A-File. According to CBP officials, in instances where CBP officers are unable to obtain, or are otherwise delayed in receiving the information they need from USCIS to determine the admissibility of a suspected overstay, CBP officials may find it

[68]The Computer-Linked Application Information Management System 3 database supports the adjudication of all USCIS immigration benefits other than naturalization and humanitarian immigration benefits (refugees, asylees, and parolees). The Central Index System database serves as a DHS-wide index used to track the location of paper case files (know as Alien Files or A-Files). Although the Central Index System also maintains some immigration status information about individuals, the Computer-Linked Application Information Management System 3 contains additional information about particular cases.

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necessary to defer the alien's inspection or make an admission decision based only on the information available to them at the time.[69]

Despite USCIS having an electronic information sharing infrastructure in place, several challenges prevent CBP officials from being able to obtain all of the information they need from USCIS by searching its electronic databases alone. In particular, USCIS's operating processes are paper based, which can result in some application and other case information not being captured electronically, and thus not being available to officials from other agencies searching USCIS's databases. According to USCIS officials we interviewed, the extent to which application information is captured electronically in the agency's databases varies between different types of benefit applications. Whereas some forms contain a limited number of fields that are not available to be viewed electronically, there are other types of applications—such as Form I-290B, which is used to appeal USCIS adjudication decisions—for which the entire application form is not captured electronically and can only be viewed in hard copy.

Additionally, USCIS officials stated that the Computer-Linked Application Information Management System 3 can be a difficult system for users from outside of the agency to navigate, and they stated that in some cases external users may not know how to effectively use the system to locate information. For example, USCIS's systems are event-based rather than account-based, which, according to USCIS officials, can result in different records about the same nonimmigrant (e.g., from multiple applications) not being automatically linked together in USCIS's databases. Consequently, external officials may have to run several queries to assemble all information for a nonimmigrant, and if any of the nonimmigrant's records are not located during this process the requesting entity may not have access to all of the information needed to make an accurate immigration enforcement decision. Although USCIS officials told us that the introduction of the Person Centric Query Service in recent years has helped to improve the ability of external users to search for information in USCIS's databases, USCIS does not consider this capability to be a final solution to its information sharing challenges. Instead, in

[69]Deferred inspections are used when an immediate decision concerning the immigration status of an arriving alien cannot be made at the POE and there is reason to believe that, if the alien is allowed to enter the United States and inspected at a later date, the alien can overcome a finding of inadmissibility (e.g., based on a suspected overstay violation) with the provision of additional information or documentation that is not available at the time and place of the initial examination.

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order to address these and other challenges, in 2007 USCIS initiated a project to transform its operating processes and data systems.

Among other things, the USCIS Transformation Program is designed to help the agency move away from its current paper-based process to an electronic environment, and it is expected to result in the development of a new information system that will eventually replace the Computer-Linked Application Information Management System. USCIS plans to begin implementing portions of the new information system in late 2011, and estimates that full implementation of the Transformation Program will be completed by fiscal year 2014. Although USCIS expects the Transformation Program to improve its ability to share information with other agencies, it is too early to tell what impact the program will have on strengthening CBP's ability to obtain information from USCIS regarding nonimmigrants' immigration status or applications for changes in status or other benefits. We have ongoing work assessing USCIS's transformation efforts for the House Committee on the Judiciary and the Senate Committee on Homeland Security and Governmental Affairs, and plan to report on these efforts later this year.

Conclusions

Identifying and taking enforcement action to address the estimated 4 million to 5.5 million foreign visitors who are estimated to have entered the United States legally but then overstayed is a daunting task. Given the government's finite resources for addressing overstays, competing priorities, and the magnitude of the estimated overstay population, it is particularly important that DHS overstay enforcement programs utilize leading program management practices to plan and execute overstay programs and effectively assess program results so that corrective actions can be taken if necessary. By establishing a time frame for assessing the funding and resources ERO would require to assume some responsibility for enforcement of civil nonpriority overstay violators and utilizing assessment findings, as appropriate, ICE could strengthen its planning efforts for executing its overstay enforcement activities moving forward. In addition, by establishing mechanisms to measure the outcomes of programs intended to address overstays in accordance with leading practices for performance management, CTCEU program managers could have more specific information with which to make informed decisions as to what program adjustments might be necessary, if any, to maximize program effectiveness.

Identifying overstays is challenging, particularly given that, in the absence of biometric departure data, DHS must rely on biographic information to

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do so. As DHS's ability to accurately identify overstays is largely dependent on the quality of the alien arrival and departure data CBP collects, it is important that CBP take steps to ensure these data are as reliable as possible. By establishing a mechanism to collect biographic I-94/I-94W exit documentation at land POEs to the extent that benefits outweigh costs, CBP could better ensure the completeness of alien departure data. Also, the reliability of leads sent to field offices is important because ICE has limited resources to investigate a large population of overstays. By developing and using performance measures to assess the quality of overstay leads, CTCEU's process for validating leads could improve and commensurately focus ICE field office resources on more promising overstay investigations. DHS's ability to share information between the many governmental entities involved in administering the nation's immigration laws also has an impact on the effectiveness of its efforts to identify and take enforcement action against overstays. Although the department has established various mechanisms to share immigration information, expanding the scope of overstay lookouts could improve CBP's ability to identify overstays during the inspection process, and by extension, better position it to take enforcement action to address overstay violators attempting to re-enter the United States.

Recommendations for Executive Action

To help ICE's execution of overstay enforcement efforts; and improve assessment of ICE programs that identify and address overstays so that program adjustments can be made, if necessary; we recommend that the Assistant Secretary of Immigration and Customs Enforcement take the following three actions:

- establish a target time frame for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment;
- develop outcome-based performance measures—or proxy measures if program outcomes cannot be captured—and associated targets on CTCEU's progress in preventing terrorists and other criminals from exploiting the nation's immigration system; and
- develop a performance measure for assessing the quality of leads CTCEU assigns to ICE field offices for investigations, using performance information already collected by CTCEU.

To increase the completeness of exit information available for the purpose of identifying overstays, we recommend that the Commissioner of Customs and Border Protection analyze the costs and benefits of developing a standard mechanism for collecting I-94/I-94W forms at land

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POEs, and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs.

To improve information sharing in support of efforts to identify and take enforcement action against overstays, we recommend that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Under Secretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for (1) out-of-country overstays of 90 days or less who entered the country using nonimmigrant business and pleasure visas, and (2) in-country overstay leads sent to ERO, and create these lookouts, to the extent that the benefits of doing so outweigh the costs.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS and the State Department for their review and comment. On April 11, 2011, we received written comments on the draft report from DHS, which are reproduced in full in appendix III. DHS concurred with our five recommendations and described actions under way or planned to address them. DHS also provided technical comments, which we incorporated as appropriate.

With regard to our first recommendation that ICE establish a target time frame for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment, DHS stated that ICE is in the process of planning for ERO to assume this responsibility. Specifically, DHS stated that ICE will identify the resources needed to transition this responsibility to ERO as part of the Fiscal Year 2013 Resource Allocation Plan. We believe that setting a target time for completing funding and resource assessment efforts would help ICE hold its staff accountable for completing these efforts. With regard to our second recommendation that ICE develop outcome-based performance measures or proxy measures and associated targets for assessing CTCEU's progress in preventing exploitation of the nation's immigration system, DHS stated that ICE plans to consult with DHS's national security partners to determine if proxy measures can be implemented. Establishing performance measures or proxy measures should help strengthen ICE's overstay enforcement efforts and assessment of ICE programs that identify and address overstays.

With regard to our third recommendation that ICE develop a performance measure for assessing the quality of leads CTCEU assigns to ICE field offices for investigations, DHS stated that, while the department

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concurred with the recommendation, CTCEU disagreed with our assessment that the metric it uses to assess the quality of overstay leads—a sampling of 1 percent of daily leads to correct deficient information and determine if additional training is needed to correct repetitive errors—is not sufficient to assess the quality of leads. CTCEU stated that one of the challenges to developing a metric is that it has to rely on information from other DHS components to formulate leads, and when that information becomes more reliable and accurate, CTCEU's leads should also become more reliable. While we recognize that CTCEU relies on data from various components to conduct its work and that the quality of its leads is impacted by the quality of data it uses to formulate them, we continue to believe that CTCEU could benefit from using information that it already collects through its sampling process to assess the quality of its leads against performance measures and monitoring the results of those measures. Through such assessment and monitoring, we believe CTCEU could obtain information to adjust its approach in identifying and assigning leads, as needed, to strengthen its overall overstay enforcement efforts.

To address our fourth recommendation, that CBP analyze the costs and benefits of developing a standard mechanism for collecting I-94/I-94W forms at land POEs, CBP proposed the completion of a cost effective independent evaluation. CBP also noted that different operating environments may render a standard mechanism for collecting I-94/I-94W forms inefficient. We recognize that different operating environments can effect the efficient collection of these forms, as we have reported, and believe this would be an important consideration in such an evaluation. Finally, DHS stated that in response to our fifth recommendation to assess the costs and benefits of creating biometric and biographic lookouts for out-of-country overstays of 90 days or less and in-country overstay leads sent to ERO, that ICE, CBP, and the National Protection and Programs Directorate will work together to assess the costs and benefits of creating lookouts for these categories of overstays, and that the results of this assessment will be used to determine the feasibility of additional program costs.

The State Department did not have formal comments on our draft report, but provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretaries of Homeland Security and State, selected congressional

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committees, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777, or StanaR@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors are listed in appendix IV.

