

# **EXHIBIT 9**

**UNITED STATES DISTRICT COURT**

DISTRICT OF ARIZONA  
Evo A. DeConcini U.S. Courthouse  
405 W. Congress  
Suite 5190  
Tucson, Arizona 85701-5053

**John M. Roll**  
Chief United States District Judge

Telephone: (520) 205-4520  
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June 3, 2010

Mr. Art Cameron (Senator Shelby)  
Professional Staff Member  
Senate Appropriations Committee

Mr. Goodloe Sutton (Senator Sessions)  
Professional Staff Member  
Senate Appropriations Committee

Ms. Jessica Berry (Senator Mikulski)  
Senate Commerce, Justice, Science  
Appropriations Subcommittee

Ms. Stephanie Myers (Congressman Wolf)  
Professional Staff Member  
House Appropriations Committee

Mr. Bill Sullivan, Justice Management  
Division Appropriations Liaison  
Department of Justice

Dear Mr. Cameron, Mr. Sutton, Ms. Berry, Ms. Myers and Mr. Bill Sullivan:

Thank you for the opportunity to discuss with you the current state of the federal criminal caseload arising from border enforcement in the District of Arizona.

Because I realize that your primary interest, at this time, is the nature of the criminal caseload in the District of Arizona arising from cases along the international border with Mexico, that will be the primary focus of this letter. Of course, it is worthy of note that in addition to its very heavy criminal caseload, the District of Arizona has a very large civil caseload. This civil caseload falls disproportionately on Phoenix division, which hears 80% of the District's civil cases. In addition, bankruptcy filings in FY-2009 nearly doubled from the year before and are on track in FY-2010 to reach an all-time high.

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In the District of Arizona, as a result of the very large criminal caseload, enormous demands are placed upon the U.S. Marshals Service to protect judicial officers, move prisoners throughout the courthouse, and provide adequate detention space for in-custody defendants. The federal judges in Arizona are most appreciative of the highly professional work of the Marshals Service. From Director John Clark of the Marshals Service and District of Arizona Marshal David Gonzales to all of the Marshals personnel, the Marshals Service has performed its responsibilities in exemplary fashion.

**Various national compilations measure criminal cases in FY-2009. These compilations measure different aspects of the nation's federal caseload:**

The **2009 Annual Report of the Director, Administrative Office of the United States Courts** ("FY-2009 Director's Report"), This comprehensive report includes statistics for federal criminal case and defendant filings and terminations, as well as statistics for misdemeanor and petty offense filings in all 94 districts. Criminal case and defendant filing statistics include unweighted (i.e., actual) filings. Its classification system defines federal criminal cases as including all felonies and class A misdemeanors as well as those petty offenses assigned to district judges. (2009 Director's Report, pp. 226 footnote, 238 footnote).

The **2009 Federal Court Management Statistics**, published by the Administrative Office of the U. S. Courts, measures the number of weighted cases per active district judge. Every two years, the U.S. Judicial Conference recommends to Congress the number of new district judgeships that should be created. Its recommendation is a product of the Biennial Judgeship Survey. The Judicial Conference looks to the number of weighted cases per active district judge in each district. Case weights are calculated based upon a case-weighting study conducted by the Federal Judicial Center in 2003-2004. (2009 Director's Report, p.407 footnote).

The **United States Sentencing Commission's Statistics Information Packet for FY-2009** ("FY-2009 Sentencing Commission Statistics") includes statistics regarding the number of sentenced felony defendants reported to the Sentencing Commission.

**Two other sources for statistics pertain exclusively to Arizona:**

**District of Arizona Statistical Reports** are distributed monthly to members of the Arizona federal judiciary. The September 2009 Report includes caseload information, including felony and misdemeanor statistics for the calendar year to date as well as for the previous 12 months, i.e., FY-2009. ("FY-2009 CM/ECF Report").

The United States Border Patrol distributes **Tucson Sector - Arizona Denial Quicklook**, which provides monthly and fiscal year to date statistics regarding apprehensions in Tucson Sector.

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Although these compilations, in some respects, focus on different stages and aspects of the nation's federal caseload, each reflects the fact that the District of Arizona has one of the heaviest criminal caseloads in the nation, both as to felonies and petty offenses, and those caseloads continue to be on the rise.

#### **FY-2009 Caseload of the 5 Southwest Border Districts**

- **In FY-2009, almost 40% of the nation's federal criminal case filings were in the 5 southwest border districts**
- **Nearly 75% of the nation's immigration criminal case filings and nearly 36% of the nation's drug case filings were in the 5 southwest border districts**
- **The 5 southwest border districts ranked 1<sup>st</sup> through 5<sup>th</sup> of the nation's 94 federal districts in criminal case and defendant filings**
- **In FY-2009, 3 of the southwest border districts were in the top 4 districts in the nation in unweighted case filings**
- **4 southwest border districts heard 61,701 petty offense cases in FY-2009**

The 5 southwest border districts, although constituting only a small fraction of the nation's 94 federal districts, had almost 40% of all federal criminal case filings in the country last fiscal year.

Nationally, 76,655 federal criminal cases were filed in FY-2009. The 5 southwest border districts, consisting of the Southern District of California, the District of Arizona, the District of New Mexico, the Western District of Texas, and the Southern District of Texas, had 29,310 federal criminal case filings - almost 40% of all federal criminal case filings in the country. (2009 Director's Report, pp. 201-203).

The 5 southwest border districts had 33,461 of the 97,982 federal criminal defendant filings in the nation in FY-2009. (2009 Director's Report, pp. 204-206). Because many criminal cases have multiple co-defendants, the number of criminal defendants is always higher than the number of criminal cases.

In FY-2009, the 5 southwest border districts had 29,156 of the nation's 81,370 felony defendant sentencings reported to the Sentencing Commission. (FY-2009 Sentencing Commission Statistics).

The five southwest border districts ranked 1<sup>st</sup> through 5<sup>th</sup> in criminal case and defendant filings, of the 94 districts. (2009 Director's Report, pp. 201-206).



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In FY-2009, a total of 25,804 criminal immigration cases were filed in the nation's 94 federal districts - of which 18,807 (73%) were filed in the 5 southwest border districts. (2009 Director's Report, at 228-232).

Nationally, 16,636 criminal drug cases were filed in FY-2009, of which 5,945 (36%) were filed in the 5 southwest border districts. (Id.)

In addition to the criminal cases described above, the District of Arizona and 3 other southwest border districts (Southern District of Texas, Western District of Texas and District of New Mexico) heard 61,701 of the nation's 109,132 petty offenses. (2009 Director's Report, pp. 356-358).

#### **FY-2009 Criminal Caseload of the District of Arizona**

- **In FY-2009, the District of Arizona ranked 1<sup>st</sup> in the Ninth Circuit and 3<sup>rd</sup> in the nation in criminal case filings**
- **In FY-2009, the District of Arizona ranked 1<sup>st</sup> in the Ninth Circuit and 3<sup>rd</sup> in the nation in criminal defendant filings**
- **In FY-2009, the District of Arizona experienced a 42% increase in felony case filings and a 44% increase in felony defendant filings over FY-2008**

#### ***District judgeships in Arizona***

The felony cases filed in the District of Arizona are heard by 13 active district judges and 5 senior district judges. Eight active district judges sit in Phoenix division (which hears 80% of the District's civil caseload) and 5 active district judges sit in Tucson. Several visiting judges from other districts have been recruited to sit in Tucson division during the past 12 months as a temporary measure to assist with the robust increase in felony filings.

In August of 2010, District Judge Frank R. Zapata, who sits in Tucson division, will assume senior status and will no longer be in the criminal case assignment draw. Until his replacement is confirmed, the remaining 4 active district judges in Tucson division will be assigned the felony caseload now divided between 5 judges.

In addition, 1 judge in Phoenix was appointed to the district court to fill a temporary judgeship. If Congress does not convert that judgeship to a permanent judgeship before 2013, the next district court vacancy to occur in Arizona that year will be designated a lapsed temporary judgeship. This would mean the loss of one of Arizona's 13 active district judgeships.

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### ***Criminal case filings***

In FY-2009, the District of Arizona's criminal case filings increased by 67.3% over FY-2008 - increasing from 3,145 in FY-2008 to 5,261 in FY-2009; Arizona was 1<sup>st</sup> in the Ninth Circuit and 3<sup>rd</sup> in the nation. (2009 Director's Report, pp. 201-203).

In FY-2009, felony case filings increased 42% over FY-2008. In FY-2009, the District of Arizona had 4,294 felony case filings - an increase of more than 1,200 cases over the 3,023 felony case filings in FY-2008. (FY-2009 CM/ECF Report).

In FY-2009, Tucson division had 2,597 of 4,294 (62%) of the District's felony case filings (FY-2009 CM/ECF Report).

### ***Criminal defendant filings***

In FY-2009, criminal defendant filings in Arizona increased by 65.6% over FY-2008 - increasing from 3,701 in FY-2008 to 6,129 in FY-2009. Arizona was 1<sup>st</sup> in the Ninth Circuit and 3<sup>rd</sup> in the nation in criminal defendant filings in FY-2009. (2009 Director's Report, pp. 204-206).

In FY-2009, felony defendant filings in the District of Arizona increased by more than 44% over FY-2008. In FY-2009, the District of Arizona had 5,125 felony defendant filings - an increase of nearly 1,600 filings over the 3,551 felony defendant filings in FY-2008. (FY-2009 CM/ECF Report).

### ***Felony defendant sentencings***

In FY-2009, the entire nation had 81,370 felony defendant sentencings reported to the Sentencing Commission. (FY-2009 Sentencing Commission Statistics, p. 3). The District of Arizona had 4,784 felony defendant sentencings, 4<sup>th</sup> highest in the nation, behind 3 other southwest border districts. (Id., at pp. 3-5).

### ***Severe shortage of federal prosecutors in Arizona in FY-2007 and FY-2008 resulted in a highly unusual decline in Arizona's criminal caseload***

In FY-2007 and FY-2008, the U.S. Attorney's Office in the District of Arizona was seriously under-staffed. This shortage resulted in the implementation of charging policies in Tucson division that largely limited marijuana drug-trafficking prosecutions to cases involving more than 500 pounds of marijuana and restricted felony illegal reentry prosecutions to only those arrestees with very serious felony records. These threshold requirements have now been eliminated in light of the infusion of the large number of federal

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prosecutors, that is, the doubling of federal prosecutors in Tucson division and the addition of federal prosecutors in Phoenix division during late CY-2008 and early CY-2009. Many of the recently hired attorneys filled existing vacancies while others filled new positions. The result has been a very large increase in criminal case and defendant filings in FY-2009. Furthermore, plans call for the addition of even more federal prosecutors in Tucson division. To date in FY-2010, the District of Arizona's felony case and defendant filings are continuing to increase over the filings for the first 7 months of FY-2009. (District of Arizona April 2010 CM/ECF Statistics).

### ***Caseload - Prevalence of immigration offenses and drug crimes***

In FY-2009, approximately 73% of the District of Arizona's criminal case filings involved either immigration offenses or drug charges. Of the District's 5,253 criminal case filings in FY-2009, 2,687 (51%) involved immigration cases and 1,135 (22%) involved drug cases. (2009 Director's Report, p. 232)(note: the 2009 Director's Report, p. 203, refers to Arizona having 5,261 criminal case filings in FY-2009).

### **FY-2009 Civil Caseload in the District of Arizona**

- **The District of Arizona's 3,629 civil case filings in FY-2009 represented a 2.5% increase over the 3,539 civil filings in FY-2008**
- **Approximately 80% of the District's civil filings in FY-2009 were in Phoenix division**

Although I understand your principle interest at this time is on federal criminal border enforcement, it is important to note that the District of Arizona also has a very significant civil caseload.

In FY-2009, the District of Arizona had 3,629 civil filings. This was a 2.5% increase over the 3,539 civil case filings in FY-2008. (2009 Director's Report, p. 137).

Of the 3,629 civil filings in FY-2009, 1,187 involved federal or state prisoner petitions, 494 were civil rights cases, and 448 were contract cases. (2009 Director's Report, pp. 151-152).

The Phoenix division had 80% of the District's civil filings. In FY-2009, Phoenix division had 2,896 of the District's 3,610 civil case filings. (District of Arizona FY-2009 CM/ECF statistics).

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### **Weighted and Unweighted Caseloads - District Judgeships**

- **In FY-2009, nationwide district judges averaged 480 weighted case filings and 507 unweighted case filings per active district judge**
- **In FY-2009, Arizona's district judges averaged 609 weighted case filings per active district judge - 8<sup>th</sup> highest in the nation**
- **In FY-2009, Arizona's district judges averaged 860 unweighted case filings per active district judge - 3<sup>rd</sup> highest in the nation**
- **The District of Arizona FY-2009 increase in criminal case and defendant filings and continued substantial civil caseload fully support the District's recent request for 5 new district judgeships**

### ***Case weights***

Every federal case is assigned a case weight. Every two years, the U.S. Judicial Conference recommends to Congress the number of new district judgeships that should be created for each of the 94 districts. This recommendation is a product of the Biennial Judgeship Survey. The Judicial Conference looks to the number of weighted cases per active district judge in each district. Case weights are calculated based upon a case-weighting study conducted by the Federal Judicial Center in 2003-2004. (2009 Director's Report, at 407 footnote).

Under the case weighing system presently utilized, civil cases are assigned a greater weight and criminal cases, including immigration and drug offenses, are assigned less weight. When adopted in 2004, each of the 5 southwest border districts dropped in weighted caseload. (District Judge Royal Furgeson, Judicial Resources Committee Member, Memorandum [to the 5 southwest border chief judges] re New District Court Weights, August 26, 2004).

### ***Arizona's FY-2008 weighted caseload***

As a result of the aberrational decline in criminal case and defendant filings in FY-2008, the District of Arizona had 487 weighted case filings per active district judge. (FY-2009 Federal Court Management Statistics, p. 126). Arizona's weighted case filings per active district judge in FY-2007 was 529. (Id.)

In the Spring of 2009, the U.S. Judicial Conference recommended that the District of Arizona receive 2 permanent district judgeships, 1 temporary judgeship, and conversion of its existing temporary judgeship to a permanent judgeship. This was a decrease of 2

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permanent district judgeships from the Judicial Conference's 2007 recommendation of 4 permanent district judgeships, 1 temporary judgeship, and conversion of its existing temporary judgeship to a permanent judgeship.

### ***Arizona's FY-2009 weighted caseload***

In FY-2009, the national average was 480 weighted cases per active district judge. (2009 Director's Report, p. 404; 2009 Federal Court Management Statistics, p. 167). For reasons previously explained, in FY-2009 the District of Arizona's average weighted case filings per active district judges rose to 609 - 8<sup>th</sup> highest in the United States. (2009 Director's Report, pp. 404-407). This was a very substantial increase over the District's weighted filings average in FY-2008 - 487 filings per active district judge. (2008 Director's Report, p. 411).

As a result of this increase, the District of Arizona recently responded to the U.S. Judicial Conference's 2011 Biennial Judgeship Survey by requesting 5 permanent district judgeships and conversion of its temporary district judgeship to a permanent judgeship.

Because of the predictable and formidable caseload increase in weighted cases per active district judge in Arizona, it is hoped that any judgeship bill enacted by Congress will reflect the current needs of Arizona and not the aberrant statistics arising from FY-2007 and FY-2008 that were the basis for the Judicial Conference's 2009 recommendation that Arizona receive only 2 new permanent judgeships.

### ***Arizona's FY-2009 unweighted caseload***

As previously noted, although the Judicial Conference looks only to the weighted caseloads of the various districts in determining the number of new district judgeships each district should receive, unweighted case filings reflect the actual caseload of each district. Because the weighted caseload system currently in place downgrades the weight assigned to most immigration felonies and drug-trafficking crimes as well as the weight assigned to probation and supervised release revocation proceedings, the 5 southwest border districts were among the leaders in unweighted filings in FY-2009.

The average number of unweighted filings nationwide in FY-2009 was 507 per active district judge. Arizona had 860 unweighted case filings per active district judge in FY-2009. (2009 Director's Report, p. 406).

In FY-2009, the Eastern District of California, with its judicial emergency situation, ranked first in the nation with 1,202 unweighted cases (2009 Director's Report, p. 406). However, the next 3 highest districts in unweighted case filings were southwest border districts - Western District of Texas, 1,031 case filings; District of Arizona, 860 case filings; and the Southern District of Texas, 832 case filings. (2009 Director's Report, pp. 404-407).

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### **Misdemeanor and Petty Offense Prosecutions in Arizona**

- **In FY-2009, Magistrate Judges heard 20,952 petty offense cases - 2<sup>nd</sup> highest in the nation - with 16,565 petty offenses heard in Tucson division and 2,786 heard in Yuma**
- **In FY-2009, Magistrate Judges heard 1,016 class A misdemeanor cases - 2<sup>nd</sup> highest in the nation**
- **In FY-2009, Magistrate Judges in Tucson heard 16,242 petty and misdemeanor Operation Streamline cases**
- **In FY-2009, Magistrate Judges conducted 4,173 felony guilty plea proceedings - 1<sup>st</sup> in the nation**

The District of Arizona has 13 full-time magistrate judges and 1 part-time magistrate judge. Of Phoenix division's 6 full-time magistrate judges, 4 sit in Phoenix, 1 in Flagstaff, and 1 in Yuma. A part-time magistrate judge also sits in Yuma. Tucson division has 7 full-time magistrate judges, all of whom sit in Tucson.

In FY-2009, the magistrate judges in the District of Arizona heard 20,952 petty offense cases. The District of Arizona ranked 2<sup>nd</sup> in the nation in petty offenses - only 43 cases behind the Southern District of Texas, which had 20,995. (2009 Director's Report, pp. 356-358).

Also in FY-2009, magistrate judges in the District of Arizona heard 1,016 of the nation's 8,700 class A misdemeanor offenses - ranking Arizona 2<sup>nd</sup> in the nation. (2009 Director's Report, pp. 350-353).

In FY-2009, the District of Arizona's magistrate judges conducted 4,173 felony change of plea proceedings - 1<sup>st</sup> in the nation.

### **Operation Streamline and Proposals for expansion**

- **The Doubling of Operation Streamline cases in Tucson division would increase the caseload by 16,000 cases**
- **The Tripling of Operation Streamline cases in Tucson division would increase the caseload by 34,000 cases**
- **The prosecution of every illegal entrant in Tucson Sector for felony charges would result in an additional 241,000 felony cases in Arizona**



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### ***Operation Streamline in Tucson division***

Tucson division's Operation Streamline, also referred to as Arizona Denial Prosecution Initiative, is a Border Patrol prosecution program in which petty and misdemeanor offenders with minimal records are arraigned, plead guilty and are sentenced in a single day. Both Tucson and Yuma have Operation Streamline programs. Of Arizona's 380 miles of international border with Mexico, 262 is in Tucson division and 118 in Yuma County, which falls within Phoenix division.

Presently, Tucson division magistrate judges hear 70 Operation Streamline cases per workday. All of these cases are heard at the DeConcini Courthouse in Tucson division

Approximately 45% of all individuals entering the United States illegally in FY-2009 were apprehended in Tucson Sector. In FY-2009, Border Patrol apprehended approximately 241,000 people in Tucson Sector, of which 16,242 were prosecuted for petty offenses or flip-flop complaints in Tucson division. Thus far in FY-2010, Border Patrol has apprehended 148,050 in Tucson Sector - a 5% increase over the same period in FY-2009. In addition, in FY-2009, Border Patrol in Tucson Sector seized approximately 1.3 million pounds of marijuana - nearly 50% of all of the marijuana entering the United States along the southwest border. Border Patrol in Tucson Sector became the first Border Patrol Sector to seize over 1 million pounds of marijuana in a fiscal year. Thus far in FY-2010, Border Patrol in Tucson Sector has seized 617,295 pounds of marijuana, which is 12% less than the quantity seized during the same period in FY-2009 but which is nevertheless projected to exceed 1 million pounds for FY-2010. (Tucson Sector April 2010 Update).

In FY-2009, Border patrol in Yuma apprehended 2,718 Operation Streamline defendants, of which approximately 1,877 (69%) were prosecuted.

### **Proposals to doubled/triple Operation Streamline in Tucson division**

It has been proposed that Operation Streamline prosecutions in Tucson division be doubled or tripled. Although the desire to prosecute a higher percentage of the individuals arrested in Tucson division is understandable, it is important to note that there is no available courtroom space to accommodate a doubling (or tripling) of Operation Streamline cases in Tucson division. It would be impossible to use the current, very large special proceedings courtroom at the DeConcini Courthouse, to hear double the number of cases in a single day.

Also, in light of the Ninth Circuit decision in *United States v. Roblero-Solis*, decided December 2, 2009, additional interaction between the Operation Streamline magistrate judge and respective defendants is required, which is time-consuming and limits the number of defendants any individual magistrate judge may see. This means that to double the daily number of Operation Streamline defendants in Tucson division, another courtroom, judge and staff would need to be dedicated Operation Streamline each workday. Tripling of Operation Streamline defendants would require the tripling of courtrooms, judges and staffs assigned to hear Operation Streamline cases.

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A doubling of Operation Streamline in Tucson division would result in the number of defendants being increased from 70 per workday to 140 per workday and would increase the current Operation Streamline caseload by more than 16,000 cases. A tripling would result in an increase to 210 Operation Streamline defendants per workday, an increase of over 32,000 cases over the current number of Operation Streamline cases.

**Additional magistrate judges, courtrooms and detention space:**

In order to double the number of Operation Streamline defendants in Tucson division, an additional magistrate judge, district court courtroom with chambers and detention space, would be needed. The specifications for magistrate judge courtrooms would provide insufficient space for Operation Streamline hearings of 70 defendants per workday.

In order to triple the number of Operation Streamline defendants, a total of 2 additional magistrate judges, courtrooms of district court specifications, chambers and detention space, would be needed.

**Additional personnel:**

In addition to the need for additional judges, courtrooms, chambers and detention space, the doubling or tripling of Operation Streamline would require doubling or tripling of additional personnel, including courtroom clerks, docket clerks, CJA voucher clerks, court interpreters, other administrative support, pretrial services officers, additional CJA panel attorneys, and security expenses. When recently asked for an estimate as to the cost of doubling or tripling Operation Streamline in Tucson, the Administrative Office of the U.S. Courts calculated the cost as \$17 million to double the number of Operation Streamline defendants (increasing defendants by approximately 17,000) and \$28 million to triple the number of Operation Streamline defendants (increasing defendants by 34,000).

**Proposal to Initiate Felony Prosecutions Against All Illegal Entrants in Tucson division**

One recent proposal suggests that felony charges be filed against every entrant arrested in Tucson Sector by Border Patrol.

Since only Article III judges may hear felony prosecutions, this would require that every case be heard by a district judge.

In FY-2009, Border Patrol arrested approximately 241,000 people in Tucson Sector. In the entire nation in FY-2009, 81,370 individuals were sentenced in federal court for felonies. If everyone of the 241,000 people arrested in Tucson Sector in FY-2009 had been prosecuted as alleged felons, Arizona would have had more than triple the number of felony prosecutions than the rest of the United States and its 93 districts.



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### **Bankruptcy Court filings in FY-2009**

- **In FY-2009, the District of Arizona's Bankruptcy Court experienced a caseload increase of 83.4%**

In FY-2009, the District of Arizona's Bankruptcy Court experienced an 83.4% increase in filings over FY-2008. In FY-2009, the Bankruptcy Court had 31,017 filings - up from 16,908 in FY-2008. (2009 Director's Report, p. 290).

If the current pace of filings continues in FY-2010, the Bankruptcy Court will exceed its all-time high in bankruptcy filings. Additional judicial resources are needed to assist with this enormous increase in filings.

### **Marshals Service**

The Marshals Service performs its duties remarkably well, particularly in light of the ever-increasing caseload in Tucson division. Two numbers are particularly illustrative of the demands placed upon the Marshals Service - the average daily number of in-custody defendants in the District of Arizona and the number of court appearances entered by in-custody defendants.

Statistics as of early May, 2010, reflect that in FY-2010, the average daily prisoner population for the District of Arizona is over 5,200 prisoners. In FY-2009, the Marshal's Service produced in-custody defendants for more than 80,000 hearings. At the current pace in FY-2010, the number of productions will be higher than in FY-2009.

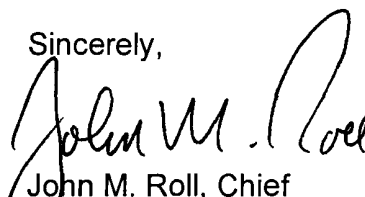
### **Clerk's Office, Probation Department, and Pretrial Services**

Needless to say, the robust increase in criminal caseload in FY-2009 and the steady civil caseload has resulted in unparalleled demands being placed on members of the Clerk's Office, probation officers, and pretrial services officers.

### **Conclusion**

Thank you for taking time to travel to the southwest border to learn firsthand about the current situation. I am grateful for the opportunity to discuss the situation confronted by the District of Arizona and would welcome the opportunity to answer any follow-up questions you may have.

Sincerely,



John M. Roll, Chief  
District Judge

JMR:kh

# **EXHIBIT 10**



STATE OF ARIZONA

JANET NAFLITANO  
GOVERNOR

OFFICE OF THE GOVERNOR  
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331  
FACSIMILE: 602-542-7601

December 30, 2005

The Honorable Donald Rumsfeld  
Secretary, U.S. Department of Defense  
Washington, D.C. 20528

Dear Secretary Rumsfeld:

I write this letter to ask for your continued attention to Arizona's border security challenges, and to discuss ways in which we can cooperate to meet these challenges in the future.

Arizona has more undocumented immigrants entering the country through its border than any other state in the nation. According to Fiscal Year 2004 U.S. Border Patrol statistics, approximately 50 percent of all undocumented immigrant apprehensions (in the United States) took place in Arizona. These border crossings often result in property damage or other crimes; and the costs of incarcerating illegal immigrants who commit these crimes have fallen to the state. During my term as Governor, I have sent four invoices to the federal government, informing them of the costs of incarcerating illegal immigrants in state correctional facilities. The last invoice, sent June 27, totaled the unpaid bill at over \$217 million dollars.

Arizonans living along the U.S./Mexico border have expressed frustration with the high number of illegal immigrants crossing into the country. Many of them have been victims of theft or property damage, and have had to bear the costs associated with the crimes. Others have had to procure medical assistance for individuals who have crossed the border and become ill or injured. And Arizonans around the state have borne the financial costs of securing the border and dealing with the illegal immigrants who are already here. The circumstances at the border have become so dire that I declared a state of emergency in Arizona's four border counties so I could use state crisis funds to help combat the effects of illegal immigration in border communities.

As you know, the responsibility of securing our border from illegal crossings is a Federal responsibility. I have contended for sometime that the federal government has lost operational control of the United States-Mexico Border and must redouble its efforts to return safety and security to this region. Resources, manpower and policies directed at the Southwest Border have been categorically inadequate. I appreciate the additional attention that has been directed toward the border in the recent past but it is a slow, late response to the problem. By no means should state resources be used to supplant this federal responsibility.

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Currently, 174 National Guard troops are stationed at the Arizona-Mexico border, assisting with interoperability and technical communications among border counties, state agencies, law enforcement and first responders. Guard members also work constructing and repairing fences in Nogales, Arizona and run drug interdiction operations in all four border counties.

I know that a significant percentage of our National Guard members are unavailable for service at our border because they are fulfilling other assignments, especially deployment to Afghanistan and Iraq. In addition, the National Guard will serve in an integral role in the coming fire season in Arizona, which could be one of our worst on record.

Within this context, I must ask about the Department of Defense's position regarding recent media reports about possible dramatic force reductions in the Army and Air National Guard in the immediate future. Never before have National Guard forces meant so much to the defense of our nation, both overseas and with respect to homeland security. I assume and would hope that there would be an opportunity to have a full and open discussion about the future of these critical forces.

Nonetheless, to the extent National Guard members remain in Arizona and are not otherwise deployed, there are a number of ways they could be of help at the border if the federal government agrees to cover the costs associated with stationing additional troops there.

- Guard volunteers could man stations at border crossing points and assist with cargo and vehicle inspections and electronic identification checks. This would free up Border Patrol officers to do other duties more directly related to enforcement.
- Members of the Guard could assist the Department of Public Safety officers assigned to check vehicles going from Arizona to Mexico. This would free up DPS officers to engage in other activities more directly related to law enforcement.
- Guardsmen and women could operate mobile observation posts much like those run by the Counter Narco-Terrorism Task Force. Soldiers could be placed in the field to observe and report suspicious persons in high-traffic areas. We would likely follow the Night Hawk procedure and arm these soldiers for self-protection.
- The Arizona National Guard could operate roving patrols similar to the mobile observation posts. The soldiers could patrol back roads and report suspicious activity. The distinction between the roving patrols and the mobile observation posts is that the patrols would be highly visible, warning potential border

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crossers that they are likely to be detected and apprehended. The soldiers should also be armed for self-protection.


- Soldiers could augment Arizona's Engineering IRT program by assigning soldiers to do maintenance and repair projects supporting Border Patrol. This would involve repairing fences, improving roads and other projects that support enforcement programs.
- Guardsmen and women could provide administrative assistance to local law enforcement agencies. This measure would free up law enforcement officers for field duty.
- Finally, Guard members could provide intelligence analysis, screening information about the activities of illegal immigrants, interpreting it and disseminating it to law enforcement agencies.

These measures stand to make a tangible impact in tightening control of the Arizona/Mexico border, but none of them will be possible without complete funding from the federal government.

My request for federal funding for Arizona National Guard activities along the border is authorized under Title 32 of the United States Code. National Guard members would remain under the control and command of the Governor even though the Guard forces are being employed "in the service of the United States" for a primary federal purpose. Furthermore, under 32 USC 901 et. seq., the Secretary of Defense is authorized "to provide funds so a Governor can employ the National Guard units or members to conduct homeland defense activities that the Secretary determines to be necessary and appropriate." You took such actions to deploy state National Guard units in the aftermath of Hurricane Katrina, and I hope you will consider doing the same to combat the state of emergency at the Arizona border.

I appreciate your prompt consideration of my request, and I am pleased to know that your office and the federal government are renewing their focus on border control. I look forward to working closely with you on this issue in the future.

Yours very truly,

  
Janet Napolitano  
Governor

cc: The Honorable Michael Chertoff,  
Secretary of the Department of Homeland Security

# **EXHIBIT 11**



STATE OF ARIZONA

JANET NAPOLITANO  
GOVERNOR

OFFICE OF THE GOVERNOR  
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331  
FACSIMILE: 602-542-7601

March 7, 2006

The Honorable Donald H. Rumsfeld  
Secretary of Defense  
Office of the Secretary of Defense  
1000 Defense Pentagon  
U.S. Department of Defense  
Washington, DC 20301-1000

The Honorable Michael Chertoff  
Secretary of Homeland Security  
Office of the Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretaries Rumsfeld and Chertoff:

I write to you jointly regarding the operational control of the Arizona-Mexico Border, and the Homeland Security implications resulting from its current condition. Specifically, this letter is a request for additional Federal attention at the border through the formal approval of funding for the use of the Arizona National Guard in a supportive role to secure our border.

I have met, corresponded, and exchanged memos with each of you personally, or with your respective Departments, on this issue. There is no problem more compelling affecting the State of Arizona today than illegal immigration. As a State, we are dependent upon the Federal government, and particularly upon your Departments, to provide the strategy, resources, and dedication to secure our border.

The United States can regain operational control of this border through a common understanding of the issues at hand, a renewed commitment to the Federal responsibilities of this mission, and the immediate allocation by your Departments of resources necessary to fulfill these commitments.

Current Federal border control policy in the Southwest has funneled illegal immigrant traffic into Arizona, and has left the Border Patrol's Tucson Sector as the primary gateway for illegal crossings along the entire United States-Mexico border. As a result of this paralyzed policy, there are more undocumented immigrants entering the

Secretaries Rumsfeld and Chertoff  
March 7, 2006  
Page 2

country through Arizona than through any other state in the nation. Yet, while over 50% of all illegal crossings from the United States-Mexico Border are through my State, only 27% of the Border Patrol officers, nationwide, are stationed in Arizona sectors.

Despite the increase in Department of Homeland Security resources to this area, Congress has still failed to appropriate even the minimum levels of funding for border security that were recommended by the 9/11 Commission and authorized by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004.

I have recently been made aware that the Department of Defense intends to decrease National Guard presence by further cutting critical Guard resources at the border currently acting pursuant to the Arizona National Guard Counter-drug Support Plan, authorized by Section 112 of Title 32. Remarkably, while Arizona suffers a decrease in funding, the United States Army has placed two Stryker Units in New Mexico, with another on the way, to assist in border-related matters. In addition, the Arizona Department of Public Safety continues to receive sporadic cooperation, at best, from Immigration and Customs Enforcement ("ICE") in responding to investigations involving unauthorized migrants.

Arizona is doing its part. Last year, I declared a state of emergency for all of the Arizona border counties, thereby releasing over \$1.5 million in State funds to help combat the effects of illegal immigration in border communities. Furthermore, this January, I sent a \$100 million border security package to our State legislature to strengthen local jurisdictions along the border, increase the region's law enforcement personnel, allocate funds for the purchase of border security equipment and technology, and combat the immigration-related crimes Arizona faces on a continual basis.

Although the State of Arizona should not be a financial or operational substitute for the Federal Government's responsibility to secure our borders, we are nonetheless willing to further assist you in this important Federal commitment. We can provide operational support through the expertise and particularized mission capabilities of the National Guard forces. Specifically, in my December 30, 2005 letter to Secretary Rumsfeld, I delineated a series of activities that the Arizona National Guard could perform within a supportive capacity in order to assist the Federal Government in securing our border. These National Guard functions would be subject to the Department of Homeland Security's Southwest border strategy, and would further take direction from that agency. Moreover, there are numerous sources of statutory authority by which to effectuate such border security activities by the National Guard, as is evidenced by the following:

- Augmentation of current Title 32 Section 112 activity in Arizona through the Drug Interdiction strategy (a strategy that notes that the "proven ease of illegal entry into the United States via the Arizona/Mexico international border may actually be the most dangerous threat included in this state plan");



Secretaries Rumsfeld and Chertoff  
March 7, 2006  
Page 3

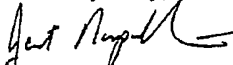
- Title 32, Section 502(f) that allows a member of the National Guard to perform "training or other dut[ies]" in addition to their regularly prescribed functions. Historically, this Section has been liberally applied, and was implemented in the Gulf Region in response to Hurricane Katrina;
- The execution of a Memorandum of Agreement ("MOA") between the Department of Homeland Security and the Department of Defense analogous to the 2002 MOA that was executed between the Immigration and Naturalization Service and the Department of Defense regarding the protection of the Canadian and Mexican Borders;
- Chapter 9 of Title 32 gives the Secretary of Defense the discretion to provide Federal funds to a governor to employ National Guard assets to conduct "homeland defense activities." The statute defines those activities as those that are "undertaken for the military protection" of a "domestic population" of the United States that is "critical to national security." 32 U.S.C. sec. 901.

For further reference, I have attached a memorandum addressing the legal avenues outlined above. (see attached) Clearly, there exists ample legal authority by which to effectuate this request, and there can be no question that, operationally, the Guard can be of invaluable assistance. As stated in a recent letter to my office from the Department of Homeland Security: "the use of the National Guard troops allows ICE and CBP to place more personnel in critical front-line law enforcement roles and we encourage this cooperation."

Returning operational control to our Southwest border is a fundamental Homeland Security mission. Therefore, I respectfully request the Department of Homeland Security to advise formally the Department of Defense as to the necessity of implementing the Arizona National Guard to assist the Federal Government in its mission in Arizona to secure our border, and further that the State of Arizona be reimbursed for these National Guard activities.

Thank you for your cooperation in working to secure the Arizona-Mexico Border. I respectfully request your immediate attention to this matter.

Yours very truly,

  
Janet Napolitano  
Governor

JN:DKB

**MEMORANDUM**

TO: File  
FROM: Legal Department  
DATE: March 6, 2006  
RE: *Title 32: Statutory Funding Options*

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**1. Augment Funding for the Current Drug-Interdiction Program Implemented Under Section 112**

Federal funding is currently provided to the Arizona National Guard for the implementation of a drug interdiction program in accordance with the provisions of Title 32, Section 112. This section provides that the Secretary of Defense may grant funding to the Governor of a State pursuant to the submission of a "drug interdiction and counter-drug activities plan" that satisfies certain statutory requirements. *Id.* The Secretary of Defense is charged with examining the sufficiency of the drug interdiction plan, and determining whether the distribution of funds would be proper. 32 U.S.C.A. §112(d).

Arizona's current drug-interdiction plan addresses Arizona's threats and vulnerabilities, and specifically delineates operational guidelines to counter these exposed areas. In addition to the specific drug intervention tactics, the plan also recognizes related border issues created by human smuggling and terrain vulnerabilities with respect to the illegal entry of aliens into the United States. Having authorized Arizona's Drug-Interdiction Plan, the Secretary of Defense enabled the Arizona National Guard to engage in border security functions. As such, these border security measures can be further strengthened by simply increasing the funding levels to the "drug-interdiction" program for the purposes of augmenting resources in the border security arena.

**2. Independent Implementation of Section 502(f)**

Historically, Title 32, Section 502(f), has been used to expand the operational scope of the National Guard beyond their "general duties." Specifically, it allows a member of the National Guard to perform "training or other dut[ies]" in addition to those they are already prescribed to perform. 32 U.S.C.A. §502(f). Where Section 502(f) is devoid of limiting language requiring any specific emergency declarations or mission obligations, the statute can be implemented independently, and interpreted to apply to any "other duty," including use of National Guard forces to bolster border security efforts in the State of Arizona. Such an expansive use was exemplified during the Katrina Disaster Relief Effort. There, National Guard forces provided additional "duties" under this

section, and received federal funding and benefits, while remaining under the authority of the respective Governors. *Hurricane Katrina: DOD Disaster Response*, CRS Report for Congress (09/19/2005).

**3. Border Security Funding Established through a Memorandum of Agreement (“MOA”) between the Department of Homeland Security and the Department of Defense**

In February of 2002, Immigration and Naturalization Services signed a Memorandum of Agreement (“MOA”) with the Department of Defense for limited Border Patrol support. This agreement resulted in the Department of Defense financially and logistically supporting National Guard forces on both the Canadian and Mexican borders.

To fund security on the Arizona-Mexico Border, an analogous funding MOA could be established. The Department of Homeland Security (“DHS”) would transfer funds to the Department of Defense (“DoD”), who would then provide National Guard assistance to the State of Arizona for security purposes on the Arizona-Mexico Border.

**4. Implementation of Chapter 9**

Title 32, Chapter 9 of the United States Code authorizes the Secretary of Defense to provide federal funding to a State, under the authority of the Governor of that State, for the use of their National Guard forces if there is a “necessary and appropriate” “homeland defense activity.” 32 U.S.C.A. §905. A “homeland defense activity” is statutorily defined as:

“an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.” 32 U.S.C.A. §901.

The Code vests discretion in the Secretary of Defense to determine what constitutes a “homeland defense activity,” and further, whether federal funding should be provided to that State pursuant to 32 U.S.C.A §905. This discretion, awarded to the Secretary of Defense in observance of compliance with Section 903, requires that he promulgate regulations giving State Governors direction and instruction for the implementation of this Chapter. See 32 U.S.C. §903 (“[T]he Secretary of Defense shall prescribe regulations to implement this chapter.”). In the absence of Federal direction and regulatory guidance, State Governors seeking Federal relief are forced to speculate as to the scope and reach of this statute. Under such circumstances, the Secretary of Defense must apply the scope of this Chapter liberally.

Furthermore, it is significant that the porous nature of the Arizona-Mexico Border plainly constitutes a “threat or aggression” against the United States pursuant to the Department of Defense’s ongoing commitment to the implementation of anti-terrorism tactics. A

2003 House of Representatives Report specifically addresses the need for both the Department of Homeland Security and the Department of Defense to coordinate efforts with regards to:

“such important activities as border defense, use of actionable intelligence, plans for use of the national guard as a first responder, and development of vaccines and various other countermeasures that have been suggested to the committee.” H.R. Rep. 108-106 (2003), 354-355 (emphasis added).

Such an interpretation is supported by the legislative history behind this statute as well as national security rhetoric which collectively emphasize the importance of border defense as a priority for the successful protection of our nation. It is thus utterly incomprehensible to assert that border defense does not fit squarely into the statutory language defining a “homeland defense activity.”

# **EXHIBIT 12**



STATE OF ARIZONA

OFFICE OF THE GOVERNOR

1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331  
FACSIMILE: 602-542-7601

JANET NAPOLITANO  
GOVERNOR

March 11, 2008

The Honorable Michael Chertoff  
United States Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Chertoff:

From the many times we have met and corresponded, I know that we share a firm commitment to securing America's borders as a necessary part of broader comprehensive immigration reform. However, I am dismayed by recent reports indicating continuing problems with Project 28 – the “virtual fence” project, which is located in my State. These reports suggest that the broad implementation of high-tech security measures across our southern border is now many years away.

Yet, at the same time this delay was abruptly announced, we continue to remove and eventually terminate a successful program using the National Guard at our Border – Operation Jump Start.

In light of this newly announced delay, I urgently request that you reconsider the draw-down of Operation Jump Start, and instead retain National Guard personnel strength in numbers necessary to maintain the hard-won improvements in operational control of the international border.

As you fully know, in testimony before Congress last week, the Government Accountability Office confirmed that Project 28 is plagued with serious flaws that will require a redesign of the system. I appreciate the Department's dedication to resolving these problems and working toward a functional high-tech border security component. I also appreciate, as you have said, that the prototype Project 28 “virtual fence,” as it existed, was of some value to Border Patrol officers. Nonetheless, the significant delays the project faces are of great concern. Your office has announced the system cannot be operational before 2011.

Real solutions to fix our broken borders cannot wait that long. Human and drug smuggling rings continue to thrive in Arizona, crossing our border and using our cities as major hubs to transport crossers throughout the country. While we wait for real progress on the “virtual fence,” border communities in Arizona will continue to be strained by the millions of dollars in costs they must absorb due to the state of border security.

The Honorable Michael Chertoff  
March 11, 2008  
Page 2

Also of concern is the timing. It is disturbing that, even though you and I met in Washington, D.C. in February, neither the State, nor apparently any of the local or tribal governments affected by Project 28, was informed by the Department of looming delays. Instead, our notification came from viewing news accounts of subcommittee hearings. The communities affected by Project 28 deserve more consideration and a greater opportunity to provide feedback.

Project 28 was a critical part of the Department's plan to bolster border security in the absence of action by Congress on comprehensive federal immigration reform. With its delay, it is now critical to maintain the strength and presence provided by Operation Jump Start.

Operation Jump Start has been highly effective. Since its launch in June 2006, the National Guard has flown 11,000 aviation flight hours, over 150 Customs and Border patrol officers were returned to law enforcement duties, and miles of high density lighting, vehicle barriers, road improvements, and fencing have been completed. When National Guard assistance was at its peak, data showed marked improvements in Border Patrol apprehensions.


Clearly, the support provided by Operation Jump Start has been invaluable. But in spite of objections from Arizona and other states, which must deal with the day-to-day issues associated with illegal immigration, the number of National Guard troops assigned to Operation Jump Start was cut in half in September 2007. A further drawdown of forces is slated to begin in April 2008 in anticipation of the current projected end date of July 15, 2008.

I have always believed that drawing down Operation Jump Start would be a mistake. Now that promised improvements in border security measures will not come to pass anytime soon, the federal government has no excuse to scale back the program. Common sense dictates that the drawdown should stop, and that a continued high National Guard presence should be maintained.

If, indeed, the drawdown continues, it is prudent to ask: what other steps will the Department take to shore up border security in lieu of the "virtual fence?"

We both know that border security is at the heart of the wellbeing of border communities, border states, and the nation as a whole. I look forward to your prompt reply regarding what measures the Department of Homeland Security will be taking to strengthen security on the Arizona border to compensate for expected improvements to high-tech enforcement that will not come nearly soon enough.

Yours very truly,



Janet Napolitano  
Governor

# **EXHIBIT 13**





STATE OF ARIZONA

JANICE K. BREWER  
GOVERNOR

June 23, 2010

EXECUTIVE OFFICE

The Honorable Barack Obama  
The President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

Dear Mr. President:

Thank you for the opportunity to visit with you in person during my recent trip to Washington, D.C. As you know, the issue of border security is foremost in the thoughts of many Arizonans and Americans alike, and I appreciated the chance to personally relate to you my concerns and outline my proposed solutions.

Mr. President, the need for action to secure Arizona's border could not be clearer. Recently, my office received a number of calls from constituents concerned at reports of new sign postings in interior counties of Arizona warning residents not to access federal lands due to criminal activity associated with the border. These warnings signal to some that we have handed over portions of our border areas to illegal immigrants and drug traffickers. This is unacceptable. Instead of warning Americans to stay out of parts of our own country, we ought to be warning international lawbreakers that they will be detained and prosecuted to the fullest extent of the law. We ought to be establishing measures to ensure that illegal traffic of any sort is kept to an absolute minimum, and that Americans are safe and secure within our own borders.

When we visited, you committed to present details, within two weeks of our meeting, regarding your plans to commit National Guard troops to the Arizona border and expend \$500 million in additional funds on border security matters. You also discussed sending members of your senior staff to Arizona to discuss your plans. While I am pleased the 28<sup>th</sup> has been set for a meeting time and we have reviewed a copy of the Department of Homeland Security's "Southwest Border Next Steps" Press Release, I am still awaiting details on National Guard deployments and how the proposed additional border security funding will *specifically* affect Arizona (and the other Border States). As I mentioned to you on June 3<sup>rd</sup>, it is very difficult to have much of a dialogue without specific details regarding your proposals. I strongly urge you to request your staff provide us with missing details of your proposals prior to the meeting on the 28<sup>th</sup>.

While we await the specific details of your border security plans, I wanted to take the time to reemphasize some of what I shared with you and respond further to some of what we discussed. In essence, I have proposed a four-point Border Surge strategy, as outlined in my recent letter to Senator Charles Schumer, summarized as follows:

Letter to President Obama  
June 23, 2010  
Page 2 of 4

### **1. National Guard Personnel and Aviation**

I believe a significant number of troops operating with a legitimate mission set is an essential part of any strategy to secure the border. I appreciate your commitment of 1,200 troops and the promise that Arizona would receive the largest contingent. I am concerned, however, that more is required, such as the deployment of 6,000 personnel proposed by Senators Jon Kyl and John McCain for the entire southwestern border.

In addition, I want to make sure that these troops have legitimate missions that:

- Support federal, state and local law enforcement—all three!
- Serve as a blocking force to stop illegal crossing activities.
- Employ the troops in a way that speaks loudly to all—both north and south of the border—that the U.S. is serious about this matter.

As part of your commitment, I also hope that you order a significant increase in aviation resources supporting border security operations on the ground. After meeting and talking to various experts, I am persuaded that aviation support is critical to the effort on the ground. Any effort will fail absent the ability to coordinate ground assets from the air, particularly given the nature of much of Arizona's border region terrain. I respectfully ask that you give serious consideration to my May 20, 2010 correspondence, which makes a very reasonable request for a reallocation of National Guard OH-58 helicopter assets in order to make a Border Surge effective. Your support of this request can make a significant difference between a winning effort versus a losing effort.

### **2. Border Fence**

In short Mr. President, we need to complete, reinforce and then maintain the border fence. In my April 6, 2010 letter to you I proposed inmate labor and other methods (i.e., purchasing instead of leasing equipment) as a means to bring down construction/maintenance costs. I certainly support efficient and effective Ports of Entry where both American and Mexican border officials can allow legal traffic and crossings. Everywhere else along the border, though, I strongly believe we must have fencing and barriers that are both substantial and monitored if the illegal crossings are to be minimized.

### **3. Enforce Federal Law and Appropriately Fund the Effort**

The United States must be prepared to detain, prosecute and then incarcerate convicted violators of United States laws. The current "no consequences policy" has resulted in a border security failure. I appreciate your general proposal to commit additional resources, but it is very difficult for me to comment without any details. It is without doubt, though, that the current border policy will continue to fail the State of Arizona without additional resources committed to the Border Patrol, Immigration and Customs Enforcement (ICE) personnel and detention facilities; prosecution; public defense; and federal prisons.

Letter to President Obama  
June 23, 2010  
Page 3 of 4

#### **4. Reimburse States for the Additional Burden of Illegal Immigration**

As I mentioned the very first time we met last year, I must continue the calls for Arizona to be reimbursed for expenses we are forced to carry because of our porous southern border. Arizona and a few other states are at a terrible disadvantage in good times, and an even worse position during bad times, because of the additional costs of illegal immigration. Just in terms of state prison costs, we estimate ongoing expenses at approximately \$150 million to incarcerate criminal aliens. While substantial on its own, this figure does not include law enforcement, prosecution and defense costs, or the enormous societal costs of the criminal behavior of those who are not even legally entitled to be here.

We are hundreds of millions of dollars short of what we should receive to relieve the disproportionate law enforcement/jail/prison, health care and education burdens we face due to our porous southern border and rampant illegal immigration. It is simply unfair for the federal government to force Border State taxpayers to carry these burdens.

#### **Immigration Reform**

You shared with me your thoughts about the matter of immigration reform and I am grateful you listened to mine. As I mentioned in our meeting, the phrase “comprehensive immigration reform” is code for “amnesty” to many in Arizona and elsewhere in our Nation. Many Americans are still waiting for the reforms that were promised by the federal government in the 1980s when amnesty was granted to thousands of illegal immigrants. Until we establish a secure border, and reestablish trust with the public that our international borders are meaningful and important, and enforcement of federal immigration law is not an idle threat, any discussion of “comprehensive reform” is premature.

Let’s first block illegal entry into the United States and enforce current law, and then other discussions, including immigration reform, might then, and only then, make sense to the public. I am committed to a serious discussion of legitimate reform—but not any false front for amnesty—when the federal government halts the free flow of illegal immigrants and illegal drugs across the southwestern border.

