



Transforming the Southern Border:

Providing Security & Prosperity in the Post 9/11 World



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JIM TURNER, RANKING MEMBER

SELECT COMMITTEE ON HOMELAND SECURITY

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With appreciation to the thousands of employees
Of the Department of Homeland Security, Department of Interior,
Department of Agriculture and Tohono O'odham Nation
On the front line of the Southern Border
Every day, working to protect America.



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A visitor to a community along our Southern Border quickly learns that the people in this region desire the same things as other American communities: safety and security, and a prosperous economy that provides good paying jobs and generates the revenue to support public services such as schools, transportation, and infrastructure. These communities are unique, however, in that because of their location, both their security and prosperity depend to a large degree on the federal government's policies and programs relating to the border. This has been the case for many decades, with illegal immigration and narcotics smuggling emerging as national concerns.

But never has the linkage between our border communities and national security been greater than since the 9/11 attacks. For now, our national security depends on our ability to prevent terrorists planning catastrophic acts of violence against the American people from crossing the Southern Border. We cannot, however, in the name of security, hinder the vibrant economic activity that passes through our border every day. To meet these dual goals of security and prosperity, we need a dramatically new approach to the Southern Border. And the time to do this is now – our terrorist enemies will not wait, neither can we.

In February, 2004, I visited Laredo, Texas at the invitation of Laredo Mayor Betty Flores to meet with South Texas government, civic, and industry leaders to discuss the issues facing border communities. These discussions, along with meetings with federal and state officials charged with implementing federal border programs, highlighted the immense challenge of attempting to enhance security without stifling economic growth.

These meetings also convinced me of the need for a comprehensive investigation of the Southern Border to inform congressional deliberations on border and homeland security policies, budgets, and programs. I tasked the Minority staff of the Select Committee to conduct this investigation. On five separate fact-finding trips, my staff visited 24 of the 43 crossing points on the Southern Border and inspected hundreds of miles of border territory between official points of entry.¹ During the course of this travel, staff interviewed hundreds of current and recently retired Department of Homeland Security (DHS) employees, received briefings from virtually all the federal agencies with responsibilities for border security, and met with scores of subject matter experts. These trips also offered the opportunity to listen to the concerns and recommendations of city and state officials, community leaders, union officials, business leaders, trade groups, and others – all of whom have been directly impacted by federal border control policies and procedures.

¹ The trips included Laredo, Texas (March 8-11, 2004), El Paso and Presidio, Texas (March 28 – April 2, 2004), Tucson, Lukeville, Sasabe, Nogales and Tohono O'odham Indian Reservation, Arizona (April 26- 30, 2004), McAllen, Brownsville and Corpus Christi, Texas (June 6-10, 2004), and San Diego, San Ysidro and Otay Mesa, California (June 28 – July 1, 2004). Members of the Majority staff of the Select Committee also attended a number of these trips.

The conclusions of this report are stark and disturbing. We have very major security gaps on our Southern Border that are not being addressed. Just last week, I visited Brownsville and Harlingen and learned that thousands of illegal immigrants, from countries other than Mexico, are coming across the border, being arrested by the Border Patrol and then being released into the community because we have no available detention space. We have places on our border where there is nothing – no fencing, no electronic monitoring, and no effective law enforcement presence – to stop people from coming across the border. Our ports-of-entry are so congested, that at times, cars are just waived through the border, with hardly any inspection. All of these security gaps could provide the pathway for a terrorist to enter the United States and do grave harm. This country is fighting a war against terror, but nowhere is the gap between rhetoric and reality greater than on our Southern Border.

To provide the security, while enabling continued economic growth and prosperity, we need a genuine transformation of the Southern Border. The decades of neglect must end. The recommendations contained in this report represent the greatest investment in our Southern Border in history. I am calling for creation of a \$1 billion infrastructure investment fund, deployment of technology to monitor the entire border 24 hours a day, seven days a week, and a doubling of border patrols and inspectors, as well as increasing the detention space and the judicial and prosecutorial services needed to support these law enforcement efforts. Nothing short of this across-the-board transformation will meet the security and economic demands of the 21st century.