Richard M. Stana

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Appendix I: Scope and Methodology

To determine the extent to which federal agencies take actions to address overstays, we analyzed program documentation, collected data, and interviewed officials from the Department of Homeland Security (DHS) and its components, including U.S. Immigration and Customs Enforcement (ICE); U.S. Customs and Border Protection (CBP); U.S. Citizenship and Immigration Services (USCIS); and the United States Visitor and Immigrant Status Indicator Technology program(US-VISIT); and the State Department. In particular, we analyzed ICE documentation, such as standard operating procedures, memos, and guidance for investigations, to determine the goals, programs, processes, and systems ICE has established for the purpose of taking enforcement action against suspected overstays located within the United States. We also interviewed ICE officials from the Counterterrorism and Criminal Exploitation Unit (CTCEU) and Enforcement and Removal Operations (ERO) headquarters, and conducted site visits to six ICE Homeland Security Investigations Special Agent in Charge field offices (located in Seattle, Washington; Los Angeles, California; San Diego, California; Miami, Florida; New York, New York; and Newark, New Jersey).[1] We selected these locations based on (1) the range in the number of overstays investigations completed by the offices from fiscal year 2004 through fiscal year 2010; (2) the offices' geographic location; and (3) the offices' proximity to CBP ports of entry (POE) we visited.[2] While the information we obtained from officials at these locations cannot be generalized across all 26 Special Agent in Charge field offices, the visits provided us with the perspectives of ICE officials responsible for conducting overstay investigations, including their views on the processes ICE has established for conducting and overseeing these investigations and any challenges they have faced in investigating overstay cases. We also assessed the extent to which CTCEU's program practices were consistent with standard practices for program management and *GAO's Standards for Internal Control in the Federal Government*.[3]

[1]During our site visit to the Newark, New Jersey Homeland Security Investigations field office, we also conducted a separate interview with officials from the ERO field office located nearby.

[2]We selected this period because CTCEU, formerly called the Compliance Enforcement Unit, was established by ICE in 2003 and fiscal year 2004 is the first year for which completed overstay investigations data are available.

[3]See, for example, GAO/AIMD-00-21.3.1 and the Project Management Institute's *The Standard for Program Management* © (2006).

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Further, we obtained and analyzed data from ICE's system for tracking overstay leads on the results of CTCEU's overstay investigations from fiscal year 2004 through fiscal year 2010.[4] In addition, we determined the extent to which Homeland Security Investigations dedicates investigative resources to overstay investigations by analyzing data on investigative hours by case category for fiscal years 2006 through 2010.[5] We assessed the reliability of these data by (1) reviewing existing documentation and documentation we collected on the controls in the systems and the policies for ensuring data reliability; and (2) interviewing agency officials who are familiar with the source of the data and internal controls built into ICE's systems, as well as the quality assurance steps performed after data are entered into the systems. We determined that the data were sufficiently reliable for the purposes of our report.

Moreover, we analyzed documentation, such as field office manuals and program memos, regarding enforcement actions taken by CBP and the State Department against out-of-country overstays attempting to be admitted to the United States or apply for a new visa. We also interviewed officials from the CBP Office of Field Operations and the State Department Bureau of Consular Affairs to identify the types of actions taken against overstays by these agencies and the circumstances in which these actions occur. We analyzed data provided by CBP on POE inadmissibilities, and the State Department on visa refusals, in order to quantify the results of actions taken by each agency against overstays from fiscal year 2005 through fiscal year 2010.[6] We assessed the reliability of the data provided by CBP and the State Department by interviewing agency officials who are familiar with the data systems and the processes used to collect, record, and analyze the data. We determined that the data were sufficiently reliable for the purposes of our report.

To determine the extent to which DHS identifies overstays and shares overstay information among its components and with federal, state, and local agencies, we analyzed the processes DHS uses to (1) evaluate suspected overstay records, (2) collect nonimmigrant arrival and

[4]We analyzed the results of CTCEU overstay investigations starting in fiscal year 2004 because it is the first year for which complete data are available.

[5]We obtained data on ICE's overstay investigative work hours from fiscal years 2006 through 2010 in order to focus our analysis on a 5-year period.

[6]We analyzed CBP and State Department data from fiscal years 2005 through 2010 because fiscal year 2005 is the first year for which complete CBP data are available.

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departure information, and (3) share information on overstays among its component entities and with other federal, state, and local agencies.[7] As part of our effort to evaluate these processes, we compared the processes established by DHS to criteria in *Standards for Internal Control in the Federal Government*.[8] Furthermore, we reviewed US-VISIT and CTCEU program documentation—such as standard operating procedures and guidelines for evaluating overstay records—and analyzed data on the number of overstays identified and overstay leads processed by US-VISIT from fiscal years 2005 through 2010 and by CTCEU from fiscal years 2004 through 2010.[9] We assessed the reliability of the data provided by US-VISIT and CTCEU by reviewing documentation on the data systems' controls and specifications, and interviewing US-VISIT and CTCEU officials who are familiar with the data systems. We determined that the data were sufficiently reliable for the purposes of our report.

Further, we interviewed officials from US-VISIT, CTCEU, and the DHS Office of Immigration Statistics about the processes and systems used to analyze nonimmigrant arrival and departure information and other immigration records for the purpose of identifying overstays. We also interviewed officials at CBP Office of Field Operations headquarters and conducted site visits to three land POEs (located in Blaine, Washington; San Ysidro, California; and Otay Mesa, California), four sea POEs (located in Seattle, Washington; Los Angeles/Long Beach, California; Miami, Florida; and Newark, New Jersey/New York, New York), and five air POEs (located in Seattle, Washington; Los Angeles, California; Miami, Florida; Newark, New Jersey; and New York, New York) in order to observe, and obtain officials' views on, the processes and systems used by CBP to inspect passengers and collect nonimmigrant arrival and departure information. We selected these locations based on (1) the presence of multiple types of POEs (land, sea, or air) in close proximity to each other; (2) the locations being geographically dispersed to include POEs on the eastern and western coasts, as well as on the northern and southern land borders; and (3) the locations being in close proximity to ICE Homeland

[7]During the course of our review we determined that state and local law enforcement actions against overstays were limited and consequently would not be a primary focus of this report.

[8]GAO/AIMD-00-21.3.1.

[9]We analyzed these data from US-VISIT starting in fiscal year 2005 and from CTCEU starting in fiscal year 2004 because those are the first years for which US-VISIT and CTCEU have complete data.

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Security Investigations field offices we visited. Additionally, to assess DHS's efforts to share overstay information, we reviewed program documentation from US-VISIT, ICE, and USCIS about applicable information sharing activities and interviewed officials from different agencies involved in sharing or receiving overstay information about the results of these activities. In particular, we interviewed officials from US-VISIT, ICE, and USCIS to obtain the perspective of agencies responsible for sharing overstay-related information. Likewise, we also interviewed State Department officials from the Bureau of Consular Affairs and CBP officials from the Office of Field Operations headquarters and at the POEs we visited to obtain the view of agencies responsible for using the shared information to take enforcement action against out-of-country overstays. Although we cannot generalize the information obtained during the site visits to the experience of CBP officials at all POEs, these visits provided us with valuable perspectives on the mechanisms DHS uses to share information about overstays and the processes CBP uses to inspect travelers and collect nonimmigrant information at POEs.

We conducted this performance audit from February 2010 through April 2011, in accordance with generally accepted government auditing standards. Those 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 and conclusions based on our audit objectives.

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Appendix II: Department of Homeland Security Identification of Overstays

The United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) is the primary Department of Homeland Security (DHS) entity responsible for identifying visa and Visa Waiver Program (VWP) nonimmigrant overstays.[1] As of November 2010, US-VISIT had 42 government positions and 76 contractor positions responsible for identifying nonimmigrant overstays based on nonimmigrants' arrival and departure information collected by DHS's U.S. Customs and Border Protection (CBP) at ports of entry (POE) and contained in the Arrival and Departure Information System database, a repository of biometric and biographic information maintained by US-VISIT. Using this database, US-VISIT identifies both in-country and out-of-country overstays.

US-VISIT Identification of In-Country Overstays

To identify in-country overstays, US-VISIT first uses the Arrival and Departure Information System to generate an automated report that identifies nonimmigrants whose period of authorized admission has elapsed but for whom there is no departure record in the Arrival and Departure Information System. US-VISIT conducts automated and manual searches of 13 databases for information indicating that any of the remaining suspected overstays have left the country, have been granted an adjustment of status, or have a legitimate reason for staying longer than their authorized periods of admission (e.g., if the person has been granted asylum status). All suspected overstay leads that do not have records indicating that the suspected overstays have left the country or that indicate that they otherwise may remain in the country due to, for example, a change in status, are sent to the ICE Counterterrorism and Criminal Exploitation Unit (CTCEU) for further verification. US-VISIT cannot conclusively confirm that the leads it provides to ICE are overstays because some information in the various databases it searches may be incorrect, out-of-date, or missing. To positively identify overstays, ICE must conduct further review and investigations.

As shown in table 5, from fiscal years 2005 through 2010, US-VISIT analyzed over 5 million leads and sent over 79,000 leads to CTCEU for further review.

[1]US-VISIT is also the primary source for developing overstay rate information for countries, including those participating in the VWP. However, the Office of Immigration Statistics within DHS is responsible for releasing this information.

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Table 5: Number of Records Processed and Identified as Potential Overstays from Fiscal Years 2005-2010

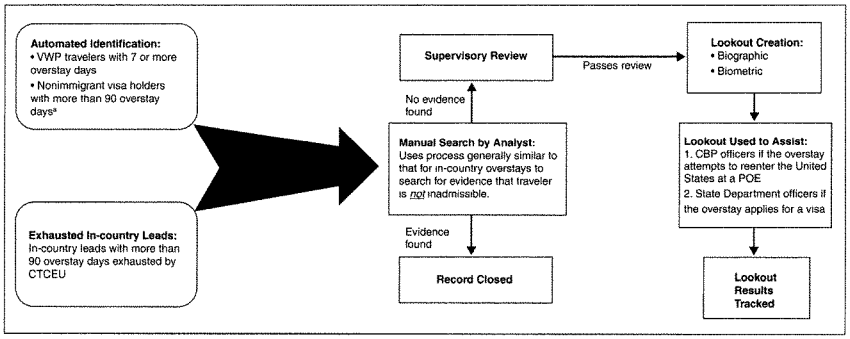
Fiscal year	Number of records processed (rounded to the nearest 100)	Number of records identified as potential overstays and sent to CTCEU (rounded to the nearest 100)
2005	67,600	1,400
2006	649,500	4,200
2007	733,300	12,900
2008	2,054,300	14,200
2009	620,900	16,400
2010	1,236,400	30,400
Total	**5,362,000**	**79,500**

Source: US-VISIT information from the TRAC database.