#### **Arizona’s Law**

You also shared some concerns about a “patchwork” approach to policy. This makes sense to me, but the failure of the federal government has driven frustration levels to the point that tolerating the status quo is no longer acceptable for Arizona. From my perspective, the single most significant factor behind the passage this year of SB 1070 and HB 2162 (the follow-up bill with amendments to SB 1070) was the frustration of Arizona elected officials, and the public we serve, regarding the failure of the federal government over the years to effectively address the problem of illegal immigration.

The growing concerns over spillover violence, the increased awareness of kidnappings, the spread of drop houses in neighborhoods throughout metropolitan areas, the scourge of the drug trade and the oppressive financial burdens posed by illegal immigration—burdens even more difficult to shoulder in this economic downturn—all contributed to accelerating the public’s frustration.

Letter to President Obama  
June 23, 2010  
Page 4 of 4

I am 100% committed to fair and just enforcement of the new Arizona law. I have made it clear that civil rights will not be compromised. The first step has been educating and training law enforcement, as well as the public, on the details of the law—a step I have already ordered in Arizona.

Instead of any discussion about suing Arizona and not cooperating with the efforts of local Arizona law enforcement to address illegal immigration, the federal government should reassure Arizona (and other states) that securing the border and enforcing federal immigration laws are duties to which the federal government will make a renewed and sincere commitment.

When the public sees consistent evidence of federal commitment, I am convinced the demand for state actions will wane. State and local governments have plenty to do and will be happy to stay out of border security and immigration law enforcement—along with the expenses of such work—if the federal government takes a firm and effective grip on the problem.

### Conclusion

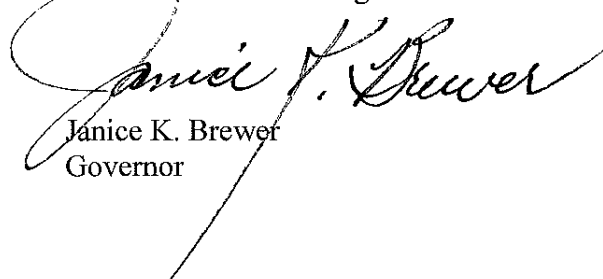
In closing, I want to assure you that I am looking to develop a solution, not have a standoff, with you and the federal government. Illegal immigration is a serious problem and I am sincerely committed to seeing something done to curb it. The real challenges at hand are about violent crime, huge taxpayer burdens, the rule of law and ensuring that our southern border does not become an open door for radical terrorists. Commerce with other countries is important to me and Arizonans—I truly want a vibrant and positive relationship with Sonora, other Mexican States and the rest of the world. Federal immigration law, however, must be honored and enforced, and our border must represent an effective means to help ensure our sovereignty and security.

I remain eager to receive the specific details of your proposals and to have the follow-up meeting with your senior staff. It is disappointing that we are such a short time away from the meeting and Arizona and the other Border States still are awaiting the specific details of what you are proposing. There is still time, however, to ensure the meeting next week is productive.

Finally, I want to re-extend the invitation I made to you to come to Arizona yourself, visit with families living along the southwestern border and see the situation firsthand. My prior visits to the border and the air survey of the Cochise County region have been very important to shaping my perspectives and thinking. Governor Richardson joined me for one trip and I believe you would also benefit from such an experience.

And when you do come, lunch is on me!

Yours in service to the great state of Arizona,



Janice K. Brewer  
Governor

# **EXHIBIT 14**



OFFICE OF THE  
**ARIZONA STATE TREASURER**

**HON. DEAN MARTIN**  
TREASURER



January 4, 2010

The Honorable Janet Napolitano  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Napolitano:

As you are aware, the State of Arizona has been grappling with a massive budget deficit of over \$3 billion since your departure as Governor, and as I had forecast a year ago, we have had to issue nearly \$38 billion in Treasurer Warrant Notes in 2009.

The cost of illegal immigration has exhausted our State Treasury. In order to pay for the federal government's responsibility of securing our national borders and incarcerating individuals who enter the United States illegally and commit crimes, the state has incurred hundreds of millions of dollars of debt to pay these bills.

As a result, I am resubmitting numerous unpaid invoices which you originally calculated as Governor and sent to the federal government relating to the State's uncompensated costs for incarcerating criminal aliens under the State Criminal Alien Assistance Plan (SCAAP) from FY1994 to FY2008.

I have included copies of your original invoices sent when you were Governor as well as an updated invoice reflecting current principal and accrued interest totaling \$1,057,885,831.12. As you can see, the Administration has continued to only "pay pennies on the dollar" towards our actual costs. I hope that you still agree with your statements from 2008, as I do, that this funding is desperately needed to alleviate a burden that has been borne for far too long by the taxpayers of Arizona and other border states.

As Secretary of Homeland Security, you are now in a position to make good on this financial obligation. I appreciate your immediate attention to this matter and look forward to your prompt response before legal remedies are pursued to recoup this long overdue debt to the taxpayers of the State of Arizona.

Sincerely,

A handwritten signature in cursive script that reads "Dean Martin".

Dean Martin  
Arizona Treasurer

Enclosures

cc: Honorable Eric Holder, U.S. Attorney General



**State of Arizona**  
**1700 West Washington**  
**Phoenix, AZ 85007**

**INVOICE**

PAST DUE

Invoice Date: January, 4th, 2010

Fiscal Year	Average Daily SCAAP Population	State Costs	Federal Reimbursement	Balance Due	Accumulated Interest*
FY 1994	950	\$15,217,100.00	\$991,900	\$14,225,200.00	\$562,470.39
FY 1995	2152	\$35,178,744.00	\$2,747,934	\$32,430,810.00	\$2,513,031.07
FY 1996	2408	\$40,206,376.00	\$17,144,440	\$23,061,936.00	\$4,076,774.15
FY 1997	2521	\$44,437,667.00	\$9,845,535	\$34,592,132.00	\$6,212,160.29
FY 1998	2748	\$50,401,068.00	\$10,709,433	\$39,691,635.00	\$9,069,851.91
FY 1999	2220	\$42,792,720.00	\$10,347,501	\$32,445,219.00	\$11,268,999.49
FY 2000	2709	\$56,073,591.00	\$12,013,299	\$44,060,292.00	\$15,392,785.18
FY 2001	3887	\$83,022,433.00	\$18,464,899	\$64,557,534.00	\$20,977,772.78
FY 2002	3885	\$75,780,810.00	\$15,919,699	\$59,861,111.00	\$15,867,914.80
FY 2003	4321	\$71,039,395.20	\$6,808,219	\$64,231,176.20	\$10,582,055.69
FY 2004	4743	\$77,807,691.12	\$12,139,791	\$65,667,900.12	\$10,685,135.96
FY 2005	n/a	\$77,125,339.50	\$13,501,247	\$63,624,092.50	\$16,903,244.92
FY 2006	4264	\$90,592,979.73	\$14,323,392	\$76,269,587.73	\$30,955,786.66
FY 2007	4581	\$97,326,479.69		\$97,326,479.69	\$46,241,966.87
FY 2008	n/a	\$72,477,678.47		\$72,477,678.47	\$46,865,863.65
FY 2009	n/a				\$20,336,391.44
FY 2010	n/a				\$4,850,842.15

Sub-Total	\$929,480,073	\$144,957,289	\$784,522,784	\$273,363,047.41
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**TOTAL** **\$1,057,885,831.12**

\*Interest rate calculated based upon actual monthly interest income from the investment of state funds.



JANET NAPOLITANO  
GOVERNOR

STATE OF ARIZONA  
OFFICE OF THE GOVERNOR  
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331  
FACSIMILE: 602-542-7601

March 17, 2008

VIA FACSIMILE AND U.S. MAIL

The Honorable Michael Mukasey  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Re: State Criminal Alien Assistance Program Invoices

Dear Attorney General Mukasey:

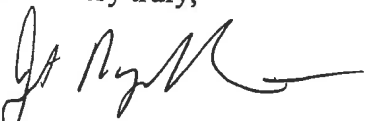
Since October 21, 2004, I have been submitting invoices to your office relating to Arizona's uncompensated costs for incarcerating criminal aliens under the State Criminal Alien Assistance Plan ("SCAAP"). As you know, the federal government is required by law to pay these costs, but has failed to pay more than pennies on the dollar. As the service provider, the State of Arizona is left with the substantial unreimbursed costs. This burden on Arizona taxpayers is unfair and is a direct result of the federal government's failure both to properly secure our borders and to pay the costs associated with this failure.

This fiscal year Arizona is facing a \$1.2 billion budget shortfall. Today the leadership of the Arizona Legislature and I are meeting to make difficult decisions about what services to Arizona's elderly, children and other residents must be cut, in part because we are using our state revenues to pay for the federal government's SCAAP costs. Under the circumstances, I must continue sending you invoices for these unpaid expenses, including our current invoice attached herewith in the amount of \$448,565,761.83.

I hereby call upon you to either pay this invoice or take Arizona's SCAAP inmates into federal custody as required by 8 U.S.C. § 1231(i)(1). Such funding is not only required by law but also desperately needed to alleviate a burden that has been borne for far too long by the taxpayers of Arizona and the other border states.

As always, I remain available to meet with you personally on this important issue.

Yours very truly,

  
Janet Napolitano  
Governor

JN:LK/jm  
Encl.



State of Arizona  
1700 West Washington  
Phoenix, AZ 85007

## Invoice

Invoice Date: March 17, 2008

Description	Average Daily SCAAP Population	Per Diem Cost	Number of Days	Amount Due
<b>FY 2008 State Expenditures - State Criminal Alien Assistance Program (SCAAP):</b>				
July 2007	4,893	\$58.21	31	\$ 8,829,467.43
August 2007	5,030	\$58.21	31	\$ 9,076,685.30
September 2007	5,061	\$58.21	30	\$ 8,838,024.30
October 2007	5,069	\$58.21	31	\$ 9,147,061.19
November 2007	5,053	\$58.21	30	\$ 8,824,053.90
December 2007	5,182	\$58.21	31	\$ 9,350,970.82
January 2008	5,244	\$58.21	31	\$ 9,462,850.44
February 2008	5,301	\$58.21	29	\$ 8,948,565.09
<b>Total Amount Due for FY 2008 State Expenditures</b>				<b>\$ 72,477,678.47</b>
<b>FY 2007 State Expenditures - State Criminal Alien Assistance Program (SCAAP):</b>				
FY 2007 State Expenditures	4,581	\$58.21	365	\$ 97,326,479.69
<b>Total Amount Due for FY 2007 State Expenditures</b>				<b>\$ 97,326,479.69</b>
<b>FY 2006 State Expenditures - State Criminal Alien Assistance Program:</b>				
FY 2006 State Expenditures	4,264	\$58.21	365	\$ 90,592,979.73
SCAAP Reimbursements in FY 2007 for FY 2006 State Expenditures				\$ (14,323,932.00)
<b>Total Amount Due for FY 2006 State Expenditures</b>				<b>\$ 76,269,047.73</b>
<b>FY 2005 State Expenditures - State Criminal Alien Assistance Program:</b>				
FY 2005 State Expenditures				\$ 77,125,339.50
SCAAP Reimbursements in FY 2007 for FY 2005 State Expenditures				\$ (13,501,247.00)
<b>Total Amount Due for FY 2005 State Expenditures</b>				<b>\$ 63,624,092.50</b>
<b>FY 2004 State Expenditures - State Criminal Alien Assistance Program:</b>				
FY 2004 State Expenditures				\$ 77,807,691.12
SCAAP Reimbursements in FY 2006 for FY 2004 State Expenditures				\$ (12,139,791.00)
<b>FY 2004 Expenditures Not Reimbursed</b>				<b>\$ 65,667,900.12</b>
<b>FY 2003 State Expenditures - State Criminal Alien Assistance Program:</b>				
FY 2003 State Expenditures				\$ 71,039,395.20
SCAAP Reimbursements in FY 2004 for FY 2003 State Expenditures				\$ (6,808,219.00)
<b>FY 2003 Expenditures Not Reimbursed</b>				<b>\$ 64,231,176.20</b>
<b>Interest on Past Due Amounts:</b>				
<b>Interest on FY 2003 Expenditures Not Reimbursed</b> (interest from 10/1/04-2/29/08 at 1.81%)				\$ 3,936,476.55
<b>Interest on FY 2004 Expenditures Not Reimbursed</b> (interest from 10/1/05-2/29/08 at 1.81%)				\$ 2,846,538.45
<b>Interest on FY 2005 Expenditures Not Reimbursed</b> (interest from 10/1/06-2/29/08 at 1.81%)				\$ 1,616,618.28
<b>Interest on FY 2006 Expenditures Not Reimbursed</b> (interest from 10/1/07-2/29/08 at 1.81%)				\$ 569,753.83
<b>Total Interest on Past Due Amounts</b>				<b>\$ 8,969,387.12</b>
<b>Total Amount Due</b>				<b>\$ 448,565,761.83</b>

If you have any questions regarding this invoice, please contact Leezie Kim at 602-542-1586.

# **EXHIBIT 15**

 [Print this page](#) |  [Close this window](#)

## STATEMENT BY SENATORS JOHN McCAIN AND JON KYL REGARDING NATIONAL GUARD TROOPS ON THE SOUTHWEST BORDER

**May 25, 2010**

*Washington, D.C.* – U.S. Senators John McCain (R-AZ) and Jon Kyl (R-AZ) today made the following statement regarding National Guard troops on the southwest border:

“We have been calling on President Obama to deploy National Guard troops to the border since March 2009 and are pleased he has finally started to recognize the essential needs of our Southwest states.

“Though this initial deployment is an important first step, the President is not sending enough troops. We believe it would be very helpful if the President could visit the Mexico-U.S. border so he could see firsthand the threat to the safety of Americans from illegal immigration, drug trafficking, and human smuggling. He could also personally witness the need for additional personnel, technology and infrastructure necessary to secure to the border.

“In 2006, President Bush deployed 6,000 National Guard troops to the Southwest border. We believe the situation on the border is far worse today than it was then due to the escalating violence between the Mexican drug cartels and the Mexican government. For this reason, we need to deploy *at least* 6,000 National Guard troops to the border region. The fact that President Obama announced today that he will only be sending one-fifth of the troops we believe are required is a weak start and does not demonstrate an understanding of the current situation in the region.

“This morning, we proposed an amendment to fully fund 6,000 National Guard troops to be immediately deployed to the Southwest border and call on the President to support our amendment.”

###

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# **EXHIBIT 16**

 [Print this page](#) |  [Close this window](#)

## ARIZONA SENATORS RESPOND TO OBAMA ADMINISTRATION DECISION TO SUE ARIZONA

**“[T]he American people must wonder whether the Obama Administration is really committed to securing the border when it sues a state that is simply trying to protect its people by enforcing immigration law.”**

**July 6, 2010**

**WASHINGTON, DC** – U.S. Senators John McCain (R-AZ) and Jon Kyl (R-AZ) today made the following statement regarding reports the Obama Administration’s will sue Arizona over the state’s new immigration law:

“It is far too premature for the Obama Administration to challenge the legality of this new law since it has not yet been enforced. Most legal experts believe such a ‘facial challenge’ to the statute would be very difficult to win.

“Moreover, the American people must wonder whether the Obama Administration is really committed to securing the border when it sues a state that is simply trying to protect its people by enforcing immigration law.

“Attorney General Holder speaks of the ‘federal government’s responsibility’ to enforce immigration laws; but what are the people of Arizona left to do when the federal government fails in its responsibility?

“The Obama Administration has not done everything it can do to protect the people of Arizona from the violence and crime illegal immigration brings to our state. Until it does, the federal government should not be suing Arizona on the grounds that immigration enforcement is solely a federal responsibility.”

###

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# **EXHIBIT 17**

The White House

Office of the Press Secretary

For Immediate Release

July 01, 2010

**Remarks by the President on Comprehensive Immigration Reform**

**American University School of International Service, Washington, D.C.**

11:12 A.M. EDT

THE PRESIDENT: Thank you very much. Thank you. Thank you. (Applause.) Everyone please have a seat. Thank you very much. Let me thank Pastor Hybels from near my hometown in Chicago, who took time off his vacation to be here today. We are blessed to have him.

I want to thank President Neil Kerwin and our hosts here at American University; acknowledge my outstanding Secretary of Labor, Hilda Solis, and members of my administration; all the members of Congress -- Hilda deserves applause. (Applause.) To all the members of Congress, the elected officials, faith and law enforcement, labor, business leaders and immigration advocates who are here today -- thank you for your presence.

I want to thank American University for welcoming me to the campus once again. Some may recall that the last time I was here I was joined by a dear friend, and a giant of American politics, Senator Edward Kennedy. (Applause.) Teddy's not here right now, but his legacy of civil rights and health care and worker protections is still with us.

I was a candidate for President that day, and some may recall I argued that our country had reached a tipping point; that after years in which we had deferred our most pressing problems, and too often yielded to the politics of the moment, we now faced a choice: We could squarely confront our challenges with honesty and determination, or we could consign ourselves and our children to a future less prosperous and less secure.

I believed that then and I believe it now. And that's why, even as we've tackled the most severe economic crisis since the Great Depression, even as we've wound down the war in Iraq and refocused our efforts in Afghanistan, my administration has refused to ignore some of the fundamental challenges facing this generation.

We launched the most aggressive education reforms in decades, so that our children can gain the knowledge and skills they need to compete in a 21st century global economy.

We have finally delivered on the promise of health reform -- reform that will bring greater security to every American, and that will rein in the skyrocketing costs that threaten families, businesses and the prosperity of our nation.

We're on the verge of reforming an outdated and ineffective set of rules governing Wall Street -- to give greater power to consumers and prevent the reckless financial speculation that led to this severe recession.

And we're accelerating the transition to a clean energy economy by significantly raising the fuel-efficiency standards of cars and trucks, and by doubling our use of renewable energies like wind and solar power -- steps that have the potential to create whole new industries and hundreds of thousands of new jobs in America.

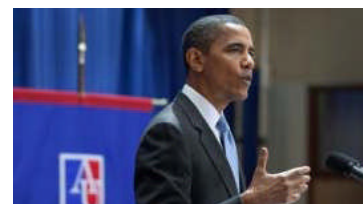
So, despite the forces of the status quo, despite the polarization and the frequent pettiness of our politics, we are confronting the great challenges of our times. And while this work isn't easy, and the changes we seek won't always happen overnight, what we've made clear is that this administration will not just kick the can down the road.

Immigration reform is no exception. In recent days, the issue of immigration has become once more a source of fresh contention in our country, with the passage of a controversial law in Arizona and the heated reactions we've seen across America. Some have rallied behind this new policy. Others have protested and launched boycotts of the state. And everywhere, people have expressed frustration with a system that seems fundamentally broken.

Of course, the tensions around immigration are not new. On the one hand, we've always defined ourselves as a nation of immigrants -- a nation that welcomes those willing to embrace America's precepts. Indeed, it is this constant flow of immigrants that helped to make America what it is. The scientific breakthroughs of Albert Einstein, the inventions of Nikola Tesla, the great ventures of Andrew Carnegie's U.S. Steel and Sergey Brin's Google, Inc. -- all this was possible because of immigrants.



**WATCH THE VIDEO**



July 01, 2010

[President Obama on Comprehensive Immigration Reform](#)

**BLOG POSTS ON THIS ISSUE**

July 02, 2010 1:25 PM EDT

[What You Missed: Open for Questions Roundtable on Comprehensive Immigration Reform](#)

See the full video, with links directly to each question, for this first-of-its-kind event engaging citizens from every angle on the immigration debate.

July 01, 2010 4:29 PM EDT

[President Obama on Fixing the Broken Immigration System: "Getting Past the Two Poles of This Debate"](#)

President Obama calls for both parties to come together to fix a broken immigration system and implement comprehensive reform that demands accountability from government, from businesses, and from individuals.

June 30, 2010 9:52 PM EDT

[The President's Speech, and a Chat, on Comprehensive Immigration Reform](#)

Watch a major speech from the President on fixing our broken immigration system, then come back for an "Open for Questions Roundtable" with one of the President's closest advisors on the issue.

**VIEW ALL RELATED BLOG POSTS**



And then there are the countless names and the quiet acts that never made the history books but were no less consequential in building this country — the generations who braved hardship and great risk to reach our shores in search of a better life for themselves and their families; the millions of people, ancestors to most of us, who believed that there was a place where they could be, at long last, free to work and worship and live their lives in peace.

So this steady stream of hardworking and talented people has made America the engine of the global economy and a beacon of hope around the world. And it's allowed us to adapt and thrive in the face of technological and societal change. To this day, America reaps incredible economic rewards because we remain a magnet for the best and brightest from across the globe. Folks travel here in the hopes of being a part of a culture of entrepreneurship and ingenuity, and by doing so they strengthen and enrich that culture. Immigration also means we have a younger workforce — and a faster-growing economy — than many of our competitors. And in an increasingly interconnected world, the diversity of our country is a powerful advantage in global competition.

Just a few weeks ago, we had an event of small business owners at the White House. And one business owner was a woman named Prachee Devadas who came to this country, became a citizen, and opened up a successful technology services company. When she started, she had just one employee. Today, she employs more than a hundred people. This past April, we held a naturalization ceremony at the White House for members of our armed forces. Even though they were not yet citizens, they had enlisted. One of them was a woman named Perla Ramos — born and raised in Mexico, came to the United States shortly after 9/11, and she eventually joined the Navy. And she said, "I take pride in our flag and the history that forged this great nation and the history we write day by day."

These women, and men and women across this country like them, remind us that immigrants have always helped to build and defend this country — and that being an American is not a matter of blood or birth. It's a matter of faith. It's a matter of fidelity to the shared values that we all hold so dear. That's what makes us unique. That's what makes us strong. Anybody can help us write the next great chapter in our history.

Now, we can't forget that this process of immigration and eventual inclusion has often been painful. Each new wave of immigrants has generated fear and resentments towards newcomers, particularly in times of economic upheaval. Our founding was rooted in the notion that America was unique as a place of refuge and freedom for, in Thomas Jefferson's words, "oppressed humanity." But the ink on our Constitution was barely dry when, amidst conflict, Congress passed the Alien and Sedition Acts, which placed harsh restrictions of those suspected of having foreign allegiances. A century ago, immigrants from Ireland, Italy, Poland, other European countries were routinely subjected to rank discrimination and ugly stereotypes. Chinese immigrants were held in detention and deported from Angel Island in the San Francisco Bay. They didn't even get to come in.

So the politics of who is and who is not allowed to enter this country, and on what terms, has always been contentious. And that remains true today. And it's made worse by a failure of those of us in Washington to fix a broken immigration system.

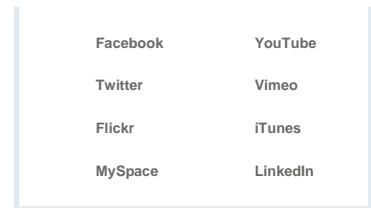
To begin with, our borders have been porous for decades. Obviously, the problem is greatest along our Southern border, but it's not restricted to that part of the country. In fact, because we don't do a very good job of tracking who comes in and out of the country as visitors, large numbers avoid immigration laws simply by overstaying their visas.

The result is an estimated 11 million undocumented immigrants in the United States. The overwhelming majority of these men and women are simply seeking a better life for themselves and their children. Many settle in low-wage sectors of the economy; they work hard, they save, they stay out of trouble. But because they live in the shadows, they're vulnerable to unscrupulous businesses who pay them less than the minimum wage or violate worker safety rules — thereby putting companies who follow those rules, and Americans who rightly demand the minimum wage or overtime, at an unfair [dis]advantage. Crimes go unreported as victims and witnesses fear coming forward. And this makes it harder for the police to catch violent criminals and keep neighborhoods safe. And billions in tax revenue are lost each year because many undocumented workers are paid under the table.

More fundamentally, the presence of so many illegal immigrants makes a mockery of all those who are going through the process of immigrating legally. Indeed, after years of patchwork fixes and ill-conceived revisions, the legal immigration system is as broken as the borders. Backlogs and bureaucracy means the process can take years. While an applicant waits for approval, he or she is often forbidden from visiting the United States — which means even husbands and wives may be forced to spend many years apart. High fees and the need for lawyers may exclude worthy applicants. And while we provide students from around the world visas to get engineering and computer science degrees at our top universities, our laws discourage them from using those skills to start a business or power a new industry right here in the United States. Instead of training entrepreneurs to create jobs on our shores, we train our competition.

In sum, the system is broken. And everybody knows it. Unfortunately, reform has been held hostage to political posturing and special-interest wrangling — and to the pervasive sentiment in Washington that tackling such a thorny and emotional issue is inherently bad politics.

Just a few years ago, when I was a senator, we forged a bipartisan coalition in favor of comprehensive reform. Under the leadership of Senator Kennedy, who had been a longtime champion of immigration reform, and Senator John McCain, we worked across the aisle to help pass a bipartisan bill through the Senate. But that effort eventually came apart. And now, under the pressures of partisanship and election-year politics, many of the 11 Republican senators who voted for reform in the past have now backed away from their previous support.





Into this breach, states like Arizona have decided to take matters into their own hands. Given the levels of frustration across the country, this is understandable. But it is also ill conceived. And it's not just that the law Arizona passed is divisive — although it has fanned the flames of an already contentious debate. Laws like Arizona's put huge pressures on local law enforcement to enforce rules that ultimately are unenforceable. It puts pressure on already hard-strapped state and local budgets. It makes it difficult for people here illegally to report crimes — driving a wedge between communities and law enforcement, making our streets more dangerous and the jobs of our police officers more difficult.

And you don't have to take my word for this. You can speak to the police chiefs and others from law enforcement here today who will tell you the same thing.

These laws also have the potential of violating the rights of innocent American citizens and legal residents, making them subject to possible stops or questioning because of what they look like or how they sound. And as other states and localities go their own ways, we face the prospect that different rules for immigration will apply in different parts of the country — a patchwork of local immigration rules where we all know one clear national standard is needed.

Our task then is to make our national laws actually work — to shape a system that reflects our values as a nation of laws and a nation of immigrants. And that means being honest about the problem, and getting past the false debates that divide the country rather than bring it together.

For example, there are those in the immigrants' rights community who have argued passionately that we should simply provide those who are [here] illegally with legal status, or at least ignore the laws on the books and put an end to deportation until we have better laws. And often this argument is framed in moral terms: Why should we punish people who are just trying to earn a living?

I recognize the sense of compassion that drives this argument, but I believe such an indiscriminate approach would be both unwise and unfair. It would suggest to those thinking about coming here illegally that there will be no repercussions for such a decision. And this could lead to a surge in more illegal immigration. And it would also ignore the millions of people around the world who are waiting in line to come here legally.

Ultimately, our nation, like all nations, has the right and obligation to control its borders and set laws for residency and citizenship. And no matter how decent they are, no matter their reasons, the 11 million who broke these laws should be held accountable.

Now, if the majority of Americans are skeptical of a blanket amnesty, they are also skeptical that it is possible to round up and deport 11 million people. They know it's not possible. Such an effort would be logistically impossible and wildly expensive. Moreover, it would tear at the very fabric of this nation — because immigrants who are here illegally are now intricately woven into that fabric. Many have children who are American citizens. Some are children themselves, brought here by their parents at a very young age, growing up as American kids, only to discover their illegal status when they apply for college or a job. Migrant workers — mostly here illegally — have been the labor force of our farmers and agricultural producers for generations. So even if it was possible, a program of mass deportations would disrupt our economy and communities in ways that most Americans would find intolerable.

Now, once we get past the two poles of this debate, it becomes possible to shape a practical, common-sense approach that reflects our heritage and our values. Such an approach demands accountability from everybody — from government, from businesses and from individuals.

Government has a threshold responsibility to secure our borders. That's why I directed my Secretary of Homeland Security, Janet Napolitano -- a former border governor -- to improve our enforcement policy without having to wait for a new law.

Today, we have more boots on the ground near the Southwest border than at any time in our history. Let me repeat that: We have more boots on the ground on the Southwest border than at any time in our history. We doubled the personnel assigned to Border Enforcement Security Task Forces. We tripled the number of intelligence analysts along the border. For the first time, we've begun screening 100 percent of southbound rail shipments. And as a result, we're seizing more illegal guns, cash and drugs than in years past. Contrary to some of the reports that you see, crime along the border is down. And statistics collected by Customs and Border Protection reflect a significant reduction in the number of people trying to cross the border illegally.

So the bottom line is this: The southern border is more secure today than at any time in the past 20 years. That doesn't mean we don't have more work to do. We have to do that work, but it's important that we acknowledge the facts. Even as we are committed to doing what's necessary to secure our borders, even without passage of the new law, there are those who argue that we should not move forward with any other elements of reform until we have fully sealed our borders. But our borders are just too vast for us to be able to solve the problem only with fences and border patrols. It won't work. Our borders will not be secure as long as our limited resources are devoted to not only stopping gangs and potential terrorists, but also the hundreds of thousands who attempt to cross each year simply to find work.

That's why businesses must be held accountable if they break the law by deliberately hiring and exploiting

undocumented workers. We've already begun to step up enforcement against the worst workplace offenders. And we're implementing and improving a system to give employers a reliable way to verify that their employees are here legally. But we need to do more. We cannot continue just to look the other way as a significant portion of our economy operates outside the law. It breeds abuse and bad practices. It punishes employers who act responsibly and undercuts American workers. And ultimately, if the demand for undocumented workers falls, the incentive for people to come here illegally will decline as well.

Finally, we have to demand responsibility from people living here illegally. They must be required to admit that they broke the law. They should be required to register, pay their taxes, pay a fine, and learn English. They must get right with the law before they can get in line and earn their citizenship -- not just because it is fair, not just because it will make clear to those who might wish to come to America they must do so inside the bounds of the law, but because this is how we demonstrate that being -- what being an American means. Being a citizen of this country comes not only with rights but also with certain fundamental responsibilities. We can create a pathway for legal status that is fair, reflective of our values, and works.

Now, stopping illegal immigration must go hand in hand with reforming our creaky system of legal immigration. We've begun to do that, by eliminating a backlog in background checks that at one point stretched back almost a year. That's just for the background check. People can now track the status of their immigration applications by email or text message. We've improved accountability and safety in the detention system. And we've stemmed the increases in naturalization fees. But here, too, we need to do more. We should make it easier for the best and the brightest to come to start businesses and develop products and create jobs.

Our laws should respect families following the rules -- instead of splitting them apart. We need to provide farms a legal way to hire the workers they rely on, and a path for those workers to earn legal status. And we should stop punishing innocent young people for the actions of their parents by denying them the chance to stay here and earn an education and contribute their talents to build the country where they've grown up. The DREAM Act would do this, and that's why I supported this bill as a state legislator and as a U.S. senator -- and why I continue to support it as president.

So these are the essential elements of comprehensive immigration reform. The question now is whether we will have the courage and the political will to pass a bill through Congress, to finally get it done. Last summer, I held a meeting with leaders of both parties, including many of the Republicans who had supported reform in the past -- and some who hadn't. I was pleased to see a bipartisan framework proposed in the Senate by Senators Lindsey Graham and Chuck Schumer, with whom I met to discuss this issue. I've spoken with the Congressional Hispanic Caucus to plot the way forward and meet -- and then I met with them earlier this week.

And I've spoken with representatives from a growing coalition of labor unions and business groups, immigrant advocates and community organizations, law enforcement, local government -- all who recognize the importance of immigration reform. And I've met with leaders from America's religious communities, like Pastor Hybels -- people of different faiths and beliefs, some liberal, some conservative, who nonetheless share a sense of urgency; who understand that fixing our broken immigration system is not only a political issue, not just an economic issue, but a moral imperative as well.

So we've made progress. I'm ready to move forward; the majority of Democrats are ready to move forward; and I believe the majority of Americans are ready to move forward. But the fact is, without bipartisan support, as we had just a few years ago, we cannot solve this problem. Reform that brings accountability to our immigration system cannot pass without Republican votes. That is the political and mathematical reality. The only way to reduce the risk that this effort will again falter because of politics is if members of both parties are willing to take responsibility for solving this problem once and for all.

And, yes, this is an emotional question, and one that lends itself to demagoguery. Time and again, this issue has been used to divide and inflame -- and to demonize people. And so the understandable, the natural impulse among those who run for office is to turn away and defer this question for another day, or another year, or another administration. Despite the courageous leadership in the past shown by many Democrats and some Republicans -- including, by the way, my predecessor, President Bush -- this has been the custom. That is why a broken and dangerous system that offends our most basic American values is still in place.

But I believe we can put politics aside and finally have an immigration system that's accountable. I believe we can appeal not to people's fears but to their hopes, to their highest ideals, because that's who we are as Americans. It's been inscribed on our nation's seal since we declared our independence. "E pluribus unum." Out of many, one. That is what has drawn the persecuted and impoverished to our shores. That's what led the innovators and risk-takers from around the world to take a chance here in the land of opportunity. That's what has led people to endure untold hardships to reach this place called America.

One of the largest waves of immigration in our history took place little more than a century ago. At the time, Jewish people were being driven out of Eastern Europe, often escaping to the sounds of gunfire and the light from their villages burning to the ground. The journey could take months, as families crossed rivers in the dead of night, traveled miles by foot, endured a rough and dangerous passage over the North Atlantic. Once here, many made their homes in a teeming and bustling Lower Manhattan.

It was at this time that a young woman named Emma Lazarus, whose own family fled persecution from Europe generations earlier, took up the cause of these new immigrants. Although she was a poet, she spent much of her

time advocating for better health care and housing for the newcomers. And inspired by what she saw and heard, she wrote down her thoughts and donated a piece of work to help pay for the construction of a new statue -- the Statue of Liberty -- which actually was funded in part by small donations from people across America.

Years before the statue was built -- years before it would be seen by throngs of immigrants craning their necks skyward at the end of long and brutal voyage, years before it would come to symbolize everything that we cherish -- she imagined what it could mean. She imagined the sight of a giant statue at the entry point of a great nation -- but unlike the great monuments of the past, this would not signal an empire. Instead, it would signal one's arrival to a place of opportunity and refuge and freedom.

"Here at our sea-washed, sunset gates shall stand," she wrote,

A mighty woman with a torch...  
From her beacon-hand  
Glow's world-wide welcome...  
"Keep, ancient lands, your storied pomp!"...  
"Give me your tired, and your poor,  
Your huddled masses yearning to be free...  
Send these, the homeless, tempest-tossed to me,  
I lift my lamp beside the golden door!"

Let us remember these words. For it falls on each generation to ensure that that lamp -- that beacon -- continues to shine as a source of hope around the world, and a source of our prosperity here at home.

Thank you. God bless you. And may God bless the United States of America. Thank you. (Applause.)

END  
11:47 A.M. EDT

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# **EXHIBIT 18**

United States Senate  
WASHINGTON, DC 20510

May 18, 2010

The Honorable Michael H. Posner  
Assistant Secretary of State  
Bureau of Democracy, Human Rights, and Labor  
U.S. Department of State  
2201 C Street, NW  
Washington, D.C. 20520

Dear Assistant Secretary Posner:

During the recent U.S.-China Human Rights Dialogue, you reportedly cited the Arizona immigration statute (SB 1070, as amended) as an example of a “troubling trend in our society” that you seemed to imply is morally equivalent to China’s persistent pattern of abuse and repression of its people. As the Assistant Secretary of State in charge of the bureau of democracy and human rights, your remarks are particularly offensive. We demand that you retract your statement and issue an apology.

According to the 2009 Human Rights Report produced by your bureau, China remains one of the worst human rights offenders, and its record is only worsening. Your bureau’s report details how democracy activists, religious groups, journalists, and human rights advocates in China continue to be “targeted for arbitrary arrest, detention, and harassment.” The report also describes the brutal tactics the Chinese regime uses to suppress these peaceful groups: “security forces reportedly committed arbitrary or unlawful killings,” “officials used electric shocks, beatings, shackles, and other forms of abuse,” and “arbitrary arrest and detention remained serious problems.” To compare in any way the lawful and democratic act of the government of the state of Arizona with the arbitrary abuses of the unelected Chinese Communist Party is inappropriate and offensive.

There is no place for moral equivalency in democracy and human rights policy. The United States is the world’s leader in defending the rights of all people. Someone in your position should be proud to proclaim that.

Sincerely,



JON KYL  
United States Senator



JOHN McCAIN  
United States Senator

# **EXHIBIT 19**



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NAACP vs. Tea Parties Arizona Immigration Law Sarah Palin Must-See Video New Black Panther Voter Intimidation Case

### State Dept. Hasn't Read AZ Law But Apologizes to China?



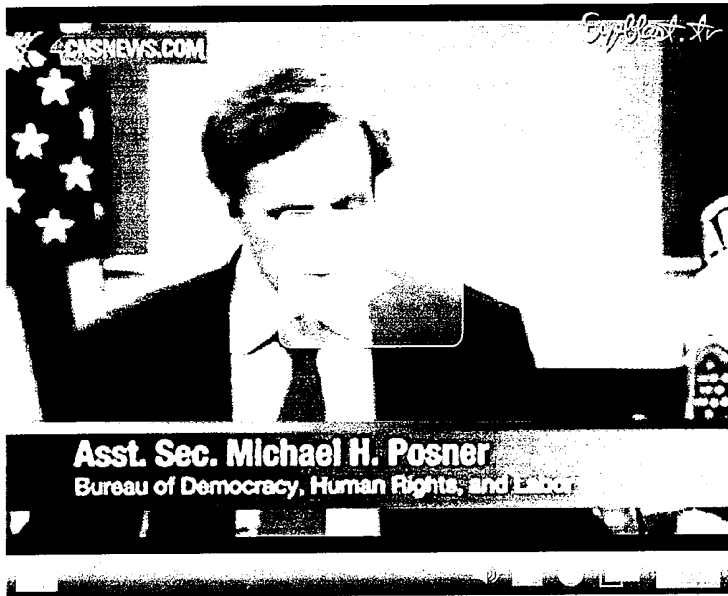
**Hannity**  
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**Judge Andrew Napolitano**  
Don't miss 'Freedom Watch with Judge Napolitano' this weekend!

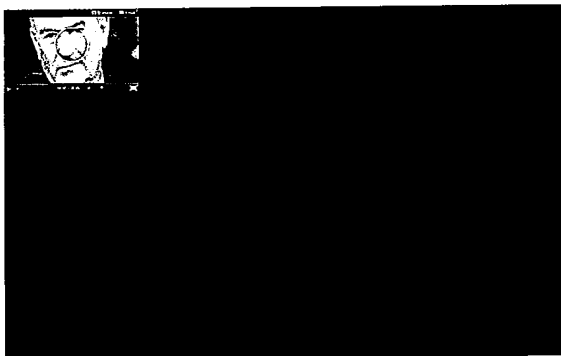


**Megyn Kelly**  
Black Panther story about fidelity of law, not Panthers



- Are Privileges Given to Those in ICE Facilities Appropriate for People Who Entered the U.S. Illegally?
- Should Obama Take Heat for His Summer Vacation?
- Do You Feel Safer Flying?
- What Would Really Stop Iran From Getting Nukes
- Despite Obama, Racism Very Much Alive
- LARRY GATLIN: Time to Stand Athwart History Yellin- 'Stop,' Once Again
- Mel Gibson -- Bringing America Together
- Why Barack and Bubba Will Be A Bust With Business
- Memo to the Media -- Obama's Just Not That Into You
- Should 'Jersey Shore' Define Italians? No Way!

- NAACP Chief Links Tea Party to David Duke
- Bachmann: Obama, Pelosi 'Scared to Death' of the Te Party
- Biden: People too Dense to Realize Obama's



- Accomplishments**
- WATCH: Union Goon Assaults Photographer
  - Maine Backlash Against Obama Vacation
  - Biden: Failed Stimulus is GOP's Fault
  - Obama Admits Health Care Mandate is a Tax
  - Obama Family Dog Flies on His Own Private Plane
  - Atheists Using Hair Dryers to "De-Baptize"
  - Philly Mayor Smears Tea Partiers

The State Department on Tuesday defended a top-ranking diplomat who expressed regret to China last week about Arizona's immigration law during a discussion on human rights in Washington.

Spokesman P.J. Crowley, in an interview with Fox News, disputed the notion that Assistant Secretary of State Michael Posner was apologizing to China, saying he was actually "standing up" for America by describing how debate functions in a "civil society."

But he echoed other top Obama administration officials in describing the law as a gateway to "racial profiling" and doubled down on Posner's comments to the Chinese.

Posner told reporters on Friday that the U.S. delegation brought up the Arizona law "early and often," as an example of a trouble spot Americans need to work on.

"It was mentioned in the first session, and as a troubling trend in our society and an indication that we have to deal with issues of discrimination or potential discrimination, and that these are issues very much being debated in our own society," Posner said.

The two-day talks were held in Washington and meant to ease the way for similar discussions in the future. The delegations discussed concerns with U.S. and Chinese rights issues, including Tibet and the Chinese treatment of dissidents. The United States was represented by officials from several Cabinet agencies including the Justice Department, Commerce Department and Internal Revenue Service.

The United States has a raft of concerns about human rights in China, including the government's forced sterilization of women and mass executions.

Arizona Republican Sens. Jon Kyl and John McCain sent a letter to Posner on Tuesday demanding he retract his statement and issue an apology. They cited the 2009 Human Rights Report produced by Posner's bureau as a reminder of the arbitrary arrests, detention and harassment of Chinese citizens by the Chinese regime.

"As the assistant secretary of state in charge of the bureau of democracy and human rights, your remarks are particularly offensive," they wrote.

"There is no place for moral equivalency in democracy and human rights policy. The United States is the world's leader in defending the rights of all people. Someone in your position should be proud to proclaim that," they added. Read more ...

=====

#### State Department: We Did Not Equate the Arizona Immigration Law With Chinese Human Rights Abuses

Much ado has been made about Assistant Secretary Michael Posner's statement Friday that he raised Arizona's controversial immigration law during human rights discussions with the Chinese government. But those comments were taken out of context and the discussion of the law was meant to show the differences between how a free society handles human rights issues and the restrictive practices enforced in China, Posner tells The Cable in an exclusive interview. "The broader context in which this was raised was to discuss the political openness of this society and the value of an open debate," Posner said. "We never did get into the merits of the Arizona law. It was not in any way a comparison between that law and any specific law or practice in China." Read more ...

#### ALSO:

McCain, Kyl Demand Top Obama State Dept. Official Retract Statement and Apologize for Likening AZ Immigration Law to Chinese Human Rights Violations

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# **EXHIBIT 20**



Print Close

- FOXNews.com

- May 18, 2010

## Napolitano Admits She Hasn't Read Arizona Immigration Law in 'Detail'

Homeland Security Secretary Janet Napolitano admitted Monday that she has not read the controversial Arizona immigration law even though she's gone on television to criticize it, and continued to assert that it was "bad law enforcement law."

Homeland Security Secretary Janet Napolitano admitted Monday that she has not read the controversial Arizona immigration law even though she's gone on television to criticize it, and continued to assert that it was "bad law enforcement law."

The admission comes after Attorney General Eric Holder, who earlier warned the law could create a "slippery slope" toward racial profiling, told a House committee last week that he had not read the bill either. On Tuesday, State Department spokesman P.J. Crowley said he too had not read the bill, even as he defended diplomatic official Michael Posner for comparing the law to Chinese human rights violations.

Napolitano discussed the policy under questioning by Sen. John McCain, R-Ariz., during a Senate Homeland Security Committee hearing on the BP oil spill response.

"I have not reviewed it in detail. I certainly know of it," the former Arizona governor said when asked by McCain whether she had a chance to give the language a close look.

Nevertheless, Napolitano said, "That's not the kind of law I would have signed." Napolitano explained that she dealt with "laws of that ilk" in Arizona before and that most law enforcement groups were opposed to them.

"It's a bad law enforcement law," she said. "I believe it mandates and requires local law enforcement or puts them into a position many do not want to be placed in."

But McCain pressed Napolitano to provide more information later on about "what specific aspect of the law" would hurt law enforcement, "since the majority of law enforcement in Arizona strongly supports this legislation."

Arizona Gov. Jan Brewer, a Republican, signed the immigration legislation last month -- Brewer, who was formerly Arizona's secretary of state, succeeded Napolitano when she left for Washington.

The Arizona policy requires local law enforcement to verify the residency status of anyone they suspect of being an illegal immigrant and empowers them to turn anyone who doesn't check out over to federal custody.

The law prohibits officers from solely considering race or nationality in implementing the law, though critics say the law will lead to racial profiling.

That was a concern expressed by Holder two Sundays ago on ABC's "This Week." After he admitted to the House Judiciary Committee Thursday that he's only "glanced" at the law, Holder said he plans to read it before determining whether it's constitutional.

Napolitano last month told ABC News that the law was "misguided," echoing comments made by President Obama.

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All market data delayed 20 minutes.

# **EXHIBIT 21**



## Political Punch

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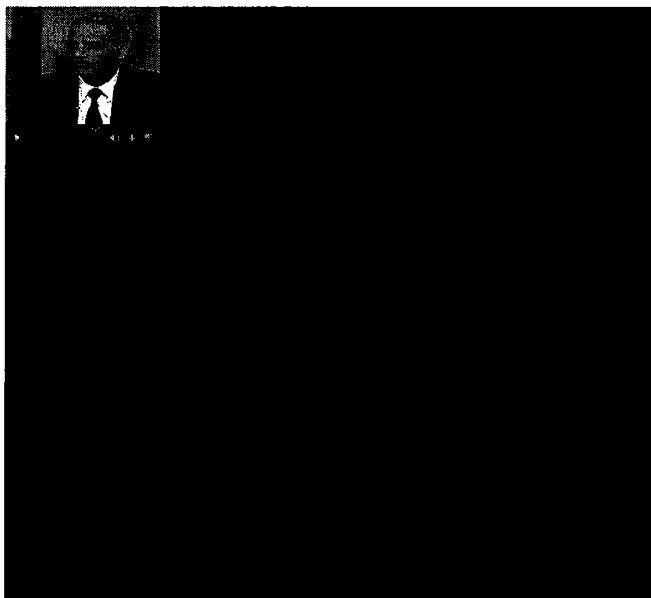
### Holder: AZ Immigration Law Not Racist

May 09, 2010 9:54 AM

Attorney General Eric Holder told me the controversial new Arizona immigration law is not racist, but he remains concerned the law could lead to racial profiling. In my "This Week" interview, Holder said, "I don't think it's racist in its motivation. But I think the concern I have is how it will be perceived and how it perhaps could be enacted, how it could be carried out. I think we could potentially get on a slippery slope where people will be picked on because of how they look as opposed to what they have done, and that is I think something that we have to try to avoid at all costs."

Holder added that immigration is a national problem and "a state-by-state solution to it is not the way in which we ought to go."

WATCH VIDEO HERE:



TAPPER: You've said we're a nation of cowards because we don't talk

freely and openly about race. So in that spirit, let me give it a shot. Do you think the Arizona immigration law is racist?

HOLDER: Well, I don't think it's necessarily a good idea. I mean, I think we have to understand that the immigration problem that we have, illegal immigration problem that we have, is a national one, and a state-by-state solution to it is not the way in which we ought to go.

TAPPER: But your issue with it is not that it's state-by-state. Your issue with it is that there are concerns that there might be racial profiling that takes place, right?

HOLDER: That is certainly one of the concerns that you have, that you'll end up in a situation where people are racially profiled, and that could lead to a wedge drawn between certain communities and law enforcement, which leads to the problem of people in those communities not willing to interact with people in law enforcement, not willing to share information, not willing to be witnesses where law enforcement needs them. I think you have to think about the collateral consequences of such a law, understanding the frustration that people feel in Arizona. It's one of the reasons why I think we have to have a national solution to this immigration problem.

TAPPER: Do you think it's racist?

HOLDER: I don't think it's racist in its motivation. But I think the concern I have is how it will be perceived and how it perhaps could be enacted, how it could be carried out. I think we could potentially get on a slippery slope where people will be picked on because of how they look as opposed to what they have done, and that is I think something that we have to try to avoid at all costs.

# **EXHIBIT 22**



# Arizona's Gov. Brewer Signs Controversial Immigration Bill

**Brewer Says Law is Necessary to Solve a 'Crisis,' But Obama Calls Bill 'Misguided'**

By DEVIN DWYER and HUMA KHAN

April 23, 2010 —

Arizona Gov. Jan Brewer signed a controversial immigration bill into law today that will give local law enforcement greater authority to ferret out and arrest [illegal immigrants](#).

Immediately before signing the bill into law, Brewer said that the legislation "represents another tool for our state to use as we work to solve a crisis that we did not create and that the federal government refuses to fix."

"We in Arizona have been more than patient waiting for Washington to act," Brewer said. "But decades of inaction and misguided policy have created a dangerous and unacceptable situation."

The bill takes effect in 90 days after the current legislative sessions over the next several weeks.

"I firmly believe [the law] represents what's best for Arizona," said Brewer. "Border-related violence and crime due to illegal immigration are critically important issues for the people of our state, to my administration, and to me as your governor and as a citizen."

The signing came just a few hours after [President Obama](#) harshly criticized the legislation, calling it "misguided." The president also instructed the Justice Department to examine the Arizona law to see if it would violate civil rights.

Obama criticized the bill at a naturalization ceremony in the White House Rose Garden for active duty service members from 24 countries.

The president said if Congress fails to enact comprehensive immigration reform at the national level, "We will continue to see misguided efforts opening up around the country."

The absence of a federal resolution of the controversial issue, he said, "opens the door to irresponsibility by others," and he cited "the recent efforts in Arizona, which threaten to undermine basic notions of fairness that we cherish as Americans."

So far this year, Congress and the administration have made little progress in advancing legislation on the issue.

## Outside Capitol Building, Crowds Protest Decision

After the signing, crowds outside of the state capitol building erupted in anger. Carrying signs and American



flags, they marched nearby, [protesting the governor's decision](#).