There can be no doubt that the findings of this report also demonstrate the need for an honest, nonpartisan dialogue on immigration reform. Securing the border is the first step for building public consensus for reform that recognizes the contributions of immigrants as well as respect for the immigration laws. But until we have far better security, the foundations for such reform are not yet in place.

The time for dramatic action is now. If we continue along the path we are on now, we remain highly vulnerable to terrorist infiltration. If we impose cumbersome, poorly conceived security procedures, we will inflict economic harm. Only a true transformation, with extensive strategic planning and major investments at our ports-of entry and in between them, will result in the border that will meet the demands of our times. Such a border could provide real security from the threats that face America and promote economic development in the United States and Mexico. This is the Southern Border to which we all aspire. It is my sincere hope that this report will contribute to making this aspiration a reality.

Representative Jim Turner, (D-TX)

Ranking Member

U.S. House Select Committee on Homeland Security

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This report is the product of a six month long investigation. Creating this document would not have been possible without the expertise, wisdom and hard work of many people.

First, I am grateful for the insight and advice provided by my colleagues in the United States House of Representatives. Congressman Silvestre Reyes, Congressman Solomon Ortiz, and Congressman Ciro Rodriguez contributed their deep understanding of border issues to this project and many sections benefited greatly from their knowledge and experience.

A number of city officials from the border communities have also been extremely generous with their time and ideas. I am especially indebted to Mayor Betty Flores of Laredo, Texas, for her advice and wise counsel and to Rene Gonzales of her staff as well as the Mayor's office of the City of El Paso and especially, Ricardo Armendariz from that office.

A series of experts and border community leaders spent a great amount of time with the Minority staff during their visits to the border, and provided their advice and insights as this document was developed and refined. In particular, I am indebted to the following individuals and organizations for their assistance: John Adams, Executive Director of the Laredo Development Foundation; Veronica Kastrin Callaghan, Vice President of Kasco Ventures; Hector and Rosario Holguin; Mike Dipp and Paul Dipp of Economy Cash and Carry; Dr. Ray Keck III, President of Texas A & M International University; Dr. Donald Michie, University of Texas at El Paso; Dennis Nixon, Chairman of the International Bank of Commerce; Dr. Dennis Soden, University of Texas at El Paso; Guillermo Trevino of Southern Distributing; the Central Business Association of El Paso, the Laredo Development Foundation, the Border Trade Alliance, the McAllen Hispanic Chamber of Commerce and the members of Joint Task Force Six.

Lastly, this work would not have been possible without the contributions of our dedicated and skilled staff, under the direction of the Democratic Chief Investigator & General Counsel John Sopko, who spent weeks on the Southern Border gathering the facts and months crafting this report and refining its recommendations.

Introduction

The massive flow of people and goods across our borders lies at the heart of America's prosperity. At the same time, the sheer volume of this commercial and passenger traffic serves as the perfect conduit for terrorists, their weapons and their finances. The relative ease which the September 11th hijackers entered the United States, reveals just how easy it is for our enemies to exploit this flow of people and trade.¹ The great challenge of our time, therefore, is to provide meaningful security on our Southern Border while maintaining, and even enhancing, the travel and trade that helps to generate America's prosperity.



¹ For a detailed accounting of how easy it was for the hijackers to exploit our border and immigration system; see, National Commission on Terrorist Attacks Upon the United States, *Final Report of the National Commission on Terrorist Attacks Upon the United States*, (Washington, D.C.: 2004). (Hereinafter, *The 9/11 Commission Report*).

In the decades leading up to September 11, 2001, protecting U.S. land borders was not viewed as a national security issue. It was either a drug or crime or immigration problem, but not one rising to the level of national security. Accordingly, during this time, many critical problems which had been previously identified by border communities, industry groups, the Government Accountability Office (GAO), academics as well as congressional committees were largely ignored.² Issues such as deteriorating infrastructure, inadequate facilities, insufficient staffing, stove-piped organizations, poor intelligence and dysfunctional immigration laws were repeatedly identified but never adequately addressed.