US-VISIT Identification of Out-of-Country Overstays

To identify out-of-country overstays, US-VISIT conducts manual and automated analyses similar to the processes for identifying in-country overstays, as shown in figure 8.

Figure 8: US-VISIT Process for Identifying Out-of-Country Overstays



Source: GAO analysis of US-VISIT standard operating procedure manual

[a]Nonimmigrant visa holders include those traveling on visas for business, pleasure, or medical treatment.

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Generally, the Arrival and Departure Information System identifies potential out-of-country overstays and then US-VISIT analysts verify the status of the suspected overstays through checking information in various databases. If through this verification process an analyst determines that a suspected overstay's actual departure date exceeds his or her authorized departure date by more than 90 days for nonimmigrant visa holders or by 7 or more days for nonimmigrants traveling under the VWP, the analyst creates an electronic lookout on the nonimmigrant's record to notify federal officials that he or she previously overstayed.[2] CBP officers use the lookout to help determine whether the nonimmigrant is eligible for readmission to the United States, and State Department consular officials use this information to help determine whether the nonimmigrant is eligible for a future visa. From fiscal years 2005 through 2010, US-VISIT created lookouts for about 53,000 suspected of-out-country overstays.

CTCEU Identification of In-Country Overstay Leads

CTCEU is responsible for identifying and validating overstay leads to be investigated by the ICE Homeland Security Investigations field offices. At the beginning of fiscal year 2011, CTCEU had 50 contract analyst and 17 government, including supervisory, positions dedicated to identifying leads. CTCEU conducts analysis subsequent to that performed by US-VISIT to identify additional in-country overstays and verify overstay leads provided US-VISIT. Specifically, CTCEU analyzes (1) in-country visa overstay leads provided by US-VISIT, (2) in-country VWP overstay leads provided by US-VISIT, (3) out-of-status students identified in the Student and Exchange Visitor Information System, and (4) overstay leads based on data collected from the National Security Entry-Exit Registration System. CTCEU analysts compare records from these four sources against records in other databases that contain information on, for example, nonimmigrants' applications to change status, to determine whether nonimmigrants have overstayed and are likely still present in the United States. Specifically, CTCEU runs 28 different queries in 15 databases to identify information pertaining to leads. These databases include the same ones that US-VISIT reviews to identify any newly updated information as well as additional databases. During this process, CTCEU removes records of nonimmigrants that have either left the country or changed their status, identifies nonpriority leads for processing by ICE Enforcement and Removal Operations, and sends leads that do not have a viable address to

[2]US-VISIT does not process records for nonimmigrant visa holders who are suspected of overstaying by less than 90 days.

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contractors to continually monitor for new address information. CTCEU assigns overstay leads deemed to be valid and of high priority to ICE field office agents within their geographical area of responsibility for mandatory investigation.

From fiscal years 2004 through 2010, CTCEU processed over 1,373,000 leads and sent over 38,000 leads to field offices for investigation. Table 6 provides information related to the overstay leads that CTCEU has processed from fiscal years 2004 through 2010.

Table 6: CTCEU Processing of In-Country Overstay Leads from Fiscal Years 2004-2010

Status of leads	2004	2005	2006	2007	2008	2009	2010	Total
Leads imported	261,600	198,600	168,500	197,300	155,600	198,300	193,300	**1,373,200**
Closed leads	239,500	180,900	148,200	166,400	104,600	101,100	103,900	**1,044,600**
Nonpriority leads sent to Enforcement and Removal Operations	13,900	13,000	15,800	25,100	46,000	85,600	79,700	**279,100**
Viable leads assigned to field offices for investigation	7,600	4,600	4,300	5,700	5,000	6,100	5,400	**38,700**
Nonviable leads sent to contractor for continual monitoring	700	300	300	200	100	6,000	4,900	**12,500**

Source: CTCEU LeadTrac data on overstay leads.

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Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

April 11, 2011

Richard N. Stana
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Comments to Draft Report, GAO-11-411, "OVERSTAY ENFORCEMENT: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs"

Dear Mr. Stana:

The Department of Homeland Security (DHS) Components with the greatest responsibility for overstay enforcement are U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and National Protection and Programs Directorate (NPPD). DHS appreciates the opportunity to review and provide comments to the recommendations in your report on overstay enforcement. It is important to note that this report focuses on both in the identification and enforcement of visa overstays. The report classifies overstays for non-immigrants who exceed their term of admission (such as a visitor) and those who violate their status (such as a student). This report is comprehensive and provides a good working knowledge about the non-immigrant visa process. ICE, CPB, and NPPD will work individually and collectively to resolve the issues identified in the report.

The purpose of this audit was to determine the extent to which DHS takes action to address overstays and shares overstay information among the Components responsible for border security and immigration enforcement. In the absence of a biometric entry and exit system, DHS uses various methods to identify overstays, primarily biographic data and share overstay information.

The report illustrates how DHS actions to address enforcement of the estimated overstay population could be enhanced by improved planning and information sharing. We have addressed each recommendation separately below.

To help ICE's execution of overstay enforcement efforts and improve assessment of ICE programs that identify and address overstays and allow program adjustments, if necessary, the U.S. Government Accountability Office (GAO) recommended that the Assistant Secretary for Immigration and Customs Enforcement take the following three actions:

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Recommendation 1: "Establish a target timeframe for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment."

Response: DHS concurs. In June 2010, ICE Director Morton announced his intention to transition noncriminal overstays from the Counter Terrorism and Criminal Exploitation Unit (CTCEU), which is part of Homeland Security Investigations (HSI), to ERO. HSI and ERO are in the process of planning for this transition. As part of the Fiscal Year 2013 Resource Allocation Plan, ICE will identify the resources needed to execute this transition.

Recommendation 2: "Develop outcome-based performance measures—or proxy measures if program outcomes cannot be captured—and associated targets on CTCEU's progress in preventing terrorists and other criminals from exploiting the nation's immigration system."

Response: DHS concurs. Due to the nature of "pro-active" investigations, a performance measure is not currently available to capture the success of the CTCEU's ability to discourage or prevent terrorist activity in the United States. As previously stated, CTCEU's approach to preventing the exploitation of the immigration system is one that mirrors the precept of the legal system in that compliance to the law is based on deterrence through example. In addition, the CTCEU prevents exploitation by enacting revisions to immigration policy and U.S. Law intended to counter identified vulnerabilities. In the meantime, ICE will consult with our national security partners to determine if proxy measures can be implemented to satisfy this recommendation.

Recommendation 3: "Develop a performance measure for assessing quality of leads CTCEU assigns to ICE field offices for investigations, using performance information already collected by CTCEU."

Response: DHS concurs. Since November 2007, CTCEU has conducted quality reviews by sampling 1% of daily leads to correct deficient information in the leads it sends to the field and to determine if additional training is needed to correct repetitive errors. ICE believes that this has contributed to the increase in field arrests since its implementation. The report referenced this; however, it also suggested that this metric is not sufficient to assess the quality of overstay leads. The CTCEU disagrees with this assertion and contends that quality control reviews ensure that the field agents have the most reliable information available at that time to begin an investigation. One of the challenges to developing such a performance measure is the fact that CTCEU relies on other Components' information to formulate leads. As that information becomes more reliable and accurate, so will the effectiveness of CTCEU leads. This report accurately stated 77% of CTCEU leads resulted in a finding of "departure," "in-status," or "all leads exhausted." Information correlating to these findings is derived from DHS databases referencing alien departure records, alien application filings, and alien self-reported addresses, which are frequently inaccurate and unreliable.

The report correctly stated that a direct correlation could not be attributed to enforcement actions by conducting quality reviews. The success or outcome of a lead generated by the CTCEU has many factors that cannot be accounted for by this program, such as the overstay moving without

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notification, dependence on other agencies to update their computer systems, and deficiencies in collected information.

Recommendation 4: "To increase the completeness of exit information available for the purpose of identifying overstays, we recommend that the Commissioner of Customs and Border Protection analyze the costs and benefits of developing a standard mechanism for collecting I-84/I-94W forms at land POEs, and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs."

Response: DHS concurs. A standardized mechanism to collect I-94 and I-94W departure information at the land border would be beneficial. CBP would like to propose a cost-effective independent evaluation be considered as responsive to this recommendation for identifying the benefits and risks with associated costs to a standardized land border mechanism for the collection of the paper I-94 given the ever-changing land border environment.

Given the different operating environments on the land border, certain factors that would challenge the efficient collection of this information include multiple entries (commuters), different nonimmigrant classifications (students), and the unforeseen results of future initiatives (automated I-94). Therefore, it may be premature at this time to develop such a standard mechanism for a paper process.

Operating environments differ greatly from our southern border ports to the northern border ports. Standardizing an efficient mechanism for northern border ports may not be an efficient mechanism for southern border ports, and vice versa. Infrastructure constraints, the lack of any outbound inspection capability, and limited resources are also significant challenges that impact developing such a mechanism.

CBP works closely with Canada on preliminary efforts to share certain border-crossing data electronically. This effort could have great potential in enhancing the CBP I-94 information collection, although it is too early to know its true value with respect to the collection of I-94 data. Canada currently assists us with the collection of paper I-94s upon departure, which is a great benefit that we do not have at our southern border ports.

Another factor that influences the development of such a standardized mechanism is an initiative to automate the I-94, eliminating the paper form, which will have a significant impact on exit control and the collection of I-94 data. With this project in its early stages, it is difficult to foresee how this may be best integrated into such a mechanism.

Recommendation 5: "To improve information sharing in support of efforts to identify and take enforcement action against overstays, we recommend that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Undersecretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for (1) out-of-country overstays of 90 days or less who entered the country using nonimmigrant business and pleasure visas, and (2) in-country overstay leads sent to ERO, and create these lookouts, to the extent that the benefits of doing so outweigh the costs."

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Response: DHS concurs. ICE, CBP, and NPPD will work together to assess the costs and benefits of creating biometric and biographic lookouts for these categories of overstay. This will involve a determination of the planning and system development and implementation costs as compared to the benefit (value-added) these costs may generate. CBP does not anticipate any cost associated with the analysis and creation of these lookouts as this function is currently performed by NPPD and ICE. Lookout creation on overstays of less than 90 days would assist CBP in identifying those that may have violated their terms of prior admission. These lookouts could also be used for analysis in determining whether an individual requires additional screening, including whether an alien's visa is void pursuant to INA 222(g). The results of this assessment will be used to determine the feasibility of additional program costs.