Brewer defended the law against claims that it is discriminatory, saying that she had worked for weeks to rework the language to strengthen civil rights protections. The governor also issued an executive order to develop training for state law enforcement to prevent racial discrimination or profiling.

"As committed as I am to protecting our state from crime associated with illegal immigration, I am equally committed to holding law enforcement accountable should this statute ever be misused to violate an individual's rights," she said.

The Arizona law makes it a crime under state law to be in the U.S. illegally and allows police to arrest and question suspected undocumented persons about their status without a warrant. It also criminalizes the transporting of an illegal immigrant anywhere in the state, even if by a family member.

Brewer, who faces a tough Republican primary in August, signed the same bill that former Arizona Gov. Janet Napolitano, a Democrat, vetoed three times.

Brewer was under intense pressure to not sign the legislation. Civil rights groups have decried the sweeping measure as opening the door to racial profiling and sowing distrust between Hispanics and the law enforcement groups charged with keeping them safe. Others said the law will pull resources from fighting more-serious crimes.

Thousands of people wrote or called the governor's office, with a 10-to-one majority opposing the bill, a spokeswoman said.

"I don't think anything has been this extreme until this point," said Bridgette Gomez, a 24-year-old math tutor. "The evil is [racial profiling](#), to think that you're going to always have to show identification. Because I'm tan, I must be illegal."

But supporters of the law, including U.S. Sen. John McCain, R-Ariz., have said it will help solve an illegal immigration crisis the federal government so far has not acted swiftly enough to contain.

### **Ariz. Immigration Bill Supporters Say They're Enforcing Law**

"Illegal is illegal," said the bill's sponsor, Republican state Sen. Russell Pearce. "We'll have less crime. We'll have lower taxes. We'll have safer neighborhoods. We'll have shorter lines in the emergency rooms. We'll have smaller classrooms."

An estimated 10.8 million immigrants live illegally in the U.S., according to the most recent Department of Homeland Security figures. About 460,000 live inside Arizona's borders. Now that the Arizona bill has become law, it likely will face constitutional challenges.

President Obama said he's instructed the Justice Department to "closely monitor" the situation and "examine the civilian rights" and other implications of the legislation.

The Mexican American Legal Defense Fund (MALDEF) and other groups are also preparing to challenge the legislation.

"The Constitution is pretty clear about having one set of rules," said Thomas A. Saenz, general counsel and president of MALDEF. "Now, you have the state of Arizona coming along and creating an obstacle to federally

mandated priorities."

Still, state Sen. Pearce, a former deputy in the Maricopa County Sheriff's Office, which is known for cracking down on illegal immigrants, said he's merely trying to enforce law that's already on the books.

"Illegal is not a race. It's a crime. And in Arizona, we're going to enforce the law ... without apologies," he said. "It's just that simple."

### **Vulnerable to Legal Challenges?**

California attempted to pass a similar measure in 1994 -- Proposition 187 -- that was designed to keep illegal immigrants from using health, education and other social services.

Even though it passed, it was struck down by a federal court on the basis of constitutionality.

Similar legal challenges against Arizona are inevitable, Saenz said, and it will likely end up costing the state millions of dollars.

"Arizona is going to face very serious consequences if it enacts it," Saenz said, comparing it to the experience in California, where the legislation was a "tremendously wasteful diversion of resources."

"There was a palpable impact on international trade to California, in particular," Saenz said. "It became clear over time that Mexican companies began to take their commerce through Texas and other border states because of pervasive hostility."

But it's high time states step up to the plate and do something about illegal immigrants, Pearce said.

"I would think this is a great opportunity to codify states' inherent authority," he said. "We created the federal government. We're in charge. Constitutionally, we have inherent authority. It's time to step up to the plate and start enforcing the law."

This is not the first time Arizona's state laws have come under fire. In 2005, the state made smuggling humans a state crime, and in 2007, it prohibited employers from knowingly hiring illegal immigrants.

Earlier this week, the state House voted for a provision that would require President Obama to show his birth certificate if he wants to be on the state's ballot in the next presidential election.

Before the signing, protesters had hoped to build grassroots momentum to convince Gov. Brewer to veto the bill -- an effort that ultimately failed.

"You hear story after story of youth that don't find out until they're 16 that they are undocumented because their parents didn't tell them," said Alicia Contreras, 26, a student at Arizona State University. "Arizona is ground zero for these type of immigration laws, and as a youth -- high school, college students -- we need to come together."

*ABC News' Sunlen Miller, Bradley Blackburn and "On Campus" reporter Lindsey Reiser contributed to this report, along with The Associated Press.*

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# **EXHIBIT 23**

**UNITED STATES SENATE  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS**

**TESTIMONY OF  
LARRY A. DEVER  
SHERIFF, COCHISE COUNTY, ARIZONA**

**APRIL 20, 2009**

## **INTRODUCTION:**

Chairman Lieberman, Ranking Member Senator McCain, members of the Committee, thank you for the invitation to address you regarding matters along the international border with Mexico that are of mutual interest and concern. I was born and raised in Cochise County, Arizona and have worked my entire 33 year law enforcement career in the border environment. This is the eighth occasion I have had the opportunity to testify before various committees of Congress about border crime and related issues, the first being twelve years ago. Sadly, this document will contain elements of previous testimony, as much remains the same or has deteriorated to even more serious circumstances.

## **BACKGROUND:**

Cochise County lies in the southeast corner of Arizona and shares 83.5 miles of international border with Mexico. Thirty of those statutory miles are private property. The remainder of the boundary is property owned by the State of Arizona (State Trust Land), and the U.S. Government (Forest Service, Bureau of Land Management, Park Service and U.S. Fish and Wildlife.) There are two Ports of Entry (Douglas and Naco.) The remainder is defined by newly constructed metal fence, vehicle barriers and barbed wire.

The County is part of the Tucson Sector of the Border Patrol which is the busiest sector in the country, accounting for almost half of all the marijuana seized and illegal aliens apprehended in the entire nation. While this area is one of the primary smuggling corridors, most of the contraband and aliens move through to the major transportation hub cities of Tucson and Phoenix. Though transiting as quickly as they can, left in the wake is a trail of criminal acts and garbage of unprecedented proportions. Historically, local criminal justice agencies have been forced to direct as much as 37% of their assets to matters related to people smuggling alone. The Cochise County Sheriff's Office hosts a multi-agency narcotics task force which is supported in part by funding through the High Intensity Drug Smuggling (H.I.D.T.A.) initiative. The Cochise County Attorney's Office prosecutes the second highest number of drug cases under this initiative in the entire State of Arizona.

A volume of THE ARIZONA SHERIFF magazine (Vol.6, No. 3) features an article about the U.S. Border Patrol. It quotes former Tucson Sector Chief Jerald Jondall as saying, "Within the last year, we've been mandated by Congress to gain control of that border. And we're going to do that along the Southern Border, whether it's narcotics, illegal aliens, terrorists, criminals, or whatever." A few notable things about that

statement: (a) it was made in 1987 (b) it was made post Reagan amnesty (c) it mentions the word “terrorists” and (d) the Sector had a staff at the time of approximately 250 to cover its entire 280 mile expanse.

Ten years later in June of 1997 I was invited to appear before the Senate Foreign Relations Committee for a hearing on border violence. And now we sit here today, a full 12 years after that, to discuss these same issues. Oh, and today there are well over 2500 agents assigned to the Border Patrol Tucson Sector.

## **WHAT WE KNOW:**

Violence related to drug and people smuggling has been steadily increasing since the shift in the 1980’s of Columbian produced cocaine smuggling from the east coast to the Mexican marijuana smuggling corridors. Initially it seemed to be mostly limited to the drug trade, but it has become part of the dire economy of the people trafficking and smuggling business, as well. Fierce competition and greed for huge profits have contributed to this.

Violence comes in many forms. People attempting to enter this country illegally are repeatedly subjected to robbery, assault, rape, kidnapping and all kinds of other atrocities. Many who cannot make the trek across steep mountain ranges or the barren and hostile desert region are often left behind to die--a form of murder, ipso facto. Competing cartels and secret combinations rob, steal, kidnap and murder on both sides of the border. In Arizona, the cities of Phoenix and Tucson, major transportation hubs, experience these events daily. Kidnappings and murder south of the border, and certainly the notoriety of this, appear to be increasing at an alarming rate. Some of this is migrating north as vulnerable groups move families and financial interests out of Mexico for protection.

Smugglers working on the U.S. side of the border are only one component of well organized and deeply rooted cartels. They are more inclined to fight than flee, have better telecommunications than many border law enforcement agencies and have sophisticated networks that challenge the best we have to offer in response. Inexperienced drivers, often armed, operating overloaded vehicles at high speed endanger law enforcement officials and the public alike. Homeowners see their properties burglarized and damaged, fences cut, water sources destroyed and acres and acres of private and public lands littered with tons of trash and human waste. None of this is more apparent than in the most eastern and western reaches of Cochise County where law enforcement presence is minimal and response can take an hour or more. Citizens in these areas cannot leave their homes without anxiety of returning to find their belongings stolen or trashed. They are also faced with the continual threat of wildfires, caused by uncontrolled campfires left by smugglers traveling through the area. And, if casual recreation is on your agenda in the beautiful mountain canyon areas of the Coronado National Forest, you will be greeted with signs that read “Caution: Drug and Human Smuggling May Be Encountered Here.”

We also know that of the illegal aliens that are captured after crossing the border, at least 10% already have serious criminal records in this country. These criminal elements are becoming more manifest in communities throughout the nation as they take up residence there and continue terrorizing and preying on U.S. citizens.

### **RESPONSE AND INTEROPERABILITY:**

There are multiple factors that negatively impact the law enforcement response to these challenges. Cochise County is almost 6300 square miles. Emergency responders typically have to travel many miles from duty stations to answer calls for service, emergency and otherwise. Local law enforcement, fire and medical response organizations are severely undermanned. Even with the significantly enhanced federal law enforcement presence response time to many of these remote areas is a minimum of one hour and generally more. People residing or recreating in these areas are all too often left to their own devices for protection.

Perhaps the greatest deficiency is the inability of local, state and federal responders to communicate effectively. Radio system infrastructure to support interoperability is extremely limited or antiquated. The topography of the area and the unavailability of fiscal resources severely challenge building the necessary common network systems to enhance communications and provide a better coordinated multi-agency response.

Additionally, while funding has necessarily targeted increasing the number of law enforcement officers, it has ignored the need for additional staff for communication and other support functions.

The good news is that cooperation and planning activities are more common today than ever before. New assets have been assigned to border enforcement. These activities have been met with renewed resolve and changes in tactics by smuggling organizations and our common commitment and determination must remain constant.

Operation Stonegarden, a meaningful federally funded border enforcement enhancement program is proving successful. The distribution of these funds to help local law enforcement agencies meet border crime related demands needs to be continually reviewed and improved upon. Enhancement of this program to include hiring additional local law enforcement officers and support staff would help to mitigate the impact of illegal alien and smuggling related crime is essential.

### **FISCAL IMPACTS:**

As mentioned previously, as much as 37% of local criminal justice system assets have been diverted to matters illegal alien related. This does not even consider the costs local residents pay in property loss and damage. Non-American citizens who are arrested and

charged with committing crimes are housed in county jails. They cannot post bond, declare indigence and many have serious medical conditions. All the costs of housing, defense and treatment are shifted to the county with little remuneration.

In 1995, Congress authorized reimbursement to state and local jurisdictions for these costs under the State Criminal Alien Assistance Program (S.C.A.A.P.) Initially, we recovered approximately 33% of actual expenses, excluding medical costs. Today, the fund only reimburses about 9 cents on every dollar. This program must be fully funded.

Unreimbursed costs to emergency medical providers and hospitals who treat the sick and injured who are not charged with crime are enormous, but a discussion for others.

### **BOTTOM LINE:**

Sheriffs on the border have no interest in becoming border enforcement agents. We do have, however, a Constitutional responsibility and duty to our citizens to preserve the peace in our respective jurisdictions. Failure to secure our borders has severely compromised the socio-economic welfare of our counties. While securing our borders is clearly a federal responsibility, we are left with the problems associated by failure to do so. And we have a clear role to play in the overall scheme of things. With severely limited resources, we are hard pressed to meet these obligations and require relief. H.I.D.T.A. funding has remained static for several years. S.C.A.A.P. funding has been severely cut, as have other formerly supportive federal funding programs. If we are to be serious about mitigating violence and repelling the threat of it spreading across our borders at an increasingly alarming rate, this funding must be restored or increased.

Our borders are not the only concern. Communities across the nation are suffering under the weight of many years of failed border enforcement policy and limited funding. These pains will only grow if not addressed immediately with renewed resolve and long term commitment from Congress.

Finally, the importance of this field hearing cannot be overstated. Policy and decision makers in Washington must continue to invite and encourage local involvement when developing tactics and strategies to deal with this most pervasive problem. Those who live and work daily in the border environment can provide invaluable perspective for finding solutions to these most difficult challenges. Thank you for your leadership in this arena.



# **EXHIBIT 24**



# Border Security: Key Agencies and Their Missions

**Chad C. Haddal**  
Analyst in Immigration Policy

January 26, 2010

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

RS21899

## Summary

After the massive reorganization of federal agencies precipitated by the creation of the Department of Homeland Security (DHS), there are now four main federal agencies charged with securing the United States' borders: the U.S. Customs and Border Protection (CBP), which patrols the border and conducts immigrations, customs, and agricultural inspections at ports of entry; the U.S. Immigrations and Customs Enforcement (ICE), which investigates immigrations and customs violations in the interior of the country; the United States Coast Guard, which provides maritime and port security; and the Transportation Security Administration (TSA), which is responsible for securing the nation's land, rail, and air transportation networks. This report is meant to serve as a primer on the key federal agencies charged with border security; as such it will briefly describe each agency's role in securing our nation's borders. This report will be updated as needed.

In the wake of the tragedy of September 11, 2001, the U.S. Congress decided that enhancing the security of the United States' borders was a vitally important component of preventing future terrorist attacks. Before September 11, 2001, border security fell piecemeal under the mandate of many diverse federal departments, including but not limited to the Department of Justice (the Immigration and Naturalization Service); the Department of the Treasury (the Customs Service); the Department of Agriculture (the Animal and Plant Health Inspection Service); and the Department of Transportation (the Coast Guard).

The Homeland Security Act of 2002 (P.L. 107-296) consolidated most federal agencies operating along the U.S. borders within the newly formed DHS. Most of these agencies were located in the Directorate of Border and Transportation Security (BTS), which was charged with securing the borders; territorial waters; terminals; waterways; and air, land, and sea transportation systems of the United States; and managing the nation's ports of entry.<sup>1</sup> The lone exception is the U.S. Coast Guard, which remained a standalone division within DHS. The BTS was composed of three main agencies: (1) the CBP, which is charged with overseeing commercial operations, inspections, and land border patrol functions, (2) ICE, which oversees investigations, alien detentions and removals, air/marine drug interdiction operations, and federal protective services, and (3) the TSA, which is charged with protecting the nation's air, land, and rail transportation systems against all forms of attack to ensure freedom of movement for people and commerce.

On July 13, 2005, the Secretary of DHS, Michael Chertoff, announced the results of the months-long Second Stage Review (2SR) that he undertook upon being confirmed as DHS Secretary. One of Secretary Chertoff's main recommendations, which was agreed to by the DHS Appropriations Conferees, was the elimination of the BTS Directorate. The Secretary announced the creation of a new Office of Policy, which, among other things, assumed the policy coordination responsibilities of the BTS Directorate. The operational agencies that comprised BTS (CBP, ICE, TSA) now report directly to the Secretary and Deputy Secretary of DHS. The goal of this reorganization was to streamline the policy creation process and ensure that DHS policies and regulations are consistent across the department. Additionally, the Federal Air Marshals program was moved out of ICE and back into TSA to increase operational coordination between all aviation security entities in the department.

Conceptually speaking, CBP provides the front line responders<sup>2</sup> to immigrations and customs violations and serves as the law enforcement arm of DHS, while ICE serves as the investigative branch. TSA is charged with securing the nation's transportation systems, whereas the U.S. Coast Guard also serves an important border security function by patrolling the nation's territorial and adjacent international waters against foreign threats. Combined FY2010 appropriations for the border security agencies of DHS equaled \$30.96 billion,<sup>3</sup> and the combined full time equivalent (FTE) manpower totaled approximately 180,142 employees.<sup>4</sup>

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<sup>1</sup> Although the functions of CBP and ICE were transferred under the P.L. 107-296, the actual agencies were created by the George W. Bush Administration. For a more detailed information on DHS, see CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, by Jennifer E. Lake.

<sup>2</sup> Some argue that the State Department's Consular posts abroad provide the first line of defense by reviewing visa applications and determining which foreign nationals will be provided with the documentation required to legally enter the country.

<sup>3</sup> This number, and all the budget numbers in the body of this report, represents the net appropriation for the four agencies discussed from P.L. 111-83, the Department of Homeland Security Appropriations Act, 2010. For a more detailed breakdown of DHS appropriations for FY2010, including the gross budget authority provided to each agency, see CRS Report R40642, *Homeland Security Department: FY2010 Appropriations*, coordinated by Jennifer E. Lake (continued...)

## The U.S. Customs and Border Protection (CBP)

CBP combined portions of the previous border law enforcement agencies under one administrative umbrella. This involved absorbing employees from the Immigration and Naturalization Service (INS), the Border Patrol, the Customs Service, and the Department of Agriculture. CBP's mission is to prevent terrorists and terrorist weapons from entering the country, provide security at U.S. borders and ports of entry, apprehend illegal immigrants, stem the flow of illegal drugs, and protect American agricultural and economic interests from harmful pests and diseases.<sup>5</sup> As it performs its official missions, CBP maintains two overarching and sometimes conflicting goals: increasing security while facilitating legitimate trade and travel.<sup>6</sup> In FY2010, CBP's appropriated net budget authority totaled \$10.13 billion<sup>7</sup> and manpower totaled approximately 58,105 FTE.

*Between* official ports of entry, the U.S. Border Patrol (USBP)—a component of CBP—enforces U.S. immigration law and other federal laws along the border. As currently comprised, the USBP is the uniformed law enforcement arm of the Department of Homeland Security. Its primary mission is to detect and prevent the entry of terrorists, weapons of mass destruction, and unauthorized aliens into the country, and to interdict drug smugglers and other criminals. In the course of discharging its duties the USBP patrols over 8,000 miles of our international borders with Mexico and Canada and the coastal waters around Florida and Puerto Rico.

*At* official ports of entry, CBP officers are responsible for conducting immigrations, customs, and agricultural inspections on entering aliens. As a result of the “one face at the border” initiative, CBP inspectors are being cross-trained to perform all three types of inspections in order to streamline the border crossing process. This initiative unifies the prior inspections processes, providing entering aliens with one primary inspector who is trained to determine whether a more detailed secondary inspection is required.<sup>8</sup>

CBP inspectors enforce immigration law by examining and verifying the travel documents of incoming international travelers to ensure they have a legal right to enter the country. On the customs side, CBP inspectors ensure that all imports and exports comply with U.S. laws and regulations, collect and protect U.S. revenues, and guard against the smuggling of contraband. Additionally, CBP is responsible for conducting agricultural inspections at ports of entry in order to enforce a wide array of animal and plant protection laws. In order to carry out these varied functions, CBP inspectors have a broad range of powers to inspect all persons, vehicles, conveyances, merchandise, and baggage entering the United States from a foreign country.

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(...continued)

and Chad C. Haddal.

<sup>4</sup> All manpower estimates are based upon requested FTEs taken from The Department of Homeland Security, *Congressional Budget Justification, Department of Homeland Security Fiscal Year 2010*. Since all DHS agencies under discussion in this report were either fully funded or almost fully funded, the qualifying phrase of “approximately” is used in conjunction with all FTE estimates.

<sup>5</sup> U.S. Congress, House Appropriations Committee, *Department of Homeland Security Appropriations Bill, 2005*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-541.

<sup>6</sup> U.S. Customs and Border Protection, *Performance and Annual Report: Fiscal Year 2003*, p. 25.

<sup>7</sup> The gross budget authority appropriated for CBP in FY2010 equaled \$11.56 billion.

<sup>8</sup> Department of Homeland Security, Office of the Press Secretary, “Homeland Security Announces New Initiatives,” press release, September 2, 2003.

## U.S. Immigrations and Customs Enforcement (ICE)

ICE merged the investigative functions of the former INS and the Customs Service, the INS detention and removal functions, most INS intelligence operations, and the Federal Protective Service (FPS). This makes ICE the principal investigative arm for DHS. ICE's mission is to detect and prevent terrorist and criminal acts by targeting the people, money, and materials that support terrorist and criminal networks.<sup>9</sup> As such they are an important component of our nation's border security network even though their main focus is on interior enforcement. In FY2010, ICE appropriations totaled \$5.44 billion,<sup>10</sup> and the agency had approximately 20,134 FTE employees.

Unlike CBP, whose jurisdiction is confined to law enforcement activities along the border, ICE special agents investigate immigrations and customs violations in the interior of the United States. ICE's mandate includes uncovering national security threats such as weapons of mass destruction or potential terrorists, identifying criminal aliens for removal, probing immigration-related document and benefit fraud, investigating work-site immigration violations, exposing alien and contraband smuggling operations, interdicting narcotics shipments,<sup>11</sup> and detaining illegal immigrants and ensuring their departure (or removal) from the United States.<sup>12</sup> ICE is also responsible for the collection, analysis and dissemination of strategic and tactical intelligence data pertaining to homeland security, infrastructure protection, and the illegal movement of people, money, and cargo within the United States.<sup>13</sup>

## The United States Coast Guard

The Coast Guard was incorporated into DHS as a standalone agency by P.L. 107-296. The Coast Guard's overall mission is to protect the public, the environment, and U.S. economic interests in maritime regions—at the nation's ports and waterways, along the coast, and in international waters.<sup>14</sup> The Coast Guard is thus the nation's principal maritime law enforcement authority and the lead federal agency for the maritime component of homeland security, including port security. Among other things, the Coast Guard is responsible for evaluating, boarding, and inspecting commercial ships as they approach U.S. waters; countering terrorist threats in U.S. ports; and for helping to protect U.S. Navy ships in U.S. ports. A high-ranking Coast Guard officer in each port area serves as the Captain of the Port and is the lead federal official responsible for the security and safety of the vessels and waterways in their geographic zone.<sup>15</sup> In FY2010, Coast Guard

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<sup>9</sup> U.S. Immigrations and Customs Enforcement, Border Security and Immigration Enforcement Fact Sheet, at [http://www.ice.gov/graphics/news/factsheets/061704det\\_FS.htm](http://www.ice.gov/graphics/news/factsheets/061704det_FS.htm).

<sup>10</sup> The gross budget authority appropriated for ICE in FY2010 equaled \$5.74 billion.

<sup>11</sup> U.S. Immigrations and Customs Enforcement, Office of Investigations Fact Sheet, [http://www.ice.gov/graphics/news/factsheets/investigation\\_FS.htm](http://www.ice.gov/graphics/news/factsheets/investigation_FS.htm).

<sup>12</sup> U.S. Immigrations and Customs Enforcement Organization, at <http://www.ice.gov/graphics/about/organization/index.htm>.

<sup>13</sup> U.S. Immigrations and Customs Enforcement, Office of Intelligence Organization, at [http://www.ice.gov/graphics/about/organization/org\\_intell.htm](http://www.ice.gov/graphics/about/organization/org_intell.htm).

<sup>14</sup> U.S. Coast Guard, Overview at <http://www.uscg.mil/overview/>.

<sup>15</sup> For an in depth discussion of the Coast Guard and port security, see CRS Report RS21125, *Homeland Security: Coast Guard Operations - Background and Issues for Congress*, by Ronald O'Rourke, and CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress*, by John Frittelli.

appropriated budget authority totaled \$10.14 billion, and the agency had approximately 49,954 FTE military and civilian employees.

As part of Operation Noble Eagle (military operations in homeland defense and civil support to U.S. federal, state and local agencies), the Coast Guard is at a heightened state of alert protecting more than 361 ports and 95,000 miles of coastline. The Coast Guard's homeland security role includes protecting ports, the flow of commerce, and the marine transportation system from terrorism; maintaining maritime border security against illegal drugs, illegal aliens, firearms, and weapons of mass destruction; ensuring that the U.S. can rapidly deploy and resupply military assets by maintaining the Coast Guard at a high state of readiness as well as by keeping marine transportation open for the other military services; protecting against illegal fishing and indiscriminate destruction of living marine resources; preventing and responding to oil and hazardous material spills; and coordinating efforts and intelligence with federal, state, and local agencies.<sup>16</sup>

## The Transportation Security Administration (TSA)

The TSA was created as a direct result of the events of September 11 and is charged with protecting the United States' air, land, and rail transportation systems to ensure freedom of movement for people and commerce. The Aviation and Transportation Security Act (ATSA, P.L. 107-71) created the TSA and included provisions that established a federal baggage screener workforce, required checked baggage to be screened by explosive detection systems, and significantly expanded FAMS. In 2002, TSA was transferred to the newly formed DHS from the Department of Transportation; as previously noted, in 2003 the Federal Air Marshal program was taken out of TSA and transferred to ICE. In FY2006, the program was transferred back to TSA. In FY2010, TSA appropriations totaled \$5.26 billion,<sup>17</sup> and the agency had approximately 51,949 FTE employees.

To achieve its mission of securing the nation's aviation, TSA assumed responsibility for screening air passengers and baggage—a function that had previously resided with the air carriers. TSA is also charged with ensuring the security of air cargo and overseeing security measures at airports to limit access to restricted areas, secure airport perimeters, and conduct background checks for airport personnel with access to secure areas, among other things.<sup>18</sup> However, an opt out provision in ATSA will permit every airport with federal screeners to request a switch to private screeners commencing in November 2004.<sup>19</sup> Additionally, as a result of the 2SR, the Federal Air Marshals program has been transferred back to TSA. FAMS is responsible for detecting, deterring and defeating hostile acts targeting U.S. air carriers, airports, passengers and crews by placing undercover armed agents in airports and on flights.

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<sup>16</sup> U.S. Coast Guard, Homeland Security Factcard, at <http://www.uscg.mil/hq/g-cp/comrel/factfile/Factcards/Homeland.htm>.

<sup>17</sup> The gross budget authority appropriated for the TSA in FY2010 equaled \$7.66 billion

<sup>18</sup> U.S. General Accounting Office, *Aviation Security: Efforts to Measure Effectiveness and Address Challenges*, GAO-04-232T, November 5, 2003, pp. 5-6.

<sup>19</sup> See CRS Report RL32383, *A Return to Private Security Screening at Airports?: Background and Issues Regarding the Opt-Out Provision of the Aviation and Transportation Security Act*, by Bart Elias.

## Conclusion

This report has briefly outlined the roles and responsibilities of the four main agencies within the DHS charged with securing our nation's borders: the CBP, ICE, the U.S. Coast Guard, and the TSA. It should be noted, however, that although the Homeland Security Act of 2002 consolidated all the agencies with primary border security roles in DHS, many other federal agencies are involved in the difficult task of securing our nation's borders. Although border security may not be in their central mission, they nevertheless provide important border security functions. These agencies include, but are not limited to the U.S. Citizenship and Immigrations Services within DHS, which processes permanent residency and citizenship applications, as well as asylum and refugee processing; the Department of State, which is responsible for visa issuances overseas; the Department of Agriculture, which establishes the agricultural policies that CBP Inspectors execute; the Department of Justice, whose law enforcement branches (the Federal Bureau of Investigation and Drug Enforcement Agency) coordinate with CBP and ICE agents when their investigations involve border or customs violations; the Department of Health and Human Services, through the Food and Drug Administration and the Center for Disease Control; the Department of Transportation, whose Federal Aviation Administration monitors all airplanes entering American air space from abroad; the Treasury Department, whose Bureau of Alcohol, Tobacco, and Firearms investigates the smuggling of guns into the country; and lastly the Central Intelligence Agency, which is an important player in the efforts to keep terrorists and other foreign agents from entering the country. Additionally, due to their location, state and local responders from jurisdictions along the Canadian and Mexican borders also play a significant role in the efforts to secure our nation's borders.

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# **EXHIBIT 25**

# Illegal Immigration



**Maricopa County Attorney's Office**

**September 2008**

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## Executive Summary

There has been recent discussion as to whether crime rates for illegal immigrants are similar to rates for persons lawfully in this country. The following report analyzes defendants sentenced for felonies in Maricopa Superior Court in an effort to shed light on that issue. The report finds illegal immigrants are over-represented for both violent and property crimes when compared to their estimated presence in the general population.

**The key conclusion of this paper is that Arizona's population is comprised of approximately 9% illegal immigrants, yet 21.8% of felonies sentenced in Maricopa County Superior Court are committed by illegal immigrants.**

## Background -- Illegal Immigration Facts

- In June 2008, the Arizona prison system reported a population of **5,173 Mexican Nationals**. (*Arizona Department of Corrections, Reports and Statistics, 2008*)<sup>1</sup>
- In 2004, the Federation for American Immigration Reform (FAIR) estimated the annual cost of incarcerating illegal immigrants in Arizona prisons and jails equal to **\$80 million**<sup>2</sup>. Today a conservative estimate is that it costs \$61.74<sup>3</sup> a day to house an inmate in an Arizona prison. Using this daily per prisoner estimate, in June 2008 the daily housing costs for Mexican Nationals for the month totaled \$319,381. Assuming that 5,173 prisoners is a relatively constant year-around number, the cost of incarcerating Mexican Nationals in Arizona has increased to approximately **\$114 million annually**.
- Law enforcement and criminal prosecutions linked to illegal immigration costs the Arizona border counties of Cochise County, Pima County, Santa Cruz, and Yuma County millions of dollars annually. A recent study from the University of Arizona<sup>4</sup> estimates that in these four border counties in Arizona costs were **\$26.6 million in 2006**. These costs represent monies spent from the counties general funds to provide law enforcement and criminal justice services (sheriff, detention, prosecutor, indigent defense, justice court, superior court, probation, etc.).

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<sup>1</sup> A recent AZ Dept. of Corrections presentation reported the vast majority of Mexican Nationals (98%) are illegal immigrants.

<sup>2</sup> "The Costs of Illegal Immigration to Arizonans" calculates a per prisoner cost of \$18,000 per year minus reimbursements from the federal SCAAP program. This doesn't include the monetary costs of the crimes that led to the incarceration.

<sup>3</sup> According to AZ Dept. of Corrections, Research and Statistics.

<sup>4</sup> "Undocumented Immigrants in U.S.-Mexico Border Counties", 2007, University of Arizona.

- In 2005, the Government Accounting Office (GAO) conducted sample studies using a pool of more than 55,000 illegal immigrants<sup>5</sup>:
- The group was arrested<sup>6</sup> a total of 459,614 times, averaging 8 arrests per illegal immigrant. ( $459,614 / 55,000 = 8$ )
  - They were arrested for a total of 700,000 offenses<sup>7</sup>, averaging 13 offenses per illegal immigrant. ( $700,000 / 55,000 = 12.72$ )
  - 12% of these offenses were violent offenses like robbery, assault and sex-related crimes.
  - 15% were property related offenses like burglary, larceny-theft, motor vehicle theft and property damage.
  - 45% were drug or immigration offenses; and the remaining 28% were for other offenses (traffic, DUI, fraud, weapons violations, obstruction of justice, etc.)
  - 80% of all arrests occurred in three states: California, Texas and Arizona.

## **Illegal Immigration and the Maricopa County Attorney's Office**

In 2005, the Maricopa County Attorney's Office (MCAO) began examining illegal immigration issues when it hosted the *Southwest Conference on Illegal Immigration, Border Security and Crime*. In addition, that year the Office supported state legislation to make human smuggling a crime. In 2006, the Office led the effort to pass Proposition 100, which prohibits bail for illegal immigrants accused of serious crimes. In 2007, the Court of Appeals upheld MCAO's interpretation of the human smuggling law which allows for the prosecution of illegal immigrants who use the services of coyotes (people who transport humans across borders for profit). Currently, in 2008, the Office has been enforcing the Legal Arizona Workers Act (LAWA), which prohibits employees from using false documents to obtain employment and penalizes employers who intentional or knowingly hire unauthorized aliens.

MCAO has convicted 125 persons of crimes related to smuggling, managing drop houses, and kidnapping in connection with smuggling. MCAO has also convicted over 750

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<sup>5</sup> "Information on Certain Illegal Aliens Arrested in the United States, Briefing for Congressional Requesters," April 2005.

<sup>6</sup> An arrest does not necessarily result in a prosecution or conviction.

<sup>7</sup> One arrest may include multiple offenses. This is why there are 1.5 times more offenses than arrests.

persons of conspiring with smugglers to transport or smuggle themselves in violation of United States immigration laws.

## **Illegal Immigration Statistics**

### **Arizona**

There have been several serious efforts to estimate the number of illegal immigrants in Arizona. Most recently the U.S. Department of Homeland Security reported the state's illegal immigrant population to be 530,000. This is a 62% increase from 330,000 they reported in 2000.<sup>8</sup> In 2007, the Center for Immigration Studies reported Arizona's illegal immigrant population to be 9% (579,000 people). A 2007 study from the Udall Center for Studies in Public Policy reports the non-citizen immigrant population in Arizona to be 619,800 people. Lastly, Harvard economist George Borjas reported in his January 2008 report, "Labor Market Consequences of Unauthorized Aliens in Arizona" that there are 450,000 undocumented immigrants residing in Arizona. **A reasonable average of these studies is that approximately 9% of Arizona's population is comprised of illegal immigrants.**

### **Maricopa County**

In 2007 MCAO began systematically tracking defendant illegal immigration status. With respect to each defendant who is prosecuted for a felony an additional characteristic was created that staff is required to enter in office computer data. MCAO staff enters for each defendant whether the defendant is an illegal immigrant, not an illegal immigrant or unknown. An analysis has found that in 2007 18.7% of defendants sentenced in Maricopa County Superior Court were illegal immigrants.

This 18.7 % figure is a conservative estimate as approximately 23% of defendants sentenced had a citizenship status of "unknown". This is due to the fact that MCAO requires official documentation to prove citizenship and often such documentation is initially unavailable. Given the large percentage of unknown defendants, a random sample of this group was selected. Analysis found 13.1% of the unknown group to be illegal immigrants, verified via the Criminal History Worksheet. When the random sample of unknown defendants was included with the known group the **total percentage of illegal immigrant defendants sentenced for felonies in Maricopa County Superior Court is 21.8%.**

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<sup>8</sup> "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007." Reported by the U.S. Department of Homeland Security, Office of Immigration Statistics, September 2008. [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2007.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2007.pdf) . Legal permanent residents are subtracted from estimates of the total foreign born population.

**Data**

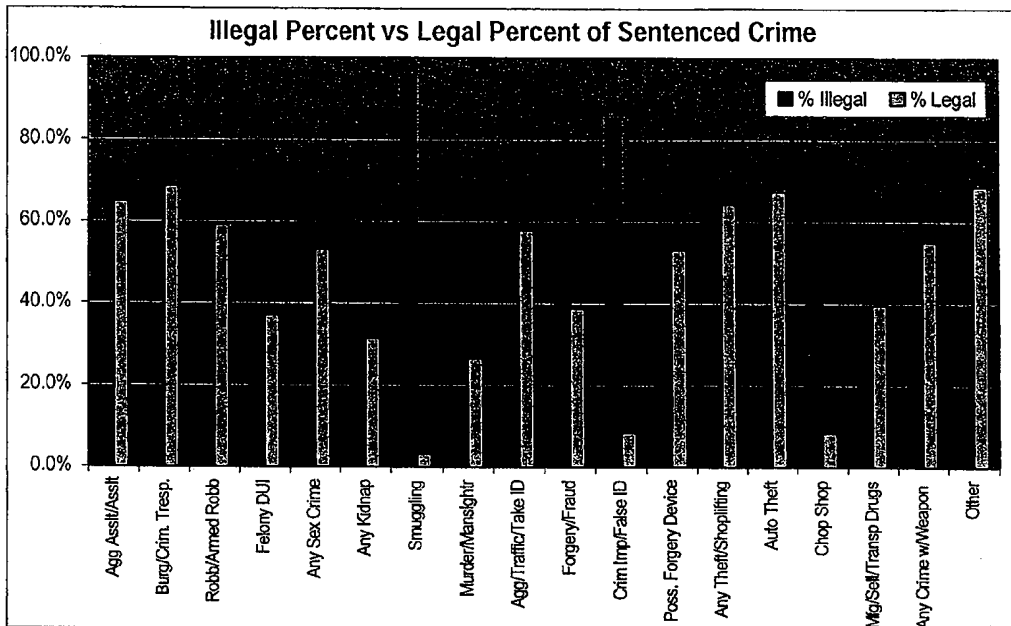
- The following chart compares the highest criminal charge that illegal immigrant defendants were sentenced for in 2007 with defendant whose status was legal. The chart does not adjust for the percentage of defendants whose status was unknown.<sup>9</sup>

Sentenced in Maricopa County Superior Court - By Highest Ranking Charge With DOC Stats												
Highest Ranking Crime	Sentenced Stats				DOC Stats						Jail Stats	
	Total Sentenced	Illegal	Legal	% Illegal	Total DOC	Illegal	Legal	Illegal %	Illegal Avg. Months	Legal Avg. Months	Illegal Avg. Months	Legal Avg. Months
Agg Asslt/Asslt	1,708	218	1108	12.8%	635	82	371	12.9%	56	49		
Burg/Crim. Tresp.	1,764	200	1210	11.3%	736	47	536	6.4%	40	39		
Robb/Armed Robb	635	83	376	13.1%	456	67	257	14.7%	86	86		
Felony DUI	1,934	392	717	20.3%	1453	326	497	22.4%	9	18		
Any Sex Crime	467	48	248	10.3%	209	20	108	9.6%	121	102		
Any Kidnap	95	34	30	35.8%	53	22	15	41.5%	91	79		
Smuggling	353	339	11	96.0%	17	17	0	100.0%	12	0		
Murder/Mansghtr	188	20	50	10.6%	181	20	47	11.0%	137	136		
Agg/Traffic/Take ID	197	22	114	11.2%	105	2	69	1.9%	21	74		
Forgery/Fraud	1,272	565	494	44.4%	476	116	255	24.4%	26	41		
Crim Imp/False ID	774	660	65	85.3%	25	12	8	48.0%	11	14		
Poss. Forgery Device	462	146	245	31.6%	27	5	19	18.5%	13	11		
Any Theft/Shoplifting	1,613	204	1036	12.6%	292	20	198	6.8%	50	33		
Auto Theft	1,214	159	818	13.1%	728	72	512	9.9%	51	50		
Chop Shop	12	6	1	50.0%	6	4	1	66.7%	53	60		
Mfg/Sell/Transp Drugs	1,287	431	511	33.5%	679	189	284	27.8%	48	65		
Any Crime w/Weapon	2,021	418	1113	20.7%	1119	174	619	15.5%	67	67		
Other	9,283	786	6,378	8.5%	1,132	2	1,052	0.2%	28	30		
<b>Total</b>	<b>25,279</b>	<b>4,731</b>	<b>14,525</b>	<b>18.7%</b>	<b>8,329</b>	<b>1,196</b>	<b>4,848</b>	<b>14.4%</b>	<b>51</b>	<b>53</b>		

Source: MCAO. Chart excludes the unknown category in its calculations.

- As noted in the following graph, illegal immigrants commit a higher number of certain crimes than persons who are known to be lawfully in this country. These crimes include kidnapping, forgery, human smuggling and the manufacturing, selling and transporting of drugs.

<sup>9</sup> The "highest criminal charge" tracks the case and the defendant by the most serious charge; lesser charges against the same defendant in the same case are not included.



- A 2007 analysis of ARS §13-1304A1 (Kidnap/Ransom) as the highest ranking charge found there were 133 kidnapping cases for ransom filed with the crime alleged dangerous. 74% of these cases were identified as illegal immigrant cases. Of those cases that have reached final disposition, 69% of cases received DOC with the average DOC sentence to be 7.7 years.

### Illegal Immigration's Impact on Maricopa County Crime

- Using the violent crime<sup>10</sup> numbers of illegal immigrants sentenced in Maricopa Superior Court as reported in the previous MCAO data, **16.5% of violent crimes can be linked to illegal immigrants.** In 2007, 18,010 violent crimes were reported to Maricopa County law enforcement.<sup>11</sup> Applying the illegal immigrant violent crime percentage to the total violent crime reported in Maricopa County found **2,973 of reported violent crime to be committed by illegal immigrants.** According to varying cost-of-crime models<sup>12</sup>, violent crimes average approximately **\$20,000** per offense. This will be the assumed cost of a single violent offense. If illegal immigrants accounted for 2,973 of the reported violent crime in Maricopa County the financial hardship imposed on Maricopa County citizens totaled approximately **\$59 million dollars in 2007.**

<sup>10</sup> Agg. Assault, Sex Crime, Kidnapping, Murder/Manslaughter, and Crime with a Weapon.

<sup>11</sup> Data reported from Maricopa County's nine largest law enforcement agencies.

<sup>12</sup> "Varieties of Criminal Behavior", Jan Chaiken & Marcia Chaiken, Rand Corporation: "The Costs of Crime and Justice", Mark Cohen, Vanderbilt University: "Imprisonment-Crime Link", James Q. Wilson, Pepperdine University: The Cost of Crime to Society: New Crime-Specific Estimates for Policy and Program Evaluation, Kathryn McCollister, PhD



- Using the property crime<sup>13</sup> numbers of illegal immigrants sentenced in Maricopa Superior Court as reported in the previous MCAO data, **18.5% of property crimes can be linked to illegal immigrants.** In 2007, 165,743 property crimes were reported to Maricopa County law enforcement.<sup>14</sup> Applying the illegal immigrant property crime percentage to the total property crime reported in Maricopa County found **6,684 of reported property crime to be committed by illegal immigrants.** According to the Department of Public Safety's Crime in Arizona 2007, the average dollar value of stolen property for the State totaled \$3,636 per property offense. If illegal immigrants accounted for 6,684 of the reported property crime in Maricopa County the financial hardship imposed on Maricopa County citizens in property alone totaled approximately **\$24 million dollars in 2007.**

## **Illegal Immigration, Crimes and Specialized Prosecution**

The Special Crimes Bureau of MCAO is comprised of an experienced group of deputy county attorneys (DCA) committed to prosecuting criminals committing felony offenses. In particular, the Special Crimes Bureau focuses on criminal activity that violates immigration law. This includes criminals who conspire to commit human smuggling by hiring a coyote for transportation across the border. This unique prosecution requires the bureau's attorneys to work closely with the United States Customs and Immigration Services, the investigative arm of the Department of Homeland Security as well as valley law enforcement. These relationships have helped the bureau improve the investigative, hearing and trial preparation processes needed to streamline illegal immigration prosecution. As of July 2008, the County Attorney's Office successfully prosecuted 750 defendants under the human smuggling statute as conspirators and 125 defendants charged with transporting and handling, including drop houses, kidnapping and extortion for ransom.

## **Noteworthy Prosecutions**

- In October 2007, Valley police launched an investigation based on an anonymous call involving a human smuggling drop house in Phoenix. Police determined that four coyotes were holding 16 illegal aliens captive and threatened to do them physical harm if increased smuggling fees were not paid. The illegal captives now identified as victims indicated to police that they had been smuggled from Mexico and had been held captive in the residence for several days. While at the residence, the victims stated that they had been guarded and threatened by the defendants who carried handguns. The victims also stated that they been collectively extorted by the Defendants. **Defendant Jose Cota-Campos was sentenced to the stipulated term of 7 years in the Arizona Department of Corrections.**

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<sup>13</sup> Burglary/Criminal Trespass, Robbery, Take ID, Forgery/Fraud, Theft/Shoplifting, Auto Theft, and Chop Shop.

<sup>14</sup> Data reported from Maricopa County's nine largest law enforcement agencies.

- In July 2007, Valley police investigated a drop house for human smuggling. Four defendants were holding 16 illegal immigrants captive and threatened to do them physical harm if an increased smuggling fee was not paid. The victims indicated that they had been smuggled from Mexico and Nicaragua and had been held captive at the residence for two to six days. While at the residence, the victims stated that they had been guarded, threatened and extorted by the defendants who had AK-47 style assault rifles. **Defendants Carlos Felix-Aguilar, Marialuisa Pacheco-Fraile, Arnoldo Luna, Jorge Montalvo-Toledo were all sentenced to 7-year sentences in the Arizona Department of Corrections.**
- In September 2007, Valley police followed a Lojack signal in a vehicle theft investigation to a garage in West Phoenix. The police then identified the residence as a drop house containing 33 illegal immigrants. **Defendant Angel Tabarea-Castillo, identified as the person in charge of the drop house, was sentenced to 7 years in the Arizona Department of Corrections.**
- A drop house containing about 20 illegal immigrants was identified. Here the illegal immigrants were robbed of their clothes, wallets, and money at gunpoint. The coyotes also substantially raised the amount of the smuggling fees that each smugglee was expected to pay. The coyotes forced the victims to provide telephone contact information for family, who were then extorted for money for the safe release of their victim relatives. Five of the illegal immigrants were bound and placed into a closet. Eventually one of the illegal immigrants was able to free himself and he attacked one of the coyotes. **Defendant Arturo Nevares-Ugarte was sentenced to a 31-year sentence in the Arizona Department of Corrections.**
- Since 2005, there have been more than **1,200 illegal immigrants identified at drop houses across the Valley**. Drop houses can occur in any neighborhood; however, the majority of drop houses go undetected until a released immigrant or neighbor makes a report. The Office has recently charged 125 defendants in connection with transporting, handling, and, in a growing number of cases, kidnapping and extortion (which often takes place in the drop house setting) of illegal immigrants. One hundred of these defendants have been prosecuted and convicted as “smugglers” under the human smuggling statute. The others have been prosecuted and convicted under kidnapping, extortion and other drop house related charges. The county attorney’s office has a 99% conviction rate in these cases.

## **Legislative and MCAO Policy Changes**

### ***Illegal Immigration Legislation***

#### **2005**

MCAO supported **Senate Bill 1372** that made human smuggling a crime, a first step towards battling illegal immigration. The law allowed local authorities to prosecute those who smuggle people across the Arizona border. Human smuggling is a Class 4 felony, punishable with up to three years in prison.

#### **2006**

**Proposition 100**, MCAO helped draft and supported an amendment to the Arizona Constitution to prohibit bail for any person who is charged with a serious felony offense and who is unlawfully in the U.S. As a result illegal immigrants who are charged with serious felonies are no longer being released. Legislation was enacted to specify that class 1, 2, 3 and 4 felony offenses would constitute the "serious felony" offenses for which a person who has entered or remained in the United States illegally should be denied bail.

#### **2007**

In 2007 MCAO supported and the Arizona Legislature enacted the Legal Arizona Workers Act (LAWA), the first such measure in the nation. The law, which went into effect in January 2008, allows a court to suspend or revoke the business license of employers found to have knowingly hired illegal workers. The bill also strengthened the State's ID theft laws against persons who use false documents to obtain employment.

#### **2008**

MCAO supported amendments to LAWA, which clarified several provisions in LAWA. It also enacted a new criminal offense to punish an employer who knowingly accepts false identification from an applicant for employment.

The Arizona Court of Appeals recently upheld the prosecution of illegal immigrants for conspiring to transport themselves in violation of Arizona's human-smuggling statute. On July 31, 2008, the Court of Appeals also ruled that Arizona courts have jurisdiction to prosecute persons under the human smuggling statute when the solicitation took place in Mexico. The Office successfully argued that because solicitation is a continuing offense and the illegal immigrant defendant was transported into Maricopa County, the Maricopa County Attorney was authorized to prosecute under the state's human-smuggling law.

### ***MCAO Policy Changes***

In 2008, the MCAO implemented new policy requiring DCA's in sentencing proceedings to bring to the court's attention the fact that a defendant was unlawfully in the United States. This ensures that the court will consider the aggravating factor under A.R.S. §13-702 of the defendant's being in violation of federal law. It also avoids putting a defendant into publicly-funded probation program in violation of state law.

In addition the DCA informs the Maricopa County Sheriff's Office (MCSO) that the defendant is in violation of immigration laws to ensure that immigration proceedings can commence. If the defendant is not in custody, the DCA asks MCSO to take the defendant into custody.

## **Outreach**

### ***Law Enforcement***

DCA's in the Special Crimes Bureau have repeatedly presented and trained law enforcement officers on technical requirements relating to human smuggling, conspiracy, Proposition 100 and the LAWA. MCSO, other law enforcement agencies, the DEA and ICE are several of the agencies who have participated in these training sessions.

### ***Public Service Campaigns***

In 2007, the MCAO published the *Road Map to Crime Prevention* booklet and created a website based on the information. [http://www.crimefreeaz.com/drop\\_houses/](http://www.crimefreeaz.com/drop_houses/) includes important drop house and illegal immigration information, cases and statistics. In 2008, MCAO's *Road Map to Crime Prevention Booklet* was the recipient of a NACo Achievement Award.

### ***Illegal Immigration Journal***

Illegal Immigration Journal <http://www.illegalimmigrationjournal.com> is an electronic journal that was launched in 2007, by the Maricopa County Attorney's Office. It is a comprehensive online resource where public, law enforcement and political leaders can find updated news and information on illegal immigration.

### ***Legal Arizona Workers Act (LAWA)***

This website <http://www.maricopacountyattorney.org/lawa/index.html> was launched in 2008, with the express purpose of providing the public information on the LAWA, including how to file a complaint. The site also provides resources to businesses that will assist them in complying with the law. This Office along with the MCSO accepts all information that is provided to it regarding violations of the law and has declined to implement barriers that make it hard for the public to report information about violations. Complaints do not have to be made in person and may be submitted via email or phone. While it is preferable to have contact information for the person making the complaint it is not mandatory.

MCAO has jointly sponsored with the Arizona Chamber of Commerce and Industry a series of seminars for the business community on LAWA compliance.