Since 9/11, this has changed. Significant attention has once again been focused upon our borders in general, and specifically the nation's 7,000 mile-long land borders. The specter of terrorists crossing our land borders to attack our homeland is now a justifiable concern especially in light of a growing number of instances of terrorists or suspected terrorists being caught crossing our land borders. For example:

- 1997 - Abu Mezer was apprehended three times crossing the Washington-British Columbia border. He was later discovered attempting to build a bomb in New York City.
- 1999 – Lucia Gaorfalo arrested attempting to smuggle suspected terrorists into the United States from Quebec.
- 1999 – Ahmed Ressam, the “millennium bomber” was caught at Port Angeles, Washington, by Diana Dean, an alert Customs inspector, while trying to bring in bombs to blow up the Los Angeles Airport.
- 2004 – Goolam Mahomed Ahmed, a Pakistani, was arrested on July 19 at the McAllen Texas airport with a doctored South African passport, after wading across the Rio Grande just days before.
- 2004 – Kamran Ahktar, aka Kamran Shaikh, a Pakistani, was arrested on July 20 in Charlotte, North Carolina for immigration violations after being observed videotaping downtown financial institutions. He had previously crossed the border illegally from Mexico.
- 2004 – A border-wide alert was issued on August 18 for Adnan G. El Shukrijumah, a suspected al Qaeda cell leader who the FBI suspects is attempting to illegally cross the Southern Border from Mexico to conduct terrorist operations.³

This report demonstrates that, even three years after the 9/11 attacks, our Southern Border is still porous and ripe for exploitation by terrorists seeking to enter the United States. Our national security depends on making this border more secure to prevent terrorists from entering the United States.

² Known since its creation in 1921 as the General Accounting Office, this congressional oversight office recently changed its name on July 7, 2004, midway through the investigation. All of the reports cited in this report were published prior to the name change, but for ease of use the office will be referred to by the new name or simply, the GAO.

³ Michael Marizco, “Arizona, Sonora on alert for al-Qaida suspect,” *Arizona Daily Star*, August 18, 2004.

It is critically important, however, to enhance border security without damaging our economy. Nowhere is the tension between security and cross-border commerce so pronounced as it is on the Southern Border with Mexico. Economic activity there has grown rapidly, especially since implementation of the North American Free Trade Agreement (NAFTA). Total trade has grown from just over \$100 billion in 1994, the first year of NAFTA, to over \$236 billion in 2003.⁴ Of that amount, surface trade (imports/exports for all surface modes) has increased more than 127% from 1994 to 2001.⁵ In 2003, the Department of Transportation reported over 4.2 million trucks and 2.6 million loaded truck containers crossed into the United States from Mexico.⁶ Since 1994, trade with Mexico has grown to such a degree that Mexico is now the United States' second largest trading partner, surpassing Japan.

Cross-border trade has been a significant contributor to economic growth along both sides of the border. It is projected that the population of many border cities in both the United States and Mexico will double in 30 years due to increased economic activity. Two of the ten fastest-growing metropolitan areas in the United States are Laredo and McAllen, Texas, are both located on the border.⁷

Combined with this growth in commerce has been the tremendous increase in legal cross-border travel – especially of pedestrian and personal vehicles. Collectively, land ports-of-entry in Texas and California led all other states in travelers inspected, with seven of the ten top land ports-of-entry located on the 1,933 mile Southern Border.⁸ Approximately 250 million people legally crossed the U.S.-Mexico border in 2003.⁹ Most of this cross-border travel with Mexico involves frequent border-crossers who travel on a regular basis to shop, work or visit relatives and friends on either side of the border. Such frequent travel has been a boon to the economies on both sides of the border as explained by various chambers of commerce. This short-term travel is especially sensitive to delays at the border crossings.¹⁰

The challenge, then, is to achieve two policy objectives – to encourage the vibrant trade in goods and services across our borders while building a strong capacity to stop those individuals who wish to do our country harm. As Rep. Jim Turner, Ranking Member of the Select Committee on Homeland Security, explained in a recent speech before the U.S.-Mexico Chamber of Commerce:

⁴ Laredo Development Foundation briefing materials provided to the staff, February 18, 2004.

⁵ U.S. Department of Homeland Security, *Data Management Improvement Act Task Force – Second Annual Report to Congress*, (Washington, D.C., December, 2003), p. 15-16.

⁶ U. S. Department of Transportation, Bureau of Transportation Statistics, “Border Crossing: US-Mexico Border Crossing Data,” available from http://www.bts.gov/programs/international/border_crossing_entry_data/us_mexico/index.html.