DHS concurs with the five GAO recommendations. DHS is taking the necessary actions to address each recommendation. Thank you for the opportunity to comment on this Draft Report. We look forward to working with you on future Homeland Security issues.

Sincerely,

Jim H. Crumpacker
Director
Departmental GAO/OIG Liaison Office

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Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Richard M. Stana, (202) 512-8777 or stanar@gao.gov

Staff Acknowledgments

In addition to the contact named above, Rebecca Gambler, Assistant Director, and Taylor Matheson, analyst-in-charge, managed this assignment. Jeremy Manion, Zane Seals, and Joshua Wiener made significant contributions to this work. Amanda Miller assisted with design and methodology, and Frances Cook provided legal support. Jessica Orr, Robert Robinson, Debra Sebastian, Sylvia Bascope, Richard Eiserman, Frederick Lyles, Katherine Trenholme, and Yee Wong assisted with report preparation.

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NTEU

The National Treasury Employees Union

STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

ON

SECURING THE BORDER

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

U. S. SENATE

May 4, 2011

Chairman Lieberman, Ranking Member Collins, distinguished members of the Committee; thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 24,000 Customs and Border Protection (CBP) Officers and trade enforcement specialists who are stationed at 331 land, sea and air ports of entry (POEs) across the United States. CBP employees' mission is to protect the nation's borders at the ports of entry from all threats while facilitating legitimate travel and trade. CBP trade compliance personnel enforce over 400 U.S. trade and tariff laws and regulations in order to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stemming the flow of illegal contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency, processing approximately 25.8 million trade entries a year at the POEs and collecting an estimated $29 billion in federal revenue in 2009.

LAND PORTS OF ENTRY

The U.S. has more than 4,000 miles of land border with Canada and 1,993 miles of land border with Mexico. Most travelers enter the U.S. through the nation's 166 land border ports of entry. About two-thirds of travelers are foreign nationals and about one-third are returning U.S. citizens. The vast majority arrive by vehicle. The purpose of the passenger primary inspection process is to determine if the person is a U.S. citizen or alien, and if alien, whether the alien is entitled to enter the U.S. In general, CBP Officers are to question travelers about their nationality and purpose of their visit, whether they have anything to declare, and review the travel documents the traveler is required to present.

Each day CBP Officers inspect more than 1.1 million passengers and pedestrians, including many who reside in border communities who cross legally and contribute to the economic prosperity of our country and our neighbors. At the U.S. land borders, approximately two percent of travelers crossing the border are responsible for nearly 48 percent of all cross-border trips. At the land ports, passenger primary inspections are expected to be conducted in less than one minute. According to CBP, for regular lanes the average inspection time per vehicle is 30 to 45 seconds during which CBP Officers should handle documents for all vehicle occupants and, if necessary, detain and transfer suspected violators to secondary inspection. For FAST truck lanes, the average processing time is 15 to 20 seconds. ("CBP: Challenges and Opportunities" Memo prepared by Armand Peschard-Sverdrup for: Mexico's Ministry of the Economy: U.S.-Mexico Border Facilitation Working Group. January 2008, page 5.)

In fiscal 2010, CBP Officers and CBP Agriculture Specialists at the 331 POEs inspected 352 million travelers and more than 105.8 million conveyances—cars, trucks, buses, trains, vessels and aircraft. Out of the total 331 official POEs, currently only 24 major land POEs are situated on the Mexico-U.S. border: six in California, seven in Arizona, one in New Mexico and ten in Texas. On the Canadian-U.S. border there are 150 land POEs. Land POEs have a series of dedicated lanes for processing commercial traffic, passenger vehicles, pedestrians and in some cases rail crossings.

Between the U.S. and Mexico, 68.4 percent of the total commercial two-way truck trade flow crossed through three land POEs—Laredo, El Paso and Otay Mesa. In rail traffic, trade is heavily concentrated (97.8%) in five rail POEs—Laredo, Eagle Pass, El Paso, Nogales, and Brownsville (Facilitating Legal Commerce and Transit, 2009 Memo prepared by Armand

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Peschard-Sverdrup for the Pacific Council/COMEXI Joint Task Force on Re-thinking the Mexico-U.S. Border: Seeking Cooperative Solutions to Common Problems, page 2).

Each year, 45 million vehicles cross into the United States from Canada. Most of the trucks use 22 principal border crossings. By 2020, the volume of truck traffic is projected to grow to 19.2 million per year, an increase of 63% from 11.8 million in1999. The six highest-volume crossings on the Canada-U.S. border handled almost 90%of the value and three-quarters of the tonnage and truck trips. According to the most recent data NTEU has, the six highest U.S.-Canada POEs are Ambassador Bridge (Detroit, Michigan), Peace Bridge (Buffalo, New York), Blue Water Bridge (Michigan), Lewiston-Queenston Bridge (New York), Blaine (Washington), and Champlain (New York). (Truck Freight Crossing the Canada-U.S. Border, September 2002, page 2, 6.)

Preventing the flow of arms, drugs, other contraband, pirated merchandise, and undeclared cash, and invasive agricultural items, while at the same time facilitating trade and the legal movement of people as efficiently as possible is a daily challenge for CBP Officers and Agriculture Specialists at the land POEs.

CBP STAFFING AT THE PORTS OF ENTRY

In October 2009, the Southwest Border Task Force, created by Homeland Security Secretary Janet Napolitano, presented the results of its staffing and resources review in a draft report. This draft report recommends the "federal government should hire more Customs [and Border Protection] officers." The report echoes the finding of the Border-Facilitation Working Group. (The U.S.–Mexico Border Facilitation Working Group was created during the bilateral meeting between President George W. Bush and President Felipe Calderon held in Merida in March 2007.) "In order to more optimally operate the various ports of entry, CBP needs to increase the number of CBP Officers. According to its own estimate, the lack of human resources only for the San Ysdiro POE is in the "hundreds" and the CBP Officer need at all ports of entry located along the border with Mexico is in the "thousands." ("CBP: Challenges and Opportunities" a memo prepared by Armand Peschard-Sverdrup for Mexico's Ministry of the Economy: U.S.-Mexico Border Facilitation Working Group, January 2008, pages 1 and 2.) It should be noted that the number of inspection booths at San Ysidro POE will increase from 24 booths to 63 inspection booths in the near future.

The Administration's FY 2012 budget requests funds for 21,186 CBP Officer positions--an increase of 409 over FY2011, but still 108 officers below the FY 2009 level of 21,294 CBP Officer positions. NTEU is disappointed that the FY 2012 budget request includes no significant increase in frontline CBP Officer or CBP Agriculture Specialist positions. After a net decrease of over 500 CBP Officer positions between 2009 and 2011, CBP is seeking appropriated funding to "support 300 CBP Officers above the FY 2011 Budget and additional canine assets to the Port of Entry operations," despite independent studies that state that CBP is understaffed at ports of entry by thousands of officers.

Of particular concern to NTEU in the FY 2012 budget request, is the decrease of $20 million in funding for inspectional overtime at the air, land and sea ports of entry. CBP states

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that "proposed efficiency will require POE[s] to reduce overtime spending during periods of increased workload, including but not limited to, the annual peak summer seasons at our Nation's air and seaports."

Overtime is essential when staffing levels are low to ensure that inspectional duties can be fulfilled, officers have sufficient back-up and wait times are mitigated. This is one reason why Congress authorized a dedicated funding source to pay for overtime-- customs user fees pursuant to Title 19, section 58c (f) of the U.S. Code. CBP collects user fees to recover certain costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments.

The source of these user fees are commercial vessels, commercial vehicle, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs broker and barge/bulk carriers. These fees are deposited into the Customs User Fee Account. User Fees are designated by statute to pay for services provided to the user, such as inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. In addition, APHIS user fees and immigration user fees also fund "fee-related" inspection costs. User fees have not been increased in years and some of these user fees cover only a portion of recoverable fee-related costs. For example, CBP collects the extraordinarily low fee of $437 at arrival of a commercial vessel to a port to recover personnel and other costs to process and inspect the vessel's crew and cargo. This fee, however, is capped at $5955 per calendar year; no matter how many times the commercial vessel enters a port that year. This fee was last raised from $397 to $437 in 2007, but the cap has remained at $5955 since 1986. Another example of an extraordinarily low user fee is the fee paid by railcar owners of $8.25 per car at arrival for processing and inspection, but the fee is capped at $100 per railcar per calendar year.

CBP is seeking legislation to lift the exemption of passengers arriving from Canada, Mexico, most of the Caribbean Islands and U.S. territories from payment of the $5.50 per arrival fee for air and sea traveler processing and inspection. NTEU supports lifting these user fee exemptions allowing CBP to more fully recover the costs of passenger processing and inspection, but believes that Congress should review all user fees collected by CBP with an eye to more fully recovering CBP's costs of these services to the user.

One example on how the lack of user fee revenue inhibits CBP enforcement in a maritime environment is in the state of Maine that has approximately 5300 actual miles of seacoast exposed to the Atlantic Ocean when taking into account all of Maine's seacoast inlets and islands. CBP has determined that it will send only one officer to conduct inspections of private – and often, commercial – vessels as a means to reduce cost and avoid overtime. In many cases, a lone CBP Officer is required to approach and enter vessels having numerous persons, weapons, and other unknown factors on board. A solo boarding Officer is unable to conduct any cargo or personnel inspections, due to the size of the vessel, the number or persons aboard, or the need to enter confined spaces. Everything from private vessels to oil tankers are not properly inspected due to CBP not sending a sufficient number of Officers to do so. In order to properly inspect vessels--private, commercial, or aircraft--a CBP Officer needs to properly check manifests, product labeling, country of origin, and so forth, to assure regulatory compliance, proper collection of fees, assessment of penalties, and rejection of non-compliant cargo. Should a CBP Officer conducting an inspection solo detect a radiation source on a vessel, they have no

means to secure the vessel, its personnel, and conduct proper inspections, notifications, or contact support services for isotope identification. Nationwide, the private vessel program operates on the "honor system" and serves little purpose as a deterrent to illegal entry or the importation or exportation of contraband, WMD, terrorist activity, or undocumented personnel.