### ***Speaker's Bureau***

MCAO sponsors a Speakers' Bureau. This is a free public service that provides MCAO experts who present basic, useful information on a variety of topics in an effort to keep citizens of Maricopa County aware of public policy, social issues, crime trends and the

criminal justice system. Our experts speak to elementary schools, high schools, colleges, civic organizations and other business and professional associations throughout Maricopa County.

The Speakers' Bureau has provided illegal immigration and Legal Arizona Worker's Act (LAWA) presentations to a number of organizations, including area law enforcement associations, homeowner's associations and local civic organizations.

### **Community Events**

In November 2005, the MCAO hosted the "Southwest Conference on Illegal Immigration, Border Security and Crime." The Conference attracted more than 250 attendees from across the country. The objective was to teach community leaders and citizens about the impact of illegal immigration on the Southwest and to empower communities to deal with these issues. Lawmakers, law enforcement, political and community leaders and members of the community gathered to seek solutions to the economic, social and public safety concerns of illegal immigration. Speakers included Andrew Thomas; Congressman Tom Tancredo; Congressman JD Hayworth; Congressman Jeff Flake; Tamar Jacoby from the Manhattan Institute and John Leo from U.S. News and World Report. Issues of discussion included employer sanctions, federal immigration solutions, amnesty and public safety concerns.

### **Conclusions and Further Research**

This analysis found illegal immigrants disproportionately represented in violent and property crimes as compared to the general population. Arizona's population is comprised of approximately 9% illegal immigrants, yet 21.8% of felonies sentenced in Maricopa County Superior Court are committed by illegal immigrants.

Study limitations include defendants identified as unknown within the Maricopa County Attorney's Office; further work is needed to reduce the unknown category.

Further study is also merited of the demographics of the illegal immigrant population in Arizona and the United States. The considerably higher criminal convictions for illegal immigrants than the rest of the population found by this study may be due to skewed demographics. That is, young males account for the bulk of crime in America. If the illegal immigrant population is over-represented by young males, the higher rate of criminality might be explained.

Alternatively, the self-selecting nature of risk-taking among many illegal immigrants may overweight risk-taking in the criminal behavior field. That is, illegal immigrants are required to violate United States laws to come to this county. They also sometimes have to take dangerous journeys. These facts may select a high number of risk-taking persons who may also be willing to engage in other risky criminal behavior.

Continued study and data sharing are required to further illuminate the impact of illegal immigration on the criminal justice system.

# **EXHIBIT 26**

# Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009

MICHAEL HOEFFER, NANCY RYTINA, AND BRYAN C. BAKER

This report provides estimates of the number of unauthorized immigrants residing in the United States as of January 2009 by period of entry, region and country of origin, state of residence, age, and gender. The estimates were obtained using the “residual” methodology employed for estimates of the unauthorized population in 2008 (see Hoefler, Rytina, and Baker, 2009). The unauthorized resident population is the remainder or “residual” after estimates of the legally resident foreign-born population – legal permanent residents (LPRs), asylees, refugees, and nonimmigrants – are subtracted from estimates of the total foreign-born population. Data to estimate the legally resident population were obtained primarily from the Department of Homeland Security (DHS) while the American Community Survey (ACS) of the U.S. Census Bureau was the source for estimates of the total foreign-born population.

In summary, DHS estimates that the unauthorized immigrant population living in the United States decreased to 10.8 million in January 2009 from 11.6 million in January 2008. Between 2000 and 2009, the unauthorized population grew by 27 percent. Of all unauthorized immigrants living in the United States in 2009, 63 percent entered before 2000, and 62 percent were from Mexico.

## DEFINITIONS

### Legal Residents

The legally resident immigrant population as defined for these estimates includes all persons who were granted lawful permanent residence; granted asylee status; admitted as refugees; or admitted as nonimmigrants for a temporary stay in the United States and not required to leave by January 1, 2009. Nonimmigrant residents refer to certain aliens who were legally admitted temporarily to the United States for specified time periods such as students and temporary workers.

### Unauthorized Residents

The unauthorized resident immigrant population is defined as all foreign-born non-citizens who are not legal residents. Most unauthorized residents either entered the United States without inspection or were admitted temporarily and stayed past the date they were

required to leave. Unauthorized immigrants applying for adjustment to lawful permanent resident status under the Immigration and Nationality Act (INA) Section 245(i) are unauthorized until they have been granted LPR status, even though they may have been authorized to work. Persons who are beneficiaries of Temporary Protected Status (TPS)—an estimated several hundred thousand—are not technically unauthorized but were excluded from the legally resident immigrant population because data are unavailable in sufficient detail to estimate this population.

## METHODOLOGY AND DATA

Two populations are estimated in order to derive the unauthorized population estimates: 1) the total foreign-born population living in the United States on January 1, 2009, and 2) the legally resident population on the same date. The unauthorized population is equal to 1) minus 2). It was assumed that foreign-born residents who had entered the United States prior to 1980 were legally resident since most were eligible for legal permanent resident status.<sup>1</sup> Therefore, the starting point for

<sup>1</sup>The Registry Provision of the Immigration and Nationality Act (INA) allows persons who have been in the United States since January 1, 1972 to apply for LPR status. Additionally, persons who had lived in the United States before 1982 as unauthorized residents were eligible to adjust to LPR status under the Immigration Reform and Control Act (IRCA) of 1986.



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the estimates was January 1, 1980. The steps involved in estimating the components of each population are shown in Appendix 1. Data on the foreign-born population that entered during 1980-2008 by country of birth, state of residence, year of entry, age, and gender were obtained from the 2008 ACS. The ACS is a nationwide sample survey that collects information from U.S. households on social, demographic, and economic characteristics, including country of birth and year of entry of the foreign-born population. The ACS consists of non-overlapping samples from which information is collected monthly over the course of a year. The ACS was selected for the estimates because of its large sample size, about 3 million households in 2008 compared to 100,000 for the March 2009 Current Population Survey, the primary alternative source of national data on the foreign-born population.

Data on persons who obtained LPR status by country of birth, state of residence, age, gender, category of admission, and year of entry were obtained from DHS administrative records maintained in an application case tracking system of U.S. Citizenship and Immigration Services (USCIS). Data on refugees arriving in the United States by country of origin were obtained from the Department of State. Data on persons granted asylum by country of origin were obtained from USCIS for those granted asylum affirmatively and from the Executive Office of Immigration Review of the Department of Justice for those granted asylum defensively through removal proceedings. Data on nonimmigrant admissions by country of citizenship, state of residence, age, gender, and class of admission were obtained from I-94 arrival-departure records in the TECS system of the U.S. Customs and Border Protection. Estimates of the unauthorized population were generated for the ten leading countries of birth and states of residence, age, and gender. The Cuban-born population living in the United States was excluded from the estimates since, according to immigration law, Cubans living in the United States more than a year are eligible to apply to adjust to LPR status.

Caution is recommended in interpreting changes in the size of the unauthorized population presented in this report. Annual estimates of the unauthorized immigrant population are subject to sampling error in the ACS and considerable nonsampling error because of uncertainty in some of the assumptions required for estimation (see Limitations below). In addition, changes in the ACS, including revisions in the wording of the question on Hispanic origin in the 2008 ACS and measurement of net international migration (see U.S. Census Bureau, 2009) may have affected the size of the foreign born population and thus estimates of the unauthorized population. This report does not discuss changes in the unauthorized population between 2008 and 2009 by countries of origin or states of residence because of greater uncertainty in those estimates. For reference, Appendix 2 provides DHS estimates by leading countries of birth and states of residence for 2000 and 2005-2009.

### Limitations

*Assumptions about undercount of the foreign-born population in the ACS and rates of emigration.* The estimates are sensitive to the assumptions that are made about these components (see **RESULTS**).

*Accuracy of year of entry reporting.* Concerns exist among immigration analysts regarding the validity and reliability of Census survey data

on the year of entry question, “When did this person come to live in the United States?” Errors also occur in converting DHS administrative dates for legally resident immigrants to year of entry dates.

*Assumptions about the nonimmigrant population estimate.* The estimates are based on admission dates and length of visit by class of admission and not actual population counts. Length of visit, which is calculated by matching arrival and departure records, is subject to more error than admissions data.

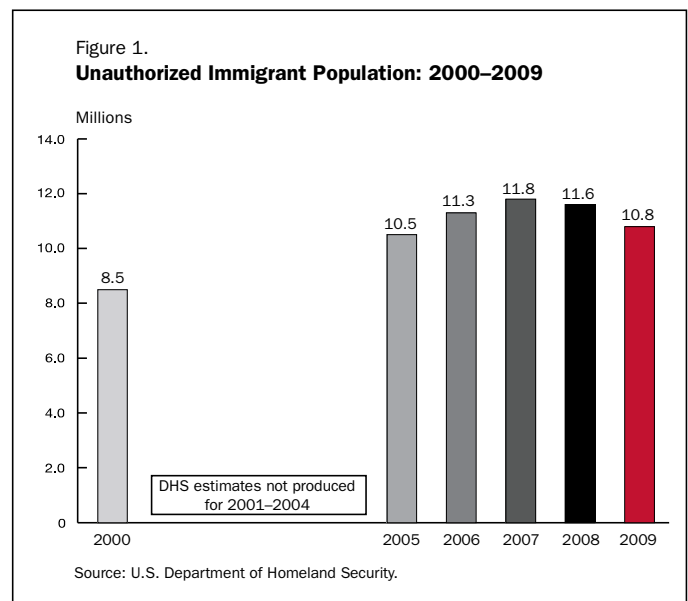
*Sampling error in the ACS.* The 2008 ACS data are based on a sample of the U.S. population. Thus the estimates of the total foreign-born population that moved to the United States in the 1980-2008 period are subject to sampling variability. The estimated margin of error for the estimate of the foreign-born population in the 2008 ACS at the 90 percent confidence level is plus or minus approximately 154,000.

*Accuracy of state of residence for the legally resident population.* State of residence for legally resident 1980-2008 entrants is assumed to be the state of residence on the date the most recent status (e.g., refugee, LPR, or naturalized citizen) was obtained; however, the accuracy of the estimates may be affected by state-to-state migration that occurred between the date of the status change and January 1, 2009.

## RESULTS

### Overall Trend

Between January 2008 and January 2009, the number of unauthorized immigrants living in the United States decreased seven percent from 11.6 million to 10.8 million (see Figure 1). Between 2000 and 2007, the unauthorized population grew by 3.3 million from 8.5 million to 11.8 million. The number of unauthorized residents declined by 1.0 million between 2007 and 2009, coincident with the U.S. economic downturn. The overall annual average increase in the unauthorized population during the 2000-2009 period was 250,000.





**Table 1.**

**Period of Entry of the Unauthorized Immigrant Population: January 2009**

Period of entry	Estimated population January 2009	
	Number	Percent
All years . . . . .	10,750,000	100
2005-2008 . . . . .	910,000	8
2000-2004 . . . . .	3,040,000	28
1995-1999 . . . . .	3,080,000	29
1990-1994 . . . . .	1,670,000	16
1985-1989 . . . . .	1,190,000	11
1980-1984 . . . . .	860,000	8

Detail may not sum to totals because of rounding.  
Source: U.S. Department of Homeland Security.

The decrease in the size of the unauthorized population between 2008 and 2009 is not likely due to sampling error in the estimates of the foreign-born population in the 2007 or 2008 ACS. The margin of error at the 90 percent confidence level was 151,000 for the 2007 ACS and 154,000, as noted above, for the 2008 ACS.<sup>2</sup> Changes in the ACS, e.g., revisions in the question on Hispanic origin in 2008 and measurement of net international migration, may have had an impact on the 2009 estimate and therefore the magnitude of change between 2008 and 2009. Trends in the unauthorized population reported by DHS are consistent with the most recent estimates by the Pew Hispanic Center showing 11.9 million unauthorized immigrants living in the United States in March 2008, 12.4 million in March 2007, 11.5 million in March 2006, and 11.1 million in March 2005 (Passel and Cohn, 2008).

<sup>2</sup>The additional sampling error introduced by shifting the reference date of the foreign born population to January 1 is not large enough for sampling error to account for the 2008-2009 change in the unauthorized population.

**Table 2.**

**Components of the Unauthorized Immigrant Population: January 2009**

	<b>2009</b>
<b>1) Foreign-born population</b>	
a. Foreign-born population, entered 1980-2008, 2008 ACS . . . . .	29,010,000
b. Adjustment for shift in reference date from July 1, 2008 to January 1, 2009 . . . . .	490,000
c. Undercount of nonimmigrants in ACS . . . . .	190,000
d. Undercount of other legally resident immigrants (LPRs, recent refugee/asylee arrivals) in ACS . . . . .	470,000
e. Undercount of unauthorized immigrant population in ACS . . . . .	1,080,000
f. Estimated foreign-born population, January 1, 2009 (a.+b.+c.+d.+e.) . . . . .	31,220,000
<b>2) Legally resident population</b>	
g. LPR, refugee, and asylee flow January 1, 1980-December 31, 2008 . . . . .	23,540,000
h. Mortality 1980-2008 . . . . .	1,520,000
i. Emigration 1980-2008 . . . . .	3,420,000
j. LPR, refugee, and asylee resident population, January 1, 2009 (g.-h.-i.) . . . . .	18,610,000
k. Nonimmigrant population on January 1, 2009 . . . . .	1,860,000
l. Estimated legally resident population, January 1, 2009 (j.+k.) . . . . .	20,470,000
<b>3) Unauthorized immigrant population</b>	
m. Estimated resident unauthorized immigrant population, January 1, 2009 (f.-l.) . . . . .	10,750,000

Detail may not sum to totals because of rounding.  
Source: U.S. Department of Homeland Security.

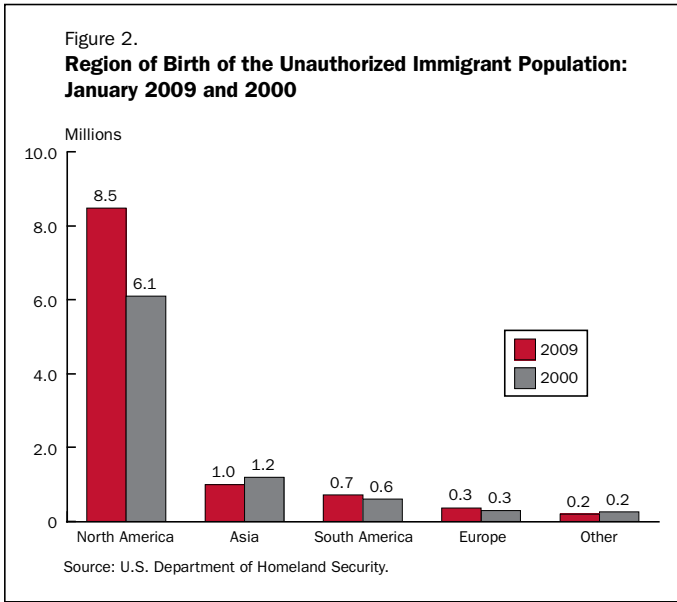
The sensitivity of the estimates to assumptions about undercount of the foreign-born population and emigration is illustrated with several examples. Doubling the unauthorized immigrant undercount rate from 10 percent to 20 percent increases the estimated unauthorized population from 10.8 million to 12.1 million. By lowering or raising emigration rates 20 percent and holding all other assumptions constant, the estimated unauthorized immigrant population would range from 10.0 million to 11.5 million. Doubling the unauthorized immigrant undercount rate and lowering or raising emigration rates by 20 percent would expand the range of the estimated unauthorized immigrant population to 11.3-13.0 million.

**Period of Entry**

Of the 10.8 million unauthorized immigrants in 2009, 4.0 million (37 percent) had entered the United States on January 1, 2000 or later (see Table 1). An estimated 0.9 million (8 percent) came to the United States between 2005 and 2008 while 3.0 million (28 percent) came during 2000 to 2004. Forty-four percent came to live in the United States during the 1990s, and 19 percent entered during the 1980s.

**Components of the Unauthorized Immigrant Population in 2009**

The size of each component of the unauthorized immigrant population estimates for 2009 is displayed in Table 2. See Appendix 1 for a detailed explanation of each entry in Table 2. For the foreign-born population, the starting point was the estimated 29.0 million foreign-born residents in the 2008 ACS that entered the United States during 1980-2008. This population was increased by 2.2 million, or 8 percent, by adjustments for the shift in the reference date from mid-year 2008 to January 1, 2009 and the addition of undercounts for the populations of nonimmigrants, other legally resident immigrants, and unauthorized immigrants. The estimated undercount of



Mexico continued to be the leading source of unauthorized immigration to the United States (see Table 3 and Appendix 2). There were 6.7 million unauthorized immigrants from Mexico in 2009, representing 62 percent of the unauthorized population. The next leading source countries for unauthorized immigrants in 2009 were El Salvador (530,000), Guatemala (480,000), Honduras (320,000), and the Philippines (270,000). The ten leading countries of origin represented 85 percent of the unauthorized immigrant population in 2009.

Between 2000 and 2009, the Mexican-born unauthorized immigrant population increased 2.0 million or 42 percent. The greatest percentage increases occurred among unauthorized immigrants from Honduras (95 percent), Guatemala (65 percent), and India (64 percent).

**Estimates by State of Residence**

California remained the leading state of residence of the unauthorized immigrant population in 2009, with 2.6 million (see Table 4 and Appendix 2). The next leading state, Texas, had 1.7 million unauthorized residents, followed by Florida with 720,000,

the unauthorized immigrant population in the ACS was nearly 1.1 million and represents 49 percent of all adjustments to the foreign-born population.

For the legally resident population, the starting point was the flow of 23.5 million LPRs, refugees, and asylees during 1980-2008. By January 2009, the 23.5 million had been reduced by 4.9 million to 18.6 million due to mortality and emigration. Emigration accounted for 3.4 million, or 69 percent, of the 4.9 million. The addition of the nonimmigrant population, estimated at 1.9 million, resulted in a total estimated legally resident immigrant population of 20.5 million on January 1, 2009. Subtracting the 20.5 million legally resident immigrants from the total 31.2 million foreign-born population on January 1, 2009 that entered the United States during 1980-2008 yields the final estimated unauthorized population of 10.8 million.

**Estimates by Region and Country of Birth**

An estimated 8.5 million of the total 10.8 million unauthorized immigrants living in the United States in 2009 were from the North America region, including Canada, Mexico, the Caribbean, and Central America (see Figure 2). The next leading regions of origin were Asia (980,000) and South America (740,000).

**Table 3. Country of Birth of the Unauthorized Immigrant Population: January 2009 and 2000**

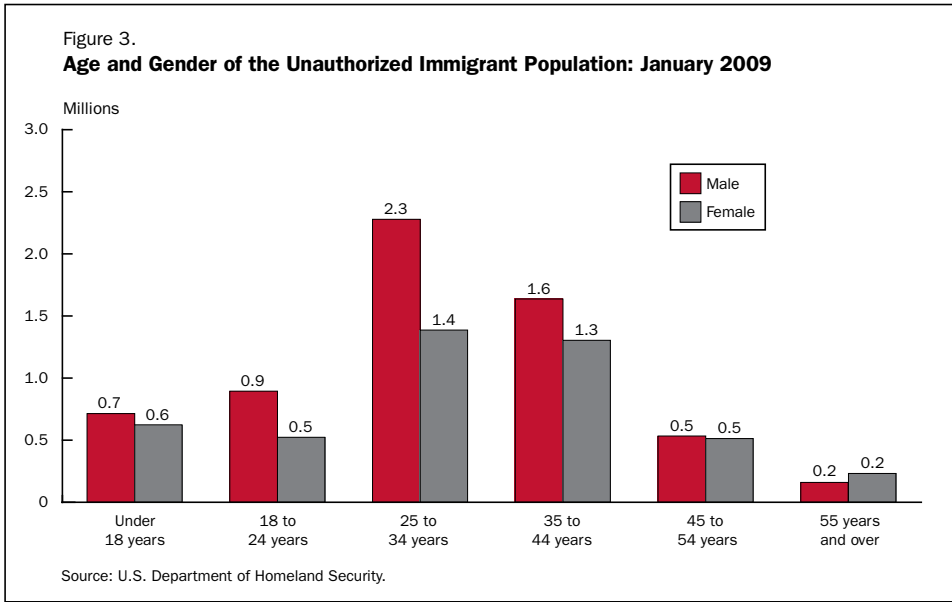
Country of birth	Estimated population in January		Percent of total		Percent change	Average annual change
	2009	2000	2009	2000	2000 to 2009	2000 to 2009
All countries . . . . .	10,750,000	8,460,000	100	100	27	250,000
Mexico . . . . .	6,650,000	4,680,000	62	55	42	220,000
El Salvador . . . . .	530,000	430,000	5	5	25	10,000
Guatemala . . . . .	480,000	290,000	4	3	65	20,000
Honduras . . . . .	320,000	160,000	3	2	95	20,000
Philippines . . . . .	270,000	200,000	2	2	33	10,000
India . . . . .	200,000	120,000	2	1	64	10,000
Korea . . . . .	200,000	180,000	2	2	14	—
Ecuador . . . . .	170,000	110,000	2	1	55	10,000
Brazil . . . . .	150,000	100,000	1	1	49	10,000
China . . . . .	120,000	190,000	1	2	-37	(10,000)
Other countries . . . . .	1,650,000	2,000,000	15	24	-17	(40,000)

— Represents less than 5,000.  
Detail may not sum to totals because of rounding.  
Source: U.S. Department of Homeland Security.

**Table 4. State of Residence of the Unauthorized Immigrant Population: January 2009 and 2000**

State of residence	Estimated population in January		Percent of total		Percent change	Average annual change
	2009	2000	2009	2000	2000 to 2009	2000 to 2009
All states . . . . .	10,750,000	8,460,000	100	100	27	250,000
California . . . . .	2,600,000	2,510,000	24	30	3	10,000
Texas . . . . .	1,680,000	1,090,000	16	13	54	70,000
Florida . . . . .	720,000	800,000	7	9	-10	(10,000)
New York . . . . .	550,000	540,000	5	6	1	—
Illinois . . . . .	540,000	440,000	5	5	24	10,000
Georgia . . . . .	480,000	220,000	4	3	115	30,000
Arizona . . . . .	460,000	330,000	4	4	42	20,000
North Carolina . . . . .	370,000	260,000	3	3	43	10,000
New Jersey . . . . .	360,000	350,000	3	4	3	—
Nevada . . . . .	260,000	170,000	2	2	55	10,000
Other states . . . . .	2,730,000	1,760,000	25	21	55	110,000

— Represents less than 5,000.  
Detail may not sum to totals because of rounding.  
Source: U.S. Department of Homeland Security.



New York with 550,000, and Illinois with 540,000. California's share of the national total was 24 percent in 2009 compared to 30 percent in 2000. The greatest percentage increases in the unauthorized population between 2000 and 2009 occurred in Georgia (115 percent), Nevada (55 percent), and Texas (54 percent).

**Estimates by Age and Gender**

In 2009, 61 percent of unauthorized immigrants were ages 25 to 44 years, and 58 percent were male (see Figure 3 and Table 5). Males accounted for 62 percent of the unauthorized population in the 18 to 34 age group in 2009 while females accounted for 52 percent of the 45 and older age groups.

**Table 5.**  
**Age and Gender of the Unauthorized Immigrant Population: January 2009**

Age	Total		Male		Female	
	Number	Percent	Number	Percent	Number	Percent
All ages . . . . .	10,750,000	100	6,190,000	100	4,570,000	100
Under 18 years . . . . .	1,320,000	12	710,000	11	620,000	13
18 to 24 years . . . . .	1,410,000	13	890,000	14	520,000	11
25 to 34 years . . . . .	3,650,000	34	2,270,000	37	1,380,000	30
35 to 44 years . . . . .	2,930,000	27	1,630,000	26	1,300,000	29
45 to 54 years . . . . .	1,040,000	10	530,000	8	510,000	11
55 years and over . . . . .	390,000	4	160,000	3	230,000	5

Detail may not sum to totals because of rounding.  
Source: U.S. Department of Homeland Security.

**NEXT STEPS**

The estimates presented here will be updated periodically based on annual data of the foreign-born population collected in the American Community Survey and on the estimated lawfully resident foreign-born population derived from various administrative data sources.

**APPENDIX 1****Components for Estimating the Unauthorized Resident Population**

The material below describes how each component was estimated. Note that the labels for each component correspond with the entries in Table 2.

**1) Foreign-born population****a. Foreign-born population, entered 1980-2008**

The estimated total foreign-born population that entered between 1980-2008 was obtained from the ACS's FactFinder. FactFinder is the Census-maintained online data portal for obtaining ACS estimates from the full sample for a particular year. Data on the distribution of the foreign born by country of origin, state of residence, year of entry, age, and gender were obtained from the 2008 Public Use Microdata Sample (PUMS). The overall FactFinder estimate for the total foreign-born population entering in the post-1979 period was reduced to remove PUMS estimates of the post-1979 Cuban-born population. Further, a three-year moving average was applied to PUMS data for year of entry to reduce heaping effects.

**b. Shift in reference date to January 1, 2009**

The reference date for the 2008 ACS, the most recently available ACS data, was shifted from mid-year 2008 to January 1, 2009 by multiplying the population of 2008 entrants by 1.72, which is the average of three ratios: the ratio of the estimated population in the 2008 ACS that entered the United States during 2007 compared to the population in the 2007 ACS that entered in 2007 and the comparable ratios for the 2006 entrants in the 2006 and 2007 ACS surveys and the 2005 entrants in the 2005 and 2006 ACS surveys. Previous DHS estimates used an average of five ratios; however, the average of three ratios better reflects recent population growth in the second half of the year.

**c. Undercount of nonimmigrants in the ACS**

Undercount refers to the number of persons who should have been counted in a survey or census, but were not. A rate of 10 percent was used to estimate the nonimmigrant undercount. This rate was used in previous DHS unauthorized population estimates for 2000 and 2005-2008 (Department of Homeland Security, 2003; Hoefler et al., 2006, 2007, 2008, 2009).

**d. Undercount of LPRs, refugees, and asylees in the ACS**

The undercount rate for LPRs, refugees, and asylees in the ACS was assumed to be 2.5 percent. This was the same rate used in DHS estimates for 2000 and 2005-2008 (Department of Homeland Security, 2003; Hoefler et al., 2006, 2007, 2008, 2009).

**e. Undercount of unauthorized immigrants in the ACS**

The undercount rate for unauthorized immigrants in the ACS was assumed to be 10 percent. This was the same rate used in previous DHS estimates for 2000 and 2005-2008 (Department of Homeland Security, 2003; Hoefler et al., 2006, 2007, 2008, 2009).

**f. Estimated foreign-born population, January 1, 2009**

The sum of 1a. through 1e. (above) is the estimated foreign-born population on January 1, 2009 that entered the United States during the 1980-2008 period.

**2) Legally resident population****g. Legal permanent resident (LPR), refugee, and asylee flow, entered 1980-2008**

The 1980-2008 flow was calculated separately for LPRs, refugees, and asylees. LPRs consist of two groups: new arrivals and those who have adjusted status. New arrivals include all persons with immigrant visas issued by the State Department who were admitted at a U.S. port of entry. For new arrival LPRs, the date of entry into the United States is the same as the date of approval for LPR status. For LPRs adjusting status, year of entry was assumed to be the year of last entry between 1980 and 2008 prior to adjustment. Year of entry was imputed when last entry date was missing (affecting approximately 40 percent of adjustment of status records during 1998-2005) using category of admission, year of LPR adjustment, and known last entry date.

Refugees and asylees included in the legally resident flow had not adjusted to LPR status as of January 1, 2009. The refugee and asylee flow was estimated based on the average time spent in the status before adjustment to LPR status—3.0 years for refugees and 5.3 years for asylees adjusting in 2008. The refugee and asylee portion of the legally resident flow therefore included refugees who arrived in the United States during the 3.0 years prior to 2009 and persons granted asylum during the 5.3 years preceding 2009.

**h. Mortality of legally resident flow 1980-2008**

Data are not collected on the mortality of legally resident immigrants. LPRs were survived to 2009 by gender and age (taking into account subsequent naturalization) using mortality rates by age and sex from 1989-1991 life tables (National Center for Health Statistics, 1997).

**i. Emigration of legally resident flow 1980-2008**

Emigration is a major component of immigrant population change. In the absence of data that directly measure emigration from the United States, researchers have developed indirect estimates based largely on Census data. For this report, annual emigration rates by year of entry (year of naturalization if the immigrant subsequently became a U.S. citizen) were calculated from estimates of emigration of the foreign-born population based on 1980 and 1990 Census data (Ahmed and Robinson, 1994). In addition, refugees and asylees, with little likelihood of returning to their country of origin, were assumed not to emigrate. The overall effective rate of emigration for legally resident immigrants in 2009 was about 22 percent after twenty years.

**j. LPR, refugee, and asylee population on January 1, 2009**

Subtracting mortality (2h.) and emigration (2i.) from the LPR, refugee, and asylee flow during 1980-2008 (2g.) results in the estimated LPR, refugee, and asylee resident population on January 1, 2009.

**k. Nonimmigrant population on January 1, 2009**

The number of nonimmigrants living in the United States on January 1, 2009 was estimated by counting days of presence between July 1, 2008 and June 30, 2009 and dividing the

result by 366. The estimate was restricted to classes of admission such as students, temporary workers, and exchange visitors where the length of stay typically exceeds two months. The estimate does not include border crossers or visitors for business or pleasure. Year of entry for the 2009 nonimmigrant population was based on the distribution of year of entry for nonimmigrants used in previous DHS unauthorized immigrant population estimates (Department of Homeland Security, 2003; Hoefer et al., 2006, 2007, 2008, 2009).

**l. Estimated legally resident immigrant population on January 1, 2009**

Adding the population of LPRs, refugees, and asylees on January 1, 2009 (2j.) to the nonimmigrant population on the same date (2k.) results in the total estimated legally resident immigrant population in the United States on January 1, 2009.

**3) Unauthorized immigrant population**

**m. Estimated unauthorized immigrant population on January 1, 2009**

Subtracting the estimated legally resident immigrant population (2l.) from the total foreign-born population on January 1, 2009 (1f.) yields the estimate of the unauthorized immigrant population.

**APPENDIX 2**

**Country of Birth and State of Residence of the Unauthorized Immigrant Population: January 2000 and 2005-2009**

Country of birth	Estimated population in January					
	2000	2005	2006*	2007	2008	2009
All countries . . . . .	8,460,000	10,490,000	11,310,000	11,780,000	11,600,000	10,750,000
Mexico . . . . .	4,680,000	5,970,000	6,570,000	6,980,000	7,030,000	6,650,000
El Salvador . . . . .	430,000	470,000	510,000	540,000	570,000	530,000
Guatemala. . . . .	290,000	370,000	430,000	500,000	430,000	480,000
Honduras. . . . .	160,000	180,000	280,000	280,000	300,000	320,000
Philippines. . . . .	200,000	210,000	280,000	290,000	300,000	270,000
India . . . . .	120,000	280,000	210,000	220,000	160,000	200,000
Korea . . . . .	180,000	210,000	230,000	230,000	240,000	200,000
Ecuador. . . . .	110,000	120,000	150,000	160,000	170,000	170,000
Brazil. . . . .	100,000	170,000	210,000	190,000	180,000	150,000
China . . . . .	190,000	230,000	170,000	290,000	220,000	120,000
Other countries . . . . .	2,000,000	2,280,000	2,290,000	2,100,000	2,000,000	1,650,000
State of residence	Estimated population in January					
	2000	2005	2006*	2007	2008	2009
All states . . . . .	8,460,000	10,490,000	11,310,000	11,780,000	11,600,000	10,750,000
California. . . . .	2,510,000	2,890,000	2,790,000	2,840,000	2,850,000	2,600,000
Texas . . . . .	1,090,000	1,670,000	1,620,000	1,710,000	1,680,000	1,680,000
Florida. . . . .	800,000	970,000	960,000	960,000	840,000	720,000
New York . . . . .	540,000	560,000	510,000	640,000	640,000	550,000
Illinois. . . . .	440,000	550,000	530,000	560,000	550,000	540,000
Georgia . . . . .	220,000	490,000	490,000	490,000	460,000	480,000
Arizona . . . . .	330,000	510,000	490,000	530,000	560,000	460,000
North Carolina . . . . .	260,000	370,000	360,000	380,000	380,000	370,000
New Jersey . . . . .	350,000	440,000	420,000	470,000	400,000	360,000
Nevada . . . . .	170,000	230,000	230,000	260,000	280,000	260,000
Other states . . . . .	1,760,000	1,800,000	2,900,000	2,950,000	2,950,000	2,730,000

Detail may not sum to totals because of rounding.  
 \*Revised as noted in the 1/1/2007 unauthorized estimates report published in September 2008.  
 Source: U.S. Department of Homeland Security.

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# **EXHIBIT 27**





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

July 8, 2010

SENT VIA ELECTRONIC COPY

Hon. Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

As Arizona's chief law enforcement officer, I write to respond to your recent statements about the security of our border with Mexico and to urge that you take immediate action to substantially strengthen our nation's fight against the most significant and immediate threat to border security: the powerful and violent Mexican drug cartels.

I remain appreciative of the new resources your Administration has begun to bring to our broken border, and I strongly support your call for major federal immigration reform.

Yet, having considered your recent remarks on these topics and your Administration's actions on border security, I am concerned that you may have misperceived the nature of the border threat, and in so doing, may have jeopardized the success of your well-intended initiatives. Your statement that our border has never been more secure, in part because we have more boots on the ground, misses a fundamental truth: ***Our border cannot be secure as long as the cartels are so deeply entrenched, so well-funded, and operate so brazenly.*** Until the cartels are dismantled, rampant trafficking of drugs, humans, guns and money across our border will persist.

The growth in size, strength and sophistication of the Mexican drug cartels is the most immediate actual threat to the security of Arizonans and other Americans from our broken border. The cartels are responsible for the murders of more than 22,700 people south of our border since 2007. These are war zone-like death tallies. They exceed the combined number of all deaths of American troops, coalition troops, and civilians in the war in Afghanistan since it began in 2001. In fact, the number of violent civilian deaths in Mexico last year also exceeded the number of violent civilian deaths in Iraq. As Attorney General Holder correctly noted last year, "International drug trafficking organizations pose a sustained, serious threat to international safety and security. They are a national security threat."

Yet, despite the proximity of the American public to this threat (many, if not most, of the killings are occurring in Mexican border towns like Juarez, Chihuahua, and Nogales, Sonora),

PROTECTING ARIZONA



Hon. Barack Obama  
July 8, 2010  
Page 2

the federal response to the situation there has paled in comparison with the \$12 billion per month we are now spending to fight in far-away Iraq and Afghanistan. Indeed, even with your new, enhanced financial commitment to the Southwest border, federal spending in this area constitutes less than one percent of our nation's annual expenditures in Iraq and Afghanistan.

For those of us actually living on the border, this imbalance is intolerable. And it is worsened by the fact that Arizonans pay a disproportionate share of the costs associated with our broken border. As I and others have repeatedly pointed out, Arizona houses a substantially higher percentage of criminal aliens than other states; yet we get paid only about 10 percent of our costs for incarcerating them—despite the clear mandate of the SCAAP law that the federal government either pay our full cost or take our criminal alien population into federal custody.

These realities must change, because the problem is getting worse. The cartels are now diversifying their business operations by attacking major sources of domestic and international commerce. Recent reports of truck hijackings and thefts from petroleum pipelines by the cartels confirm that they are finding new ways to make money, overrun civil authority, and expand their power.

Perhaps more troubling, the cartels have launched an assault on Mexican democracy itself. The recent assassination of leading gubernatorial candidate Rodolfo Torre and his staff, on the heels of an attempted assassination of the Chief of Police of Puerto Penasco, sends a clear message that the cartels believe they—and not the Mexican people, the Mexican government, or even the United States—control the border region.

The time has come for you to identify and more forcefully respond to the real threat on our border. The cartel leaders are nothing short of well-armed warlords whose continued operations near and across our border pose a significant, serious, and immediate threat to Arizona's and the nation's security.

I call on you to launch a major, multi-national, law enforcement initiative aimed first and foremost at identifying cartel warlords by name and bringing them to justice by all means available. Breaking up these cartels and restoring the rule of law within Mexico not only would bring better security to the border region, but also would greatly assist Mexican efforts to stabilize their economy and improve the conditions that compel so many Mexican citizens to seek work illegally in the United States. It would also restore safety and confidence to the many legitimate businesses (including tourism) that seek peaceful trade between the United States and Mexico.

I can think of few international policy areas of more immediate interest to the people of Arizona than restoring the rule of law in the border region and developing Mexico into a safe, stable and prosperous trading partner. For this reason, I have made the fight against the cartels my top priority as Arizona's Attorney General. The prosecutors and investigators in my Office have helped take down a number of drug- and human-smuggling rings. Using federal Merida Initiative funds, we have trained over 400 Mexican prosecutors to help improve that country's low criminal conviction rates. I also secured an important \$94 million recovery from Western Union that includes \$50 million for the four states that make up the Southwest Border Alliance to further Arizona's work in disrupting the flow of money to the cartels.

Hon. Barack Obama  
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If my Office can achieve these results on our limited state budget, imagine the impact the federal government could make if it devoted even five percent of the money it is spending on the wars in Iraq and Afghanistan. At a minimum, as I have discussed on several occasions with Secretary Napolitano and Customs and Border Patrol Commissioner Alan Bersin, I implore you to find funding to provide dollar-for-dollar federal matches to the law enforcement initiatives being funded by our Southwest Border Alliance.

Which brings me to my final point: In the absence of a new and comprehensive federal immigration law, it is just wrong for this Administration to fight state efforts to address the effects of our broken border. While I did not agree with the specific approach taken by my state when it passed SB 1070, I fully support Arizona's right to take strong action to protect our taxpayers from the substantial costs of residing along a broken border.

Your Administration's decision to challenge Arizona's law before it even takes effect — without any effort to address Arizona's costs or to effectively deal with the cartel threat — has created substantial and justifiable anger here. That anger should not be underestimated, and threatens to undermine the effectiveness of your efforts to secure needed federal immigration reform.

I strongly urge you to take two steps to address that anger: 1) focus federal law enforcement efforts on a stronger and higher profile multi-national effort to find and incarcerate the leaders of the cartels; and 2) propose real financial relief to Arizona taxpayers who have paid far more than most others of the financial consequences of a failed federal border policy. Fully funding the SCAAP law and better compensating border state hospitals for emergency treatment of immigrants would go a long way toward addressing the frustrations of Arizonans and other border state taxpayers.

I would be pleased to meet with you at any time to discuss these important issues further.

Sincerely,

A handwritten signature in blue ink that reads "Terry Goddard". The signature is written in a cursive, slightly slanted style.

Terry Goddard

# **EXHIBIT 28**

Exhibit

**Senate Public Safety and Human Services Committee**

**January 20, 2010**

Speaker	Time	Statements
Sen. Pearce	6:52	<p>Anyway, this bill I believe is a critical, critical issue. All we're simply going to do in this bill is three basic things. One is take the political handcuffs over of law enforcement. And I think everybody is aware that law enforcement has inherent authority. And you'll have argument, you know, that it's a federal issue. It's a federal responsibility to set policy. But if people understand the constitution and if they've been a student of the case law by many courts, the 5th, the 6th, the 8th, the 10th Circuit Courts, and even as recently as 2005 in a United States Supreme Court Mueller v. Mena, has made it very clear states have inherent authority and law enforcement has inherent authority. The only impediment to them enforcing our laws are political policies and decisions that are placed on them. And this is an attempt to remove those and let officers use the good sense and the discretion and the training they have to make those determinations case by case.</p>
	8:39	<p>And let me tell you how it's written. It's written in a permissive manner Madam Chairman. The reason it's written the way it's written is because it not only gives a tool to law enforcement, but it provides an ability such as Sheriff Dever – who is one of the folks who had asked me to write it this way – he says one of the problems they have on the border counties is the Border Patrol is too efficient. And they have an illegal alien in custody that is a major investigative lead or a suspect in a crime and what they would like is the ability to keep them in custody while they complete that investigation. And what happens is the Border Patrol takes them away and they'd like a state law that lets them keep them – allows them to keep those folks in custody when they get a focus of a major investigation. So this is written in a permissive manner that they can use it or turn them over to ICE and work with Phoenix Police and many others.</p>
	9:29	<p>As you'll see, the support for this bill is really, really long. And the reason is I've worked very close with law enforcement, the boots on the ground, to make sure that we've written this in a manner and give them the discretion they need, no direct liability on the police officer on the street to do what he needs to</p>

		<p>do. But the position simply is to make sure policy makers don't put policies in place that restrict law enforcement. No other law, no other law do we put conditions on when and where you can ask, as you know. And that's actually these – what so-called sanctuary policies are illegal. Under A.U.S.C. 1644 and A.U.S.C. 1373 it says you will not restrict law enforcement from communicating with ICE and reporting that information. Yet we have these policies all over the nation. The sad part Madam Chairman, these policies are one of the greatest dangers to our neighborhoods and our nation. And talking – and we just did a survey with – and I'll let Phoenix Police Association, they're going to speak, talk about this – they did a survey among their officers and overwhelmingly about 85% wanted these impediments removed. They felt like they were the greatest threat to their ability to help in a safe neighborhood approach.</p>
	11:10	<p>Senator – Representative Cavanaugh has worked very hard on a provision to deal with day laborers. As you know, the problem with the folks that were virtually shutting down businesses in Phoenix – Pruitts for example – and this is hopefully to give law enforcement the tools to deal with the significant day laborer issue. And I think it's well written. There's some tweaks which I appreciate Madam Chairman has your name on an amendment. I think those are probably good things.</p>
	12:03	<p>Let me see, a couple of other quick things – this bill [is] huge and critical – we've worked with law enforcement. And one of the things we worked on – just questions I'm anticipating a little bit here – is that we're providing ability through the funding we give Maricopa County they will go anywhere in the state. We're trying to create a couple of vans that would be driven by volunteers that will go anywhere in the state and pick up these folks for agencies that don't have jail space or capacity to assist them in any way we can. We have an agreement with Border Patrol that they will take these folks any time that we deliver them to them if jail space is a problem, that we can deliver them directly to Casa Grande where they have a holding facility or to the border and they'll take them. So we've crossed all the bridges that I think need to be crossed concerning the implementation of this policy and allow police officers to do their job, protect our citizens. And we have lots and lots of data. More than anybody ever wants. But I just think this is good policy. Enough's enough. We need to enforce our laws, protect our neighborhoods and keep our oath of office.</p>



<p>Sen. Melvin</p>	<p>14:05</p>	<p>I would just like to say a few words in support of the bill. And I address this to everyone in the room and everyone that's listening to the recording of these proceedings. You know, I think we often lose sight of the fact that our poorest border and costs related to illegal aliens are costing the citizens of Arizona in excess of two billion a year. If we could solve this issue and this legislation takes us in that direction, we could in many ways almost eliminate our budget woes. These gut wrenching billions in budget deficits. This is directly related to reducing those costs to the Arizona taxpayers in hospitalization, education and incarceration. In all of those areas we have 20-30% of students, patients and inmates who are illegal aliens and the total cost is in excess of two billion. I would ask you to look at a website Fair.com – the Federation for American Immigration Reform where it's well documented. These are not fictional numbers. They're real numbers. For too long we've expected the federal government to solve the border issue but we have an obligation as a border state to do all that we can to make sure this border is secure and I applaud Senator Russell Pearce for sponsoring this bill and I urge all of my Committee Members to vote for it. Thank you.</p>
<p>Mark Spencer</p>	<p>46:25  46:47</p>	<p>Madam Chairman, Members of the Committee, thank you for your time. And just as importantly, thanks for your service to the State. You know, I'm sitting in the back of the room and I hear this word come up. Senator Melvin, you used the word. And two of the speakers used the word. The word was cost. Let me show you some real costs attributed and connected with illegal immigration.</p> <p>As the President of the Phoenix Law Enforcement Association I have the privilege and honor of representing over 2400 rank and file police officers and detectives who serve in the first responder capacity. It's a great privilege and honor and Phoenix Police officers have paid a cost when it comes to illegal immigration. On February – on Friday, May 27, 1988, Phoenix Police Officer Ken Collings was murdered by an illegal alien carrying out a bank robbery. On Sunday, December 21, 1997, Phoenix Police Officer Brian Wilbur was seriously injured when he was struck by a car driven by an intoxicated illegal alien. On Friday, March 26, 1999, Phoenix Police Officer Marc Atkins was murdered in an ambush by illegal aliens. On Monday, March 26, 2001, Phoenix Police Officer Jason Schechterle was severely burned when an illegal alien driving a taxi cab collided into the rear of his police car. On Saturday, April 12, 2003, Phoenix Police Officer Robert Sitek was shot</p>

		<p>and seriously injured by an illegal alien involved in an armed carjacking. On Tuesday, September 18, 2007, Phoenix Police Officer Nick Erfle was murdered by an illegal alien during a contact reference a civil traffic violation. On Sunday, October 16, 2007, Phoenix Police Officer Brett Glidewell was shot in the chest by an armed illegal alien who had been stopped for a civil traffic violation. On Sunday, October 25, 2008, Phoenix Police Officer Shane Figueroa was killed by an illegal alien who was driving a vehicle while intoxicated. This illegal alien was a multiple crosser with outstanding warrants. In reference to Shane’s death, investigators told me that while Shane’s life ebbed away on the street, the suspect in the case, the killer of Shane Figueroa took the time to urinate on the side of the road. There is some cost for you when it comes to illegal immigration.</p>
	48:37	<p>I’ve heard the concern for small towns when it comes to Senator Pearce’s legislation. But really it seems like the big towns that are struggling with the common sense and the rule of law such as Mesa or Phoenix. When I held the position of Grievance Chair, my main focus was on discipline and on March 1, 2007, I assisted Officer Ryan Larson as his PLEA rep. The following allegation of misconduct generated an internal investigation, which cost money, and Ryan’s Notice of Investigation read as follows: “On February 25, 2007, at approximately 0800 hours, you conducted a traffic stop resulting in the detention of a Hispanic male. You subsequently turned that male over to ICE resulting in the individual’s deportation. If sustained, it would be a violation of Operations Orders 1.4.3.”</p>
	49:24	<p>The Phoenix Police Department routinely as a matter of common sense policing tactics engages in proactive strategies when it comes to addressing various crimes; two examples being prostitution and DUI, both misdemeanors. It’s clearly understood that serious crimes orbit around these misdemeanors and a proactive heads numerous problems off at the pass. Starting around March 2004 when it came to illegal immigration in the Phoenix Police Department, that strategy was abandoned. The Phoenix Police Department routinely as a matter of common sense allows its personnel to work with federal partners. When on the street I had the opportunity to work with the Secret Service, with counterfeiting operations, postal inspectors, ATF agents. Our robbery detectives as a course of bank robbery business have contact with the FBI. But when it came to illegal immigration starting around 2004 the Phoenix Police Department pulled the plug. They turned the</p>

		<p>switch off and restricted an isolated partnership with ICE. This abandonment was clearly seen in Ops Orders 1.4, simply translated, Ops Orders 1.4 mandated that an illegal alien commit another crime or serious felony before an officer could contact ICE. When it came to illegal immigration another crime, another victim, another cost, more damage were required before a phone call could even be made to ICE. It was in this type of atmosphere that our police officers were asked, what do you think about this policy? And they made a clear connection – 8 out of 10 of our officers saw the clear connection between quality of life in Phoenix and illegal immigration, calls for service and illegal immigration.</p> <p>50:55 I think three issues are important to the Committee Madam Chair that they know. First, our members clearly saw this connection and made it very clear in their presentation that they needed the policy changed. The immigration policy did not cultivate deterrence. Number two, PLEA does not believe that skin color dictates conduct. Ethnicity is not indicative – and I repeat is not indicative of criminality. Crime is a choice. And thirdly, the federal government is miserably failing at protecting the borders. The border patrol needs all the support and assistance it can get.</p> <p>51:31 Department homicide reports clearly show that the Hispanic/Latino community was bearing an unfair burden in the City of Phoenix. As victims of homicides in 2006 and '07 Hispanics were at least three times more likely to be homicide victims than any other race. In '06 and '07 out of 10 homicide victims, 6 were Hispanic. That's a cost. Detectives relayed to us that half of those 6 victims were killed by illegal aliens. It should be noted that in 2008 statistics roughly showed a drop in this number. Hispanics were at least 2 times more likely.</p>
Mark Spencer	52:09	<p>On October 15, 2008, Chief Harris stated in ENS that a 24% decrease in violent crime and a 26% decrease in auto thefts can be partly attributed to “a new immigration policy that allows our officers to use their discretion when dealing with criminal aliens” and “unprecedented cooperation between our investigative units, our state, federal, local partners.” If this is what the new policy did, one could wonder beyond what I’ve presented, how much crime was generated as a result of the blind eye old policy. PLEA believes along with proactive and discretionary immigration policies, this proactive immigration legislation as well as proactive immigration enforcement and prosecution are the fueling factors in deterrence. The rule of law</p>



		<p>is not complex, it's reasonable. And I would ask the Committee to seriously consider supporting this legislation. If you really want to get a picture of the costs of illegal immigration, come with me to a police funeral or the hospital of an officer that's been killed or injured by an illegal alien. Thank you for your time.</p>
Sen. Rios	53:18	<p>Madam Chairman. Mark, thank you very much for your testimony. I had a question. You raised an interesting statistic that speaks to perhaps an overrepresentation of Hispanic victims of certain crimes. And I think there are probably all of us on this Committee very concerned about human smuggling and the drug trade and the coyotes and a lot of the very dangerous crime associated with them that's coming to Phoenix. My question is, is there any concern that by broadening the law and you know, increasing the penalties for "trespassing" that we will in essence disincentivize many folks that are here from reporting some of these very serious crimes because they'll be afraid for their own well-being or be afraid of being deported. Will that in effect make your job more difficult if we have less people reporting it?</p>
Mark Spencer	54:14	<p>Madam Chair, Senator, yes. And that's a valid concern. And certainly the minority communities, they'd better be sensitive to what's taking place in their communities. There is absolute validity to that concern. But in addressing that I will say two things to you Senator Rios. First of all, past history is indicative of future performance. The Phoenix Police Department has a stellar record, a record of national prominence when it comes to not engaging in the racial profiling. We're not under a federal mandate by the FBI because the second reason Senator Rios, is our policy made it very clear to our officers the focus is not on victims or on witnesses. It's not on victims or witnesses. And even in that situation you'll see I think federal immigration law allows what's called a U-Visa to protect and maintain the sanctity of victims and the importance of witnesses. The concern is there but I think our past history is an indicator of our future performance. You allow us discretion with weapons, with high tech equipment, and you have entrusted your police officers throughout the state on people's constitutional rights and how we contact, search, detain, arrest, and I think the officers in the State of Arizona have given you a firm foundation to build confidence in the legislation that Senator Pearce is promoting. The concern is legitimate. I think our track history and even an example of our policy indicates those concerns are addressed legitimately.</p>

Sen. Pearce	1:12:33	Madam Chairman, thank you very much. I've heard a lot of testimony here today that really concerns me that's just misinformation. First of all, we have a duty. You know, to believe that this illegal alien problem somehow is a net loss is absolutely the farthest thing from the truth. And the data is out there significantly. The cost to educate, medicate and incarcerate illegal aliens and the burdens to officers has been testified. Job loss – 26 year high in unemployment. 26 year high in unemployment. Don't you think it's about time to start protecting American jobs?
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# **EXHIBIT 29**

**Testimony of Members of Arizona Legislature  
Regarding Senate Bill 1070  
April 19, 2010**

Speaker	Time	Comments
Senate President Burns	19:30	Senate Bill – Final Reading of Bills.
Secretary	19:36	SB 1070 10:08:25 Fast reading by Secretary “unlawfully present aliens”
Senate President Burns	19:59	You’ve heard the third reading of Senate Bill 1070. Those in favor of the measure will vote “aye.” Those opposed will vote “no.” The system is now open. The Senate will proceed to vote.
Senate President Burns	20:16	Senator Chevront, District 15.
Senator Chevront	20:18	Thank you, Mr. President. I’d like to explain my vote.
Senate President Burns	20:20	Yes. Proceed.
Senator Chevront	20:21	Mr. President; members.  In the last couple of weeks, we’ve been called the Alabama of the 21 <sup>st</sup> Century. We have groups accusing us of creating a police state in Arizona. We have national groups out there urging a boycott at a time when we are in a fiscal crisis. We are passing a bill – or attempting to pass a bill – that almost everyone says will be ruled unconstitutional. The federal authority to regulate immigration derives from various sources, including the federal government’s power to establish a uniform rule of naturalization. That’s the U.S. Constitution, Article I, Section 8, Clause 4, its power to regulate commerce with foreign nations, and its broad authority over foreign affairs. Thus, the Supreme Court has established the power to regulate immigration is unquestionably exclusively a federal power.
	21:17	So the question is: why are we going down this route? I know that people in times of stress are very unhappy with the status quo. They’re blaming others who may be not able to communicate with them well. But by passing this law, we’re going to put anybody who walks down the street in jeopardy of being arrested. We’re going to make criminals out of individuals who just happen to be grocery shopping, picking their kids up at school, who are going to visit relatives. We are going to be making people, who happen to have family members in their home who might not be documented, criminals.
	21:56	I supported the employee sanction law. It’s a matter of supply and demand. People are coming to this country for the same reasons almost

Speaker	Time	Comments
	22:46	<p>everybody in this country – our forefathers and mothers – came to this country. We realize that the reason they’re coming here mostly is for jobs, and we try to address that. We know that that program doesn’t seem to be working that well, because nobody has been, suspended their license or has been arrested. But in reaction, we seem to be going down this route, and I think it’s something that’s extremely un-American. We are a country of opportunity and a welcoming nation, and to have the rest of the world look at the State of Arizona in this light is very damaging – not only to someone, who like me, who’s a native – but to our whole state and to future generations.</p> <p>And I vote no.</p>
Senate President Burns	22:50	Senator Huppenthal, District 20.
Senator Huppenthal	22:56	Mr. President, I’d like to explain my vote.
Senate President Burns	22:58	Yes. Proceed.
Senator Huppenthal	23:01             23:59	<p>Mr. President, I’m somebody who cherishes the Statue of Liberty and the slogan at its base, near and dear to my heart, and I didn’t come naturally to the debate over illegal immigration. But it started with me at the library when I was out talking to citizens, and a man by the name of Mr. Perez came up to me, and he grasped me by the collar, and he said, “My cousin and my nephew were murdered by illegal immigrants. What are you doing to help us?” And when I got the chairmanship of the Judiciary Committee, I went to the chief scientist at the Department of Justice, and I said, tell me what you know about illegal immigration and its impact on crime. And he told me that the illegal immigrants had lower rates of crime because they were afraid of involvement with the, the authorities, with police officers.</p> <p>But as I went back and looked at the data, I could see that the brain trust back in Washington, D.C. and Harvard was just missing it. You could – there was overwhelming evidence that illegal immigration and the way illegal immigrants were being treated was having a profound impact, not only on Mr. Perez’s life but many of our citizens’ lives. And we have seen that by following good policies, we have seen a huge benefit. We have seen the murder rate in the City of Phoenix drop from 250 to 125. You don’t see any discussion of this in the mainstream media, and the reason is – it happened right over the concurrence of Senator Pierce’s law on restricting the employment of illegal immigrants. That’s just huge – 50% reduction. And the biggest beneficiaries of that have been low-income minorities. We – in our Caucasian neighborhoods, this wasn’t a phenomenon that was being visited upon us. This was a</p>

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	25:24	phenomenon that was being visited on minorities. That's where those murders were taking place – many of them not to be cleared.
	26:01	What Senator Pierce has done, resolute under a non-stop, unceasing, hateful attack on him personally, has just said – we want to stand by the rule of law and that we in America, we need to stay, be stayed the land of the melting pot. We have seen parts of our neighborhoods nuclear-bombed by the effects of illegal immigration. When I go out at lunchtime, I'll drive concentric circles around here, observing neighborhoods. What is going on? And you see neighborhoods that have just been devastated by the effects of illegal immigration. It's not tolerable. That's the message that Senator Pierce has sent out.
	26:22	And we've had accusations of racism, racism, racism, against these stops. I've taken the time to go down to the Sheriff's Office and go over their procedures, and from what I can tell, it's by the book, by the book, by the book. But we don't see that reported in the mainstream media.
	27:01	Now, is there, is there officer error? Let me assure you, you don't have to have a brown skin to be a, to be the victim of officer error, police enforcement error. Undoubtedly there is, and that should be – there is a proper role for the media to cover that. And it's not appropriate. But the bottom line is, is that by going with the rule of law, enforcing the rule of law, we have saved countless people's lives, countless destruction of people's property, a huge reduction that we've seen in automobile theft rates – because we've got the – we're slowly getting this situation under control.
	27:01	Now, I think that we need to stay even-balanced on this. I think we need to very carefully follow up to make sure of what the effects are of this on our citizens. We want to be respectful of civil rights. But I think this legislation is appropriate and necessary for us to bring this situation under control, and I vote "aye."
Senate President Burns	27:21	Senator Landrum Taylor, District 16.
Senator Landrum Taylor	27:26	Thank you, Mr. President. Explaining my vote –
Senate President Burns	27:28	Yes. Proceed.
Senator Landrum Taylor	27:30	<p>Alright. There are quite a few concerns that I have with this legislation, and unfortunately I won't have a lot of time to get into every single one of them.</p> <p>But I know, as I've had numerous conversations with constituents, one of</p>

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	27:39	the main things that has come forward is just this whole issue of the unconstitutionality, being able to infringe upon individuals' privacy. I looked at, at what the League of Cities and Towns sent, and the fact that they're, they're not in support of this particular piece of legislation. And particularly when we think about someone coming into our state, even folks that are even thinking about planning vacations and things of that nature – is this really going to be a state that people are want to come, going to want to come to, whether it's to visit on a temporary basis, or a business – are they going to want to relocate here? I mean, these are things that I have a huge concern about, with what could happen.
	28:28	I just do not see where this legislation can create a sense of peace. I see where chaos will, will come out of it. And the reason for that is, you know, we'll have situations truly where you will have neighbors perhaps turning against neighbors, friends against friends, maybe even family against family. And all because of, of fears – fears and assumptions that could be made.
	28:58	It's a wrong road that we're travelling down with this legislation. I realize there are vast concerns as it relates with the conversation of immigration. We've all talked about that. But is this the solution to what the concern is? And I don't see that as being the case with the way this legislation is drafted. It is a way to where our state will be going completely backwards. As a, as a native here, is it, is it something that I could be proud to see a law like this coming forward? I just can't, because I see where we will be damaging the reputation of our state and the lives of individuals, just because of assumptions or stereotypes.
	29:46	I, for one, could not support this legislation and I really would hope that it doesn't make it out of this chamber today. And for that, I vote no.
Senate President Burns	29:58	Senator Braswell, District 6.
Senator Braswell	30:04	Mr. Chair, I rise to address this issue.
Senate President Burns	30:10	Proceed.
Senator Braswell	30:13	Mr. Chair, I am very interested in our Declaration of Independence and the history of our great nation, and state rights. And today, in preparation for this meeting and our gathering here to vote on this legislation, I reviewed our Constitution. And the American colonies declared to the world themselves free and independent states. Because individuals equally possess these rights by nature, government derives its powers from the consent of the governed. Our forefathers sought to

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	31:19  31:33	<p>secure the blessings of liberty to ourself and our posterity. Their challenge was to create the institutional arrangements for limiting power and securing the rights promised in the Declaration of Independence while preserving a republican form of government that reflected the consent of the governed.</p> <p>I'm very concerned with the situation here in Arizona, and I think that the action that we're taking here today is well within the boundaries of what was intended by our forefathers.</p> <p>And with that, I vote "aye."</p>
Senate President Burns	31:38	Senator Melvin, District 26.
Senator Melvin	31:43	Mr. Chairman, I rise to explain my vote.
Senate President Burns	31:46	Yes, proceed.
Senator Melvin	31:47  32:03  32:56  33:26	<p>Let me just say a couple of things. One, words have meaning. Each and every word has meaning. And I'd like to just talk about legal alien for a minute.</p> <p>I was an American business man overseas for 12 years – two years in Korea, eight years in Japan and two years in Pakistan. Each and everyday, 365 days of each of those 12 years, I carried two documents with me. One was a legal alien registration card issued to me by the country where I was living and working. And the second was my American passport. I carried those two documents with me day in and day out for the privilege of being in those countries to live there and to work there. They were not a burden to me at all. And I took no affront at the word alien and no one else should.</p> <p>The second point I want to make is – the federal government has dropped the ball on this issue for over 20 years. And elected officials of both parties have been pointing their fingers east to Washington saying it is a federal issue. Well we have an obligation in this state to also do what we can to protect life, liberty and property in this state. And that's what we're about here today.</p> <p>Next, I want to say that the illegal alien situation in this state is costing us collectively over \$2 billion dollars a year in related costs to education, incarceration and medication. And that is a direct hit to the budget and that's what is causing a lot of our budget problems that we have been wrestling with last year and this year. Another point – and those \$2 billion dollars by the way, for the press that's here, I would encourage you to go to the fair.org, Federation for American Immigration Reform,</p>



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	34:16	click on Arizona, you'll see the figures. They are all there.
	35:05	The next point I want to make, on this issue of alienating people. Back in 2004 we had Prop 200. A lot of people said it's going to split the state right down the middle when we required photo ID to register to vote; photo ID to vote and proof of citizenship for Social Services. And when that went to the ballot, roughly 49% of Hispanic Americans voted for it and roughly 55% of all Arizonans voted for it and we're a better State for it and other states are following our lead on that legislation.
	35:38	Now we've had a rancher killed on the border. Land is being trashed. Farm animals are being killed and this should not be happening in the United States of America. My father did not fight in World War II from the Philippines to Okinawa for – to have this almost anarchy taking place in our own country. And this bill goes a long way to bringing law and order to the state.
Senate President Burns	35:57	Senator Gray, District 10.
Senator Gray	36:02	Mr. President, I request to explain my vote.
Senate President Burns	36:05	Proceed.
Senator Gray	36:06	Members, I hope you will bear with me on 21 reasons and that's just a short list of why I support this bill.
	36:16	Phoenix Officer Shane Figueroa killed by an illegal. Phoenix Officer Nick Erfle murdered. Phoenix Officer Gidwell shot in the chest. Child serial rapist in Chandler. Fifteen-year-old raped in Scottsdale by a school janitor. Fifteen-year-old kidnapped and raped in Guadalupe. Phoenix Officer Mark Atkinson murdered. Phoenix Officer Robert Sitek(sp??) murdered. Chris Eagle, Park Ranger in southern Arizona, murdered. Border patrol agent James Effling(sp??) murdered, Deputy Sean Pierce(sp??) shot by homicide suspects. All of these are by illegals.
	37:05	Number 12 on my list. Deputy Lou Arkinsinger(sp??) shot by homicide suspects. Sergeant Manuel H. Tapia was shot by a drug suspect. DPS Officer Robert K. Martin, 57, shot to death. His assailant Ernestino Fogato(sp??) Martinez, a 19-year-old ex-convict illegal. Agent Richard Faus(sp??), 37, of the United States Drug Enforcement Agency, murdered. Agent Alexander Cripnik(sp??), 27, Border patrol, murdered.

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	38:29	<p>Jason Scheckterle, Phoenix Officer, suffered fourth degree burns when his patrol car went up in flames, hit by an illegal on drugs. A Gilbert mother killed by an illegal alien, fleeing from police in Mesa. Jason, decorated Iraq war veteran, stabbed in his own front yard by an illegal alien. Mother, a legal immigrant, killed by an illegal alien trying to ram sheriff's deputy's car in Phoenix. Tracy, 17 years old, killed by a drunk illegal alien. And there was also another young lady several years ago killed by an illegal in my district.</p> <p>In support of the Phoenix Law Enforcement Association, in their ability to use the most effective laws that we will have on our books, I vote "aye".</p>
Senate President Burns	38:43	Senator Gould, District 3.
Senator Gould	38:50	Thank you, Mr. President. I rise for an explanation of my vote.
Senate President Burns	38:52	Yes, proceed.
Senator Gould	38:53  39:29	<p>Members, the United States Constitution says that the federal government shall protect the states from foreign invasion. The federal government has not done that. We have waited and we have waited and we have waited. We began to push our own Arizona initiatives earlier in this decade. We actually thought the Bush Administration would actually do something, they failed to do something. We thought maybe the Obama Administration would do something, they failed to do something. We thought maybe former Governor Napolitano might do something, but she's proved to be more concerned about returning service men and what bumper stickers might be on people's cars.</p> <p>I told my constituents since the federal government will do nothing, that Arizona would. We need to protect our citizens. We heard in committee last week that essentially, we've given up American territory 60 miles from the border. People are living in no man's land. They are being attacked by foreign invaders. They are being killed by drug smugglers. Arizona needs to do something. Arizona needs to act. I vote "aye".</p>
Senate President Burns	39:58	Senator Allen, District 5.
Senator Allen	40:05	Thank you, Mr. President. I'd like to explain my vote.
Senate President Burns	40:07	Yes, proceed.
Senator Allen	40:08	Like many federal programs, immigration is another broken program that is not working. And there apparently is no will in the federal

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		<p>government to make it work right. We could have guest worker programs. We could, that would work. And we've had them in the past that have worked and we could have them now where people could come legally and work, temporarily or for a few months and go back. But there's no will in the federal government to do that. There's no will in the federal government to fix our border. And as Senator Gould just said, we are fighting this battle 60 to 100 miles from that border when we could solve many of the issues that we are facing today by standing on that border and stopping the problem there.</p>
	40:51	<p>There are people now coming who have no desire to work. That's not why they're here. They are here to cause harm and criminal harm. And they bring drugs into our country and human smuggling. And prey upon these innocent people who are looking for a better life and charge them enormous amounts of monies to come here. It's terrible that we are allowing people to sell human souls in that way. And the crime that's happening in our State is horrendous, just as Senator Gray read that list of all the people whose lives have been changed.</p>
	40:28	<p>Our borders can be sealed. But there is a way that we can fix this problem. But again, there's no will within the federal government. And so now it comes down to the ability of our state to do something to protect our citizens who live here. The hearing that we had last Tuesday on the violence on our borders was very alarming to me. And every citizen in Arizona should have been there to hear that hearing, to understand what is happening to our citizens there on the border.</p>
	41:28	<p>In my district, when I go around talking in my district, the number one concern, of course, has always been the budget. But the number two concern that people always ask me is 'what are you doing about illegal immigration; what are you doing about securing our border.' And of course the answer has been 'well, it's the federal government.' The federal government is not acting, but we on the state level, we have tried to do things such as Prop 200 a few years back, and many bills that have come through this chamber as you know. So we have been trying to do something.</p>
	42:29	<p>1070 is a bill that has been worked and reworked and there were things in that bill that alarmed me. I do not want to live in a police state. And I asked many questions of the sponsor, many questions of other people. I reread and reread the bill. Went back with questions that other people had brought up and I found that much of the e-mail was sent by people who had never read the bill and was just going off somebody else's opinion about what they thought was in the bill. And so a lot of things were put out there in the public that people were alarmed about, but</p>

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	43:18	<p>never got the right answer back. And they didn't read the things that Senator Pierce put out over and over and over again to explain the fears that people had and the many, many things he did to try to address those, amending the bill quite a bit.</p> <p>I've had my question satisfied and if any of these fears prove to be true, then I will be the first one back here in January to try to address those things. But I am satisfied now that we have constitutional protections in there. And that this is just another means for us to be able to know and understand who are here legally, who are not, and to try to do something about this invasion of our state; the cost to the taxpayers; the harm that's been causing from those who are coming here to commit crime and violence for the gain of money. And for all of those reasons, I vote "aye".</p>
Senate President Burns	44:04	Have you all voted? Senator Verschoor, District 22.
Senator Verschoor	44:20	Mr. President, explanation of my vote.
Senate President Burns	44:22	Yes, proceed.
Senator Verschoor	44:26	<p>Mr. President, I concur with several of the folks today who have spoken in favor of this bill today. Folks – it's a shame that we even have to do this bill today. Because what we have here, is we have an abdication of our federal government's responsibility to enforce immigration laws here, to protect our borders, to protect us from the criminals that are crossing our borders who are killing our citizens; who are robbing their homes; invading their homes. And we have asked over and over and over again for that protection. So we have turned to our local law enforcement, to our local protectors of our rights and our property. And now this bill today will take the handcuffs off them, where so many of them have been handcuffed by local officials who don't want our local officers enforcing immigration laws. And that's why we're doing that today.</p>
	45:30	So today we stand up here, giving our state the ability to enforce these laws against illegal immigration through our state. And with that I vote "aye".
Senate President Burns	45:52	Senator Miranda, District 13.
Senator Miranda	45:55	Thank you, Mr. President. Explaining my vote.
Senate President Burns	45:57	Yes, proceed.

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Senator Miranda	45:59  446:44  47:48	<p>I concur with Senator that said it is a shame. It is a shame that we're voting on this bill. Because with this bill we're encouraging, are sacrificing our civil rights. We're encouraging racial profiling. By making police prioritize the lady that is simply waiting at the bus stop, wanting to go to work. Instead of asking police departments to concentrate on the real criminals. It is a shame. You know, we all want something done on the border issue. We want action. This is not it. This is not it.</p> <p>You know, DPS came out with a report 2½ years ago. They investigated themselves whether or not they were doing racial profiling. Well guess what? They were. And they decided they needed to fix it. And hopefully they've done that job. You know, you know it's popular that I hear that we're going to take the handcuffs off the police. What we're doing with this bill is we're putting handcuffs on our communities. That's what we're doing with this bill. You know, you know the popular way of getting people to listen is making you afraid of something and telling you who is to blame for that. Who's to blame for losing your job? Who's to blame for losing your home? Who's to blame for all the other things that are happening right now in Arizona? That's a popular way of doing things, you know.</p> <p>The other side of this that we're not listening to is the economic impact that Arizona's going to have. People in other states, businesses in other states are saying – what's wrong with Arizona? Why would I want to take my conference to that state when they're, they're doing racial profiling and giving up civil rights? Why would I do that? I can take my business and do it in another state that's more tolerant. You know, you know we – the politics of extremism and hate, I want to believe can be overcome by the politics of moderation and respect. And you know, people are so desperate. They are so desperate for an answer to this situation, that they'll drink the sand thinking it's water. And with that I vote no.</p>
Senate President Burns	48:55	Senator Pierce, District 18.
Senator Pierce	49:02	Mr. President, may I explain my vote.
Senate President Burns	49:03	Yes, proceed.
Senator Pierce	49:05	Mr. President, it's disappointing to me to hear the myths and the misinformation that continues to be spread around. You know, very simply, illegal is not a race – it's a crime. You know, and I appreciate Senator Linda Gray's, her comments from and concerns and expressing the heartfelt sorrow that has been felt by many families for the deaths

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	49:40	and maimings of our citizens.
	50:06	You know, one of the greatest respects, things we can do is have respect for our Constitution and the rule of law. It's disappointing to me that we have folks talking about that there's things we can do or the border should be secured, but they voted against every measure, every measure to do anything about it. We talk about it's a federal responsibility. It's not true, it's never been true as a sole responsibility. It's all been a joint responsibility.
	50:33	Do you know – had law enforcement enforced immigration laws, we would have averted 9/11. The terrorist attacks on September 11, 2001 underscored for all Americans the link between immigration law enforcement and terrorism. Four of the five leaders of the 9/11 attack were in violation of immigration laws, had contact with law enforcement prior to that. In fact, one of them – the citation was still in the glove box of his abandoned car at the airport.
	51:46	I get a little tired of some of this rhetoric that is just so untrue. When do we, when we do we stand up for Americans? Our citizens have a constitutional right to expect our laws to be enforced. We talked about those who are for, those who are against, you know, in 2006. We love polls. But we had a poll called an election, the margin of error of zero. Seventy-five percent, we had four ballot initiatives on there, four propositions dealing with illegal aliens. And again, I'll remind people, this isn't about immigration, that's the legal process I think that we all respect and admire. That's about those who violate our laws, who enter our country illegally or remain in our country illegally. In '06 we had four ballot initiatives there, Mr. President. They passed by an average of 75%. Sixty percent of Hispanics voted for them. We get tired of this. It kind of reminds me of a statement made by one of the leaders in this anarchist movement of not enforcing our laws, putting citizens at risk, jobs taken from Americans. I mean what use to be – if you folks come over now, it's going to become a tsunami of job taking, wage depressing tsunami. Enough is enough.
	51:46	We go through the list and we've read the names, and Senator Linda Gray did, of some of those who have suffered at the hands of violent criminals that cross our borders. One out of ten that cross that border have felony convictions according to the border patrol. We have a study out of Atlanta, Georgia Science Foundation using government data that shows that we have about 240,000 in the last 10 years – illegal aliens committing sexual crimes, one million victims. It's a little disappointing that we continue to ignore the damage to this country. We're a nation of laws and the laws must be enforced. Yet there has never been, and again

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	52:32	<p>I'm going to read, I'm just – to make sure people understand – Congress has firmly established that there is significant public interest in the effective enforcement of immigration law.</p> <p>Congress could have chose to use their plenary powers to preempt law enforcement from enforcing these laws. That has never been done. There's never been an impediment on enforcing these laws. States have inherent authority to enforce these laws as if they were written into state statute. The only impediment has been political. The lack of courage, the lack of willingness to carry out their oath of office and the disregard for the damage to America. And policies that have restricted these folks. We've tightened in this bill the civil rights provisions. We already have it in the Constitution – both U.S. and Arizona – but in this bill we strengthen that in fact. In this bill we made sure that we're not expanding police powers, we simply want to uncuff them and let them do their job.</p>
	53:15	<p>As you know, I've spent most of my career in law enforcement, Mr. President, and I believe in handcuffs. But I believe they ought to be on the right people. Get them off from law enforcement, put them on the right people. We have no such restrictions on any other law. Law enforcement, and I have two legal opinions that cover on that – one from ledge counsel, one from the county attorney – to make it clear. We've not expanded police powers, we simply have removed the policies that restrict them from doing their job. And by enforcing these laws you'll have less crime, you have lower taxes, you have safer neighborhoods, you have shorter lines in emergency rooms, you have smaller classrooms. Enough is enough, Mr. President. All we're asking for is that our laws be enforced. There's also been an issue raised as if somehow – and I've heard it here on the floor today – that all of a sudden you've got to, you have some police state and citizens are at risk. Mr. President, this doesn't expand any of that.</p>
	54:15	<p>We've modeled this after federal law, current law that requires if you're not a citizen and you're a visitor to the United States, you must have certain indicia on you. All we're doing is making sure that that law is complied with. And if you notice on the trespass provision, which we no longer call that, but it's still there on the bill – it's very simple. We made it permissive. And the reason we made it permissive is for a good reason. Sheriff Dever(?) on the border said one of his challenges is that the border patrol's very effective, maybe too effective. And they have somebody they'd like to keep in custody because they're an investigative lead or a suspect in a major crime. And they'd like some ability to do that. We've given him that tool. People can continue just to call ICE today, like they do normally, like they do today, or if they have a need</p>



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	55:06	<p>they could use that provision to incarcerate.</p> <p>Mr. President, this is a very simple bill. And there are things you can do as a state and there are things you can't do. Under the Immigration and Naturalization Laws, the Congress has sole authority to regulate. But the courts have ruled – the 5<sup>th</sup>, the 6<sup>th</sup>, the 8<sup>th</sup>, the 9<sup>th</sup>, the 10<sup>th</sup> – have all ruled in February. The First Circuit Court also issued another ruling on inherent authority. In 2005, <i>Mueller vs. Miener</i>(??) by the United States Supreme Court, a 9-0 landmark decision made it clear that law enforcement can ask as often as they ask about your age, your date of birth and where you live, striking down a 9<sup>th</sup> Court decision that tried to apply 4<sup>th</sup> and 14<sup>th</sup> amendments to illegal aliens in terms of law enforcement asking. And they struck it down, chastised the 9<sup>th</sup> Circuit Court and said clearly states have inherent authority to ask.</p>
	55:51	<p>You don't need a 287(g), another great myth. That's post duress – that's for purposes of making final determination or long-term investigations. States have inherent authority to enforce these laws, but they refuse to. And actually under Federal 8 U.S.C. 1644 and 8 U.S.C. 1373, it's illegal to have a policy that restricts law enforcement, one we call sanctuary policy. And we have sanctuary cities all over this country where citizens are attacked, assaulted, raped, killed, murdered and we continue to have these policies in place.</p>
	56:27	<p>It's about time we have a little respect for the law, Mr. President, and put into place simply the ability of law enforcement to do their job. In this bill we've given them discretion. We've made it clear that they have discretion. When practicable, we put in there that if it impedes an investigation, that they have that discretion. I've worked with law enforcement very closely, very closely on this. In fact, it's kind of interesting everybody talks about this.</p>
	56:56	<p>Let me tell you who is in favor of this bill, very clearly. And I'm only going to read part of the list, Mr. President. Nine out of 15 sheriffs have enthusiastically endorsed this bill, Arizona Police Association's 9,000 members have enthusiastically endorsed this bill, Phoenix Law Enforcement Association's 2700 officers have endorsed this bill, Glendale Police Association took a poll – 87% of their officers said please, take our handcuffs off, let us use the most effective tool we have for safe neighborhoods. Let us decide when we need to enforce these laws. Take the handcuffs off. Maricopa County Attorney's Office, Maricopa County Sheriff, Pinal County Sheriff, Mohave County Sheriff, Yavapai, Cochise, Gila, Navajo, Graham, Greenly County Sheriff's, Arizona Fraternal Order of Police, Border Patrol Officers' Association –</p>



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		<p>3,500 strong in the state of Arizona. Maricopa County Deputies Law Enforcement Association, the Arizona Republican Party unanimously endorsed this bill, Members USA. 9/11 Families For Secure America endorsed this bill.</p>
	58:01	<p>Mr. President, I can go on and on. 80% of our public endorse this bill. It is pretty clear where they stand, you know. Either you're on the side of law-abiding folks or you're on the side of law breakers. I choose to stand on the side of law keepers. This is an important step forward for Arizona and the rest of the nation. This does not expand police powers. It simply puts into place the enforcement provision that we expect for any other law, that we don't turn a blind eye. And I was rather amazed here awhile back at a press conference in Phoenix by a couple of police chiefs and some others – Chief Harris, Catscolm[sp?] from Mesa – right after the murder of Officer Erverly stood on the steps and refused to enforce these laws. So you're right, it is a shame we have to pass legislation. We have to pass legislation to enforce existing law and that's all we're doing here, Mr. President. Enough is enough. We're a nation of laws.</p>
	58:58	<p>And I've gone to these funerals. I've talked and visited with these families. Mr. President, it's our duty. We all have a sworn oath, it's our duty. This law is not mean-spirited, it's simply enforcing the law. This law isn't about race, it's simply about what's illegal. This bill simply would take the handcuffs off of law enforcement, allow them to do the job that the public expects them to do. And that's why it's called Support Our Law Enforcement and Safe Neighborhood Act. That's exactly what it's about.</p>
	59:26	<p>I would encourage support for this bill. I've worked with the Governor's Office on this bill, I've worked with the concerns that have been raised by Representative Biggs and Adam Driggs over in the House to fix those concerns. I have two legal opinions that fix those concerns, say they're not there on some of these – again, I don't want to be rude. I think some of these are very sincere people, but this inventing things that are in the bill that aren't there is pretty disappointing. This bill has been worked hard from every aspect to make sure that it's legal, it's moral, it's within scope.</p>
	1:00:00	<p>And again, about the lawsuits – I expect to be sued, Mr. President. I've been to court seven times on Proposition 200 by the left and [inaudible] border crowds and the Profits Over Patriotism crowd. I've won seven times. I've been to court five times, federal court, on employer sanctions by the same crowd – I've won five times. I'm currently being sued on a constitutional amendment passed by almost 80% of the public on</p>

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		Proposition 100 to say no bond for illegal aliens who commit serious crimes against our citizens. I'm being sued on that one right now by the ACLU. I expect to win. I expect to be sued here. I know I'll win. This is a cleverly, perfectly balanced bill between what states can do and what states can't do. And we've written it for that very purpose. And again, thank you, Mr. President, and thank you for the time.
Senate President Burns	1:00:57	Have you all voted? Senator Aboud how do you vote? [No audible response] Senator Bunch, how do you vote? [No audible response] Senator Burton Cahill, how do you vote? [No audible response] Senator Rios, District 23 –
Senator Rios	1:01:14	Thank you, Mr. President. Permission to explain my vote?
Senate President Burns	1:01:16	Yes, proceed.
Senator Rios	1:01:18	You know, I don't think any of us in this room disagree that we have an immigration problem and that the federal government has failed to act. But this bill is not the answer. You know, I think it's very easy to get caught up in the emotion of this issue because it is a very emotionally charged issue that all of us are very concerned about. But this bill isn't the answer. If we look at what the provisions of this bill actually do, we're going to recognize that this is going to be a huge unfunded mandate on local police. We're turning them into ICE agents without any funding to do so. The ability for anyone to sue any official, any agency, any city, any town because they don't believe that immigration enforcement laws are being followed to the fullest extent of the law is going to result in millions of dollars in defense attorney fees to our local municipalities and in the end, our taxpayers. We don't have enough money to keep our cities running, but we're going to have to pay millions of dollars in defense attorney fees. And I think the most important thing that needs to be drawn out, in my estimation, is although it's named a safe neighborhood law – ironically I think it's going to have the exact opposite result. It's going to have a chilling effect on our public safety.
	1:02:46	I had the opportunity to ask the President of PLEA – the Phoenix Law Enforcement Association – when he was testifying on this bill if, in fact, he was concerned that it might have a negative effect on both victims and witnesses of crime reporting those crimes. And he concurred yes, in fact that is a legitimate concern. People are not going to report crimes out of fear of being prosecuted or deported or whatever it is because of this law. We heard a whole list of names cited. And I was glad that was brought up because that was one that I wanted to address. The child serial rapist in Chandler – there were many people that indicated after the fact that

Speaker	Time	Comments
		<p>this rapist probably would have been caught sooner were it not for the fact that people in that community were afraid to report him. This is what is going to continue to happen. So public safety – my public safety, your public safety – is going to be in jeopardy. This bill does nothing to address human smuggling, the drug cartels, the arms smuggling. My concern is it creates a lot of negative effects that none of us here want. It doesn't address the bigger issue. And yes, I believe that it will create somewhat of a police state. And yes, I believe that oftentimes it's, you know, it was mentioned today that it takes courage to vote for this. I guess I would argue that it takes courage to vote against this because it's very popular to jump on the band wagon and to scapegoat a race of people. But you've got to dig into the details, because the devil's in the details and this bill will not do what many have said it would. But it will create more problems for our state. And I vote no.</p>
Senate President Burns	1:04:48	Senator Aboud – District 28?
Senator Aboud	1:04:51	Thank you, Mr. President. Permission to explain my vote?
Senate President Burns	1:04:55	Yes, proceed.
Senator Aboud	1:04:56	<p>Thank you, Mr. President. You know, I had two town halls this weekend and overwhelmingly, the citizens in my district in Tucson are deathly afraid of this piece of legislation. We've been celebrating Holocaust remembrance week and folks were remembering that a lot of the tactics now that will be employed because of this piece of legislation were the tactics that were used in Nazi Germany. And my folks are saying – I have to report people or I have a business person that just e-mailed me, a small business person, and said my family and I are going to be on a street and the police are going to come up and demand to know what my immigration status is because I'm Hispanic. And when we talk about being in other countries and working for years and carrying your documents with you – I can see that that's appropriate. But these are the citizens of Arizona that are saying I have to prove that I'm a citizen. I thought this was a country where we were innocent until proven guilty. And on behalf of the citizens of Tucson who have asked me to vote no, I also vote no. Thank you.</p>
Senate President Burns	1:06:21	Senator Harper, District 4?
Senator Harper	1:06:23	Thank you, Mr. President. I'd like to explain my vote.
Senate President Burns	1:06:24	Yes, proceed.

Speaker	Time	Comments
Senator Harper	1:06:26	<p>Doing the job that Congress will not do – that was the motto of the Minute Man Project when it kicked off on a spring day many years ago – not the Minute Man Civil Defense, but the Minute Man Project. The states are having to step up because the federal government has failed. And we find ourselves doing many things to uphold our Constitution in contrast to what the federal government is doing. And that’s why I support Senate Bill 1070. And while I, if you would indulge me for a moment – I would like to make a statement about something else that will be in the press today also. And it was about a Burgess floor amendment to 1024 across the way. It was an amendment to require that the parties provide evidence that their nominee for president was constitutionally eligible to hold the position. Now, let me state that Barak Obama has shown ample evidence that he is he was born in Hawaii, he’s showed his birth certificate, there were birth announcements in the Hawaii newspapers at the time. He’s shown ample evidence. But what the whole debate a year and a half ago showed was that the states have no way to check and balance the federal government on that issue as well as this one. And so the Burgess floor amendment was to provide a way for the states to verify that a nominee for president was eligible. We find ourselves doing many things that the federal government will not do and it’s time the states step up and declare their rights and preempt the federal government. Now obviously, we’re saying we’re going to force federal law here, but it’s because they’re not. We’re going to step up and do the job. I support Senate Bill 1070. I vote aye.</p>
Senate President Burns	1:08:16	Senator Lopez, District 29?
Senator Lopez	1:08:19	Thank you, Mr. President. I rise to explain my vote.
Senate President Burns	1:08:20	Yes, proceed.
Senator Lopez	1:08:22	<p>Thank you, Mr. President. I’m voting no on this bill. This bill actually legalized racial profiling. In the bill itself it says that law enforcement may, if they have reasonable suspicion, determine the immigration status of the person. If they have reasonable suspicion that that individual might be here undocumented. To me, that’s giving a defense to law enforcement to stop whomever they want because they can always say – I had reasonable suspicion that this person was here illegally. You know, the sponsor of this bill has indicated that this legislation precludes police from considering race or color or national origin. So what is law enforcement going to use? Are they going to look at the way somebody’s dressed? Are they going to look at, you know, or listen to the language that they’re using. Are they – do they have an accent, do they have difficulty communicating in English? Is that what they’re</p>

<b>Speaker</b>	<b>Time</b>	<b>Comments</b>
		<p>going to look at? Or are they going to look at the color of that person's skin and say – I have reasonable suspicion that this person is here illegally. You know folks, 15 years ago today, April 19, was the Oklahoma City bombing. Many people died, many more were injured. Let me ask the question – would Timothy McVey have been asked his immigration status? I vote no.</p>
Senate President Burns	1:10:12	<p>The system is now closed. By your vote of 17 ayes, 11 nays, and 2 not voting, you have passed Senate Bill 1070. Signed in open session. The secretary is instructed to record the action and transmit the bill to the Governor.</p> <p>End of Discussion re SB1070 at 1:10:24</p>

# **EXHIBIT 30**

## Bureau of Land Management- Southern Arizona Project FY 2009 Fact Sheet

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The Southern Arizona Project (SAP) is administered by the Bureau of Land Management (BLM) in Arizona to mitigate the effects of undocumented immigration and drug smuggling on Arizona's borderlands. Cleanup and mitigation projects are managed by the BLM and cooperating agencies or nonprofits and are funded out of the SAP budget.

Undocumented immigration and drug smuggling operations have deleterious effects on the fragile landscape of the Sonoran Desert. Unauthorized automobile and foot travel create de facto trails and roads throughout this landscape that are continually used for illegal purposes. Vehicles used in these illegal activities are often simply left in the desert if they run out of gas or otherwise become disabled. Trash left by undocumented immigrants is another familiar problem. These people typically move en masse through Arizona's borderlands leaving trash along their routes and also in great concentrations at "lay up" sites where they rest or wait for rides.

Remediation and restoration of impacted lands is another focus of the SAP. Disturbances to the natural landscape can fragment wildlife habitat, cause excessive erosion, and increase the presence of invasive plant species. Remediation efforts have focused on unauthorized roads and trails. Grading of disturbed sites, removal of invasive brush, and reseeding with native plants are standard practices in road and trail restoration. The installation and maintenance of fencing and other barriers can also help minimize illegal travel on enclosed lands. This is a continual challenge, as illegal activities occur every day on Arizona's borderlands.

The SAP is managed by the BLM Arizona State Office in Phoenix, and project funds are shared between the Safford, Tucson, Lower Sonoran, and Yuma Field Offices. These are the four field offices that manage lands along and within 100 miles of the international border—the area where most border-related illegal activity occurs. The BLM also enters into assistance agreements to help fund other entities in their cleanup and restoration projects on impacted lands within the 100 mile zone. Partners in FY 2009 included: Coronado National Forest, Cabeza Prieta National Wildlife Refuge, Buenos Aires National Wildlife Refuge, San Bernardino National Wildlife Refuge, Arizona Department of Environmental Quality, Arizona Game and Fish Department, Cochise County, the Town of Marana, the City of Yuma, the Tohono O'odham Nation, the Pascua Yaqui Tribe, the Cocopah Tribe, and the International Sonoran Desert Alliance.

Student interns hired through the Student Conservation Association (SCA) helped make the SAP successful in FY 2009. SCA interns were able to take part in on-the-ground cleanup projects and also coordinate volunteer efforts, maximizing the impact of volunteers' time. Funds were also used to hire Southwestern Conservation Corps (SCC) crews for cleanup projects.

### **Highlights from FY 2009:**

Trash removal: Over 234 tons (468,000 lbs.) of trash was removed through efforts by the BLM and partners during FY 2009.

Vehicle removal: 62 vehicles and approximately 800 tires removed during FY 2009.

**Bureau of Land Management- Southern Arizona Project FY 2009 Fact Sheet**

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Land restoration: Over 650 acres of land were cleaned up and restored. Restoration efforts included clearing of invasive plant species, replanting areas damaged by unauthorized roads and trails, grading of disturbed sites to restore natural contours, and erecting barriers to minimize future access to these areas.

Nationally designated areas requiring cleanup and restoration: Cleanup, remediation, and mitigation projects completed in Sonoran Desert and Ironwood Forest National Monuments, San Pedro Riparian National Conservation Area, Cabeza Prieta, San Bernardino, Leslie Canyon, and Buenos Aires National Wildlife Refuge, and Coronado National Forest.

Tohono O’odham Reservation: Over two dozen sites and 18.5 tons of trash cleaned up as a result of SAP/TO partnership agreement.

Arizona Game and Fish Department: Over 20 tons of trash removed near Arivaca during Hunters Who Care cleanup event in March 2009.

Arizona Department of Environmental Quality: SAP provided ADEQ with funding in FY 2009 to assist in the development of web-based and GIS management tools for the collection, standardization, and sharing of data between the many stakeholders affected by waste issues along the international border. Goals of this project include identifying, mapping, and making available information on waste sites throughout southern Arizona and logging cleanup efforts in a consistent manner. Doing this will help ADEQ quantify accomplishments made in the cleanup of these sites and encourage cooperation between stakeholders.

**Southern Arizona Project- FY 2009 Totals**

<b>Trash removed</b>	<b>over 234 tons (468,000 lbs)</b>
<b>Tires removed</b>	<b>8 tons (approximately 800 tires)</b>
<b>Vehicles removed</b>	<b>62</b>
<b>Bicycles removed</b>	<b>404</b>
<b>Lands remediated</b>	<b>Over 650 acres</b>
<b>BLM roads repaired</b>	<b>33 miles</b>
<b>Unauthorized roads closed</b>	<b>7</b>
<b>Fence maintenance</b>	<b>7 miles</b>
<b>Signs erected</b>	<b>48</b>
<b>Wells maintained</b>	<b>3</b>
<b>Marijuana plants destroyed</b>	<b>103</b>



Bureau of Land Management- Southern Arizona Project FY 2009 Fact Sheet

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A typical “lay up” site. Clothing, backpacks, food wrappers, and water bottles make up the bulk of the trash at this site.



Volunteers made many cleanup efforts possible. Safety instruction is part of volunteer training.

Bureau of Land Management- Southern Arizona Project FY 2009 Fact Sheet

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Two days work yield of approximately 7 tons of trash



Road used for illegal smuggling through the Sonoran Desert National Monument before and after remediation.

# **EXHIBIT 31**



## U.S. Customs and Border Protection

June 24, 2010

Contact: Tucson Sector  
Communications Division  
520-748-3210

# Community Informational

**TUCSON SECTOR BORDER PATROL -- In an effort to improve our communications within the community, we are sending you this Community Informational to inform you of significant actions taken by Border Patrol Agents in the Tucson Sector Area of Responsibility. We are excited to provide you this insight into issues that may appear in the media. We would appreciate your feedback and constructive criticism on how we can better keep you informed. If you would like to see something added, let us know. If you prefer not to receive this information, or know of someone who would like to receive it, please email us at [tcfieldcommunicationsbranch@cbp.dhs.gov](mailto:tcfieldcommunicationsbranch@cbp.dhs.gov). Finally, feel free to forward this to others who may benefit from this information. The following is a rundown of activities that occurred over the past week within the Tucson Sector.**

### Arrests

**(AJO)** Ajo Station agents arrested an illegal alien Thursday convicted of a sexual offense. The conviction was discovered by agents using the Integrated Automated Fingerprint Identification System (IAFIS). The subject was held for prosecution.

**(CAG)** Border Patrol agents from the Casa Grande Station arrested an illegal alien Saturday previously convicted for a sexual offense with a minor. The conviction was identified using the Integrated Automated Fingerprint Identification System (IAFIS). The subject was held for prosecution.

**(DGL)** Douglas Station agents arrested an illegal alien Saturday previously charged with spousal sexual assault. Agents found the charge using IAFIS. The subject was held for prosecution.

**(CAG)** Friday, agents from the Casa Grande Station arrested an illegal alien with an extraditable warrant from California for driving a vehicle without consent. Agents discovered the warrant using IAFIS. The subject was turned over to the Pinal County Sheriff's Office pending extradition.

Criminal aliens, such as sexual assailants, are among the many who attempt to enter the United States illegally. Technology, such as IAFIS, helps the Border Patrol quickly identify criminals and bring them to an appropriate law enforcement resolution.

### Seizures

**(DGL)** Agents from the Douglas Station, using a Remote Video Surveillance System (RVSS), spotted individuals loading marijuana into a truck near the border Wednesday. Agents responded and found the



- 2 -

truck containing 295 pounds of marijuana valued at close to \$236,000. The truck, marijuana and driver were taken to the Douglas Station for processing.

**(NGL)** On Saturday, Nogales agents at the Interstate 19 checkpoint referred a vehicle to secondary inspection. In secondary, agents using a Non-Intrusive Inspection (NII) system noticed anomalies in the vehicle, which turned out to be 50 pounds of marijuana in a hidden compartment valued at \$40,000. The marijuana, car and driver were taken to the Nogales Station for processing.

**(NGL)** Friday at the checkpoint, a Border Patrol canine team assisted with the discovery of 350 pounds of marijuana inside a hidden compartment in a trailer. The marijuana, truck and driver were taken to the Nogales Station for processing.

**(CAG)** Casa Grande agents, using a Mobile Surveillance System (MSS), spotted a group of 15 suspected illegal aliens Saturday in the West Desert. Agents responded but the subjects absconded, dropping backpacks which contained marijuana. Agents recovered the marijuana, weighing more than 800 pounds and valued at approximately \$690,000.

**(TUS)** Friday, Agents operating a Mobile Surveillance System acquired visual of two suspicious vehicles near Three Points, Arizona. As agents responded to the area, the suspects fled on foot. Agents then discovered that both vehicles contained a total of 135 bundles of marijuana. Record checks on the vehicles revealed that one had been reported stolen. Agents turned vehicle over to the Pima County Sheriff's Office. The second vehicle and all the marijuana were seized and transported to Tucson Station for processing.

The Border Patrol continues to use technology along the border to detect and identify possible threats to U.S. security. Technology, such as the RVSS, continues to give agents greater situational awareness along the border.

## **Rescues and Recoveries**

**(CAG)** Agents assigned to the Border Patrol's Search, Trauma and Rescues (BORSTAR) team located three subjects Wednesday who were left behind by their smuggler in the West Desert. BORSTAR agents provided assistance on scene before transporting the subjects to the Casa Grande Station for processing.

**(NCO)** Agents assigned to the Naco Station rescued a man Wednesday who was severely dehydrated. Agents patrolling near the border encountered a man who had just entered illegally west of Naco, Arizona. Medical personnel on scene determined the man needed further medical attention and he was transported to a local hospital.

**(CAG)** Friday, agents assigned to the Border Patrol Border Search, Trauma and Rescue (BORSTAR) team responded to a report of four illegal aliens abandoned by their smuggler. BORSTAR agents, along with the Customs and Border Protection (CBP) Office of Air and Marine, conducted a search and later found the subjects. There were no reports of injuries.

The Border Patrol frequently provides aid to individuals left behind in the desert by smugglers who continue to put peoples' lives at risk. The Tucson Sector has more than 200 agents trained as emergency medical technicians and more than 3,200 agents available to respond to an emergency.

~CBP~

# **EXHIBIT 32**

**SOUTHERN ARIZONA PROJECT  
TO  
MITIGATE ENVIRONMENTAL DAMAGES  
RESULTING FROM ILLEGAL IMMIGRATION**



**FISCAL YEAR 2008  
END-OF-YEAR REPORT  
BUREAU OF LAND MANAGEMENT**

# **The Southern Arizona Project To Mitigate Damages Resulting from Illegal Immigration and Smuggling**

## **Fiscal Year 2008 End-of-Year Summary**

### **Introduction**

The Southern Arizona Project is a program administered by the Arizona Bureau of Land Management (BLM) to mitigate the impacts of illegal immigration and smuggling through on-the-ground projects. The program focuses on the borderlands, the roughly 100 miles north of the US-Mexico border, that stretch from the New Mexico border on the east to the California border at the Colorado River on the west.

Between FY2003 and FY 2005, the Project was funded through supplemental appropriations approved by Congress. Since FY 2006, the BLM has provided funding through its base annual appropriations for resource protection. In FY2008, the program dollars were \$ 711,000. The program funding totals over \$5,000,000: FY2003 \$695,000; FY2004 \$790,000; FY2005 \$986,000; FY 2006 \$971,000; FY2007 \$962,000.

Program dollars were shared among BLM offices in the southern Arizona borderland: the Arizona State Office (Phoenix); Colorado River District, Yuma Field Office; the Phoenix District, Lower Sonoran Field Office; and the Gila District, Safford and Tucson Field Offices. Funds were also transferred through appropriate agreements to neighboring counties and towns, federal and state agencies, non-governmental groups, and to the Tohono O'odham Nation and Pascua Yaqui Tribe for mitigation activities on their lands.

Annual reports, included FY2008, have been posted to the website:

[http://www.blm.gov/az/st/en/info/newsroom/undocumented\\_alien.html](http://www.blm.gov/az/st/en/info/newsroom/undocumented_alien.html)

### **Part I: Program Accomplishments Fiscal Year 2008**

In the descriptions below and in the attached Appendices, each participating agency's major efforts and accomplishments are listed. Once again partners include federal state, local and tribal agencies. As in previous years, key groups in ensuring the success of this program also include the Student Conservation Association (SCA) interns and the Southwest Conservation Corps as well as hundreds of volunteers willing to dedicate time and energy to restoring these important landscapes.

Some interesting patterns are revealed in the FY2008 projects: 1) Extremely large sites were recorded and some were cleaned up; 2) road and illegal trails restoration projects were the focus of much activity; and 3) infrastructure projects, such as wells, fences,



cattle guards and barriers, contribute to effective resource management and reduce degradation.