BORDER VIOLENCE AT U.S.-MEXICO LAND PORTS

In the past five years, a new challenge also confronts CBP personnel at the southwest land POEs. An epidemic of violence has erupted right across the U.S. southern border in Mexico due to an increase in Mexican drug cartel activity there and the crackdown on drug and human traffickers by the Mexican government. Drug violence in northern Mexico has skyrocketed with more than 35,000 killed over the last five years. This violence is fueled by arms smuggling and bulk cash drug proceeds transiting south from the U.S. The incidence of violence is escalating daily at or near U.S.-Mexico POEs.

NTEU is providing information to Congress and the Administration to help assess security equipment and other needs to address the increased threat to CBP personnel at the southern border. Safety of CBP Officers at the ports of entry is a major concern. Appropriate facilities, staffing and equipment are necessary at the southern land ports to ensure CBP Officers' safety.

The FY 2010 DHS funding bill included $8.1 million for 65 CBP Officers and 8 support staff positions to be dedicated to "Combating Southbound Firearms and Currency Smuggling." NTEU believes that this staffing increase remains insufficient to address the staffing needs at southern ports of entry. Outbound enforcement remains a particular challenge. For example, according to the Government Accountability Office (GAO), "from March 2009 through February 22, 2011…CBP Officers seized about $67 million in illicit bulk cash leaving the country at land POEs…the National Drug Intelligence Center estimates that criminals smuggle $18 billion to $39 billion a year across the southwest border, and that the flow of cash across the northern border with Canada is also significant." (DHS Progress and Challengers in Security the U.S. Southwest and Northern Borders, GAO-11-508T, page 7.)

CHALLENGES WITH FACILITATING LEGAL TRADE VS. STOPPING ILLICIT FLOW OF MONEY, GUNS AND DRUGS

Cross-border commercial operators are acutely concerned about wait times and costs of delay at the land POEs. Wait times differ across POEs and vary depending on whether the congestion involves pedestrians, passenger vehicles, trucks or railcars and whether the ports participate in expedited crossing programs such as SENTRI for people or FAST (Free and Secure Trade) lanes for trucks and railcars that are certified as compliant with the Customs Trade Partnership Against Terrorism (C-TPAT) agreement. Wait times also vary with the day of the week and the time of day and holidays on either side of the border. Currently, not all available lanes are staffed to capacity. Antiquated port infrastructure and CBP personnel staffing shortages contribute directly to wait times at the land POEs.

NTEU believes that there is no way you can speed up the inspection process in which CBP Officers are currently conducting primary inspections in 30 to 40 seconds without

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increasing staffing. NTEU's position was confirmed by the October 2009 draft report of the Southwest Border Task Force created by Homeland Security Secretary Janet Napolitano that recommends the "federal government should hire more Customs [and Border Protection] officers."

The report echoes the finding of the Border-Facilitation Working Group. (The U.S.–Mexico Border Facilitation Working Group was created during the bilateral meeting between President George W. Bush and President Felipe Calderon held in Merida in March 2007.) "In order to more optimally operate the various ports of entry, CBP needs to increase the number of CBP Officers. According to its own estimate, the lack of human resources only for the San Ysdiro POE is in the "hundreds" and the CBP Officer need at all ports of entry located along the border with Mexico is in the "thousands." ("CBP: Challenges and Opportunities" page 1 and 2. Memo prepared by Armand Peschard-Sverdrup for: Mexico's Ministry of the Economy: U.S.-Mexico Border Facilitation Working Group. January 2008.)

In 2007, in a GAO report entitled Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry (GAO-08-219), GAO found that:

- CBP needs several thousand additional CBP Officers and Agriculture Specialists at its ports of entry.
- Not having sufficient staff contributes to morale problems, fatigue, and safety issues for CBP Officers.
- Staffing challenges force ports to choose between port operations and providing training.
- CBP's onboard staffing level is below budgeted levels, partly due to high attrition, with ports of entry losing officers faster than they can hire replacements.

The conclusions of this report echo what NTEU has been saying for years and, in order to assess CBP Officer and CBP Agriculture Specialists staffing needs, Congress, in its FY 07 DHS appropriations conference report, directed CBP to submit by January 23, 2007 a resource allocation model for current and future year staffing requirements.

In July 2007, CBP provided GAO with the results of the staffing model. **The GAO reported that "the model's results showed that CBP would need up to several thousand additional CBP officers and agricultural specialists at its ports of entry."** (See GAO-08-219, page 31) And the Washington Post reported that "the agency needs 1,600 to 4,000 more officers and agricultural specialists at the nation's air, land and sea ports, or a boost of 7 to 25 percent." (November 6, 2007)

The staffing model reinforces the findings of the Border Facilitation Working Group--"when you look at the budgets that are normally handed out to CBP to POEs, one can conclude that this unit has been traditionally under-funded." (See CBP: Challenges and Opportunities, page 1.) To date, however, it is NTEU's understanding that CBP's POE staffing model has not been made public or even available for Congress to review.

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IMPACT OF STAFFING SHORTAGES

According to GAO, "At seven of the eight major ports we visited, officers and managers told us that not having sufficient staff contributes to morale problems, fatigue, lack of backup support and safety issues when officers inspect travelers--increasing the potential that terrorists, inadmissible travelers and illicit goods could enter the country." (See GAO-08-219, page 7.)

"Due to staffing shortages, ports of entry rely on overtime to accomplish their inspection responsibilities. Double shifts can result in officer fatigue…officer fatigue caused by excessive overtime negatively affected inspections at ports of entry. On occasion, officers said they are called upon to work 16-hour shifts, spending long stints in primary passenger processing lanes in order to keep lanes open, in part to minimize traveler wait times. Further evidence of fatigue came from officers who said that CBP officers call in sick due to exhaustion, in part to avoid mandatory overtime, which in turn exacerbates the staffing challenges faced by the ports." (See GAO-08-219, page 33.)

Staffing shortages have also reduced the number of CBP Officers available to conduct more in depth secondary inspections. In the past, there were three inspectors in secondary processing for every one inspector in primary processing. Now there is a one to one ratio. This has resulted in a dramatic reduction in the number of illegal cargo seizures. For example, at the Port of Sweet Grass, Montana, from 2000 through 2007, there has been a 59% reduction in the number of seizures of illegal drugs, hazardous imports and other contraband. Port-by-port seizure data is deemed law enforcement sensitive and it is now very difficult to compare number of seizures at a port from year to year.

Without adequate personnel at secondary, wait times back up and searches are not done to specifications. This is a significant cargo security issue. A full search of one vehicle for counterfeit currency will take two officers on average a minimum of 45 minutes. Frequently, only one CBP Officer is available for this type of search and this type of search will then take well over an hour.

Finally, NTEU has been told that when wait times in primary inspection becomes excessive in the opinion of the agency, CBP Officers are instructed to query only one occupant of a vehicle and to suspend COMPEX (Compliance Enforcement Exams) and other automated referral to secondary programs during these periods. This is an improvement over the past practice of lane flushing, but is still a significant security issue. Also, when primary processing lanes become backed up, passenger vehicles are diverted to commercial lanes for processing

NTEU has heard of several examples of how staffing shortages affect land ports in Maine that has 293 miles of densely wooded land border with Quebec, Canada. Along this expanse are the so-called "Woods Ports" that handle hundreds of vehicles a day. At the Woods Ports of St. Juste, St. Zacharie, St. Aurelie, St. Pamphile, and Estcourt Station only one CBP Officer staffs a shift. This one Officer staffing violates CBP policy and standard law enforcement assignment practices, prohibits any secondary inspections, places CBP Officers in extreme danger, and endangers our national security. With help in some cases two hours away, a lone CBP Officer confronted by terrorists or other illegal persons attempting to enter the U.S., has little opportunity

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to prevail. Nor can a lone Officer conduct required monitoring of potential absconders, make ENFORCE entries, or perform many of the other duties that CBP requires.

These are just a few examples of how CBP staffing shortages affect U.S. national security. Again, NTEU concurs with the October 2009 Homeland Security Advisory Council Southwest Border Task Force Draft Report that calls on Congress to authorize funding to increase staffing levels for CBP Officers. NTEU urges Congress to authorize funding for CBP Officers and CBP Agriculture Specialists at the levels specified in CBP's own workforce staffing model, in addition to funding an increase in CBP Officer staffing needed to expand outbound inspection and address the increasing violence at the U.S.-Mexico border.

NTEU also strongly supports legislation expected again to be reintroduced shortly by Representative Silvestre Reyes (D-TX) entitled "Putting Our Resources Towards Security (PORTS) Act." Representative Reyes' PORTS Act would authorize 5,000 additional CBP Officers and 1,200 additional CBP AS new hires, in addition to 350 border security support personnel at the nation's 331 official ports of entry over the next five years. In addition, the bill authorizes funding for infrastructure improvements at the existing ports of entry to repair and improve the gateways into our country.

CBP AGRICULTURE SPECIALIST STAFFING

In 2008, NTEU was certified as the labor union representative of CBP Agriculture Specialists as the result of an election to represent all Customs and Border Protection employees that had been consolidated into one bargaining unit by merging the port of entry inspection functions of Customs, INS and the Animal and Plant Inspection Service as part of DHS' One Face at the Border initiative.

According to GAO-08-219 page 31, CBP's staffing model "showed that CBP would need up to several thousand additional CBP Officers and agriculture specialists at its ports of entry." And GAO testimony issued on October 3, 2007 stated that, "as of mid-August 2007, CBP had 2,116 agriculture specialists on staff, compared with 3,154 specialists needed, according to staffing model." (See GAO-08-96T page 1.)

CBP FY 2012 budget request includes funding for 2,394, CBP Agriculture Specialists, 760 short of those needed, according to CBP's own staffing model.

Also, NTEU continues to have concerns with CBP's stated intention to change its staffing model design to reflect only allocations of existing resources and no longer account for optimal staffing levels to accomplish their mission.

Finally, NTEU strongly supports Section 805 of S. 3623, a bill introduced in the Senate in 2009 that, through oversight and statutory language, makes clear that the agricultural inspection mission is a priority. The legislation increases CBP Agriculture Specialist staffing, and imposes an Agriculture Specialist career ladder and specialized chain of command.

END ONE FACE AT THE BORDER

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In 2003, DHS created a new Customs and Border Protection Officer position and announced the "One Face at the Border" initiative that purportedly unifies the inspection process for travelers and cargo entering the United States. In practice, the major reorganization of the roles and responsibility of the inspectional workforce as a result of the One Face at the Border initiative has resulted in job responsibility overload and dilution of the customs, immigration and agriculture inspection specializations and in weakening the quality of passenger and cargo inspections.

NTEU believes the One Face at the Border initiative has failed to integrate the different border functions it sought to make interchangeable, because they are not. The Customs, Immigration and Agriculture functions performed at our borders enforce different laws and require different training and skills. Consolidating Immigration and Customs inspection functions has caused logistical and institutional weakness resulting in a loss of expertise in critical homeland security priorities.

For these reasons, NTEU urges CBP to reinstate Customs and Immigration specializations, as it did with the Agriculture specialization, at the POEs. The "One Face" initiative should be ended, customs and Immigration specializations should be reestablished within CBP, and overall CBP inspection staffing should be increased.

NTEU suggests that the Committees include the following provision in any upcoming CBP authorization.

SEC. __. ESTABLISHMENT OF SPECIALIZED CBP OFFICER OCCUPATIONS.--The Secretary of Homeland Security shall establish within the Bureau of Customs and Border Protection two distinct inspectional specialization occupations for Customs and Border Protection Officers at the air, sea and land ports of entry; an immigration inspection specialization and a customs inspection specialization.

RATIO OF CBP SUPERVISORS TO FRONTLINE CBP OFFICERS

NTEU continues to have concerns that CBP is continuing to increase the number of supervisors when a much greater need exists for new frontline hires. In terms of real numbers, since CBP was created, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. According to GAO, the number of CBP Officers has increased from 18,001 in October 2003 to 18,382 in February 2006, an increase of 381 officers. In contrast, GS 12-15 CBP supervisors on board as of October 2003 were 2,262 and in February 2006 there were 2,731, an increase of 462 managers over the same of time. **This is a 17% increase in CBP managers and only a 2% increase in the number of frontline CBP Officers.** (See GAO-06-751R, page 11).

In Maine, for example, the current ratio is approximately 1 to 8 of management to frontline employees. Despite the tremendous increase in supervision and management, at all but three major Maine ports of entry, the port directors and supervisors continue to work only day and evening shifts and refuse to staff midnight shifts, instead instructing officers who need assistance to call one of the three major ports if a supervisory decision or action is required.

In 2009, CBP reports that there were 19,726 CBP Officers of which 16,360 were bargaining unit frontline employees--a ratio of one supervisor for every five CBP Officers. And according to CBP data, in 2009, the number of CBP Agriculture Specialists was 2,277, of which 312 were non-frontline supervisors--a ratio of one supervisor for every six CBP Agriculture Specialists. The tremendous growth in CBP managers and supervisors at the POEs has come at the expense of front line national security preparedness and frontline positions. Also, these highly paid management positions are exacting a needless level of expense upon the CBP budget.

TRADE ENFORCEMENT AND COMPLIANCE STAFFING

When CBP was created, it was given a dual mission of safeguarding our nation's borders and ports as well as regulating and facilitating international trade. It also collects import duties and enforces U.S. trade laws. In 2005, CBP processed 29 million trade entries and collected $31.4 billion in revenue. In 2009, CBP collected $29 billion—a drop of over $2 billion in revenue collected. Since CBP was established in March 2003, there has been no increase in CBP trade enforcement and compliance personnel and again, the FY 2012 budget proposes no increase in FTEs for CBP trade operations personnel.

In effect, there has been a CBP trade staffing freeze at March 2003 levels and, as a result, CBP's revenue function has suffered. Recently, in response to an Import Specialists staffing shortage, CBP has proposed to implement at certain ports a tariff sharing scheme. For example, because CBP has frozen at 984 nationwide the total number of Import Specialist positions, CBP is reducing by 52 positions (from 179 to 127) the number of Import Specialists at the New York City area ports and shifting those positions to other ports. To address the resultant shortage of Import Specialists at New York area ports, CBP is implementing tariff sharing between the port of New York/Newark and JFK airport. Currently, each port (Newark and JFK) processes all types of entries and all types of commodities via the Harmonized Tariff Schedule (HTS).

The reduction in trade personnel has resulted in each port being assigned only parts of the HTS and each port only processing half the commodities entering its port. Tariff sharing presents a number of operational problems with regard to trade personnel performing cargo exams on merchandise that is unloaded at the port of Newark, but the only commodity teams that are trained to process it are at JFK and, vice versa, when merchandise that can only be processed in Newark, is unloaded at JFK. CBP proposes that instead of physical examinations of the merchandise, digital photos can be exchanged between the ports. This is a short-sighted solution that shortchanges taxpayers, trade compliant importers, and the federal treasury.

One example of how CBP staffing decisions affect CBP's trade facilitation mission is at the POE at Belfast, Maine. According to NTEU members, CBP no longer staffs the Port of Belfast, Maine allowing, in many cases, cargo vessels to proceed without inspection. This violates 19 CFR 101.2, 101.3, and 101.6 and places an unnecessary burden on the trade community by requiring its agents to now travel to Bangor to clear their cargo and paperwork. This also requires dispatching one or more officers to Belfast and Searsport from Bangor for each arrival as opposed to having an Officer immediately available at the port as required under the Code of Federal Regulations.

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Because the Belfast POE is effectively closed, i.e., there is no immediate presence of a CBP Officer to accomplish commercial and private vessel inspections, CBP is incurring increased travel and overtime costs, the trade community is needlessly burdened, and national security is threatened. Also, Searsport, which was previously served by the Belfast POE, is likewise being adversely impacted.

The FY 2012 budget requests funding for CBP's enforcement program to "prevent trade in counterfeit and pirated goods, and enforce exclusion orders on patent-infringing and other Intellectual Property Rights violative goods." This request, however, includes no increase in CBP trade operations and enforcement staff at the POEs to implement this trade enforcement program.

RECRUITMENT AND RETENTION ISSUES

NTEU is pleased to commend Congress and the Department for addressing two major CBP Officer recruitment and retention challenges—lack of law enforcement officer retirement status and a lower rate of journeyman pay than most other federal law enforcement occupations. In July 2006, Congress extended enhanced retirement prospectively to CBP Officers and in October 2009, CBP announced an increase in the rate of CBP Officer and CBP Agriculture Specialists journeyman pay from GS-11 to GS-12.

According to GAO, however, up to 1,200 CBP Officers a year are lost to attrition and current hires are not keeping pace with this attrition rate. NTEU expects that the extension of enhanced retirement and increasing journeyman pay will help to attract and recruit new hires to keep pace with attrition and achieve staffing levels currently authorized. Since it usually takes about 1 1/2 years to recruit, hire and train a CBP Officer, however, Congress needs to increase CBP Officer staffing levels now to keep pace with current attrition rates.

NTEU commends the Department for increasing journeyman pay for CBP Officers and Agriculture Specialists. Many deserving CBP trade and security positions, however, were left out of this pay increase, which has significantly damaged morale. NTEU strongly supports extending this same career ladder increase to additional CBP positions, including CBP trade operations specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administration duties should also be increased from GS-7 to GS-9.

INFRASTRUCTURE ISSUES

"The average land POE is 40–45 years old. Urban sprawl has enveloped some of these ports, rendering them effectively landlocked…Over time, eroding infrastructure and limits on the availability of land – along with projected growth in the legal movement of goods and people stemming from the continued deepening of economic integration – will require both governments to erect new infrastructure." (See Facilitating Legal Commerce and Transit by Armand Peschard-Sverdrup, page 4).

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Infrastructure issues vary from port to port. NTEU does not dispute that the infrastructure problems at the POEs need to be addressed. But all port infrastructure solutions, including constructing additional 24 hour port facilities, will take years to achieve. What is necessary today is to staff all existing lanes and to start now to recruit additional personnel to staff proposed new lanes to capacity. Without adequate staffing to achieve this, excessive overtime practices, as well as increased wait times, will continue.

For example, "Congress allocated $184 million to double the size of the Mariposa Port of Entry in western Nogales through the American Recovery and Reinvestment Act, also known as the stimulus package. But it did not set aside money to hire the 150 additional officers needed to fully staff the port when it's completed in three years. Already, time-consuming searches and seizures at the three busy Nogales ports mean there aren't enough inspectors to keep all the lanes open - resulting in waits of up to four hours to cross the border on holiday weekends or during the winter produce season. Without more officers, the four-year upgrade of the port could be a waste." (New Lanes at Border Face Lack of Staffing, Arizona Daily Star, February 27, 2011.)

Also, the observations and suggestions of frontline CBP Officers should be taken into account when planning new infrastructure solutions. For example, since before 9/11, the lack of a manned egress point for the Cargo Inspection facility at the Port of Blaine has been noted by numerous port runner incidents. After years of lobbying by Officers, Blaine has a manned egress booth, but it is not staffed 24/7, and the CBP Officer assigned to the exit booth has no way to physically stop a vehicle and driver who want to run the port. There are no gates, no tire shredders, or deployable bollards at the new egress point. Pulling into secondary is still largely dependent on the honor system. This new manned egress point intercepts the lost drivers, and the drivers who can't understand instructions from the primary officer, but it doesn't stop deliberate port runners.

TECHNOLOGY ISSUES

Customs and Border Protection relies on technology to process border crossings both inbound and outbound with greater efficiency and speed. To compensate for the inadequacy of personnel at land POEs, CBP is relying more on technology, such as Radiation Portal Monitors (RPM) and Radio Frequency Identification (RFID). According to GAO, however, "as of March 2011, license plate readers were available at 48 of 118 outbound lanes on the southwest border but none of the 179 outbound lanes on the northern border." (DHS Progress and Challengers in Security the U.S. Southwest and Northern Borders, GAO-11-508T, page 7.)