**Large sites.** Despite efforts since 2003 to clean up trash areas, some very large sites remain. Many were recorded and cleaned up in the last two years, but many remain recorded only; others are not even known yet but believed to exist along trails. The FY2007 End-of-Year Summary provides details of the BLM mapping project within the Ironwood Forest National Monument (IFNM). BLM staff located immigrant trails (largely north/south) across the IFNM and vicinity: West Silverbell Trail over 11.2 miles in length, 8.2 acres; the Roskrige Trail, 6.4 miles; the Malpais Trail 11.5 miles; and the Ajo Foot Trail just to the south of the IFNM and south of Garcia Strip) of 6.9 miles. Each trail segment is accompanied by significant amounts of trash that may extend beyond the trails in washes, side trails and layup sites. In February 2008, the BLM cleaned up the Ajo Foot Trail. A 15-member SCC crew, 2-member SCA crew and 3 additional workers (SCA and park rangers) collected 606 bags or 13,332 lbs. of trash from this area. The trash removed included 3,679 migrant backpacks.

The Arizona Game and Fish Department (AZGFD) conducted aerial surveillance as preparation for the Hunters Who Care March 2008 event. AZGFD flew the northwest section of the Altar Valley for approximately two hours. AZGFD staff visually located and documented thirty-one large layup sites for clean up—that is sites greater than 50 meters in one dimension. Most sites were polygons; some sites were 150 meters long, by 50 meter wide. Linear trail sites similar to the ones reported in the IFNM were also seen. Using the GPS data allowed AZGFD to place volunteers in clean up locations more efficiently than in past years.

Large sites have also been reported by other agencies including those sites in the urban fringe that include both immigrant trash and resident or visitor debris. The Gila Watershed Partnership cleaned up large camp sites along the Gila River. Both the IFNM and AZGFD efforts show the promise of using aerial and on-the-ground mapping to indicate the extent of the problem.

**Road and Trail Restoration.** Restoring routes is a difficult task requiring a number of actions from breaking down berms to planting difficult-to-handle desert plants. Similar to the principle of “trash begets trash”, illegal trails created by smugglers quickly become re-used by other smugglers, visitors or recreationists turning trails into roads. In one case, smugglers deliberately created miles of road in wilderness. The BLM Phoenix District concentrated efforts in the Lower Sonoran Desert Monument with over 5 miles of rehabilitated roads and dozens of illegal side trails masked or reclaimed to disguise these entry points. The BLM Tucson Field Office reclaimed 25 illegal routes. In addition to removing trash and raking out trails, these rehab teams practice “vertical mulching” which uses standing plants as well as dead desert plant materials to mask entry points.

**Infrastructure Repair and Installation.** Agency teams inspected and repaired over 14 miles of fencing, installed cattle guards, maintained wells, added protective barriers, and maintained roads. The completion of the projects contributes directly to the ability of agencies and ranchers to manage local resources which are damaged or threatened by illegal activities. Some infrastructure projects such as using boulders to block an

archaeological site from vehicles or using barriers to keep vehicles from riparian areas will last for a while, as will cattle guards. Fences and roads however, require multiple repairs as smuggling vehicles going **both** north and south damage roads beyond the intended uses. Fences are repeatedly run through by vehicles or damaged from crossers. Coronado National Forest and the AZGFD Department both note the difficulty that ranchers or permit-holders have managing pastures when smugglers drive right through fence gates.

#### **A Summary of Accomplishments for FY2008:**

- Litter removal: over 184,567 lbs were picked up and disposed from BLM-managed lands; long-stretches of public lands up to 9 miles long were cleaned of trash;
- Litter removal: over 28,800 lbs removed from tribal lands and 16,000 lbs. plus 3 dumpsters (120 cu.yds) from other southern Arizona lands.
- Abandoned cars: 70 abandoned vehicles, 17 bicycles and 144 tires were removed from BLM-managed lands;
- Fencing and repairs: over 22 miles of fencing were inspected and repaired; 8 miles in the San Bernardino/Leslie Canyon NWRs; 4.2 miles in the Buenos Aires NWF (and removed  $\frac{3}{4}$  mile of old fence); and the remainder mainly on BLM-managed lands; BLM also repaired 12 Off-Highway Vehicle protective cables along the SPRNCA;
- Roads and trails rehabilitated, removed or restored: the BLM Lower Sonoran Field Office/Sonoran Desert National Monument (LSFO/SDNM) rehabilitated 5 miles of illegal routes and at least 21 entry points were masked; SDNM also placed over 100 signs or regulatory posts to block illegal recreation uses; the BLM Tucson Field Office (TFO) rehabilitated 25 illegal routes and installed visitor warning signs;
- Roads maintained: BLM maintained 4 miles and treated roads for dust in the Las Cienegas NCA; the AZGFD worked with the Marley Ranch to install 8 cattle guards and the Coronado National Forest purchased cattle guards for fall installation;
- Sensitive area protection: FWS added 4,000 ft of wildlife-friendly barrier in San Bernardino National Wildlife Refuge (SBNWR). BLM repaired the vehicle barrier at the archaeological site Bead Hill;
- Restoration Projects: BLM Yuma Field Office planted 289 willows and 128 cottonwood trees on 5 acres along the Colorado River in areas damaged by illegal crossing trails. The LSFO/SDNM reclaimed 15 acres of illegal roads, illegal immigrant staging areas, and OHV route damage;
- Windmills and wells maintained: BLM Phoenix District maintained three wells operated to benefit the Sonoran Pronghorn.

- Environmental Monitoring: FWS San Bernardino/Leslie Canyon continued monitoring the impacts of immigration and smuggling to natural resources on refuge lands;
- Special law enforcement details supported by the program funds produced these results during their patrol or operations: stolen vehicles recovered 25; vehicles impounded tied to UDI smuggling 61; UDIs detained for USBP 284; Marijuana pounds seized 1,447 lbs; and security flights 25.

## **Bureau of Land Management**

### **Arizona Border Security Detail**

In FY2008 Arizona BLM law enforcement units were provided with \$75,000 in funding to provide security for crews completing cleanup and rehabilitation, and to provide emergency care to any persons found in distress in the southern Arizona deserts. Other indirect goals were to increase the law enforcement presence in order to serve as a deterrent for undocumented immigrant and drug smuggling, prevent additional resource damage and trash dumping, and provide increased visitor and employee safety on public lands. Including the rangers that normally patrol the border areas, there were a total of 700 hours of total overtime worked during FY07.

Rangers from the El Centro Field Office regularly assisted the Yuma Field Office in patrolling the border areas. Agents from the Arizona State Office and Rangers from other Field Offices in Arizona assisted the Gila and Phoenix Districts.

Listed below are the highlights and statistics from this time period taken from Significant Activity Reports:

*Highlights and statistics from this time period taken from Significant Activity Reports:*

	FY08	Compared to FY07
• Stolen Vehicles Recovered	25	41
• Vehicles Impounded tied to UDI Smuggling	61	91
• Undocumented Immigrants Detained for USBP	284	457
• Pounds of Marijuana Seized	1447 lbs	4622 lbs
• Assaults of Ranger (By Vehicle)	1	1
• Weapons Seized	0	3
• Backup to Assault of Border Patrol Officer	0	3
• Assist on Recovery of UDI Exposure Fatalities	0	3
• Search and Rescue Operations	6	8
• Border Security Details	18	35
• Border Drug Flights	7	25
• UDA Layup Sites (dump/litter)	3	
• UDA related shooting non/LEO involved	1	
• Coordinated Border Patrol Operations	4	
• Environmental Training for Border Patrol	4	

## **BLM Phoenix District Office**

The Phoenix District Office, including the Lower Sonoran Field Office, received \$242,200 in funds during FY2008. Project details and photographs are provided in Appendix B.

SCA interns, SCC youth crews, BLM resource staff and BLM law enforcement rangers collected 251 bags of trash, 17 bikes, 26 tires, and rehabilitated five miles of routes associated with illegal smuggling activities from October 2007 to September 2008 on the Sonoran Desert National Monument (SDNM). There were also several instances of target shooting debris and dump sites of household material.

Areas on the monument south of Interstate 8, specifically Vekol Valley, Freeman and Smith Road contained most of the trash. Illegal routes reclaimed were mostly south of Interstate 8 in the Table Top Wilderness Area, Smith Road, Freeman Road, and Area A (Sand Tank Mountains). SCC crews were utilized for three weeks on two major projects, assisting with route rehabilitation and trash removal related to illegal smuggling activities.

In addition to border traffic restoration projects, SCA interns performed public contact, patrols, invasive species eradication, and manned tables at outdoor expositions. The SCAs and SCC crews repaired fences, signed areas, and supervised other volunteers.

Rehabilitation of roads and trails most often involved erasing ruts, knocking down berms and removing vehicle tracks caused by vehicles followed by vertical mulching techniques with dead ocotillo and creosote bushes. Crews placed dead creosote limbs, rock sand

gravel on top to disguise road loops and illegal entries. Once rehabilitated, the area will continue to reclaim as the winter rains and desert annuals provide restoration and ground cover.

**Bicycle Removal:** Surprising to most people, UDIs and smugglers often ride bicycles from Mexico cross-country on their journey north into the US. They abandon the bikes at or near their final pickup point and the bikes accumulate at places one might least expect. The SCA interns gathered these bikes, sometimes walking them one at a time out of remote locations in the Table Top Wilderness Area. They were brought in to the PDO and then donated to Goodwill Industries or other charitable organizations for repair and eventual donation to needy families.

### **Lower Sonoran Field Office/Sonoran Desert National Monument: Project Highlights**

- Vekol Valley D Road, November 2007; SCAs and SCC; crews erased the prominent illegal roads created by off-highway vehicle (OHV) users. Dismantled berms caused by off-road traction and raked out off-road tracks. Replanted vegetation, including vertical mulching techniques; primarily used creosote bush and ocotillo. Finished project by throwing dead creosote limbs, rocks and gravel on top to disguise loop.
- SCC Crew Vekol Valley UDA Trash Removal and Illegal Smuggling Route Restoration, Nov. 26 - Dec.6, 2007, south of Interstate 8: Vekol Road; 6-member SCC, SCAs and park rangers; removed 5 bags of trash and restored 12 illegal routes through heavy rehabilitation. Ruts were knocked down, rocks distributed, vegetation barriers installed and other repairs prescribed for long stretches of braided road.
- SCC Crew Smith Road/ Antelope Peak / Table Top Wilderness Area; UDA Trash Removal, Fence Repair and Illegal Route Restoration, Jan. 21 – 25, 2008, south of Interstate 8: Smith Road/ Antelope Peak /Table Top Wilderness Area; 7- member SCC, SCAs and park rangers, removed 31 bags of trash along Smith Road and the Antelope Peak area. Repaired 30 feet of fence along Smith Road; restored 2.5 miles of illegal routes with vertical mulching.
- Vekol Valley Vehicle Route Tracks Eradication, Feb. 8, 2008, Vekol Valley, SDNM; SCA interns removed vehicle tracks, restored area using raking sweeping, plant materials, vertical mulching, and posted road closure signs.
- Eradication of OHV Tracks into Wilderness, April 9, 2008, SDNM; SCA interns reclaimed illegal smuggling route into wilderness through vertical mulching and other techniques, signed with carsonite posts.
- Antelope Peak Jeep Trail Eradication, Jan. 25, 2008, SDNM, Vekol Valley, Table Top Wilderness; SCA interns rehabilitated road and reclaimed impacts through digging out the ruts, vertical mulching and other techniques. Project required several hours of crew labor from wilderness boundary south about 150 feet.

- Vekol Valley Dump Site A, April 16, 2008; SCAs cleaned up UDA trash and restored area; Dump Site B, April 28, 2008; SCAs cleaned up and restored second dump site.
- Bicycle Removal, SDNM, ongoing removal of bicycles as staff locate these. In 2007 and 2008, at least 17 bikes were removed.
- BLM Law Enforcement; Vehicles Removal, October 2007 to September 2008, SDNM BLM law enforcement rangers and Border Patrol; removed 70 vehicles south of interstate 8 related to illegal smuggling activities. Includes 7 from the Sand Tank Mountains reported by SCA interns.
- Medical Evacuation & Resource Impacts Eradication, December 2007, East Butterfield, Road 8008 (3 miles in from 238); SCA interns erased ruts and vehicle tracks caused by emergency vehicles. Utilized vertical mulching techniques with dead ocotillo and creosote bushes. Area was rehabilitated and will continue to reclaim as the winter rains and desert annuals provide restoration and ground cover.
- Borderland's Target Shooting Site, January 2008, one-half mile north of Highway 238 on West Butterfield; SCA interns removed target shooting debris.
- Cabela's Sportsman's Exposition, 2/23/2007 - 2/24/2007, Cabela's Sporting Goods Store, Phoenix, Arizona; SCA interns and BLM staff provided outreach on SDNM, BLM, the borderland issues, and appropriate recreational uses/opportunities.
- Butterfield Stage Overland Trail and the Anza National Historic Trail, May 2008, SCAs and BLM staff assisted the National Historic Trail Workshop field tour; provided education on restoration techniques and repair efforts.

### **Phoenix/Lower Sonoran Field Office Partnership: the International Sonoran Desert Alliance**

Project Reports have not been received from the International Sonoran Desert Alliance. Funds were obligated to late in FY2008 for projects to be initiated and completed on-the-ground. These efforts will be reported in the FY2009 Southern Arizona Project Report.

### **BLM Gila District**

The Safford Field Office (SFO) and the Tucson Field Office (TFO) are managed through the Gila District Office. Both offices manage substantial borderlands currently being impacted by illegal immigration and smuggling from the lands just adjacent to the border including the SPRNCA to the IFNM which is 70 miles north of the international border.

## **BLM Tucson Field Office**

The Tucson Field Office (TFO) received \$245,500 in FY2008 to develop and complete projects. The money was used in several partnership agreements to clean up trash left behind by smugglers and illegal immigrants, assist in the rehabilitation of degraded lands, contracts for waste removal, and for the costs of materials and supplies. Project details and photographs are provided in Appendix A. The Tucson staff achieved these results or made the following efforts:

### **Coordination, Safety Training, Orientation, Equipment and Supplies for SCA Interns:**

- Coordinated Student Conservation Association (SCA) interns and volunteers, training and equipping field workers with safety and telecommunication needs.
- SCAs organized volunteer groups. BLM staff and SCA interns worked closely with several organizations that provided significant service hours to remediate the impacts caused by smugglers and illegal immigrants on public lands;
- Coordinated conservation crew projects: Southwest Conservation Corps (SCC) and affiliated with the SCC, the Community Learning Adventure Service Project (CLASP).
- Furnished or purchased equipment and supplies for crews including: 1) travel money for camping, 2) Trimble GeoXM handheld unit, 3) truck box and bed liner, 4) equipment and vehicle maintenance and repairs including replacement tires for trucks, 5) hand tools for restoration projects, 6) steel storage container to house supplies and equipment, including shelving to organize tools, 7) cement and other supplies for installing five visitor warning signs, 8) rental roll off containers for waste disposal near large project sites.
- Ensured safety and training for SCAs and volunteers: 1) Providing safety equipment, including gloves, trash grabbers, hand sanitizer, first aid kits, appropriate PPE (i.e. hearing and eye protection); 2) immunizations to mitigate exposure to high risk diseases, 3) SCA/BLM staff developed 5 day new employee orientation covering topics from defensive driving, to working in remote locations, to 4WD, and Leave No Trace ethics, 4) four day desert ecology training through Tucson Audubon Society for SCA intern, 5) Wilderness First Responder Training for two new SCA interns and recertification for continuing SCA intern.
- Renewed landfill contract for proper disposal of collected waste.
- Purchased & distributed trash bags: 600 bags were donated to volunteer groups such as Humane Borders, Samaritans, Silverbell Estates Community and Red Hill Community.



### **Student Conservation Association**

Four SCA interns were contracted to organize and assist with work projects approved for the TFO. Two were assigned to the IFNM, one was assigned as needed to the LCNCA and the IFNM, and one was assigned to the SPRNCA. As part of their training, these interns have become certified Wilderness First Responders. They have developed and undergone field safety orientations to become familiar and confident in performing their jobs under the current conditions, which include working in remote areas where illegal smuggling of people and drugs occur, with little or no radio/cell phone coverage and in extreme weather conditions.

In addition to organizing and working with a variety of organizations and groups to do cleanup and repairs, these SCA interns spent more than 110 hours themselves, cleaning up trash left by smugglers and undocumented migrants.

The SCA interns will be performing these tasks to support FY 2009:

- Coordinating 3 weeks of project work with the SCC
- Coordinating 1 week with CLASP\*
- Coordinating and orienting new SCA interns and new BLM staff
- Coordinating with partners for regular cleanup and rehabilitation work (e.g. Humane Borders, Sky Island Alliance, Sierra Club, Silverbell Estates Community, Hunters Who Care, Red Hill Community)
- Documenting and remediating sites being damaged by undocumented migrants
- Documenting foot trails being created by undocumented migrants
- Coordinating waste removal, tire collection and removal, and disposal of other items not fit for landfills
- Installing and maintaining bilingual signage
- Recording and rehabilitating cross country vehicle routes (as a result of smuggling)
- Creating and organizing an education activity for the annual Ironwood Festival.

\* Bi/annually, the SCAs coordinate with a local high school to do a service project. The SCAs coordinate community speakers and a week of community service to provide a dual educational/service based program that examines and helps mitigate the impacts caused by smugglers and undocumented migrants.

### **TFO Project Highlights: IFNM and vicinity**

- SCAs spent more than 110 hours themselves cleaning up 1.7 tons/3,835lbs. of trash and 26 tires. The SCAs in coordination with BLM park rangers installed 5 visitor warning signs, totaling about 48 hours of work.
- Removed UDI trash from public and neighboring lands: continued collection efforts through two roll-off dumpsters. Since Oct. 24, 2007, 10 roll-off containers have been filled equaling approximately 22.8 tons.

- Rehabilitated routes: In coordination with both SCC and CLASP, the SCAs rehabilitated 16 illegally created routes. The park ranger and SCAs in coordination with Friends of the Ironwood Forest (FIF) rehabilitated 9 illegally created routes totaling 1.3 miles.
- An SCC crew and two SCA interns worked in the backcountry of the IFNM December 2007 to clean up 159 bags or 2,385 lbs. of trash. They hiked the trash out of a wash for 1 mile.
- In February, a 15-member SCC crew, 2-member SCA crew and 3 additional workers (SCA and park rangers) collected 606 bags or 13,332 lbs. of trash from BLM land within proximity of IFNM. The trash removed included 3,679 migrant backpacks. The participants bagged trash and hiked bags 0.5-1 mile back to vehicle staging area, working a total of 806 volunteer hours in 5 days.
- One CLASP crew worked 24 hours in the IFNM in March to remove a total of 155 bags or 2,480 lbs. of trash 1.5 miles out of Cocio Wash. The crew of 9 met with federal agency employees, volunteers and community speakers to learn about the land, illegal immigration and its effects. Through these educational sessions and practical work experiences, the crew became intimately familiar with, as well as remediated the impacts of, smuggling in southern Arizona.
- In April, a 48-member youth group from Wellesley, Massachusetts volunteered at IFNM for one day. The morning was spent cleaning up trash along a foot trail, resulting in the removal of 54 bags of trash or 810 lbs. The afternoon was spent in educational time with federal agency employees and community speakers in order to learn about the causes and impacts of smuggling in southern Arizona. The group generally agreed that this was the most rewarding and meaningful part of their one-week long service trip to Arizona.
- Two neighborhood groups adjacent to the IFNM (Red Hill Community and Silverbell Estates) collected 177 bags = 4,110 lbs. This amount included 28 tires found in the IFNM. BLM staff and SCA interns then picked up and disposed of this trash.

### **Town of Marana, IFNM Program**

The Town of Marana has been performing significant cleanup projects in and around the IFNM to remediate the impacts from illegal smuggling. They perform cleanup work on a weekly basis on lands within and bordering the IFNM.

- The Town of Marana crews have collected an average of 0.3 tons or 616 lbs of trash per week.
- The Town removed and disposed of 90 tires.

**TFO Project Highlights: San Pedro Riparian National Conservation Area (SPRNCA) 2008**

- With the Boy Scouts on April 12, 2008, cleaned approximately 3 miles along the San Pedro trail and railroad grade that runs parallel to the San Pedro River; 1,220 lbs of trash were removed.
- With SCC in March, 2008, cleaned directly along the San Pedro River and Railroad grade for approximately 3 miles in the Hereford bridge area.
- With City High School of Tucson, cleaned approximately 3 miles along the San Pedro River in the Boquillas Ranch area.
- Repaired SPRNCA boundary fence in Garden wash, Hunter wash, Miller wash and Carr-Ramsey wash. Numerous repairs have been made due to flood washouts and persons cutting the fence down to allow ATV access.
- Repaired vehicle barrier at Bead Hill Archaeological site to prevent illegal vehicle access. Area cleaned of approximately 400 lbs. of UDI trash.
- Repaired approximately ½ mile of barbed wire fence with the aid of the fire crew immediately east of the Hereford Bridge.
- Completed the construction of 6 railroad grade cable barriers in February/March of 2008 along the SPRNCA corridor. These barriers also included fence work to tie the barriers into the existing fence.
- SCA's and Park Ranger picked up over 2,175 lbs. of UDI trash from the SPRNCA.

**TFO Project Highlights: Las Cienegas National Conservation Area (LCNCA)**

- Approximately 4 miles of road was maintained by the BLM Gila District Force Account Crew. Funding was used to operate the machinery and pay for mobilization.
- Dust abatement was applied utilizing water truck and water trailer with mixed Soiltac stabilizer, after road maintenance and where increased vehicle traffic dictated a need. Approximately 7 road miles treated. The main road was spot treated twice due to heavy traffic; primary dust treatments were done in October 2007 and September-October 2008, with minor work throughout year.
- Completed other signage and maintenance assessments for future projects.

## **Safford Field Office**

The Safford Field Office (SFO) received \$ 48,000 for FY2008, most of which was provided to partners through agreements. SFO purchased almost \$9,000 worth of needed supplies, including trash bags, toilet paper, gloves, litter sticks, water trailer and an ATV trailer. These supplies enabled the staff to pick up trash related to illegal immigrant travel within the field office boundaries.

### **SFO Partnership Reports not found elsewhere in FY2008 Appendices:**

#### **The Malpai Borderlands Group**

The Malpai Borderlands Group (MBG) worked to fix damaged fences left by illegal immigration traffic. MBG had problems finding reliable contractors and employees to pick up the trash left behind by illegal immigration. The funding for this agreement will be carried over to the next fiscal year.

## **BLM Colorado River District**

The Colorado River District administers three field offices: the Yuma Field Office (YFO), Kingman Field Office, and Lake Havasu Field Office. The District office was funded \$20,000 for law enforcement support. Details and photographs and projects are provided in Appendix C. The YFO experiences significant impacts from smuggling and illegal immigration including fire starts, abandoned vehicles, trash, and habitat degradation.

## **Yuma Field Office**

The YFO was provided \$81,000 in FY2008. YFO continued to emphasize restoration along the Colorado River, abandoned vehicle removal, and cleanup of public lands

**Restoration:** BLM staff and a contracted 7-person crew planted 289 willows and 128 cottonwoods within a 5-acre area along Lower Colorado River in the Paradise Cove area. The trees replaced previous plantings that had not survived and expanded the restoration area. Temporary irrigation and protective structures were installed for each tree to increase their survival rate. The site is a high traffic area for illegal border incidents and has been subjected to several wildfires. There was another wildfire adjacent to the restoration area this year. Fortunately, the restored area was not affected by the wildfire.

- 5-acre area replanted with willows and cottonwoods

The restoration site is adjacent to a wetlands area where the City of Yuma has invested considerable work to improve riparian habitat and provide recreation opportunities for the community. Law enforcement, including the Border Patrol, BLM, Yuma County Sheriff, and City of Yuma, has increased their presence in the vicinity of the restoration area.

As of this report, the cottonwoods and willows have approximately a 90% survival rate, and the trees are currently 5 feet tall. The trees have survived the summer and if they are irrigated on a regular basis, there is a high probability that they will reach a size where irrigation is not needed for the trees to reach maturity.

Since the inception of the restoration project, 5.6 acres have been planted with native vegetation. A total of 1070 trees have been planted with a survival rate of 63% (674 trees survived). Ground water depth is a key factor for tree survival. On a lower area where the ground water was more accessible, there was a 90% survival rate. At a slightly higher elevation where the ground water was deeper, there was a 40% survival rate.

Tree mortality at the lower elevation was usually due to rabbits and beavers. Protection measures (caging and tree protectors) were improved as a result. An irrigation system has also been installed and improved in the area to enhance the survival rate. Irrigation will be withdrawn from individual trees as they reach sufficient size to reach maturity on their own.

In FY 2009, the restoration area will be expanded by 1.3 acres. There will be added efforts to increase tree survival rates. The efforts will include earlier tree planting in January and a deep pipe irrigation technique where pvc pipe will be buried at a 1-foot depth at each tree to improve water availability for the root system and to reduce evaporative water loss.

**Abandoned Vehicles:** Reported as stolen, three abandoned vehicles were removed and a fourth abandoned smuggling vehicle, was removed by the owner's insurance company. Abandoned vehicles are being removed promptly after being discovered to prevent the environmental damage and substantially increased removal costs that are incurred after a vehicle is burned. In recent years, abandoned vehicles that were not promptly removed were burned by unknown persons.

- 3 abandoned vehicles removed

**Cleanups:** BLM staff and an SCA intern coordinated cleanups at 9 sites where illegal border activities occur throughout the Yuma Field Office. Some of these sites are adjacent to remote wilderness areas that are more than 50 miles north of the border. BLM staff, partners and volunteers (photos below) removed more than 31.6 tons of trash from these sites in FY 2008.

Trash that included discarded clothing and blankets, empty water jugs, and numerous pieces of carpet used to hide tracks (photos below) from DHS Agents was removed.

- Cleaned up 9 sites resulting in more than 31.6 tons of trash

**Law Enforcement:** Labor funding for law enforcement activities provided by the borderlands project ensured that required security was available for staff engaged in border mitigation projects. Law enforcement has also stepped up efforts to prevent and decrease illegal border activities by increasing patrols in problem areas. Partnering with

other law enforcement agencies continues to improve public safety along the border and throughout the YFO.

**YFO Lessons Learned:** Tree survival rates continue to improve at the restoration sites. It is important that maintenance for these sites is provided until planted trees can reach a size where they can achieve maturity on their own. Methods are still being sought to further improve tree survival rates.

Hiring a volunteer coordinator was a great improvement for cleanup projects. Many individuals, groups, and other government agencies are willing to help with the cleanup projects with a little support from the BLM. Efforts are being expanded with partners and volunteers to win back a cleaner and safer environment. It is hoped that soon the community can safely return to some areas that were popular for hunting and other recreation activities.

There were no vehicles that were burned this year. The prompt removal of abandoned smuggling vehicles has helped to keep removal costs in check.

## **U.S. Fish and Wildlife Service (USFWS)**

### **FWS Leslie Canyon National Wildlife Refuge (NWR) and San Bernardino NWR**

The BLM Safford Field Office continued the interagency agreement with FWS at San Bernardino and Leslie Canyon NWR for \$10,000 in FY2008. See Appendix E for additional details, photos and costs.

**Trash Removal**, April –September 2008, various locations on SBNWR and LCNWR in Cochise County, AZ, student intern and refuge personnel removed trash from layout and other sites.

- Picked up an estimated 0.18 tons of debris that had been discarded on the two refuges, a decrease over past years.

**Wildlife Friendly Vehicle Barrier Installation**, April – Sep. 30, 2008, international border along the south boundary of SBNWR in Cochise County, AZ.

Narcotics smugglers have traditionally cut the international border fence and driven through the “protected” SBNWR, using this public land as a route to transport drugs into the United States. To help prevent this illegal and destructive activity, horizontal railroad iron was welded onto a concrete-filled, steel, bollard-style vehicle barrier at gaps remaining along 4,000-feet of the accessible south boundary of the refuge.

- Completed 4,000 ft of vehicle barrier

**Fence Repair**, April – Sep. 30, 2008, various locations on SBNWR and LCNWR in Cochise County, AZ;

Illegal immigrants crossing through SBNWR/LCNWR and adjacent properties often cut and/or damage fences and gates to accommodate their trespass across public lands. Throughout the year, refuge personnel inspected and repaired an estimated eight miles of fence line on the two refuges. Both volunteer positions and a temporary laborer position were filled to conduct much of the repair work.

- 8 miles of fence line inspected and repaired

**Monitoring Impacts to Wildlife from Illegal Border Activities**, April – Sept. 30, 2008, various locations on SBNWR and LCNWR in Cochise County, AZ.

Illegal immigrants crossing through the refuges impact water quality, wildlife populations, and other habitat conditions in these “protected” areas. During 2008, studies were conducted on the refuges to help monitor wildlife population changes resulting from the impacts of illegal immigration and smuggling activities. One temporary biologist was hired during the project period to conduct monitoring on the impacts to habitat and avian wildlife, using a 50:50 match of FWS funds and mitigation funding.

### **FWS Buenos Aires National Wildlife Refuge**

The BLM TFO and Buenos Aires National Wildlife Refuge (BANWR) signed an interagency agreement to fund continued efforts in 2007-2008 to mitigate damage to the refuge by illegal border crossers. This is the third round of interagency funding in the past three years, to be used to offset natural resource damage caused by illegal border crossers. This funding was spent between Sep. 1, 2007 and Dec. 31, 2008. Approximately \$10,500 was received. The funding enabled:

- towing of abandoned vehicles
- hiring of 12 weeks of work by two habitat restoration interns from the Student Conservation Association (SCA)
- additional interagency funding supplied 10 work days by the Southwest Conservation Corps (SCC).

BANWR stretches from the U.S./Mexico border to twenty-five miles north of the international boundary. Border Patrol estimates that several hundred to one thousand undocumented aliens cross the border every day into the refuge. In the year 2001, GIS analysis and aerial imagery revealed 1,314 linear miles of UDA trails on the refuge, including 117 individual trail crossings at the 4.5-mile international border. This translates to 280 acres of complete denudation, which of which is in fragile and valuable riparian habitat. The amount of trash (litter, clothing, water bottles, human waste) is unsightly to visitors and unsafe for wildlife.



Before interagency funds were available, 20 abandoned vehicles needed to be removed. Some vehicles are blackened by being set afire, and many are in remote and off-road areas. Removal is difficult and costly.

**Towing of abandoned vehicles:** cost = approximately \$3,500

Average cost for removal per vehicle is \$750. These disabled, often burned or rolled-over vehicles typically must be extricated from remote and rugged areas or washes.

- Several vehicles were removed in fiscal year 2007.

**Student Conservation Association:** = two 12-week interns at a cost of approximately \$7,000.

Two interns worked a 12-week volunteer period from Oct. 1 to Dec. 22, 2007. Labor is volunteer, but funding covered transportation to the refuge, lodging en route, and food expenses during their stay. Most duties involved fence repair and litter cleanup.

The SCA's repaired fence close to the border, where barbed wire fence is damaged or cut by illegal immigrants. Some fence removal was performed to clear the landscape of old ranch fence.

The interns cleaned up litter along illegal trails and in lay-up sites. These sites are typically cluttered with clothing, backpacks, food cans, and other debris when the immigrants change clothes and discard their belongings, prior to getting a pre-arranged vehicle ride or continuing their journey on foot.

The interns also worked with biology interns on projects to analyze damage to vegetation caused by immigrant traffic.

Occasional duties included animal husbandry for the endangered masked bobwhite quail, a species which is captive bred on the refuge for reintroduction efforts.

**Southwest Conservation Corps:** Nov. 5 – 15, 2007

The SCC provided valuable work on fences. In 10 work days the crew repaired barbed wire fence that had been damaged or cut by illegal immigrants. Broken fence allows cattle to enter from Mexico, adding to the landscape damage caused by immigrants. The crew also removed a large amount of barbed wire fence left over from ranching days. This helps the movements of deer and pronghorns and eliminates an obstacle in which they can become fatally entangled.

The crew was well-organized and was facilitated by capable SCC leadership. The two SCA interns assisted the group in the work each day and helped guide them to the work sites.

- Along a 4.2 mile length of fence at Garcia Road, the crew replaced 300 feet of barbed wire and made a great many repairs to broken areas. This fence parallels

the international border and is often damaged or severed. Maintenance of this fence helps contain cattle that come through or around the border fence.

- At a second site near an immigration route, the crew repaired ½ mile of fence and removed 1500 ft. of coiled fence on the ground.
- At a third site, ¾ miles of old fence was removed.

## **Cabeza Prieta National Wildlife Refuge**

Cabeza Prieta NWF continued its partnership with the BLM Phoenix District. Funds were obligated too late in FY2008 for projects to be initiated and completed on-the-ground. These efforts will be reported in the FY2009 Southern Arizona Project Report.

## **U.S. Forest Service**

### **Coronado National Forest**

The Coronado National Forest (CNF) encompasses approximately 1.8 million acres with 30 miles of the US/Mexico border on two districts, Nogales and Sierra Vista. The impacts of illegal border activities include damaged fences, miles of unauthorized foot trails, miles of unauthorized roads, soil compaction and erosion, trampled vegetation, and piles of trash and human waste. Trespass cattle enter CNF through the damaged fences, wildfires are started by UDA's, and abandoned mines are used as hideouts, camp sites, and caches.

This agreement provided funding in the amount of \$10,000 to address these impacts. Five cattle guards were purchased for \$10,000, under this agreement by the Nogales Ranger District. The cattle guards have been purchased and are on site. The Forest Service engineering road crew will install these between December 2008 and February 2009.

- 5 cattle guards were purchased

The cattle guards were purchased to assist CNF in managing the grazing rotation. The cattle guards allow the Forest Service and permittees to manage rangelands more efficiently and effectively. These cattle guards will replace gates that are commonly left open or destroyed by illegal immigrants, drug traffickers, and the general public allowing cattle to enter pastures not open to cattle.

### **Cochise County**

The BLM Gila District Office, Safford Field Office worked with Cochise County through an assistance agreement to remove undocumented immigrant trash in the county utilizing the Solid Waste Department and volunteer groups.

Cochise County picked up approximately 8 tons of illegal immigrant trash along roads and in remote areas of Cochise County. There were 14 different events in which the county organized with local members of the community to pick up the garbage. The groups of people included local Boy Scout troops, girl softball teams, and local hiking clubs. With each event, the County provided supervision, supplies (trash bags, pickers, gloves) and transportation to the local landfill to dispose of the trash properly.

- During 14 events, 8 tons of trash removed

### **Pima County**

No report received as of December 2008. See Arizona Game and Fish Department for coordination with Pima County of Hunters Who Care events.

### **The Tohono O'odham Nation (TON)**

The TON received \$24,966 in FY2008 at the end of the fiscal year. That work will be reported in the FY2009 report.

### **The Pascua Yaqui Tribe**

BLM signed an assistance agreement with the Pascua Yaqui Tribe focused on Tortuga Ranch. This ongoing project resulted in a heavy duty cleanup of littered areas on tribal lands. The December 2007 cleanup on Tortuga Ranch was done through a contractor and local oversight. The Tribe did a one-time, heavy duty cleanup of "trouble" areas that cover some of the most vast and difficult areas to reach on the ranch. The areas done are the trail sometimes known as the "Western Electric Power Lines" trail or "The Eloy Highway" due to the heavy illegal immigration traffic, the levee area and the four corners.

This project was a one-time large cleanup of nine different points measuring a total of 8.22 miles long, which lasted approximately one and a half weeks to complete. Five trips were made to the landfill, and the workers dumped in total an approximate amount of 14 tons of garbage, using 10 boxes of 72 bags each. Each bag carried approximately 40 lbs per bag which totals approximately 28,800 lbs of trash. At approximately 2000 lbs per ton, the project coordinators estimate a total of 14 tons of trash cleaned up and disposed from Tortuga Ranch.

- Disposed of 14 tons (28,800 lbs) of trash from Tortuga Ranch

Late in FY2008, an additional \$19,000 was transferred to continue this program and will be reported in FY2009.

## Arizona Game and Fish Department

The Arizona Game and Fish Department (Department or AZGFD) enhanced their already successful program through additional equipment and supplies, aerial mapping to plan events, and expanded partnerships. AZGFD is particularly effective in using volunteers who already have an awareness of the outdoors and recognize the degradation occurring on ranchlands in southeast Arizona. These groups have shown a continual desire to transform the landscape back to its natural condition. In FY2008, two components dominated the AZGFD program: mitigation through cleanup events and installation of cattle guards.

**Mitigation by Clean-Up Events:** AZGFD clean up events are an expansion of regular duties for local Department Wildlife Law Enforcement and Landowner Relations Program personnel who implement the existing "Adopt-A-Ranch Program". Adopt-A-Ranch is an AZGFD tool to help connect concerned hunters and outdoors-minded people with ranchers and landowners with needs on their properties. The *Goal* is to work together on volunteer projects, to stimulate a cooperative *Win-Win* result for landowners, volunteers, wildlife, and rangeland habitat. Adopt-A-Ranch Projects throughout the state cover a wide range of rangeland issues from trash removal, to road and trail maintenance, water projects, to making fences wildlife friendly.

AZGFD considers the latest UDI trash cleanup events to be very successful: goals are being achieved at each clean up event. Through additional equipment and supplies, volunteers stay safer during their experience. Direct contact with UDI trash could pose health risks from illnesses that might be contracted from this garbage. In addition, the new equipment that this funding has help purchase helps limit potential contact volunteers might have with poisonous reptiles and painful spines from cactus and thorn bushes. The equipment has helped reduce overall fatigue due to less bending and carrying of heavy loaded bags. To date, there have been no reports of injury or sickness, or snakebites attributed to these cleanup activities.

Attendance of these volunteer groups is usually depended on several factors including conflicts with scheduled: hunting seasons, holiday and long weekend commitments, local and national sporting events, and unwillingness to attend during poor weather.

### Hunters Who Care: Two Clean Up Events Held in Fiscal Year 2007-08

AZGFD expanded the "Hunters Who Care" cleanup events into: Two annual, 2-day cleanup events starting in 2006 resulted from BLM funding. The Department coordinated efforts with Pima County Natural Resources, Parks and Recreation (Pima County), in conjunction with Southern Arizona Hunters Who Care and held a joint clean-up event on State Trust (STL) and Pima County lands near Arivaca, on December 8- 9, 2007. The Department coordinated with these same partners for a clean up in the Altar Valley on March 15-16, 2008.

*December 2007 near Arivaca AZ:* Clean up focused on small ranch roads and intermittent stream channels, mostly on STL several miles north and south of Arivaca

Road from milepost 5 to 20 along Arivaca Road. This area is a mix of STL leased lands and county property (Rancho Seco), the Marley Ranch (private and STL lease), and the Sopori KX Ranch (private and STL lease). Information on trash locations was provided by area ranchers, hunters, and AZGFD law enforcement personnel familiar with back roads and washes in these remote ranchlands.

Over 68 volunteers participated in the event along with 14 AZGFD and Pima County staff. Unfortunately, heavy rain doused the event on Saturday morning and attendance was unusually low for the first day. Volunteers targeted known "lay-up sites" and commonly used trails, along roads and near livestock water sources.

On Sunday December 9<sup>th</sup> 2007 an effort was made to focus on a site located on the Sopori KX Ranch, south of Arivaca Road. There was one wash approximately ½ mile long and 25 feet wide covered entirely in trash (see Photos). Participants included members of: Southern Arizona Hunter's Who Care, Safari Club International, the Boy Scouts of America, Pima County, and others. This one wash was cleaned by over 25 dedicated volunteers, for a period of four hours.

The joint effort of this two-day event yielded three dumpsters of UDI trash, or approximately 120 cubic yards.

- Two days of cleanup yielded three dumpsters of UDI trash, or approximately 120 cubic yards.

*Use of Aerial Mapping for cleanup planning.* AZGFD utilized BLM funding to fly a pre-cleanup planning flight (for the first time) in Department Aircraft over the northwest section of the Altar Valley on March 5<sup>th</sup> 2008. Three Department personnel used hand held GPS units, while flying over the Altar Valley, for approximately two hours. AZGFD visually located and documented thirty-one large layup sites for clean up. A "large site" the site needed to be greater than 50 meters in one dimension. Sites were usually polygons, some up to 150 meters long, but others were linear following trails. Site shape is often influence by shade or cover in the vicinity. AZGFD gathered enough data in this one flight to pinpoint on the ground locations of high-density areas of UDI trash accumulation. See Appendix I for maps and more information.

These locations enabled volunteers to travel directly to highly polluted areas, using their valuable time more efficiently than ever before. The Department will be able to use this data on several more cleanups over the next few years. Volunteers were only able to clean six large areas in the two-day period March 15-16, 2008. These sites will likely persist, as patterns for immigration change very little year by year, but usage by immigrants is influenced by weather conditions, available cover from the elements, and law enforcement activities.

*March 15-16, 2008 Results near Three Points AZ:* Approximately 44 volunteers participated in this two-day event held in the Altar Valley, near Three Points AZ, cleaning up six large areas.

**Installation of Cattle Guards to Mitigate UDI Impacts to Ranches:** AZGFD worked with local ranches to reduce persistent damages from UDI and drug traffickers' vehicles to fences and gates by replacing swinging gates with cattle guards in key locations. In FY2008, efforts focused on the Marley Ranch which has been facing increasing impacts to ranch resources due to motorized UDI traffic and enforcement activities on and near the ranch. Cattle from the Marley Ranch were regularly escaping their designated pastures through downed fences and broken gates, because gates were regularly being driven through, rather than being opened and closed. Vehicles traveling at high speeds across the ranch transporting UDI's and/or contraband, or vehicles being pursued by law enforcement in these remote situations, often fail to yield, and often drive through fencing and gates, rather than stop and open and close ranch gates and then face arrest. These cattle escaping onto nearby properties were not only a nuisance to ranchers, who must gather cattle each time, but they were being told they would be fined for cattle found in trespass on Refuge property.

AZGFD coordinated efforts with the Buenos Aries National Wildlife Refuge (BANWR) and Marley Ranch representatives. In the late summer of 2008, the Marley Ranch entered into a five-year Stewardship Access Agreement with the Department that guarantees public access through the Ranch's Private lands (State Trust Lands have access when Private is open to public).

The Department utilized funding through this grant to provide the Ranch with \$10,000 for the purchase and installation the cattle guards in the eight needed locations. AZGFD obtained sixteen used 7'X7' cattle guard grates from the AZ Department of Transportation, and delivered these to the Ranch along with other materials such as lumber, hardware, and cement to install the cattle guards. The Marley Ranch and AZGFD obtained necessary clearances with AZ State Land Department and State Historic Preservation Offices, for the placement of the guards.

- In September 2008, eight cattle guards were installed on Private and STL property within the Ranch boundaries (See Appendix I for photographs and maps of locations).

## **Gila Watershed Partnership**

In partnership with the Safford Field Office, Gila BLM District, the Gila Watershed Partnership (GWP) completed efforts to clean up UDI sites in the Gila River watershed.

Greenlee County Buzzard Roost Undocumented Immigrant (UDI) Camp Cleanup, Jan. 2007 through Nov. 14, 2008, Greenlee County. GWP spent considerable efforts to clean up an illegal immigrant camp. An elderly man had permitted UDIs to stay in the area. Multiple shelters, debris and abandoned vehicles were removed. Due to the remoteness of the area and its difficulty to patrol, UDIs repeatedly used the area requiring further cleaning.

- GWP dismantled one UDI camp and removed debris, abandoned vehicles and shelter materials.



Gila River UDI Clean up in association with the Safford Public Works. A number of UDI camps along the Gila River were identified and GWP is removing the debris. In the first two sites, GWP used City of Safford equipment to remove a great deal of the debris. In the last area, a prison crew removed garbage, some of which was half buried. GWP filled 14 large bins with debris.

- Three Gila River camps were cleaned up removing over 14 large bins of debris.

## **Part II: The Southern Arizona Project to Mitigate Impacts of Illegal Immigration and Smuggling: Assessing the Extent and Impact of the Damage**

**How Big Is the Problem? What is known about the Extent?** The borderlands and the impact zone is over 100 miles north of the border, and is continuing to edge northward. Almost 86% of the Mexico- Arizona border miles consist of federal and tribal lands. Of the 21.5 million borderland acres, about 3.7 million are state trust land, 4.2 million are private land, 35,000 acres are other county and city land, some 2.9 million are Indian lands, and the remainder are managed by federal agencies---USFS 1.7 million, BLM 3.7 million, Department of Defense (DOD) lands 2.8 million, USFWS 1.7 million, NPS 442,000 acres, and the Bureau of Reclamation 53,000. [Source: *Arizona Coordinated Plan*, 2004, Borderland Management Task Force]

After six years of the Southern Arizona Project, a great deal of descriptive and anecdotal information exist about the amount of damage on lands in southern Arizona, but no comprehensive or scientifically-designed inventory has been completed to define the extent of the issues. In prior reports, the estimated figure provided for trash accumulation in southern Arizona has been stated as 25 million pounds based on the simple formula that over 300,000 immigrants have been arrested and each UDI carries an average of 8 lbs of trash.

Some specific areas or units have had a more in-depth review. The Buenos Aires NWR was subject to GIS analysis and aerial imagery studies in 2001. According to BANWR, that analysis revealed 1,314 linear miles of UDA trails on the BANWR, including 117 individual trail crossings at the 4.5-mile international border. This translates to 280 acres of complete denudation, consisting of fragile and valuable riparian habitat. The miles of trails and acres of denudation have increased since that year.

Linear transect data are also available for the Cabeza Prieta NWF and these show increasing illegal trails and routes across the wilderness. The Tohono O'Odham Solid Waste Division is using GPS locations to re-visit and monitor 134 sites and to plot the locations of over 200 abandoned vehicles. Some GPS tracking has occurred on the BLM IFNM and individual locations have been plotted on maps for both areas cleaned up and needing work. The Border Patrol also has extensive maps showing trails and lay-up sites.



While data exist, no systematic analysis or compilation has been generated nor have the hundreds of cleaned-up locations and rehabbed trails been entered into a database, although some are being mapped. In May 2008, the Borderland Management Task Force in conjunction with BLM and the Arizona Department of Environmental Quality (ADEQ) formed a work group to address several related questions:

- What is the state of knowledge (inventories, studies, current efforts) to identify or to study impacts to lands and resources?
- What is the extent and nature of the impacts? For example, litter, infrastructure, and what resources must be applied to recovery these lands?
- What are the impacts of the damages to natural and cultural resources? For example, what are the impact of roads and trails to fragmenting habitat.
- What, if any, are the health risks associated from burned vehicles or trash accumulations?

The Assessment Project may produce results in FY 2009. No assessment funds have been made available for a comprehensive and systematic look at the problem. The ADEQ in partnership with the Environmental Protection Agency (EPA), with the BLM and the BMTF, has begun at least phase one, to set up an interactive website and compile existing information.

In brief, while hundreds of Southern Arizona Projects have been completed removing over a million pounds of trash and over 300 abandoned vehicles and 3,000 abandoned bicycles, and have repaired miles of fence and rehabbed roads or obliterated illegal trails---it is not possible to state what percent of the problem has been successfully tackled.

**Assessing the Costs of Mitigating the Damages from Illegal Immigration and Smuggling**

Similarly, the dollars spent for the Southern Arizona Project have been allocated and tracked by specific project codes to ensure results on the ground. But the cost per ton of litter or per abandoned vehicle removal cannot be calculated with any degree of confidence. Agencies and partners are leveraging the funding provided by BLM with in-house labor and materials and through recruiting hundreds of volunteers. This adds to the benefits, but makes calculations more difficult.

One way of looking at these projects is through the “level of effort” reporting that agencies sometimes provide. For example, in FY2007, Pima County reports, as a conservative estimate of time and resources spent on their partnership project that would match the BLM funding as:

	Volunteer time *	PC Staff*	Mileage*
Last report Period	1,390 hrs	2,150 hrs	12,000 miles
Current FY2007 Period	<u>2,650 hrs</u>	<u>125 hrs</u>	<u>8,195 miles</u>
Estimated Value	\$36,360	\$23,000	\$8,078 estimated

Using charges at \$.40/mile, \$9/hr for volunteers/summer youth crews and \$ 20/hr for Pima County staff.

Pima County also provides levels of efforts for 9 clean-up locations:

Property	Volume of Trash	Fence Repairs	Man-hours Effort
Canoa Ranch	3- cu/yds	2- 50 ft	32 hrs
Bar V Ranch	10- cu/yds	5- 150 ft	40 hrs
Empirita Ranch	10- cu/yds	10- 500 ft	120 hrs
Kings 98 Ranch	5- cu/yds	0	20 hrs
Old Hayhook	0	0	10 hrs
Rancho Seco	120- cu/yds	4- 100 ft	40 hrs
Buckelew Ranch	2- cu/yds	0	20 hrs
Black Wash	0	0	0
Cienega Creek	5- cu/yds	5- 150 ft	80 hrs
Project Coordination			320 hrs

Levels of efforts may be deduced from many project descriptions provided in the Appendices. For example: The Phoenix District description for the Vekol Valley Trash Removal and Illegal Smuggling Route Restoration is typical. A 6-member SCC crew, 3 SCA members plus 2 park rangers worked over a 10-day period resulting in 5 bags of trash, 2 bikes, and 12 illegal routes restored (totaling 2 miles). These routes required heavy rehabilitation work.

Similarly the BLM IFNM reports on a trash-removal project at the Ajo site in the Roskrige-Recortado Mountains where a 15-SCC crew, 2-member SCA crew and 3 others worked 806 volunteer hours in 5 days. The crew members hiked on foot trails 0.5 to 1 miles from the vehicle staging area, picked up trash and hiked back. This was repeated until the crew removed 606 bags (approximately 13,332 lbs.) of trash, including 3,679 migrant backpacks.