Technological advances are important, but without the training and experience, technology alone would have failed to stop the millennium bomber at Port Angeles, Washington. Today, primary processing is increasingly dependent on technology. CBP Officers are instructed to clear vehicles within thirty seconds. That is just enough time to run the license through the plate reader and check identifications on a data base. If the documents are in order the vehicle is waived through. The majority of a CBP Officers' time is spent processing I-94s, documents non-resident aliens need to enter the U.S.

Also, technology improvements can't overcome deficiencies in equipment and in port infrastructure. For example, DHS recently touted as a money-saving effort the transferring excess IT equipment within the Department rather than buying new equipment. NTEU has learned that at the El Paso cargo facility, CBP Officers "barely get by with the old computers" they inherited three months ago when the facility received newer, yet used, computers handed down from the CBP training facility in Artesia, NM. It is questionable if this practice is efficient or effective.

Also, expedited inspection programs, such as FAST, work very well for the participants in these programs in that their clearance process is reduced. CBP, however, needs a higher level of verification of FAST participants because of the higher risk their expedited clearance creates. For example, at the Blaine POE, many of CBP Officer's narcotics seizures have come out of FAST approved Carriers and Consignees. Expedited inspection programs such as FAST and C-TPAT, require additional CBP Officers to conduct these verifications.

Finally, NTEU is closely monitoring the contemplated expansion of the Global Entry kiosk technology that is being piloted at the international airports and urges the Committee to also do so. It is our understanding that CBP plans to expand this program beyond U.S., Mexican nationals with a border crossing card, Canadian and Dutch citizens, and Legal Permanent Residents to additional countries, such as the U.K., South Korea, Germany and Japan and to holders of other visas types, such as holders of L1 (non-immigrant work visas) and E1 (treaty trader visitor) of various countries. Also, holders of F1 and J1 (students/researchers and their immediate family) from Holland are now eligible to apply for the Global Entry card. Please note that a Global Entry card holder never has to talk to a CBP Officer upon entering the U.S. from abroad (unless they are randomly chosen by COMPEX for a mandatory random check)—instead they are processed by an automated Global Entry kiosk, pick up their luggage and go directly to an airport exit without any interaction with CBP inspection officials.

NTEU also has concerns about the reported reduction of the time allotted for interviews of applicants for Global Entry cards by CBP Officers, the loosening of the vetting process to allow some individuals with misdemeanor convictions to be eligible, and the automatic enrollment of Global Entry cards to NEXUS card holders and the exemption of these card holders of the $100 processing fee—a fee that does not nearly cover the cost of processing the application and staffing the vetting, interviewing and issuance of these cards in this time of fiscal constraints. And Global Entry cards are good for five years.

NTEU RECOMMENDATIONS

As noted by DHS's own Advisory Council, for too long, CBP at the POEs has been unfunded and understaffed. DHS employees represented by NTEU are capable and committed to the varied missions of the agency from border control to the facilitation of trade into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. The American public expects its borders and ports be properly defended.

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Congress must show the public that it is serious about protecting the homeland by:

- increasing both port security and trade enforcement staffing at the Ports of Entry to the level recommended by the draft September 2009 Homeland Security Advisory Council Report and Recommendations;
- fully staffing all existing lanes and booths at the POEs to capacity;
- ending the One Face at the Border initiative by reestablishing CBP Officer and CBP Agriculture Specialist inspection specialization;
- extending career ladder pay increases to additional CBP personnel including CBP trade operations specialists, CBP Seized Property Specialists and CBP Technicians.
- Ensuring that CBP Officers' and Agriculture Specialists' overtime and premium pay system is fully funded; and
- requiring CBP to submit a yearly workplace staffing model that include optimal staffing requirements for each POE to fully staff all lanes and reduce wait times.

The more than 24,000 CBP employees represented by the NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of legitimate trade and travel. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology to perform their jobs better and more efficiently.

Thank you for the opportunity to submit this testimony to the Committee on their behalf.

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Post-Hearing Questions for the Record
Submitted to the Honorable Janet A. Napolitano
From Senator Susan M. Collins

"Securing the Border: Progress at the Federal Level"
May 4, 2011

Question#:	1
Topic:	Southwest
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: In a Wall Street Journal Op-Ed published recently you wrote that, "there is a widespread misperception that the Southwest is wracked by violence spilling over from Mexico's ongoing drug war. The facts tell a different story. Some of America's safest communities are in the Southwest border region, with crime rates in cities along the border staying steady or dropping over the past decade." Two days later, FBI Director Robert Mueller appeared before a House Appropriations Sub-Committee. Regarding the Southwest Border, he testified that "at too many points along the way, drug cartels transport kilos of cocaine and marijuana, gangs kidnap and murder innocent civilians, traffickers smuggle human cargo, and corrupt public officials line their pockets by looking the other way. Any one of these offenses represents a challenge to law enforcement. Taken together, they constitute a threat not only to the safety of our border communities, but to the security of the entire country." It appears the Administration is sending mixed messages to Congress. How can public perception of border security be reconciled when there are two opposing federal views?

Response: Both the U.S. Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) agree that the security challenges we face along the southwest border are significant. However, the purpose of my Wall Street Journal Op-Ed was to shed some light on the positive results of the Administration's efforts to secure the Southwest border, clear up common misperceptions that southwest border communities are unsafe, and discuss emerging economic opportunities in the area.

In the past two years, the Obama Administration has made great strides in manpower, technology, and infrastructure to help secure the Southwest border. For example, in fiscal years (FY) 2009 - 2010, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement seized 81 percent more currency, 25 percent more drugs, and 47 percent more weapons along the Southwest border than they did in FYs 2007 - 2008. The tools that DHS and our counterparts have put into place to help secure our Southwest

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Question#:	1
Topic:	Southwest
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

border are paying off — the crime rate in Tucson, Arizona, fell 15 percent between 2008 and 2009 and fell 21 percent in Brownsville, Texas, during that same period.

We understand that that more work is required on the Southwest border. DHS wants to make clear to the public that we will not let up in our efforts to secure the border and protect communities in the Southwest. However, DHS, along with local leaders in the region, also believe it is important to emphasize that the security challenges we face at the border are real, so are the economic opportunities in the region and the progress that we have made over the past two years. Therefore, the Wall Street Journal Op-Ed stands as our position concerning violence on the Southwest border.

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Question#:	2
Topic:	GAO findings
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: I am concerned with the GAO findings released on Northern Border security. DHS must continue to analyze the right mix of resources, ensuring there is effective use of personnel, technology, and international, state, and local agency partnerships that allow the border be open to our friends, but closed to those who would do us harm. Increased interagency cooperation and information sharing are imperative aspects to that mission. To that extent, I am encouraged by the joint declaration released between this administration and Canadian Prime Minister Harper. By recognizing common goals and strong partnerships, the declaration frames the intent to strengthen international security and support economic growth. How does DHS intend to provide security across the entire Northern Border while supporting the framework of the joint declaration?

Response: On February 4, 2011, President Obama and Prime Minister Harper released the U.S.-Canada declaration, *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness.* As described in the vision, the United States and Canada will share responsibility for the security and resilience of our nations, and seek to address threats at the earliest point possible within, at, and away from our borders while facilitating legitimate travel and trade. Implementing *Beyond the Border (BTB)* will require increased coordination between federal, state, local, tribal, territorial, and Canadian partners. For example, drug trafficking is the principle criminal activity being committed along the northern border. For such cross-border drug issues, DHS components partner with Canadian law enforcement agencies to investigate international smuggling crimes. These investigations are coordinated with the Drug Enforcement Administration (DEA), which is the single point of contact for U.S. drug related matters in the foreign environment and for ensuring that investigations comply with relevant U.S. and Canadian government protocols. By acting as a force multiplier and increasing intelligence and information sharing, this type of cooperation with partner law enforcement agencies on both sides of the U.S.-Canada border will support DHS efforts to effectively and efficiently secure the entire Northern Border.

Additionally, the Science & Technology Directorate is leading a sensor information sharing pilot with the U.S. Customs and Border Protection (CBP), the Royal Canadian Mounted Police (RCMP) and Defence Research and Development Canada to demonstrate the operational utility of a common surveillance picture to enhancing border security. The pilot will take place in the U.S. northeast and involve sharing radar sensor data to monitor a cross border body of water. This data sharing should facilitate the detection and interdiction of illegal cross border activity.

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Question#:	2
Topic:	GAO findings
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Beyond the Border creates a Beyond the Border Working Group (BBWG). The BBWG will report recommended initiatives to country leadership and oversee the implementation of those initiatives.

Beyond the Border identifies four key areas of cooperation: 1) Addressing threats early; 2) Trade facilitation, economic growth, and jobs; 3) Integrated cross-border law enforcement; and 4) Critical infrastructure and cybersecurity. Improved information and intelligence sharing underpins the accomplishment of all these areas. The United States and Canada commit to advancing these key areas while respecting the sovereignty, civil rights and civil liberties, privacy protections, and legal frameworks of both countries.

DHS is currently working with U.S. and Canadian partners to identify BBWG action items. Possible near-term action items include: forming bilateral port committees to ensure greater cross-border coordination; further harmonizing trusted traveler and shipper programs; developing efforts to strengthen global supply chain security; expanding liaison exchange officers; implementing items in the joint critical infrastructure action plan; and continuing collaboration on threat assessments.

Three DHS operational components – CBP, the U.S. Immigration and Customs Enforcemement (ICE), and the U.S. Coast Guard (USCG) – lead the effort to secure the Northern Border. Other DHS organizations, such as the Transportation Security Administration (TSA), S&T, the National Protection and Programs Directorate (NPPD), and the Domestic Nuclear Detection Office (DNDO) play supporting roles in Northern Border security efforts. Since the establishment of DHS, a number of steps have been taken to improve security along the Northern Border. Such as:

- deploying additional ICE Homeland Security Investigations special agents and Enforcement and Removal Operations officers, CBP officers and Border Patrol agents, and Coast Guard personnel;
- deploying additional Radiation Portal Monitors to Northern Border Ports of Entry, providing CBP with the capability to scan commercial truck and personally owned vehicles entering the United States from Canada;
- establishing new Northern Border air branches; and
- deploying additional CBP and USCG aircraft and vessels along the Northern Border.

Dozens of initiatives are also underway to enhance security along the Northern Border – ranging from joint task forces and information sharing efforts with our Canadian counterparts and other Federal, state and local agencies – to the research and development of new technologies suitable for the Northern Border's climate and terrain.

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Question#:	2
Topic:	GAO findings
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DHS will seek to jointly address threats at the earliest point possible within, and away from our borders while expediting the flow of legitimate travel and trade.

DHS intends to provide security across the entire Northern border through the ICE-led Border Enforcement Security Task Forces (BEST) and the Integrated Border Enforcement Teams (IBETs). These two programs ensure collaboration and coordination with federal, state, local, and Canadian law enforcement agencies and foster international partnerships to identify and dismantle transnational criminal organizations that seek to exploit our shared border.

BESTs

The United States and Canada's integrated criminal investigations occur through the ICE-led BEST. A key element of the BEST program along the Northern border is the participation and coordination between United States and Canadian law enforcement agencies, including the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police, the Niagara Regional Police Service, the Toronto Police Service, the Windsor Police Service, and the Amherstburg Police Service. BESTs were developed as a comprehensive approach to identify, disrupt, and dismantle transnational criminal organizations (TCOs), including drug trafficking organizations, posing significant threats to border security. For such cross-border drug issues, DHS components partner with Canadian law enforcement agencies to investigate international smuggling crimes. These investigations are coordinated with the Drug Enforcement Administration (DEA), which is the single point of contact for U.S. drug related matters in the foreign environment and for ensuring that investigations comply with relevant U.S. and foreign government protocols.

The BEST is an investigative task force that recognizes the unique resources and capabilities of participating law enforcement partners and is built upon the proven pillars of *co-location* and *cross-designation*. This enables each BEST to seek a comprehensive approach to combating TCOs while recognizing the distinctive circumstances and threats facing any particular BEST are unique and, therefore, require a dynamic, flexible response that is most effectively shaped by those senior field managers in the affected area of responsibility. There are currently 20 BESTs domestically and one in Mexico City, Mexico. Along the United States-Canada border, BESTs are currently located in Blaine, Washington; Detroit, Michigan; and Buffalo, New York. Additionally, a Massena, New York BEST is anticipated to commence operations this year. DHS cross-designation is essential to successful BEST operations. State, local, and Canadian participants in the task force may be cross-designated under 19 U.S.C. §1401(i) (Customs Authority) in appropriate cases for direct support of BEST operations. Cross-designated

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state, local, and provincial law enforcement officers enjoy the same authorities and protections afforded to their DHS counterparts, thus eliminating the border as an impediment to law enforcement, a situation that has historically been exploited by criminal organizations. The BEST program benefits from the co-located participation, resources, and experience drawn from over 60 state, provincial, and local, police departments. These equal partners provide invaluable resources and expertise that enable BESTs to provide a comprehensive approach to investigating TCOs.

IBETs

Canada and the United States have cooperated since 1997 through IBETs, which are now international models for cooperation. IBET operational interdiction teams, composed of CBP Office of Field Operations, U.S. Border Patrol, ICE, U.S. Coast Guard, RCMP, and CBSA operate on a daily basis in 24 locations along the United States-Canada border, including four locations where Canadian and American intelligence analysts are co-located. IBETs work in an integrated land, air, and marine environment within their authorities along the border and complement the authorities of other U.S. law enforcement agencies. IBETs operate in accordance with current memorandums of understanding and agreements that U.S. law enforcement agencies have with the Government of Canada, and collaborate with municipal, provincial, state, federal, First Nation (Native American) law enforcement agencies, stakeholder agencies, and related governmental departments to identify, investigate, and interdict persons and organizations that threaten the national security of our respective countries or that are involved in organized criminal activity, including drug smuggling, between the ports-of-entry. For such cross-border drug issues, DHS components partner with Canadian law enforcement agencies to investigate international smuggling crimes. These investigations are coordinated with the Drug Enforcement Administration (DEA), which is the single point of contact for U.S. drug related matters in the foreign environment and for ensuring that investigations comply with relevant U.S. and Canadian government protocols.

Integrated Cross-border Maritime Law Enforcement Operations (ICMLEO ShipRider)

Pilots for the Canadian Shiprider operations took place in 2005, 2007 and 2010 with great success. Over the past three years the USCG and RCMP have worked closely together while negotiating a bilateral agreement that will perpetuate the program as a bi-national tool to more effectively respond to intelligence driven operations supported by the IBETs and other investigative and intelligence sources. The ICMLEO Framework Agreement was signed in 26 May 2009 and is currently in the Canadian legislative process for

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ratification as a treaty between the U.S. and Canada. This agreement when ratified will allow law enforcement officers from Federal, Provincial, State, local and Tribal law enforcement agencies to operate seamlessly, virtually eliminating the border as an impediment and enhancing maritime border security between both nations. While awaiting ratification, the USCG and RCMP as Central Authorities are working closely with our DHS partners and CBSA to develop standard operating procedures, training programs, and aligning administrative requirements. This includes efforts to refine training and recertification processes for law enforcement officers who receive cross designation and IMCLEO ShipRider certification.

Question#:	3
Topic:	GAO report
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: In 2006, Pew estimated that as much as 45 percent of the illegal population in the U.S. entered the country legally, but stayed beyond the authorized period. This is a security gap that has and will continue to be exploited by those who wish to do our country harm, until substantial efforts are made to address it. I was troubled to learn that, according to a new GAO report, Immigration and Customs Enforcement has only allocated about three percent of its investigative work hours to overstays, which has resulted in only about 8,100 arrests from FY 2004 through 2010. Can you describe for me how the Department proposes to better address overstay identification and apprehension?

Response: The Department of Homeland Security (DHS) employs a layered approach to the national security of the United States. U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), other DHS components, and the Department of State are involved in the screening of aliens seeking to enter the United States through the entire process, from the moment the applicant applies for a visa at an overseas post, through the screening of the traveler prior to arrival (i.e., seaport and airports via passenger manifests), through inspection by CBP at the port of entry, and by notifications to ICE if the alien violates or overstays his or her period of authorized admission. This includes continuous efforts by DHS and its intelligence community partners to identify foreign terrorists, their associates, and criminal activity on a continual basis through various programs and initiatives.

To provide this additional layer of scrutiny and vetting before a visa is issued, DHS visa security units have been established at 19 high-risk overseas posts. When aliens attempts to enter the United States, CBP screens them at the various ports of entry by comparing biometric and biographical data to establish identity, confirm compliance with entry regulations, and to deny entry to travelers who are considered a risk to the United States because of their criminal associations, identification on a watch list, and through the detection of any previous or current administrative or criminal violations, or other grounds of inadmissibility to the United States. The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, Automated Biometric Identification System (IDENT), routinely receives fingerprint records from various sources and compares the data against subjects who had previously been enrolled in the IDENT system. If a subject match is identified that contains derogatory information, such as outstanding warrants, the lead is forwarded for review to the responsible DHS component or other agency program, such as the Department of Justice, Department of State, or Department of Defense.

Question#:	3
Topic:	GAO report
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

ICE's Counterterrorism and Criminal Exploitation Unit (CTCEU) is committed to investigating 100 percent of the nonimmigrant visa violators that it considers high risk. To achieve this, the CTCEU maintains a staff of over 50 contract analysts to conduct individual record checks of various government and non-government databases in order to identify potential violators. This capability, coupled with automated technology, enables the CTCEU to review hundreds of thousands of potential violators every year and screen against threat criteria. In addition, 366 ICE Homeland Security Investigations (HSI) special agents, as well as corresponding support staff, have been deployed to ICE field offices to investigate CTCEU-related cases.

The Compliance Enforcement Advisory Panel (CEAP) was created by the CTCEU on March 19, 2009, to formalize and strengthen existing relationships with members of the national intelligence community and sister law enforcement partners. The CEAP is an outreach activity that is used by the CTCEU to ensure an active, informed, and impartial review of the relevance of CTCEU's priority criteria in addressing the enduring and emerging national security threats to the homeland.

Finally, ICE Enforcement and Removal Operations (ERO) and HSI collaborate and exchange information about non-immigrant violators who do not meet the HSI threshold for national security criminal investigation. As part of this collaboration, lists of identified non-priority visa violators are provided by CTCEU and sent to the ICE ERO Fugitive Operations Support Center and the Criminal Alien Program in ERO for additional review and comparison against their priorities.

ICE agents working hours attributable to visa overstays do not represent a complete picture of DHS's efforts to address this issue, as visa overstay identification is accomplished through the efforts of DHS and other federal agencies. Additionally, the Science & Technology Directorate is initiating efforts to evaluate past projects and prepare analytical input that will inform a way-forward for Validated Exit (biographic and biometric) and improve targeting those who overstay their periods of admission. Examining the totality of the level of effort by DHS and other agencies should be examined when assessing the effectiveness of visa overstay identification.

Question#:	4
Topic:	pat-downs
Hearing:	Securing the Border: Progress at the Federal Level
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: Given the recent news reports regarding the pat-downs of children by TSA agents and concerns related to TSA screening policies, TSA administrator John Pistole announced that there will be changes to the current screening protocol. Will you elaborate on the stated changes and explain any steps taken in addition to those mentioned by TSA administrator Pistole to ensure the privacy of minors during screening procedures?

Response: The Transportation Security Administration (TSA) Administrator has pledged to make TSA an intelligence-driven, risk-based agency and has made it a priority to explore additional ways to focus its resources and move beyond a one-size-fits-all system while maintaining a high level of security. TSA has initiated a working group to review all possible screening options for children and present the best way forward while maintaining a proper security stance. The current process includes providing alternative screening methods to resolve alarms, such as utilizing Advanced Imaging Technology (AIT), Walk Through Metal Detectors (WTMD), and Explosives Trace Detection (ETD) units. The current, less intrusive pat-down will still be used to screen children who opt out, or are opted out by a parent or guardian, of AIT or WTMD screening, or who require a pat-down to resolve an alarm which technology cannot resolve. Overall, the new process should significantly reduce the number of children who may require a pat-down. Regardless, measures intended to protect passengers' privacy will remain in effect. If a child is required to undergo the pat-down, the parent or guardian may request a private area for the child's personal screening. The private area will either be a separate room or an area out of the view of the general public. The parent or guardian will never be separated from the child.

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