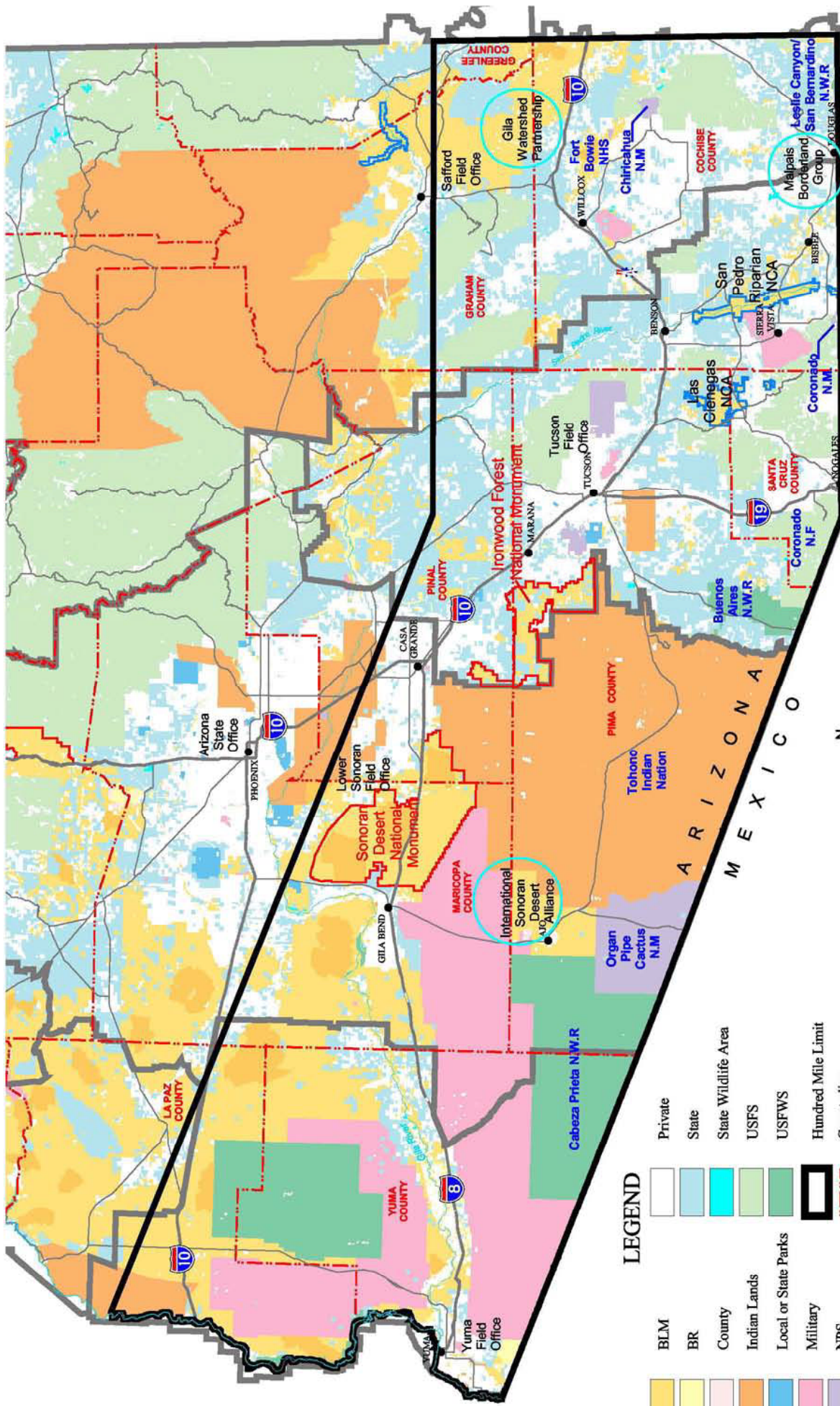
**Determining the Impacts of Damage to Natural and Cultural Resources.**

Funding has not yet been made available for studying the impacts of trash, trails, damaged and eroded soils, etc. on natural and cultural resources. Noted above, the BMTF/BLM/ADEQ/EPA Assessment Project has begun to address the issue of impacts.

The San Bernardino/Leslie Canyon NWR has begun monitoring studies for wildlife population changes resulting from the impacts of illegal immigration on these refuges. Most agency specialists would like to link problems such as the increasing number and miles of illegal roads and trails to habitat fragmentation and how this in terms impacts larger and smaller species of mammals and other species. Just as the Southern Arizona Project success has resulted from expanded partnerships bringing resources to the issues, completing impact studies will require attracting partners such as the United States Geological Survey, universities, and non-profits organizations, and the Department of Homeland Security.

FY2008 Summary Prepared by: Shela McFarlin, BLM, Arizona State Office



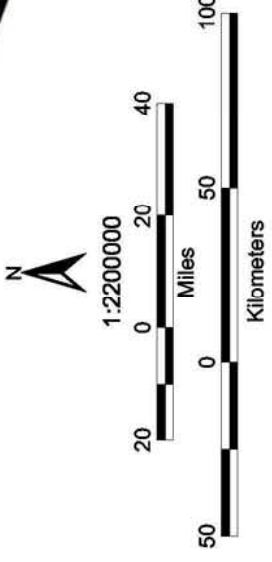


**LEGEND**

- BLM
- BR
- County
- Indian Lands
- Local or State Parks
- Military
- NPS
- Non-governmental Organization Projects
- Private
- State
- State Wildlife Area
- USFS
- USFWS
- Hundred Mile Limit
- County line
- BLM Field Office Boundaries



**Caution:**  
Land ownership data is derived from less accurate data than the 1:24,000 scale base map. Therefore, land ownership may not be shown for parcels smaller than 40 acres, and land ownership lines may have a plotting error of 1/16 to 1/8 inch.



No warranty is made by the Bureau of Land Management of use of the data for purposes not intended by BLM.  
The Arizona State Land Department and Bureau of Land Management make no warranties, implied or expressed, with respect to information shown on this map.



## SOUTHERN ARIZONA PROJECT FISCAL YEAR 2008 - PHOTO HIGHLIGHTS

### UDI Site Cleanup

Bureau of Land Management (BLM) Ajo site, Roskruge-Recortado Mountains

Before



After



Before



After





#### BLM Yuma Field Office Clean-Ups

Trash that included discarded clothing and blankets, empty water jugs, and numerous pieces of carpet used to hide tracks (photos below) from DHS Agents was removed.



Carpet pieces used to hide footprints



Removing discarded blankets



An area after a clean-up



Volunteers sign in for a clean-up



Buenos Aires National Wildlife Refuge:

Litter Problem



SCA Melissa Bowers with border litter



Pascua Yaqui Tribe  
Tortuga Ranch Clean-Up



Before



Under clean up





## Restoration

BLM Yuma Field Office Restoration Project, 5 acres along Colorado River



Planting Crew



Planted Trees

### Road Rehabilitation Projects

BLM, IFNM, West Silverbell foot trails and smuggling roads

Before Rehab



After Rehab



Before Rehab



After Rehab



BLM, Phoenix District, Vekol Valley

Illegal Route Bypass Rehab (Before)



During Rehab Work



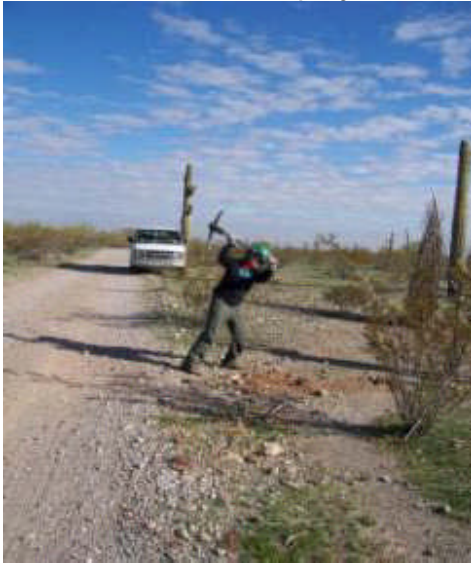
Vekol Road Illegal Smuggler Route Restoration before (left) and after (right)





**Fencing, Barriers and Protection:**

BLM Phoenix District projects



Roy and the SCC crew put up fencing at the end of Smith Road (8022).

**San Bernardino/Leslie Canyon Projects:**



Wildlife friendly vehicle barrier

SB/LC NWR

Photo F (Damaged Border Fence)



Photo G (Damaged Border Fence & UDA Trash)





**Abandoned vehicles and bicycles**

BLM, Phoenix District, Sonoran Desert National Monument



Abandoned vehicles found in the Sand Tank Mountains



# **EXHIBIT 33**





# A Line in the Sand: *Confronting the Threat at the Southwest Border*



PREPARED BY THE MAJORITY STAFF OF THE  
**HOUSE COMMITTEE ON HOMELAND SECURITY**  
SUBCOMMITTEE ON INVESTIGATIONS  
MICHAEL T. McCAUL, Chairman

## **EXECUTIVE SUMMARY AND FINDINGS**

The Subcommittee on Investigations of the Committee on Homeland Security issues this interim report summarizing its findings regarding the criminal activity and violence taking place along the Southwest border of the United States between Texas and Mexico. The Texas-Mexico border region has been experiencing an alarming rise in the level of criminal cartel activity, including drug and human smuggling, which has placed significant additional burdens on Federal, State, and local law enforcement agencies. This interim report will examine the roots of the criminal enterprise and its effects on the local populations, what steps are being taken or should be taken to counter the threat, and the significance of these issues for the overall homeland security of the United States.

The United States border with Mexico extends nearly 2,000 miles along the southern borders of California, Arizona, New Mexico and Texas. In most areas, the border is located in remote and sparsely populated areas of vast desert and rugged mountain terrain.



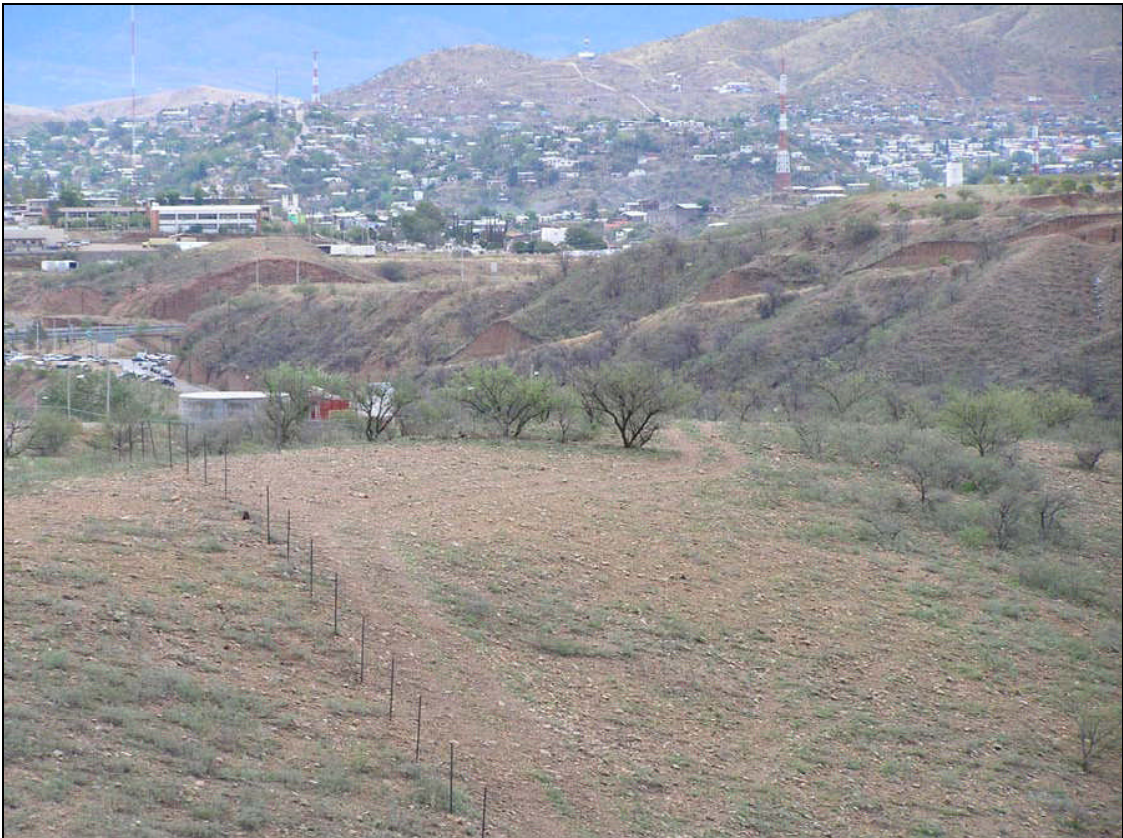
**U.S.-Mexico border in New Mexico**

The border's vast length and varied terrain poses significant challenges to U.S. law enforcement efforts to control the entry of individuals and goods into the United States. The U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS) is the federal agency with primary responsibility to detect and prevent illegal entry into the United States. As of the date of this report, approximately 11,000



CBP agents patrol the nearly 6,000 miles of international border the United States shares with its neighbors Mexico and Canada.

In addition to Federal agents, State and local law enforcement also patrol the border areas. In remote areas along the border, many sheriffs' departments are called upon to address border-related criminal matters and serve as a backstop to CBP operations. In many cases, these local law enforcement agencies do not have the resources necessary to patrol the thousands of square miles of border territory under their respective jurisdiction, leaving the security of the border vulnerable.



**U.S.-Mexico border in Arizona**

While the Southwest border hosts robust legal commercial activity, the border also is the site of violent criminal enterprises. These enterprises are carried out by organized criminal syndicates and include the smuggling of drugs, humans, weapons, and cash across the U.S.-Mexico border.

During 2005, Border Patrol apprehended approximately 1.2 million illegal aliens; of those 165,000 were from countries other than Mexico. Of the non-Mexican aliens, approximately 650 were from special interest countries. Special interest countries are

those “designated by the intelligence community as countries that could export individuals that could bring harm to our country in the way of terrorism.”<sup>1</sup>

A significant portion of illegal activity at the border relates to illegal drug smuggling. Below is a summary of FY 2005 Federal drug seizures, which shows a total of 222,714 kilograms of cocaine and 1,162,509 kilograms of marijuana.

Federal Nationwide Seizures to EPIC in FY 2005

<u>Federal Agency</u>	Cocaine (in kg)	Marijuana (in kg)	Methamphetamine (in kg)
DHS (CBP, ICE)	32,353	894,353	2,616
DEA	52,246	223,652	2,671
FBI	1,380	15,908	107
Coast Guard	128,908	6,326	N/A
Other-Federal	7,827	22,270	76
<b>Total</b>	<b>222,714</b>	<b>1,162,509</b>	<b>5,470</b>

Source: El Paso Intelligence Center, National Seizure System

Federal law enforcement estimates that 10 percent to 30 percent of illegal aliens are actually apprehended and 10 percent to 20 percent of drugs are seized.<sup>2</sup> Therefore, in 2005, as many as 10 to 4 million illegal aliens crossed into the United States; and as much as 2.2 to 1.1 million kilograms of cocaine and 11.6 to 5.8 million kilograms of marijuana entered the United States.

The triple threat of drug smuggling, illegal and unknown crossers, and rising violence are the reality facing communities. While many illegal aliens cross the border searching for employment, not all illegal aliens are crossing into the United States to find work. Law enforcement has stated that some individuals come across the border because they have been forced to leave their home countries due to their criminal activity. These dangerous criminals are fleeing the law in other countries and seeking refuge in the United States.

Along the border with Mexico, there are 43 Ports of Entry, 18 in Texas, connecting with major U.S. interstate highways. These Ports of Entry and highway systems are intended to facilitate lawful trade and commerce. However, the Mexican drug cartels have been able to use these highways for their own ends, seeing in them an efficient means to transport their drugs and illegal aliens across the border.

<sup>1</sup> “*Strengthening Border Security Between Ports of Entry: The Use of Technology to Protect Our Borders: Hearing Before the Subcomm. On Immigration, Border Security and Citizenship and the Subcomm. On Terrorism, Technology and Homeland Security of the Senate Comm. On the Judiciary*, 109<sup>th</sup> Cong. (Apr. 28, 2005) (written statement of David Aguilar, Chief, Border Patrol, U.S. Department of Homeland Security).

<sup>2</sup> Interview by Subcomm. Staff with Federal law enforcement personnel (Aug. 21, 2006).

Mexican drug cartels operating along the Southwest border are more sophisticated and dangerous than any other organized criminal enterprise. The Mexican cartels, and the smuggling rings and gangs they leverage, wield substantial control over the routes into the United States and pose substantial challenges to U.S. law enforcement to secure the Southwest border. The cartels operate along the border with military grade weapons, technology and intelligence and their own respective paramilitary enforcers.

In addition, human smugglers coordinate with the drug cartels, paying a fee to use the cartels' safe smuggling routes into the United States. There are also indications the cartels may be moving to diversify their criminal enterprises to include the increasingly lucrative human smuggling trade.

Moreover, U.S. law enforcement has established that there is increasing coordination between Mexican drug cartels, human smuggling networks and U.S.-based gangs. The cartels use street and prison gangs located in the United States as their distribution networks. In the United States, the gang members operate as surrogates and enforcers for the cartels.

Murders and kidnappings on the both sides of the border have significantly increased in recent years. The violence along the U.S.-Mexican border has increased so dramatically, the United States Ambassador to Mexico, Tony Garza, during the last year, has issued an unprecedented number of diplomatic notes to the Mexican Government and threat advisories to U.S. citizens traveling to Mexico. During August 2005, the Ambassador closed the U.S. consulate in Nuevo Laredo for one week in order to assess security.

This new generation of sophisticated and violent cartels, along the Southwest border, is presenting significant challenges to U.S. law enforcement. These criminal syndicates have unlimited money to buy the most advanced weapons and technology available. The cartels monitor the movements and communications of law enforcement and use that intelligence to enable the criminals to transport their cargo accordingly.

In addition to the criminal activities and violence of the cartels on our Southwest border, there is an ever-present threat of terrorist infiltration over the Southwest border. Data indicates that there are hundreds of illegal aliens apprehended entering the United States each year who are from countries known to support and sponsor terrorism.

- U.S. Immigration and Customs Enforcement investigations have revealed that aliens were smuggled from the Middle East to staging areas in Central and South America, before being smuggled illegally into the United States.
- Members of Hezbollah have already entered the United States across the Southwest border.
- U.S. military and intelligence officials believe that Venezuela is emerging as a potential hub of terrorism in the Western Hemisphere. The Venezuelan

government is issuing identity documents that could subsequently be used to obtain a U.S. visa and enter the country.

In response to the increasing criminal activity and violence along the Texas-Mexico border, the State of Texas, in partnership with the Federal government, recently launched Operation Rio Grande, an initiative to increase border security. Under Operation Rio Grande, Texas has conducted targeted, short duration, and high intensity regional operations that integrate local, State and Federal law enforcement.

The Texas border security strategy includes four key areas of focus: 1) increasing patrols and law enforcement presence; 2) centralizing command, control and intelligence operations; 3) increasing State funding and deployment of State resources for border security; and 4) making better use of technology to fight border crime. By focusing on these areas, Texas has been able to mount an aggressive defense which has significantly reduced crime in areas of operations; and substantially decreased transnational drug and human smuggling enterprise activities between Ports of Entry.

Additionally, Texas has utilized a number of new tactics and strategies to achieve a reduction in crime on the border. A cornerstone of this new strategy has been the use of Joint Operations Intelligence Centers (JOIC) and a Border Security Operations Center (BSOC).

During the respective operations, crime in the border regions decreased anywhere from 30% to 75% in the targeted areas. This reduction was sustained even after the operation ended as local, State and Federal agencies continue to implement lessons learned and best practices. The net effect of these efforts is that Texas is developing the capability to curtail border-related criminal enterprises.

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## **INTRODUCTION**

The following interim report focuses on the criminal activity and violence along the Texas-Mexico border. The findings contained in this report reflect the work of the Subcommittee on Investigations, Committee on Homeland Security, U.S. House of Representatives.

At the direction of Congressman Michael McCaul, Chairman of the Subcommittee on Investigations and Vice Chairman of the U.S./Mexican Interparliamentary Group, the objective of this interim report is to document the state of border security along the Texas-Mexico border.

This interim report represents the culmination of several months of investigation by the Subcommittee. During 2006, the Subcommittee held hearings on border security examining the expanding crisis of violence on the Southwest border. On February 7, 2006, the Subcommittee convened to examine a particularly troubling incursion into the sovereign territory of the United States by armed individuals who were driving military-



style vehicles, carrying military type weapons, and appeared to be wearing Mexican army uniforms. On August 16, 2006, the Subcommittee convened a field hearing in Houston, Texas to hear testimony from Texas State and local government officials and law enforcement officials regarding border violence and criminal activity.

In addition, Subcommittee staff traveled to Texas, New Mexico, and Arizona and met with Federal, State and local law enforcement officials, county attorneys, and local residents and ranchers to gather facts relevant to this report. To understand the unique challenges facing law enforcement on the Southwest border, Subcommittee staff also accompanied law enforcement personnel as they patrolled the border.

Based on a review of the data, interviews conducted and other information collected, Subcommittee staff finds that:

- 1. Drug trafficking organizations and human smuggling networks are proliferating and strengthening their control of key corridors along our Nation's Southwest border.*
- 2. The Mexican drug cartels wield substantial control over the U.S.-Mexican border. Law enforcement on the border agree that very little crosses the respective cartel territories, or "plazas," along the Southwest border without cartel knowledge, approval, and financial remuneration.*
- 3. These criminal organizations and networks are highly sophisticated and organized, operating with military style weapons and technology, utilizing counter surveillance techniques and acting aggressively against both law enforcement and competitors.*
- 4. Drug trafficking organizations, human smuggling networks and U.S. based gangs are increasingly coordinating with one another to achieve their objectives.*
- 5. Federal, State and local law enforcement report new and ever-increasing levels of ruthlessness and violence associated with these criminal organizations, which are increasingly spilling across the border into the United States and moving into local communities.*
- 6. Each year hundreds of illegal aliens from countries known to harbor terrorists or promote terrorism are routinely encountered and apprehended attempting to enter the U.S. illegally.*
- 7. The existing resources of the U.S. Border Patrol and local law enforcement must continue to be enhanced to counter the cartels and the criminal networks they leverage to circumvent law enforcement.*

## **I. Dangerous Criminal Enterprises Operating Along the Southwest Border**

### **A. The Emerging Influence and Power of Mexican Drug Cartels**

Mexican drug trafficking organizations and criminal gangs have emerged in recent years as the most influential drug traffickers in the United States. Though Mexico's cartels have existed for some time, they have become increasingly powerful with the demise of the Medellin and Cali cartels in Colombia and have now come to dominate the U.S. illicit drug market.

According to the National Drug Intelligence Center, Mexican cartels are "the predominant smugglers, transporters, and wholesale distributors of cocaine, marijuana, methamphetamine, and Mexico-produced heroin in the United States" and "are expanding their control over the distribution of these drugs in areas long controlled by Colombian and Dominican criminal groups, including areas of New York and Florida."<sup>3</sup>

In addition to drug trafficking, cartels have been tied to both human and arms smuggling, and U.S. intelligence officials report they expect to see human smuggling become another component of the drug cartels' business.<sup>4</sup> This fact is of particular import in a post 9/11 environment and at a time in history when the United States is more concerned than ever about securing its borders.

Mexican cartels are also increasing their relationships with prison and street gangs in the United States to facilitate trafficking drugs within the United States.<sup>5</sup> For example, gangs including the Latin Kings and Mara Salvatrucha buy methamphetamine from Mexican drug cartels for distribution in the southwestern United States.<sup>6</sup>

The U.S. Drug Enforcement Administration reports that the Mexican drug syndicates operating today along our Nation's Southwest border are far more sophisticated and dangerous than any of the other organized criminal groups in America's law enforcement history.<sup>7</sup> Indeed, these powerful drug cartels, and the human smuggling networks and gangs they leverage, have immense control over the routes into the United States and continue to pose formidable challenges to our efforts to secure the Southwest border.

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<sup>3</sup> U.S. Department of Justice National Drug Intelligence Center, *National Drug Threat Assessment* (January 2006).

<sup>4</sup> Interview by Subcomm. Staff with Federal law enforcement personnel in Wash, D.C. (September 18, 2006).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Pushing the Border Back: the Role Intelligence Plays in Protecting the Border: Hearing Before the House Permanent Select Comm. on Intelligence*, 109<sup>th</sup> Cong. (August 17, 2006) at 6 (written Statement of John S. Comer, Assistant Special Agent in Charge Phoenix Field Division, Drug Enforcement Administration).

B. Smuggling Routes Along the Texas-Mexico Border

Along the Texas-Mexico border, drug cartels and organized criminal groups have established a robust presence in key strategic areas. The Texas-Mexico border is particularly attractive to these criminal networks as it spans approximately 1200 miles, includes 18 Ports of Entry, and has major interstate highways in Brownsville, McAllen, Laredo, and El Paso, thereby providing the organized crime groups with access to the rest of the Nation.

The South Texas region covers approximately 625 miles of border territory – a total area of 20,963 square miles and borders three separate Mexican States. Inside the territory are 11 Ports of Entry that include 15 international bridges. Directly across the cities of Brownsville, McAllen, and Laredo are major Mexican cities, each with a population between 600,000 and 800,000.



**Trains from Central America and Mexico en route to the U.S. border**

McAllen and Brownsville host interstate highways and thoroughfares, providing drug traffickers and human smugglers with ready access to the Nation's interior. Trains, usually 90 to 160 cars in length, traveling from Central America through Mexico to Brownsville, McAllen, and Laredo, are one mode of transportation illegal aliens use to enter the United States.<sup>8</sup> Each year thousands of illegal aliens cling to the sides and tops of the rail cars for the journey to the north.<sup>9</sup>

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<sup>8</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006).

<sup>9</sup> *Id.*



**Trains from Central America and Mexico en route to the U.S. border**



**Train routes from Central America and Mexico with U.S. Destinations**

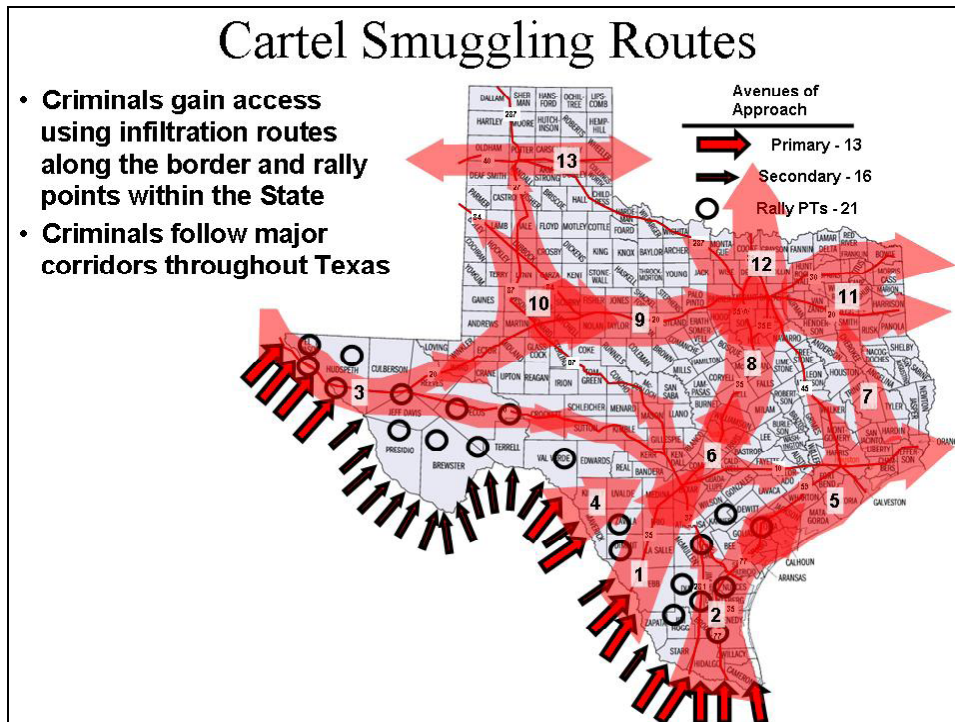
The El Paso-Juarez corridor in west Texas also serves as the gateway for drugs destined to major metropolitan areas in the United States. Mexican drug cartels transport significant quantities of marijuana and cocaine through the El Paso Port of Entry using major east/west and north/south interstate highways. These highways provide the Mexican cartels with transportation routes for drug distribution throughout the United States. Drug cartels also obtain warehouses in El Paso for stash locations and recruit



drivers from the local area to transport the drugs to various destinations throughout the United States.<sup>10</sup>

The Alpine area is largely rural and sparsely populated, encompassing the Big Bend corridor, a transshipment route for drugs entering the United States from Northeast Mexico. The drug cartels maintain command and control elements to the north in the Midland-Odessa area and in the border towns to the south in Presidio and Redford.<sup>11</sup>

The Laredo Port of Entry is the busiest and most heavily traversed land Port of Entry on the Southwest border, handling approximately 6,000 commercial vehicles a day. Forty percent of all Mexican exports cross into Laredo, Texas, where Interstate 35 connects directly to Dallas, and from there throughout the United States. U.S. Border Patrol Chief John Montoya describes this Port of Entry as “the key ingress into the United States.” “It’s called a gateway city, not only into Mexico but into the United States as well.”<sup>12</sup> The very conditions that make the Laredo Port of Entry so attractive to legitimate commerce also make the city ideal for the illicit drug and human smuggling trade.



Drug and human smuggling routes from Mexico into the United States

<sup>10</sup> Press Release, Drug Enforcement Agency, Jun. 1, 2006; available at <http://www.usdoj.gov/dea/pubs/States/texas.html>.

<sup>11</sup> *Id.*

<sup>12</sup> Chris Bury, *Drug ‘War Zone’ Rattles U.S.-Mexico Border*, ABC NEWS, Aug. 30, 2006.

C. Cartels Waging Violent Turf Battle Over Control of Key Smuggling Corridor

Nuevo Laredo, Laredo's neighboring city on the Mexico side of the border, is the most important launching point for illegal contraband entering the United States. Nuevo Laredo is also where much of the violence and drug cartel activity has taken place in recent years. The violence is due to the fact that the major drug cartels are currently battling for control over this highly coveted corridor into the United States known as a "plaza."

The plaza proceeds through major cities with large highway systems where both aliens and drugs can be staged prior to movement to other parts of the United States. Control of this corridor translates into control of all illegal smuggling, both of humans and drugs. Any criminal organization that wants to smuggle through this established safe passage into the United States is required to pay a tax to the cartel that controls the plaza.<sup>13</sup>

The Sinaloa cartel began to contest the Gulf Cartel's domination of this coveted corridor following the arrest of Gulf Cartel leader Osiel Cardenas in March 2003. While in prison, Arellano Felix, head of the Tijuana cartel, and Cardenas forged an alliance against the Sinaloa and its ally the Juarez cartel. As a result, the cartels are now largely aligned into two blocks, some which support the Gulf Cartel and others which support the Sinaloa Cartel. It is these two blocks that are involved in the massive and violent turf wars which are currently being carried out in Nuevo Laredo.<sup>14</sup>

To protect and expand their criminal operations, Mexican drug cartels maintain highly developed intelligence networks on both sides of the border and have hired private armies to carry out enforcement measures.<sup>15</sup> For example, the Gulf Cartel leader Cardenas employs a group of former elite military soldiers known as "Los Zetas."<sup>16</sup> The Zetas are unique among drug enforcer gangs in that they operate as "a private army under the orders of Cardenas' Gulf Cartel, the first time a drug lord has had his own paramilitary."<sup>17</sup> The Zetas have been instrumental in the Gulf Cartel's domination of the drug trade in Nuevo Laredo, and have fought to maintain the cartel's influence in that city following the arrest of Cardenas.<sup>18</sup> The Zetas' activities are not limited to defending the Gulf Cartel's terrain in northern Mexico. The paramilitary force is also believed to control trafficking routes along the eastern half of the U.S.-Mexico border.<sup>19</sup>

The Zetas are believed to be a serious threat to public safety on both sides of the Southwest border. They are well-financed and well-equipped and have demonstrated a

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<sup>13</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in Wash, D.C. (Sept. 27, 2006).

<sup>14</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006).

<sup>15</sup> Interview by Subcomm. Staff with Federal law enforcement personnel (Sept. 25, 2006).

<sup>16</sup> *Id.*

<sup>17</sup> Oscar Becerra, *New Traffickers Struggle for Control of Mexican Drug Trade*, JANE'S INTELLIGENCE REVIEW (Sept. 1, 2004).

<sup>18</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006).

<sup>19</sup> *Id.*



willingness to shoot, torture, and kill law enforcement officers, or rival cartel and gang members on both sides of the border. Federal law enforcement officials deem the Zetas among the most dangerous criminal enterprises in the Americas.<sup>20</sup>

Reports indicate that while the Zetas were initially comprised of members of the Mexican military's Special Forces, they now include Federal, State, and local law enforcement personnel as well as civilians. Moreover, according to U.S. intelligence officials, Zetas are recruiting former Guatemalan Special Forces military personnel known as Kaibiles and members of the notorious cross-border gangs known as Maras, including the violent Mara Salvatruchas (MS-13).<sup>21</sup>

The cartels' methods of torture and killing are particularly brutal. On September 6, 2006, masked gunmen entered a nightclub in the Michoacan, fired guns in the air and rolled five severed human heads onto the dance floor.<sup>22</sup> The gunmen left a sign among the severed heads that read:

“The family doesn't kill for money. It doesn't kill women. It doesn't kill innocent people, only those who deserve to die. Know that this is divine justice.”<sup>23</sup>

According to Federal law enforcement officials; this hideous act was a revenge killing between warring gangs. Decapitations are becoming quite common in many areas in Mexico where cartels and gangs battle for control over lucrative smuggling corridors. Heads are publicly displayed for the purpose of intimidation.

Another brutal means of torture and death is called “guisoe.” This practice involves putting a person into a 55 gallon drum, usually dead, but not always, and pouring various flammable liquids over the body and lighting it on fire. A variation on this method is to place a burning tire around the neck of an individual, burning the victim alive. The remains are dumped on roadsides as a message to others who would consider crossing the cartels.<sup>24</sup> The ruthless methods employed by these cartels to torture and kill their competitors are no different than the techniques used by Al Qa'ida and other terrorist organizations. This level of brutality is particularly troubling as the cartels are executing these vicious murders a mere stones-throw from U.S. soil.

Sometimes the violence and intimidation is captured on video. In 2005, a video was anonymously delivered to the *Dallas Morning News* showing four men, handcuffed and badly beaten in front of a backdrop of black plastic, describing to off-camera interrogators their work as cartel assassins. The men were members of the Zetas. The video ends when one of the Zetas is shot in the head at point blank range by an off-

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> National Public Radio, *A Cult of Death in Michoacan*, npr.com, September 20, 2006; available at <http://www.npr.org/templates/story/story.php?storyId=6113878>.

<sup>23</sup> *Id.*

<sup>24</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006).



“La Barbie,” head of the Sinaloa enforcers alleged to have killed members of Zetas

camera captor. Law enforcement authorities have never found the body of the murdered Zeta, nor the other three men, dead or alive.<sup>25</sup>

U.S. law enforcement officials are struck with the resiliency and determination of these criminals. In the words of one law enforcement official: “They [the Zetas] have the Texas-Mexico border wired.”<sup>26</sup> For example, in 2005, just six hours after being sworn in as Nuevo Laredo’s Police Chief, Alejandro Dominguez was killed. He had announced a crackdown on the cartels. He was shot more than 50 times.<sup>27</sup> During mid-September 2006, a group of 25 individuals in Nuevo Laredo were gathered in a local hotel with visas to travel to the U.S. for work. The Zetas mistakenly thought the workers were from a rival cartel and kidnapped and tortured them. The workers were released when the cartels realized their mistake. U.S. Federal law enforcement authorities said Mexican police would not respond to the emergency calls for help that were made during the incident.<sup>28</sup>

The violence is beginning to spread to neighboring Mexican States also sharing a border with Texas. Nuevo Leon, once thought to be one of the safest States and home to some of the richest families in Mexico, has seen the murders of three top law enforcement officials who had spoken out against the drug cartels. During September 2006, two police chiefs were killed as well as the top crime investigator.<sup>29</sup> In the past two years, six journalists covering drug trafficking along the border have also been killed.

<sup>25</sup> *Id.*

<sup>26</sup> Alfredo Corchado, THE DALLAS MORNING NEWS (Sept. 24, 2006).

<sup>27</sup> Interview by Subcomm. Staff with Federal law enforcement personnel (Sept, 27, 2006).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

The Zetas have now become completely entrenched in Nuevo Laredo and have grown to more than five hundred with hundreds more in a support network throughout Mexico.<sup>30</sup> In an example of the Zeta's capabilities, a shootout on September 22, 2006 in Nuevo Laredo between the Zetas and an assassination target lasted approximately 40 minutes. The shootout included bazookas and grenades and reportedly killed approximately five Zetas and injured approximately five others.<sup>31</sup>

In response to such aggressive efforts on the part of the Zetas to defend and control parts of Mexico and its border with the U.S., the Sinaloa cartel established its own heavily-armed enforcer gang, "Los Negros." The group operates in a similar fashion to the Zetas. Los Negros, attempting to wrest control from the Zetas over the local police in Nuevo Laredo are believed to be responsible for the recent rise in violence there.<sup>32</sup> According to Webb County Sheriff Rick Flores, the warring cartels and the increase in violence wrought by these paramilitary enforcers have provoked a major cross-border human exodus from Nuevo Laredo into Laredo, Texas.<sup>33</sup>

D. Increasing Coordination Between Mexican Drug Cartels, Human Smuggling Networks, and U.S.-Based Gangs

Federal, State, and local law enforcement officials are witnessing a growing nexus between the Mexican drug cartels, illegal alien smuggling rings, and U.S. based gangs.<sup>34</sup> The human smuggling networks that operate along the Southwest border cannot move their human cargo through drug cartel controlled corridors without paying a fee.<sup>35</sup> The typical Mexican illegal alien now pays approximately \$1,200 to \$2,500. For aliens from countries other than Mexico this price is often considerably higher, and may even be more alluring for the cartels.<sup>36</sup> Foreign nationals are often charged an exorbitantly higher fee ranging anywhere from \$45,000 to \$60,000 per person.<sup>37</sup> Indeed, it is estimated that human smuggling through Mexico into the United States each year puts billions of dollars into criminal hands.<sup>38</sup>

According to U.S. law enforcement officials, tremendous incentive exists for drug cartels to diversify their criminal enterprises to include the human smuggling trade.<sup>39</sup> Human smuggling can be more lucrative than the illicit drug trade and the benefits far outweigh the risks for the cartels. There are many reasons for this. Law enforcement is dealing with a different type of commodity – drugs don't hide themselves as humans are able.

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<sup>30</sup> Interview by Subcomm. Staff with Federal law enforcement (Sept. 26, 2006).

<sup>31</sup> *Id.*

<sup>32</sup> Laurie Freeman, *State of Siege: Drug-Related Violence and Corruption in Mexico*, (Wash. Office in Latin America) (June 2006).

<sup>33</sup> Interview by Subcomm. Staff with Rick Flores, Webb County Sheriff's Office, Laredo, Tex. (Aug. 23, 2006) [hereinafter Aug. 23 Interview with Flores].

<sup>34</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006); Interview by Subcomm. Staff with Federal law enforcement (Sept. 26, 2006).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Telephone interview by Subcomm. staff with Federal law enforcement personnel (Oct. 13, 2006).

Consequently, smugglers can transport large numbers of illegal aliens across the border at one time and meet with some success.

Moreover, prosecutions for human smuggling are abysmally low.<sup>40</sup> Typically, groups of illegal aliens apprehended attempting to cross the border will not identify the smuggler in the group. For those smugglers that are identified and captured, most are simply returned to their country of origin. Thus, there is a revolving door for the smugglers. Since it is unlikely the smuggler will be prosecuted he or she can opt for voluntary removal, face no criminal penalties and smuggle again. As human smugglers charge anywhere from \$2,000 to \$60,000 per alien and face little or no consequences if caught, human smuggling is a far less risky business endeavor than the drug trade.

Federal law enforcement officials also report that the cartels are not only increasingly engaged in the human smuggling business, they are also actively coordinating with existing human smuggling rings, using diversionary tactics to protect their loads.<sup>41</sup> It is not uncommon for cartels to facilitate the crossing of fifty or more illegal aliens across the U.S.-Mexico border to divert Border Patrol resources away from an area they plan to transport large amounts of drugs across.

Mexican drug cartels have also increasingly “cemented” ties to street and prison gangs on the U.S. side.<sup>42</sup> U.S. gangs retail drugs purchased from Mexican traffickers and often work as cartel surrogates and enforcers on U.S. soil.<sup>43</sup> Mara Salvatrucha, (MS-13) is one such gang involved in the cross-border drug smuggling business. MS-13 has established a growing presence in cities across the United States. Law enforcement agencies in twenty-eight States have reported MS-13 members are engaged in retail drug trafficking. Drug proceeds are subsequently laundered through seemingly legitimate local businesses.<sup>44</sup>

On September 28, 2006, in Laredo, Texas, twelve gang members were indicted on seventeen counts of illegal drug and firearm offenses. Charges against the defendants include engaging in a continuing criminal enterprise, conspiracy to possess with intent to distribute cocaine, possession of cocaine, felons in possession of weapons and possession of weapons during and in relation to a drug trafficking crime. All twelve defendants are believed to be members of or associated with the Hermandad de Pistoleros Latinos (Brotherhood of Latin Gunmen) prison gang and working for the Gulf Cartel.<sup>45</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Interview by Subcomm. Staff with Federal law enforcement (Sept. 26, 2006); *Combating Violence at the U.S. Southwest Border: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Immigration, Border Security and Claims of the House Comm. on Judiciary*, 109<sup>th</sup> Cong. (Nov. 2005) at 1-2 (written Statement of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Press Release , U.S. Department of Justice, *Pistolero Gang Leader Convicted*, (Sept. 29, 2006).

Federal and State officials report that a growing number of gangs are increasingly collaborating with the major drug cartels to facilitate cross-border smuggling of not only drugs, but also humans. These gangs include MS-13, Mexican Mafia, and the Texas Syndicate. In August 2006, Mexico's Deputy Attorney General for Organized Crime, Jose Luis Santiago Vasconcelos, postulated these gangs are becoming increasingly more powerful as they fill the void left by the cartels when their leadership is arrested by the Mexican government.<sup>46</sup>

In February 2005, FBI Director Robert Mueller described U.S. based-gangs as "more organized, more violent, and more widespread than ever."<sup>47</sup> The Department of Justice estimates there are approximately 30,000 gangs with more than 800,000 members in the U.S.<sup>48</sup> Mueller believes these violent gangs pose a growing threat to the safety and security of Americans.<sup>49</sup>

Many members of violent street gangs are actively involved in other crimes such as rape, robbery, and murder. U.S. Immigration and Customs Enforcement has found that approximately half of the apprehended gang members have violent criminal histories, with arrests and convictions for crimes such as robbery, assault, rape and murder.<sup>50</sup> This figure includes only those whose criminal histories are known. Approximately 90 percent of U.S. MS-13 members are foreign-born illegal aliens and depend upon the Texas-Mexico border smuggling corridor to support their criminal operations.<sup>51</sup> MS-13 members are involved in a variety of other types of criminal activity, including rape, murder, and extortion.<sup>52</sup>

The foreign nationals who belong to these gangs often ignore Federal immigration laws, regularly entering the United States illegally. They then travel to the nation's interior cities to join with other gang members and participate in criminal activity. A Federal investigator told Committee staff of a recent interview he conducted with an MS-13 member who described the ease with which he had routinely traversed the Southwest border. The gang member decided to return to his native country of Guatemala to spend

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<sup>46</sup> *Mexico: Gunmen Taking Over the Cartels*, LATINNEWS WEEKLY REPORT, Aug. 8, 2006.

<sup>47</sup> *Global Threats to the U.S. and the FBI's Response: Hearing Before the Senate Comm. On Intelligence*, 108<sup>th</sup> Cong. (Feb. 16, 2005) at 15 [written statement of Robert S. Mueller, Director, Federal Bureau of Investigation].

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Federal Strategies to End Border Violence: Hearing Before the Subcomm. on Immigration, Border Security and Citizenship and the Subcomm. on Terrorism, Technology and Homeland Security of the Senate Comm. on the Judiciary*, 109<sup>th</sup> Cong. (Mar. 1, 2006) at 11-13 (written Statement of Marcy Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security).

<sup>51</sup> *Federal Strategies to End Border violence: Hearing Before the Subcomm. on Immigration, Border Security and Citizenship and the Subcomm. on Terrorism, Technology and Homeland Security of the Senate Comm. on the Judiciary*, 109<sup>th</sup> Cong. (Mar. 1, 2006) at 11-13 (written Statement of Marcy Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security).

<sup>52</sup> *Gangs and Crime in Latin American: Hearing Before the Subcomm. on the Western Hemisphere of the House Comm. on International Relations*, 108<sup>th</sup> Cong. (Apr. 20, 2005) at 4 (written Statement of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation).

Christmas with his mother. To save his own money, he voluntarily turned himself into authorities and was flown home at U.S. Government expense under the expedited removal program, spent the holidays with his family, and returned by illegally crossing the Southwest border. The gang member boasted this process is so easy he has repeated it several times.<sup>53</sup>

The Zetas are also one of the main groups smuggling illegal aliens and drugs into the United States from Mexico. A recent FBI bulletin noted that “FBI intelligence indicates that Los Zetas are becoming increasingly involved in systematic corruption as well as alien smuggling, including smuggling special interest aliens into the United States.”<sup>54</sup> The Zetas wield their control over the movement of people across the border through an elaborate network of spies, checkpoints and use of sophisticated technology. Some of those networks are deepening their ties to Texas cities, including Houston and Dallas, with the help of gang members.<sup>55</sup>

In 2005, law enforcement linked at least three drug related killings in the Dallas area to the Zetas. Texas law enforcement authorities believe a squad of Zeta members, as many as ten, might be operating inside Texas as assassins for the Gulf Cartel. Authorities said the cartel is protecting nearly \$10 million in daily drug transactions in Texas.<sup>56</sup> Zetas are also known to have established smuggling routes in residential neighborhoods on the U.S. side of the border that are used to smuggle “high-value” illegal aliens.<sup>57</sup>

#### E. Human Smugglers’ Disregard for Human Lives

In most instances, alien smuggling organizations have shown complete disregard for the lives under their control. In a trafficking case in McAllen, Texas, two smuggled women from Central America were found on the side of a road beaten and without clothing. Their captors intimidated the victims by shooting weapons into the walls and ceiling as they were raped.<sup>58</sup> U.S. law enforcement officials say it is a virtual certainty that women will be sexually assaulted or raped on their journey across the Southwest border into America.<sup>59</sup>

In May 2006, Webb County, Texas sheriff’s deputies found 56 illegal immigrants locked inside a refrigerated trailer. An anonymous call led the deputies to the trailer in a

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<sup>53</sup> Interview by Subcomm. Staff with a Federal investigator (Sept. 19, 2006).

<sup>54</sup> See Blas Nunez-Neto, Cong. Res. Serv., Order No. RL33097, *Border Security: Apprehensions of “Other Than Mexican” Aliens* (June 20, 2006) [hereinafter Blas Nunez, *Apprehensions of “Other Than Mexicans”*].

<sup>55</sup> Interview by Subcomm. Staff with Federal law enforcement (Sept. 26, 2006); *Combating Violence at the U.S. Southwest Border: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Immigration, Border Security and Claims of the House Comm. on Judiciary*, 109<sup>th</sup> Cong. (Nov. 2005) at 1-2 (written Statement of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation).

<sup>56</sup> Jerry Seper, *Mexico: Former Members of An Elite Force of Anti-Drug Commandos Aiding Drug Traffickers*, THE WASHINGTON TIMES, Feb. 24, 2005.

<sup>57</sup> Aug. 23 Interview with Flores.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*



warehouse district of Laredo, Texas. When the deputies arrived on the scene, there was no driver in sight and no way for the individuals locked inside to escape. The forty-three men, eleven women and two children had been in the truck for approximately six hours and many were near death by the time they were rescued.<sup>60</sup>

In another case, two individuals were convicted on February 2, 2006, in Tucson, Arizona for causing death and serious bodily injury while smuggling illegal aliens and attempting to evade arrest. The smugglers were transporting illegal aliens in a stolen truck on an Arizona Interstate and, during a high speed pursuit, caused an accident that involved ten vehicles. The accident resulted in the deaths of five people, including an elderly couple hit head on, and injured thirty-eight individuals.<sup>61</sup>

The illegal aliens smuggled into the United States on rail trains coming from Mexico into Brownsville, McAllen, and Laredo, Texas are often robbed, beaten, and sexually assaulted by gangs and corrupt law enforcement officials along the way.<sup>62</sup> Sadly, these examples are not rare, but are instead daily occurrences in the multi-billion dollar human smuggling business.

#### F. Border Violence Against Law Enforcement and U.S. Citizens

The violence on the Southwest border encountered by U.S. Border Patrol and local law enforcement is increasing at an alarming rate. From 2004 to 2005, violent incidents against Border Patrol agents on the Southwest border have increased 108%. During FY 2006, there have been 746 violent incidents against Border Patrol agents, including 435 incidents of rock assaults, 173 physical assaults, 46 vehicle assaults, and 43 firearm assaults. In January 2006, the Department of Homeland Security sent a confidential memo to Border Patrol agents warning that they could be the targets of assassins hired by alien smugglers.<sup>63</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> Press Release, U.S. Immigration and Customs Enforcement “*ICE Initiatives to Combat Southwest Border Violence*” (Mar. 8, 2006); Interview by Subcomm. Staff with Ed Rheinheimer, Cochise County Attorney, in Bisbee, Ariz. (July 24, 2006).

<sup>62</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex (Aug. 21, 2006).

<sup>63</sup> See Blas Nunez-Neto, Cong. Res. Serv., Order No. RL33097, *Border Security: Apprehensions of “Other Than Mexican” Aliens* (June 20, 2006) [hereinafter Blas Nunez, *Apprehensions of “Other Than Mexicans”*].

### Rocking Violence Against Border Patrol Agents



**Injuries suffered by Border Patrol agents from rocks thrown**

According to Texas Homeland Security Director Steve McCraw, the ruthlessness and violence of these criminal networks are unprecedented. At one time, members or associates of Mexican drug cartels would drop the drugs or abandon their vehicles when confronted by U.S. law enforcement. Similarly, human smugglers would simply give up when approached or stopped on the highway. This is no longer the case. The drug cartels no longer tolerate compliance. Loads of both drugs and humans are vigorously protected by direct confrontation, high speed chases, and standoffs at the Rio Grande River.<sup>64</sup>

In today's climate, U.S. Border Patrol agents are fired upon from across the river and troopers and sheriff's deputies are subject to attacks with automatic weapons while the cartels retrieve their contraband. In May 2006, the Zapata County Sheriff's Office received information that the cartels immediately across the border plan to threaten or kill as many police officers as possible on the United States' side.<sup>65</sup>

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<sup>64</sup> *Criminal Activity and Violence Along the Southern Border: Hearing Before the Subcomm. on Investigations of the House Comm. on Homeland Security*, 109<sup>th</sup> Cong., (Aug. 16, 2006) at 2 (written Statement of Steve McCraw, Director, Governor's Office of Homeland Security, Tex).

<sup>65</sup> Interview by Subcomm. Staff with Sigifredo Gonzalez in Laredo, Tex (Aug. 23, 2006).

## Laredo, Texas Incident 12/28/2005



*On December 28, 2005, while apprehending a group of undocumented aliens, two border patrol agents were fired upon by an unknown assailant on the Mexican side of the border. A CBP Remote Video Surveillance camera operator was able to capture pictures of the likely assailants, shown above. Since this incident, the same assailant (2<sup>nd</sup> from the left) has been tied to three other incidents involving shots fired at CBP Border Patrol Agents.*

Between May 2004 and July 2006 there have been forty-nine reported abductions of U.S. citizens in the region between the Texas cities of Del Rio and Brownsville. Thirty-four of these abductions occurred in Nuevo Laredo and involved U.S. citizens who had crossed the border. Twenty-three victims were released by their captors, nine victims remain missing, and two are confirmed dead. These numbers likely represent only a fraction of the actual occurrences, as many kidnappings of U.S. citizens go unreported.<sup>66</sup>

Yvette Martinez, 27, and her friend Brenda Cisneros, 23, are among nine Americans who the FBI says have simply disappeared along the border in the last two years. Martinez and Cisneros crossed the border in September 2004 to attend a concert in Nuevo Laredo – and never came back. The FBI revealed in testimony that alleged members of Los Zetas are believed to have kidnapped Martinez and Cisneros.<sup>67</sup> The violent brazenness of these criminal groups knows no limits. In broad daylight, a young man was gunned down in a Laredo parking lot as his pregnant wife looked on. The ambush had all the markings of a cartel assassination.<sup>68</sup> Webb County, Texas Sheriff Rick Flores is concerned with the level of brutality that accompanies the cartels as they move their merchandise across the border. Flores says these cartels show no mercy for women or children.<sup>69</sup>

<sup>66</sup> *Combating Violence at the U.S. Southwest Border: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Immigration, Border Security and Claims of the House Comm. on Judiciary*, 109<sup>th</sup> Cong. (Nov. 2005) at 1-2 (written Statement of Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation).

<sup>67</sup> *Id.*

<sup>68</sup> Aug. 23 Interview with Flores.

<sup>69</sup> *Id.*

In response to the violence in Nuevo Laredo, Ambassador Tony Garza has been compelled to take an unprecedented number of actions to address the escalating crisis. On August 1, 2005, Ambassador Garza suspended operations at the U.S. Consulate in Nuevo Laredo for one week in order to assess the security of consulate employees. The closure followed a violent battle involving unusually advanced weaponry between armed criminal factions.<sup>70</sup>

On January 25, 2006, the Ambassador sent a Diplomatic Note to the Mexican Government regarding the January 23, 2006 border incursion in Hudspeth County, Texas. Ambassador Garza requested the Mexican government fully investigate the January 23 incident in which individuals dressed in military uniforms, carrying military-style weapons, and using military vehicles intervened to prevent a drug shipment from being intercepted by U.S. law enforcement operating in the United States.<sup>71</sup>



**Cartel members unloading drugs after failed attempt at U.S. entry during alleged military incursion January 23, 2006**

Ambassador Garza also stated “the violence of late along our border highlights the need for increased enforcement efforts by the United States and serves to bolster the arguments of those who seek the creation of physical barriers along our border. It also makes recent assertions that the United States is somehow exaggerating the problems along our border all the more untenable, and highlights the inability of the Mexican government to police its own communities south of the border.”<sup>72</sup>

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<sup>70</sup> Press Release, U.S Embassy in Mexico, Ambassador Tony Garza, (July 29, 2005).

<sup>71</sup> Press Release, U.S Embassy in Mexico, Ambassador Tony Garza, (Jan. 25, 2006).

<sup>72</sup> *Id.*



On January 27, 2006, Ambassador Garza issued a second Diplomatic Note. He again addressed the increasing violence on the Mexican side of the border and the recent attacks against U.S. Border Patrol where agents had been shot or fired upon.<sup>73</sup>

As recently as September 14, 2006, Ambassador Garza issued an advisory to Americans traveling to Mexico describing the increased violence and asking them to exercise caution. “Violence in the U.S.-Mexico border region continues to threaten our very way of life, and as friends and neighbors, Mexicans and Americans must be honest about the near-lawlessness of some parts of our border region....Drug cartels, aided by corrupt officials, reign unchecked in many towns along our common border.”<sup>74</sup>

One week later, on September 21, 2006, U.S. officials from several Federal law enforcement agencies met with their Mexican counterparts in Laredo, Texas to discuss the violence along the border. The officials all agreed that an immediate response to violence and increasing criminal activity and ending the culture of impunity is needed, especially in border zones like Nuevo Laredo and Tijuana.<sup>75</sup>

#### G. The Sophisticated Technology and Advanced Resources of the Drug Cartels

According to El Paso County Sheriff Leo Samaniego, drug cartels operating along the southwestern U.S. border are a “country unto themselves” with intelligence capabilities, weaponry and communications equipment that challenges the Border Patrol and local law enforcement.<sup>76</sup> Sheriff Samaniego advises his deputies to “back off” when they see well armed individuals from cartels and other criminal organizations.<sup>77</sup>

Zapata County, Texas Sheriff Sigifredo Gonzalez reports having been told by a number of informants familiar with drug cartel operations that local law enforcement is armed with woefully inadequate weaponry when compared with the automatic assault weapons used by the drug cartels.<sup>78</sup> And in Hidalgo County, Sheriff Luca Trevino reports that in the summer of 2006, two of his deputy sheriffs came under attack as 300 to 400 rounds were fired from automatic weapons originating on the Mexican side of the river.<sup>79</sup>

This new breed of cartel is not only more violent, powerful and well financed, it is also deeply engaged in intelligence collection on both sides of the border.<sup>80</sup> The tactics used

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<sup>73</sup> Press Release, U.S Embassy in Mexico, Ambassador Tony Garza, (Jan. 27, 2006).

<sup>74</sup> Press Release, U.S Embassy in Mexico, Ambassador Tony Garza, (Sept. 14, 2006).

<sup>75</sup> Press Release, US Embassy in Mexico, Ambassador Tony Garza, (Sept. 21, 2006).

<sup>76</sup> Cybercast New Service, *Southern Border Sheriffs Outgunned by Drug Cartels*, CNSnews.com, August 25, 2006; available at <http://www.cnsnews.com/ViewSpecialReports.asp?Page=/SpecialReports/archive/200608/SPE20060825a.html>.

<sup>77</sup> *Id.*

<sup>78</sup> Email correspondence from Sheriff Sigifredo Gonzalez to Subcomm. Staff (Oct. 12, 2006) (6:07p.m.).

<sup>79</sup> *Criminal Activity and Violence Along the Southern Border: Hearing Before the Subcomm. on Investigations of the House Comm. on Homeland Security*, 109<sup>th</sup> Congress, (Aug. 16, 2006) at 20-24 (Statement of Rep. Poe, Member, U.S. House of Representatives).

<sup>80</sup> Telephone Interview by Subcomm. Staff with Steve McCraw, (Sept. 27, 2006).

by these sophisticated networks include placing spotters with high-powered binoculars and encrypted radios in the mountains to guide smugglers past Border Patrol and other law enforcement agencies operating along the border.<sup>81</sup> A Library of Congress report on Criminal and Terrorist Activity in Mexico describes how smugglers carry on a “technological arms race” with CBP and ICE.<sup>82</sup>

Webb County, Texas Sheriff Rick Flores indicated that he is disturbed by the level of resources the cartels and criminal organizations possess and utilize against local law enforcement noting that the cartels utilize rocket propelled grenades...automatic assault weapons, and “level four” body armor and Kevlar helmets similar to what the U.S. military uses.<sup>83</sup> Some local officials are taking steps to protect their officers from these weapons. The Sheriff for Hidalgo County, Texas Sheriff has prohibited the deputies in his department from patrolling along the banks of the Rio Grande River because of the threat of violence from the cartels.<sup>84</sup>

The criminal organizations are indeed extremely advanced, well-equipped, and highly adaptable to enforcement measures marshaled against them. In January 2006, ICE agents, along with ATF agents and Laredo Police Department officers seized an enormous cache of weapons in Laredo, Texas. Authorities confiscated two completed improvised explosive devices (IEDs) materials for making thirty-three more, military style grenades, twenty-six grenade triggers, large quantities of AK-47s and AR-15 assault rifles, 1,280 pounds of ammunition, silencers, machine gun assembly kits, 300 primers, bulletproof vests, police scanners, sniper scopes, narcotics and cash. These seizures clearly illustrate the level of violence along the border, especially in Nuevo Laredo and Juarez area.<sup>85</sup>

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<sup>81</sup> Blas Nunez, *Apprehensions of “Other Than Mexicans.”*

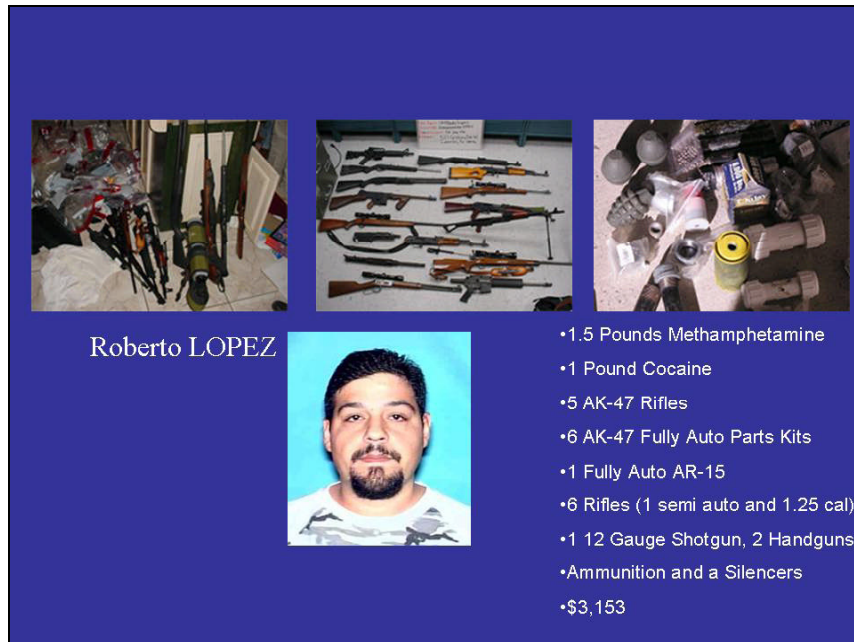
<sup>82</sup> Ramon J. Miro, *Organized Crime and Terrorist Activity in Mexico, 1999-2002*, Library of Congress, (Feb. 2003).

<sup>83</sup> *Criminal Activity and Violence Along the Southern Border: Hearing Before the Subcomm. on Investigations of the House Comm. on Homeland Security*, 109<sup>th</sup> Congress, (Aug. 16, 2006) at 47 (Statement of Rick Flores, Sheriff, Webb County, Tex.).

<sup>84</sup> *Id.*

<sup>85</sup> Interview by Subcomm. Staff with Federal law enforcement personnel in Laredo, Tex. (Aug. 23, 2006).





**Weapons cache seized in Laredo, Texas January 26, 2006**

Drug cartels and the other criminal organizations they leverage and employ continue to develop new techniques that impede detection by law enforcement agencies. Despite the more than one thousand border patrol agents who work in the Laredo area, despite the dozens of thermal imaging cameras along nearly 200 miles of border, and despite the checkpoints along major highways, local law enforcement officers have indicated that the smugglers know how to slip through by using private property to circumvent the roadblocks. According to Sheriff Flores of Webb County, Texas, “[f]or all the beefed up enforcement on the border, the drug cartels appear stronger and more violent than ever.”<sup>86</sup>

In short, the manpower, resources, and technology utilized by U.S. law enforcement needs to be enhanced to combat the highly organized and sophisticated cartels. These criminal enterprises have seemingly unlimited money to purchase the most advanced technology and weaponry available. The cartels are able to break the encryptions on both Border Patrol and sheriffs’ deputies’ radios.<sup>87</sup> Lookouts for the cartels, using military grade equipment, are positioned at strategic points on the U.S. side of the border to monitor movements of U.S. law enforcement.<sup>88</sup> In response, the cartels then move their cargo accordingly.<sup>89</sup> The cartels use automatic assault weapons, bazookas, grenade launchers and IEDs. In contrast, U.S. Border Patrol agents are issued .40 caliber Beretta semi automatic pistols.

<sup>86</sup> Chris Bury, *Drug ‘War Zone’ Rattles U.S.-Mexico Border*, ABC NEWS, (Aug. 30, 2006).

<sup>87</sup> Interview by Subcomm. Staff with Federal law enforcement personnel in Laredo, Tex. (Aug. 23, 2006).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

## II. Illegal Alien Crimes Against U.S. Citizens

Not all illegal aliens are crossing into the United States to find work. Law enforcement officials indicate that there are individuals coming across the border who are forced to leave their home countries because of their criminal activity. These dangerous criminals are fleeing the law in other countries and seeking refuge in the United States. For instance, it is known that many of the operatives of cartels in Mexico actually live in the United States. Information received by several law enforcement agencies indicates these criminals are living in our communities and that they come to the U.S. to escape the possibility of apprehension in Mexico.<sup>90</sup>

The Violent Crimes Institute conducted a 12 month in-depth study of illegal immigrants who committed sex crimes and murders for the time period of January 1999 through April 2006. This study makes it clear that the U.S. faces a dangerous threat from sexual predators that cross the U.S. borders illegally.<sup>91</sup>

The Institute analyzed 1,500 cases in depth, including serial rapes, serial murders, sexual homicides, and child molestation committed by illegal immigrants. Police reports, public records, interviews with police, and media accounts were all included. Offenders were located in thirty-six states, with the most of the offenders were located in States with the highest numbers of illegal immigrants. California was ranked first, followed by Texas, Arizona, New Jersey, New York, and Florida.<sup>92</sup>

Based on an estimated illegal immigrant population of 12,000,000 and the fact that young males make up more of this population than the general U.S. population, the Institute concluded that sex offenders in the illegal immigrant group make up a higher percentage. ICE reports and public records show sex offenders comprising 2% of illegals apprehended. Based on this 2% figure, which is conservative, the Institute estimates that there are approximately 240,000 illegal immigrant sex offenders in the United States.<sup>93</sup>

The study concluded, when applied to ongoing illegal immigration at the borders, these estimates translate to 93 sex offenders and twelve serial sexual offenders coming across U.S. borders illegally per day. The 1,500 offenders in this study had a total of 5,999 victims. Each sex offender averaged four victims. This puts the estimate for victimization numbers around 960,000 for the 88 months examined in this study.<sup>94</sup>

The violence of illegal aliens is not confined to border communities. Residents and law enforcement in the interior cities are also vulnerable to criminals crossing the border. The following are examples of crimes committed by illegal aliens:

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<sup>90</sup> *Id.*

<sup>91</sup> Deborah Schurman-Kauflin, PhD., *The Dark Side of Illegal Immigration: Nearly One Million Sex Crimes Committed by Illegal Immigrants in the United States*, The Violent Crimes Institute, (2006).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

- In testimony before the House Committee on Homeland Security's Subcommittee on Investigations, Carrie Ruiz, a Houston resident, described how her 17 year old daughter was murdered in October 1999 by an illegal immigrant from Venezuela who escaped prosecution by returning to his home country. Ruiz's daughter was stabbed more than thirty-nine times after she helped authorities identify a gang member.
- On February 10, 2005, a high-ranking member of the Mara Salvatrucha (MS-13), was apprehended in Brooks County, Texas. He had been previously deported at least four times. This MS-13 gang member is believed to have been responsible for the killing of twenty-eight persons, including six children, and the wounding of fourteen others, in a bus explosion in his native country. Information was received in late April of this year that he was on his way back into the United States, or that he was already in the country,<sup>95</sup> and was threatening to assassinate any officer that attempted to apprehend him.
- On March 22, 2006, Texas State Trooper Steven Stone was shot six times at point blank range by two illegal aliens during a routine traffic stop. Ramon Ramos and Francisco Saucedo were charged with fourteen counts of aggravated assault on a public servant. An investigation showed that Ramos had been criminally deported from the United States on two different occasions on Federal weapons and drug charges. Ramos had been living illegally in the United States for approximately three to four years prior to the March 22 shooting.

On the night of the shooting, Ramos and Saucedo were in possession of body armor, a rifle modified for automatic fire, a handgun modified for automatic fire, two or more handguns, numerous knives, drugs and alcohol.<sup>96</sup>

- On June 27, 2006, a teenage girl from Mexia, Texas was forced off the road by two illegal aliens and kidnapped. She was sexually assaulted by both men. The two illegals tried unsuccessfully to break her neck and strangle her. They then dragged her out of the car and put her into a ditch where they began kicking, beating, and stabbing her with broken glass. She sustained massive injuries to her head, face and upper body. After the suspects left her for dead, she was able to walk about one-half mile to the nearest house and ask for help. The suspects are identified as Noel Darwin Hernandez and Javier Guzman Martinez. An immigration hold has been placed on each suspect.<sup>97</sup>

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<sup>95</sup> *Border Vulnerabilities and International Terrorism Part II: Hearing Before the Subcomm. On International Terrorism and Nonproliferation of the House Comm. On International Relations*, 109<sup>th</sup> Cong. (July 7, 2006) at 3 (written Statement of Sigifredo Gonzalez, Sheriff, Zapata County, Tex.).

<sup>96</sup> *Criminal Activity and Violence Along the Southern Border: Hearing Before the Subcomm. on Investigations of the House Comm. on Homeland Security*, 109<sup>th</sup> Cong., (Aug. 16, 2006) (statement of Steven Stone, State Trooper, Tex.).

<sup>97</sup> Mike Anderson, *Texas Woman Spent Two Hours 'in Hell' After Being Beaten, Raped*, WACO TRIBUNE-HERALD, June 30, 2006.

- On September 21, 2006, in Houston, Texas an illegal immigrant from Mexico, Juan Leonardo Quintero, was charged in with capital murder in the shooting death of Houston Police Officer Rodney Johnson. Quintero had been deported in the past. His record shows in 1998 he was charged with indecency with a child.<sup>98</sup>

On September 29, 2006, one week after Officer Johnson was killed by an illegal alien, Houston Mayor Bill White announced a change in the way Houston Police officers process suspected illegal immigrants. The Houston police will fingerprint suspected illegal immigrants detained on minor violations, and those with identification police believe to be fraudulent. That information will then be provided to Federal authorities.<sup>99</sup>

### III. Vulnerability to Terrorist Infiltration

The number of aliens other than Mexican (“OTMs”) illegally crossing the border has grown at an alarming rate over the past several years. Based on U.S. Border Patrol statistics there were 30,147 OTMs apprehended in FY2003, 44,614 in FY2004, 165,178 in FY2005, and 108,025 in FY2006. Most of them were apprehended along the U.S. Southwest border.<sup>100</sup>

The sheer increase of OTMs coming across the border makes it more difficult for Border Patrol agents to readily identify and process each, thereby increasing the chances that a potential terrorist could slip through the system. Moreover, there is no concrete mechanism for determining how many OTMs evade apprehensions and successfully enter the country illegally.

The U.S. Department of Homeland Security (DHS) pays particular attention to OTMs apprehended by the Border Patrol who originate from thirty-five nations designated as “special interest” countries. According to Border Patrol Chief David Aguilar, special interest countries have been “designated by our intelligence community as countries that could export individuals that could bring harm to our country in the way of terrorism.”<sup>101</sup>

Though the majority of overall apprehensions made by the Border Patrol occur in the Tucson sector of Arizona, the Texas border – specifically the McAllen sector – far outpaces the rest of the country in OTM and Special Interest Alien apprehensions. Since September 11, 2001, DHS has reported a 41% increase in arrests along the Texas/Mexico border of Special Interest Aliens.

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<sup>98</sup> Jennifer Leahy, James Nielsen and Mike Tolson, *Illegal Immigrant Charged in HPD Shooting Death*, HOUSTON CHRONICLE, Sept. 22, 2006.

<sup>99</sup> Houston, Texas 11 News reports, Sept. 29, 2006 (3:18 PM).

<sup>100</sup> Information provided by U.S. Border Patrol to Subcomm. Staff. (Oct. 3, 2006).

<sup>101</sup> *Strengthening Border Security Between Ports of Entry: The Use of Technology to Protect Our Borders: Hearing Before the Subcomm. On Immigration, Border Security and Citizenship and the Subcomm. On Terrorism, Technology and Homeland Security of the Senate Comm. On the Judiciary*, 109<sup>th</sup> Cong. (Apr. 28, 2005) (written statement of David Aguilar, Chief, Border Patrol, U.S. Department of Homeland Security).

From FY2001 to March 2005, 88 percent of Special Interest Alien apprehensions for both the Southwest and Northern borders occurred in Texas. During that same period, 75 percent of Special Interest Alien apprehensions on the Southwest border occurred in the Laredo, McAllen, and Del Rio Sectors. Since September 11, 2001 to the present hundreds of illegal aliens from special interest countries (such as Iran, Jordan, Lebanon, Syria, Egypt, Saudi Arabia, Kuwait, Pakistan, Cuba, Brazil, Ecuador, China, Russia, Yemen, Albania, Yugoslavia and Afghanistan) were apprehended within the South Texas region alone.<sup>102</sup>

The data indicates that each year hundreds of illegal aliens from countries known to harbor terrorists or promote terrorism are routinely encountered and apprehended attempting to enter the U.S. illegally between Ports of Entry. Just recently, U.S. intelligence officials report that seven Iraqis were found in Brownsville, Texas in June 2006.<sup>103</sup> In August 2006, an Afghani man was found swimming across the Rio Grande River in Hidalgo, Texas;<sup>104</sup> as recently as October 2006, seven Chinese were apprehended in the Rio Grande Valley area of Texas.<sup>105</sup>

Items have been found by law enforcement officials along the banks of the Rio Grande River and inland that indicate possible ties to a terrorist organization or member of military units of Mexico.<sup>106</sup> A jacket with patches from countries where al Qa'ida is known to operate was found in Jim Hogg County, Texas by the Border Patrol. The patches on the jacket show an Arabic military badge with one depicting an airplane flying over a building and heading towards a tower, and another showing an image of a lion's head with wings and a parachute emanating from the animal. The bottom of one patch read "martyr," "way to eternal life" or "way to immortality."<sup>107</sup>

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<sup>102</sup> Telephone Interview by Subcomm. Staff with Federal law enforcement personnel, in Wash. D.C. (Oct. 13, 2006).

<sup>103</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006).

<sup>104</sup> *Id.*

<sup>105</sup> Telephone Interview by Subcomm. Staff with Federal law enforcement personnel, in Wash. D.C. (Oct. 13, 2006).

<sup>106</sup> *Border Vulnerabilities and International Terrorism Part II: Hearing Before the Subcomm. On International Terrorism and Nonproliferation of the House Comm. On International Relations*, 109<sup>th</sup> Cong. (July 7, 2006) at 4 (written Statement of Sigifredo Gonzalez, Sheriff, Zapata County, Tex.).

<sup>107</sup> *Id.*





**Military patches found along the Texas border.**

On January 28, 2006, Border Patrol Chief David Aguilar was asked by a reporter from KGNS television station in Laredo, Texas, about the outcome of the investigation of the jacket. Chief Aguilar responded that the patches were not from al Qaeda but from countries in which al Qaeda was known to operate.<sup>108</sup>

According to ICE testimony, on September 8, 2004, ICE agents arrested Neeran Zaia and Basima Sesi. The human smuggling organization headed by Zaia specialized in smuggling Iraqi, Jordanian, and Syrian Nationals and was responsible for the movement of more than 200 aliens throughout the investigation.<sup>109</sup> The investigation was initiated when a confidential informant familiar with the organization reported ongoing smuggling activities by Zaia, who had been previously convicted of alien smuggling. Investigative efforts revealed that the aliens were smuggled from the Middle East to staging areas in Central and South America. Once in these staging areas, the conspirators would arrange to smuggle the aliens from these sites into the U.S. or its territories.<sup>110</sup>

Members of Hezbollah, the Lebanon-based terrorist organization, have already entered to the United States across our Southwest border. On March 1, 2005, Mahmoud Youssef Kourani pleaded guilty to providing material support to Hezbollah.<sup>111</sup> Kourani is an

<sup>108</sup> *Federal Strategies to End Border Violence: Hearing Before the Subcomm. On Immigration, Border Security and Citizenship and the Subcomm. On Terrorism, Technology, and Homeland Security of the Senate Comm. On the Judiciary*, 109<sup>th</sup> Cong. (Mar. 1, 2006) at 4 (written Statement of A. D'Wayne Jernigan, Sheriff, Val Verde County, Tex.).

<sup>109</sup> *Setting Post 9/11 Priorities at the Bureau of Immigration and Customs Enforcement: Hearing Before the Subcomm. on National Security, Emerging Threats and International Relations of the House Comm. On Government Reform*, 109<sup>th</sup> Cong. (Mar. 28, 2006) at 4 (written Statement of Robert A. Schoch, Deputy Assistant Director, National Security Division, Office of Investigations).

<sup>110</sup> *Id.*

<sup>111</sup> Press Release, U.S. Attorney, Eastern District of Michigan, Department of Justice, Mar. 1, 2005; available at <http://detroit.fbi.gov/dojpressrel/pressrel05/hizballahsupport030105>.



illegal alien who had been smuggled across the U.S.-Mexico border after bribing a Mexican consular official in Beirut for a visa to travel to Mexico. Kourani and a Middle Eastern traveling partner then paid coyotes in Mexico to guide them into the United States. Kourani established residence among the Lebanese expatriate community in Dearborn, Michigan and began soliciting funds for Hezbollah terrorists back home in Lebanon. He is the brother of the Hezbollah chief of military operations in southern Lebanon.

In December 2002, Salim Boughader Mucharrafille, a café owner in Tijuana, Mexico, was arrested for illegally smuggling more than two hundred Lebanese illegally into the United States, including several believed to have terrorist ties to Hezbollah.<sup>112</sup> Just last month Robert L. Boatwright, Assistant Chief Patrol Agent of the El Paso Texas Sector, reported, “We have apprehended people from countries that support terrorism...they were thoroughly debriefed and there was a tremendous amount of information collected from them.”<sup>113</sup>

Statements made by high-ranking Mexican officials prior to and following the September 11, 2001 terrorist attacks indicate that one or more Islamic terrorist organizations has sought to establish a presence in Mexico. In May 2001, former Mexican National security adviser and ambassador to the United Nations, Adolfo Aguilar Zinser, reported, that “Spanish and Islamic terrorist groups are using Mexico as a refuge.”<sup>114</sup>

Federal Bureau of Investigation Director Robert Mueller has confirmed in testimony “that there are individuals from countries with known al-Qa’ida connections who are changing their Islamic surnames to Hispanic-sounding names and obtaining false Hispanic identities, learning to speak Spanish and pretending to be Hispanic immigrants.”<sup>115</sup>

These examples highlight the dangerous intersection between traditional transnational criminal activities, such as human and drug smuggling, and more ominous threats to national security. Sheriff Sigifredo Gonzalez summed it up this way: “I dare to say that at any given time, daytime or nighttime, one can get on a boat and traverse back and forth between Texas and Mexico and not get caught. If smugglers can bring in tons of marijuana and cocaine at one time and can smuggle 20 to 30 persons at one time, one can just imagine how easy it would be to bring in 2 to 3 terrorists or their weapons of mass destruction across the river and not be detected. Chances of apprehension are very slim.”<sup>116</sup>

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<sup>112</sup> Associated Press, *Terror-Linked Migrants Channeled into U.S.*, FOXNEWS.COM, July 3, 2005; available at <http://www.foxnews.com/story/0,2933,161473,00.html>.

<sup>113</sup> Chris Roberts, *Agency Focuses Fight Against Smuggling, Terrorism*, EL PASO TIMES, Sept. 13, 2006.

<sup>114</sup> Ramon J. Miro, *Organized Crime and Terrorist Activity in Mexico, 1999-2002*, Library of Congress, (Feb. 2003) at 43.

<sup>115</sup> *FBI FY 2006 Budget Request: Hearing Before the House Comm. On Appropriations*, 108<sup>th</sup> Cong. (Mar. 8, 2005) (Written Statement of Robert Mueller, Director, Federal Bureau of Investigations).

<sup>116</sup> *Border Vulnerabilities and International Terrorism Part II: Hearing Before the Subcomm. On International Terrorism and Nonproliferation of the House Comm. On International Relations*, 109<sup>th</sup> Cong. (July 7, 2006) at 2 (written Statement of Sigifredo Gonzalez, Sheriff, Zapata County, Tex.).

Furthermore, according to senior U.S. military and intelligence officials, Venezuela is emerging as a potential hub of terrorism in the Western Hemisphere, providing assistance to Islamic radicals from the Middle East and other terrorists.<sup>117</sup>

General James Hill, commander of U.S. Southern Command, has warned the United States faces a growing risk from both Middle Eastern terrorists relocating to Latin America and terror groups originating in the region. General Hill said groups such as Hezbollah had established bases in Latin America. These groups are taking advantage of smuggling hotspots, such as the tri-border area of Brazil, Argentina and Paraguay, and Venezuela's Margarita Island, to channel funds to terrorist groups around the world.<sup>118</sup>

Venezuela is providing support—including identity documents—that could prove useful to radical Islamic groups, say some U.S. officials. The Venezuelan government has issued thousands of cédulas, the equivalent of Social Security cards, to people from places such as Cuba, Columbia, and Middle Eastern nations that host foreign terrorist organizations. The U.S. officials believe that the Venezuelan government is issuing the documents to people who should not be getting them and that some of these cédulas could be subsequently used to obtain Venezuelan passports and even American visas, which could allow the holder to elude immigration checks and enter the United States.<sup>119</sup> Recently, several Pakistanis were apprehended at the U.S.-Mexican border with fraudulent Venezuelan documents.<sup>120</sup>

“Hugo Chavez, President of Venezuela, has been clearly talking to Iran about uranium,” said a senior administration official quoted by the Washington Times. Chavez has made several trips to Iran and voiced solidarity with the country's hard-line mullahs. He has hosted Iranian officials in Caracas, endorsed Tehran's nuclear ambitions and expressed support for the insurgency in Iraq. The Times reports Venezuela is also talking with Hamas about sending representatives to Venezuela to raise money for the militant group's newly elected Palestinian government as Chavez seeks to build an anti-U.S. axis that also includes Fidel Castro's Cuba. “I am on the offensive,” Chavez said on the al Jazeera television network, “because attack is the best form of defense. We are waging an offensive battle....”<sup>121</sup>

Given all that is happening in Chavez's Venezuela, some American officials regret that terrorism is seen chiefly as a Middle East problem and that the United States needs to look looking to protect its southern flank. A U.S. intelligence official expressed concern that “Counterterrorism issues are not being aggressively pursued in this hemisphere.” Another intelligence official stated terror suspects held at Guantanamo Bay are not being interrogated about connections to Latin America. The bottom line, when it comes to

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<sup>117</sup> Linda Robinson, U.S. News & World Report, “Terror Close to Home,” October 6, 2003.

<sup>118</sup> Andy Webb-Vidal, *Terror Groups 'Relocating to U.S.'s Backyard*, THE FINANCIAL TIMES, March 5, 2003.

<sup>119</sup> *Id.*

<sup>120</sup> Interview by Subcomm. Staff with Federal investigator (Sept. 18, 2006).

<sup>121</sup> Rowan Scarborough, *Chavez Turns to Iran on Military, Uranium*, WASHINGTON TIMES, Apr. 10, 2006.

terrorism so close to U.S. shores, says the official, “We don’t even know what we don’t know.”<sup>122</sup>

Islamic radical groups that support Hamas, Hezbollah and Islamiya Al Gamat are all active in Latin America. These groups generate funds through money laundering, drug trafficking, and arms deals, making millions of dollars every year via their multiple illicit activities. These cells reach back to the Middle East and extend to this hemisphere the sophisticated global support structure of international terrorism. While threats to our nation from international terrorism are well known, lesser known threats spawned by narcoterrorism reach deeply into this country.<sup>123</sup>

Federal law enforcement entities estimate they apprehend approximately 10 to 30 percent of illegal aliens crossing the border.<sup>124</sup> U.S. intelligence officials along the southwest border, on the other hand, are less optimistic. To be sure, it is unclear how many illegal aliens of any nationality evade capture by law enforcement each year and succeed in entering the United States illegally. It is especially difficult to provide the total number of Special Interest Aliens entering the U.S. illegally because they pay larger amounts of money (\$15,000 to \$60,000 per alien) to employ the more effective Mexican alien smuggling organizations and are less likely to be apprehended.

One thing, however, is known for certain – hundreds of people from countries known to harbor terrorists or promote terrorism are caught trying to enter the United States illegally along the land border, and the massive flow of immigrants and our porous border create various and abundant opportunities for concealment. Given the ever-present threat posed by al-Qa’ida and other terrorist organizations – a threat that has been underscored by the recent events in London and the vulnerability of our borders – the need for immediate action to enforce our borders could not be more apparent.

#### **IV. Texas Border Security Initiatives**

In response to the increasing criminal activity and violence along the Southwest border, on February 9, 2006, the State of Texas, in partnership with the Federal government, launched Operation Rio Grande. The strategy focuses on four key areas: 1) increased patrols and law enforcement presence; 2) centralized of command, control, and intelligence operations; 3) increased State funding and deployment of State resources for border security; and 4) enhanced utilization of technology to fight border crime.<sup>125</sup> By concentrating on these areas, Texas has mounted an aggressive defense to significantly reduce crime in areas of operations. When executed, these operations have significantly

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<sup>122</sup> Linda Robinson, *Terror Close to Home*, U.S. NEWS AND WORLD REPORT, Oct. 6, 2003.

<sup>123</sup> Lt. Gen. James E. Hill, Commander, U.S. Southern Command, Remarks to the Association of the U.S. Army Annual Meeting, Wash., D.C., (Oct. 6, 2003).

<sup>124</sup> Interview by Subcomm. Staff with Federal law enforcement personnel, in McAllen, Tex. (Aug. 21, 2006).

<sup>125</sup> Information provided by Tex. Homeland Security Director Steve McCraw to Subcomm. Staff (Oct. 2006).

impeded transnational drug and human smuggling enterprise activities between the Ports of Entry.<sup>126</sup>

As part of Operation Rio Grande, a series of targeted, short duration, high intensity operations were conducted in a fully integrated local, State, and Federal construct. These operations were designed to target international criminal enterprises and reduce crime and violence along the entire south Texas border region. The operations were named for the principal county and surrounding counties in which they were conducted. These operations included:

- Operation Del Rio – 2-27 June
- Operation Laredo – 8-20 July
- Operation El Paso – 3-17 August
- Operation Big Bend – 18-31 August
- Operation Valley Star – 8-21 September<sup>127</sup>

Each operation utilized a number of new tactics and strategies to achieve a reduction in crime on the border. A cornerstone of this new strategy has been the use of Joint Operations Intelligence Centers (JOIC) and a Border Security Operations Center (BSOC). Six JOICs were dispersed throughout the state to assist in Operation Rio Grande. Located in Amarillo, Corpus Christi, El Paso, McAllen, San Antonio, Tyler and Waco, the JOICs receive operational reports from law enforcement agents in the field, as well as intelligence reports from all source intelligence centers and the BSOC. The JOICs then analyze and plan deployment of law enforcement assets in response to real time threats.<sup>128</sup>

One of the key cornerstones of Operation Rio Grande is the increased cooperation among Federal, State, and local law enforcement. During the duration of each regional operation, U.S. Border Patrol and border sheriffs received the support of various and key State resources. For example, the Department of Public Safety (DPS) reinforced law enforcement patrols with fixed-wing and rotary aviation assets, the Department of Transportation assisted operations with specialized equipment such as road barriers, the National Guard dedicated resources for training, and DPS Trooper Strike Teams dispatched covert surveillance units to the border.<sup>129</sup>

In Val Verde County, which was the focus of the Operation Del Rio law enforcement effort, experienced a 76% reduction in major crime when compared to the same 30-day period last year. The operation brought together the sheriffs from Kinney, Maverick, Val Verde, Zavala, and Dimmit counties, the police departments of Del Rio and Eagle Pass, U.S. Customs and Border Protection, the Department of Public Safety, the Texas

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

National Guard, the Texas Parks and Wildlife Department, the Civil Air Patrol, and the Governor's Division of Emergency Management.<sup>130</sup>

As a result of Operation Del Rio, drug smugglers temporarily closed down their operations in the affected areas as the risk of being caught became too great. Indeed, major felonies—homicides, burglaries, and thefts—were down in Val Verde County by three-quarters during Operation Del Rio.<sup>131</sup> Neighboring Maverick County reported a one-quarter drop in crime. The other three counties—Dimmit, Zavala, and Kinney—also experienced significant reductions.<sup>132</sup> According to law enforcement officials, Operation Laredo resulted in a 65% to 75% reduction in all crimes across five counties.<sup>133</sup>

Generally, for all the regional operations, officials reported crime in the border regions decreased anywhere from 30% to 75% in the targeted areas.<sup>134</sup> This reduction was sustained even after the operation ended. Indeed, joint Federal, State and local agencies continue to share information and coordinate operations, and the procedures that were put into place during operations are continuing. Each operation built upon the best practices from previous operations.<sup>135</sup> The net effect of these operations is that Texas is developing the capability to address illegal activity at the border and the related criminal enterprises. The Texas example clearly illustrates that increased law enforcement presence and resources can be highly effective in eliminating, or at least diminishing criminal activity along the border.

## V. Federal Border Security Efforts

The Federal government has launched numerous successful initiatives to secure our Nation's Southwest border. Operation Hold the Line in El Paso, Texas and Operation Gatekeeper in San Diego, California were introduced in September 1993 and October 1994, respectively. Both programs led to a significant drop in apprehensions of illegal aliens.

Under Operation Hold the Line, Border Patrol agents were reassigned to duty on the border, thereby mobilizing resources along the border around the clock. Agents assumed positions along the border, visible to both would-be crossers and to each other. This deployment effectively stopped numerous day-crossers, resulting in a 70 percent drop in apprehensions. This operation demonstrated that adequate resources are the key to obtaining control over border areas.<sup>136</sup>

Under Operation Gatekeeper, a similar plan was implemented. Many agents were transferred to high visibility positions along the border and a three-tiered system of agent

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> [www.usdoj.gov/iog/special.9807/gkp01.htm](http://www.usdoj.gov/iog/special.9807/gkp01.htm).

deployment was instituted to facilitate apprehensions of illegal aliens who evaded capture through the first line of defense. The Border Patrol in San Diego also received new equipment, including four wheel drive vehicles, infrared night scopes, electronic sensors and portable radios.<sup>137</sup>

More recently, the Department of Homeland Security (DHS) launched the Secure Border Initiative (SBI), a comprehensive multi-year plan to secure the borders of the United States' and reduce the number of illegal aliens crossing the borders. SBI includes:

- More agents to patrol our borders, secure our ports of entry and enforce immigration laws;
- Expanded detention and removal capabilities to eliminate “catch and release;”
- A comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of UAVs, and next-generation detection technology;
- Increased investment in infrastructure improvements at the border – providing additional physical security to sharply reduce illegal border crossings; and
- Greatly increased interior enforcement of our immigration laws – including more robust worksite enforcement.<sup>138</sup>

On September 21, 2006 DHS awarded a contract to implement SBInet along the United States Northern and Southwest borders. The SBI plan is an integrated mix of increased staffing, increased interior enforcement, greater investment in detection technology and infrastructure, and enhanced coordination on international, Federal, State, and local levels. A critical component of the SBI strategy is SBInet, a program focused on transforming border control through technology and infrastructure. During the next eight months, SBInet technology will be deployed on the Southwest border. Following this initial deployment, additional task orders will be issued focusing first on the Southwest border.<sup>139</sup>

On May 15, 2006, President Bush announced the National Guard would assist U.S. Customs and Border Protection. Under Operation Jump Start, up to 6,000 National Guard will be sent to the Southwest border for a two-year deployment to assist CBP with logistical and administrative support, operate detection systems, provide mobile communications, augment border-related intelligence analysis efforts and build and install border security infrastructure.

Recently, the Federal government implemented another important action to secure the Southwest border. In July 2006, ICE ended its so called “catch and release” program. Currently, 99 percent of illegal aliens apprehended are now being detained for return.<sup>140</sup>

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<sup>137</sup> *Id.*

<sup>138</sup> [http://www.dhs.gov/dhspublic/interapp/editorial/editorial\\_0868.xml](http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0868.xml).

<sup>139</sup> Press Release, U.S. Department of Homeland Security, *DHS Announces SBINET Contract Award to Boeing*, Sept. 21, 2006.

<sup>140</sup> Press Release, Department of Homeland Security, Aug. 23, 2006; *available at* [www.dhs.gov/dhspublic/display?theme=43&content=5808&print=true](http://www.dhs.gov/dhspublic/display?theme=43&content=5808&print=true).



Prior to initiating this policy, most individuals who were apprehended for crossing the border illegally were not detained, but instead provided with a notice to appear for adjudication of their immigration status and released into the general population pending a hearing. Unfortunately, a very small percentage of these individuals appeared at their scheduled time. Most ignored the notice and simply became part of the illegal alien population residing in the United States. Ending this policy is a major step forward in securing our border and addressing the issue of illegal immigration. DHS has also implemented an interior repatriation program. Under this program, Mexicans who are apprehended at the border are returned to their hometowns in the interior of the country. By returning illegal aliens to the interior, far from the border, it is more difficult to reattempt illegal entry into the United States.<sup>141</sup>

DHS is also working to end the Orantes injunction. The Orantes injunction, issued more than 17 years ago, mandates that the U.S. Government provide Salvadorans with a specific notice of rights indicating that they are entitled to a hearing before an immigration judge. The injunction was based heavily on civil rights abuses in El Salvador which do not currently exist and affords Salvadorans arrested by immigration officers greater protections than aliens of other nationalities.<sup>142</sup> El Salvadorans account for the largest number of apprehended illegal aliens, with the exception of Mexicans. An injunction imposed in the 1980's interferes with El Salvadorian removals. This outdated injunction is a major obstacle in DHS' effort to implement a policy of "catch and return." DHS is seeking court and legislative action to end it.<sup>143</sup>

Also, in response to the increased criminal activity and violence along the Texas-Mexico border, especially in Nuevo Laredo and Laredo, ICE established Operation Black Jack in July 2005. Operation Black Jack subsequently evolved into the Border Enforcement and Security Task Force (BEST). The ICE task force includes Federal, State and local law enforcement represented by the Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Federal Bureau of Investigation, U.S. Marshals Service, Laredo Police Department, Texas Department of Public Safety, and Mexico's Federal Protective Police (PFP). To date, BEST has made 63 arrests and seized more than 700 pounds of marijuana, more than 300 pounds of cocaine, 42 assault rifles 18 handguns, almost \$5 million, hundreds of rounds of ammunition, and material to make IEDs.<sup>144</sup>

The FBI's Joint Terrorism Task Forces (JTTFs) is also a vital component of border security. The mission of the JTTF is to detect and investigate terrorists and terrorist groups and prevent them from carrying out terrorist acts directed against the United States. The JTTFs are units within the FBI's field offices, and select Resident Agencies, that focus primarily on addressing terrorism threats and preventing terrorist incidents.

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<sup>141</sup> Press Release, Department of Homeland Security, Aug. 28, 2006; *available at*: [www.dhs.gov/dhspublic/display?theme=44&content=4951&print=true](http://www.dhs.gov/dhspublic/display?theme=44&content=4951&print=true)DHS.

<sup>142</sup> Press Release, U.S. Department of Homeland Security, *U.S. Government Seeks to End Litigation Undermining Expedited Removal of Salvadorans*, November 17, 2005.

<sup>143</sup> Press Release, Department of Homeland Security, Aug. 23, 2006; *available at*: [www.dhs.gov/dhspublic/display?theme=43&content=5808&print=true](http://www.dhs.gov/dhspublic/display?theme=43&content=5808&print=true).

<sup>144</sup> *Id.*

The JTTFs are operational units because they respond to terrorism leads and conduct terrorism investigations. The JTTFs also combine the resources and expertise of multiple agencies to collect and share counterterrorism intelligence. The JTTFs share classified and unclassified information with their Federal, State, and local partners.

On July 31, 2006, DHS announced the Department of Justice will add 25 Assistant United States Attorneys to the five Federal law enforcement districts along the border. The 25 Assistant U.S. Attorneys will prosecute only immigration-related crimes including alien smuggling, entering the U.S. without inspection, illegal re-entry, possession of firearms as an alien, illegal employment of undocumented aliens, human trafficking and document fraud.<sup>145</sup>

On October 4, 2006, the President signed the FY07 Homeland Security Appropriations bill. The bill provides \$21.3 billion for border protection and immigration enforcement including 1,500 border patrol agents, 6,700 detention beds, and \$1.2 billion for border fencing, vehicle barriers, technology, and tactical infrastructure. The bill provides:

- \$5.2 billion for the Secure Border Initiative
- \$2.27 billion for border patrol, adding 1,500 new Border Patrol agents, for a total of 14,800;
- \$1.2 billion for border fencing, vehicle barriers, technology and infrastructure;
- \$4.2 billion for Immigration and Customs Enforcement (ICE);
- \$3.1 billion for the Coast Guard's homeland security missions;
- \$1.38 billion for ICE custody operations, adding 6,700 detention beds, for a total of 27,500;
- \$28.2 million to assist State and local efforts to enforce immigration law;
- \$238 million for transportation and removal of undocumented aliens;
- \$600 million for Air and Marine Operations for border and airspace security;
- \$183 million for a total of 75 fugitive operations teams Nation-wide, an increase of 23;
- \$137 million for the Criminal Alien Program;
- \$44 million for Alternatives to Detention;
- \$362 million for the US-VISIT program; and
- \$135 million to support immigration verification systems.

The appropriations bill also includes provisions criminalizing the creation of tunnels to illegally cross U.S. borders. The Border Tunnel Prevention Act of 2006 enacts stiff penalties on those who use and construct tunnels, as well as those who allow them to be constructed on their property.

On September 29, 2006, Congress passed the Secure Fence Act of 2006. This Act provides 700 miles of two-layered reinforced fencing along the Southwest border with prioritized placement at critical, highly populated areas. The Act also provides border personnel with the authority and ability to disable fleeing vehicles, similar to the

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<sup>145</sup> Press Release, U.S. Department of Homeland Security, *Twenty-Five Federal Prosecutors to be added to U.S./Mexico Border Districts*, July 31, 2006.

authority the Coast Guard currently possesses for vessels. The Act enhances border security through a “virtual fence” that deploys cameras, ground sensors, unmanned aerial vehicles and integrated surveillance technology, and an evaluation of the Northern border and determining what actions are needed to secure those areas.<sup>146</sup>

## **VI. Conclusion**

The Federal government has taken positive steps to secure its borders, but much more is needed to combat an increasingly powerful, sophisticated, and violent criminal network which has been successful in smuggling illegal contraband, human or otherwise, into our country. The growth of these criminal groups, along the Southwest border, and the potential for terrorists to exploit the vulnerabilities which they create, represents a real threat to America’s national security.

It is imperative that immediate action be taken to enhance security along our nation’s Southwest border. Greater control of the border can be achieved by:

- enhancing Border Patrol resources, including expanding agent training capacity, and technical surveillance abilities;
- constructing physical barriers in vulnerable and high-threat areas;
- implementing state-of-the-art technology, cameras, sensors, radar, satellite, and Unmanned Aerial Vehicles to ensure maximum coverage of the Nation’s Southwest border;
- making permanent the “catch and return” policy;
- expanding the use of the expedited removal policy;
- establishing additional detention bed space;
- improving partnerships and information sharing among Federal, State, and local law enforcement;
- building a secure interoperable communications network for Border Patrol and state and local law enforcement;
- mandating a comprehensive risk assessment of all Southwest border Ports of Entry and international land borders to prevent the entry of terrorist and weapons of mass destruction;
- promoting both international and domestic policies that will deter further illegal entry into the United States; and
- enhancing intelligence capabilities and information sharing with our Mexican counterparts and improving cooperation with the Mexican government to eradicate the Cartels.

The Subcommittee will continue its investigation of border security matters and plans to issue a more comprehensive report on the entire Southwest border. The Subcommittee will hold future hearings, as warranted, on border security.

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<sup>146</sup> Press Release, House Committee on Homeland Security, *Four Major King-led Homeland Security Measures to Become Law*, Sept. 20, 2006.