⁷ Staff briefing by Laredo Chamber of Commerce.

⁸ Jennifer Lake, James Monke, Lisa Seghetti, Stephen Vina, Ruth Wasem, Coordinator. *Border Security: Inspections Practices, Policies and Issues*, Updated August 2, 2004. Washington, Congressional Research Service, 2004, (RL 32399) p. 31.

⁹ *Op. cit.*, US-Mexico Border Crossing Data.

¹⁰ Staff briefings with community leaders in El Paso and Laredo, Texas.

Security is indeed our nation's first priority. However, security can only be enhanced if it is integrated into a modernized border designed to facilitate trade and travel. If we are to succeed in securing our homeland, then the economic impact on border communities and the larger U.S. economy must be part of the equation. Homeland security will not work if local communities are not consulted on border security policies, if their cooperation is not sought, or if implementation of border security programs is not coordinated.¹¹

This report focuses on ten major areas that show that the U.S. government is not taking the steps necessary to provide both security and prosperity on the Southern Border. In doing so, it makes recommendations on the policies we must pursue to create a border that meets the challenges of our new world.

1. The Southern Border Is Porous

Hundreds of thousands of illegal immigrants and tons of unlawful contraband successfully cross our Southern Border every year. There is practically nothing to stop determined terrorists and their sympathizers from taking advantage of these loopholes in our border security system to cross into our country, bringing with them their weapons and finances.

2. The Southern Border's Infrastructure Is Inadequate At Ports-Of-Entry

Infrastructure modernization and expansion are necessary to provide security while promoting commerce. Resources to expand and improve the infrastructure and support the growth in workload and staffing of most ports-of-entry on the Southern Border have not kept pace with the increased threats of the post-9/11 world. Nor has the infrastructure at most ports grown to keep pace with the last decade's tremendous increases in commerce and cross-border travel.

3. More Staffing Is Needed On The Southern Border

Just as sufficient infrastructure is necessary to achieve both security and the efficient flow of commerce at the border, it is also necessary for the government to have the appropriate numbers of border agency personnel in order to achieve its trade and security goals. Government officials and community leaders expressed widespread dissatisfaction with the staffing levels for all agencies responsible for border security. Three years since 9/11, no comprehensive staffing plan has yet been developed for the Southern Border

4. Modern Technology Must Be Deployed On The Entire Southern Border

New and improved technology is required to help the border agencies address the post-9/11 threat and keep pace with growing border trade. Border security and processing functions are still being performed in a labor intensive manner, with little use of new technologies.

¹¹ Remarks of Congressman Jim Turner before the U.S.-Mexico Chamber of Commerce, Homeland Security and Immigration Panel, Jefferson Building, Library of Congress, March 17, 2004.

Minimal planning and funding has gone into capturing the efficiencies of recent technological advancements to modernize the border. Much of the technology on the Southern Border is more than a quarter century old. Although some new technologies have been introduced at a few border locations, these limited deployments cannot meet the challenges at hand.

5. Border Officials Are Not Getting The Intelligence They Need To Perform Their Counter-Terrorism Mission

The intelligence databases available to front line border officials are antiquated and not fully integrated or interoperable. Millions of travelers are still not checked against any database. Unintended intelligence “stovepipes” have formed within border agencies with a proliferation of uncoordinated and duplicative intelligence centers. Complicating this situation is that the vast majority of border investigators lack security clearances to pursue their top priority – preventing terrorists from entering the United States.

6. The US-VISIT Initiative Has Serious Implications For The Southern Border

Border communities, along with many DHS officials at the ports-of-entry, expressed concern about the implementation of the US-VISIT initiative. DHS needs to better coordinate its implementation with border communities.

7. Federally Owned And Tribal Lands On The Southern Border Are Not Secure

The Administration needs to better coordinate and fund border security activities on federally-owned or tribal lands that comprise roughly 50% of the Southern Border. Federal parks, wildlife sanctuaries, forests and Indian reservations lie adjacent to the Southern Border. Many of these areas have experienced the largest increases in narcotics and human smuggling. The protection of these border areas has been inadequate. The numerous federal agencies with responsibilities for these areas have not fully coordinated their law enforcement activities.

8. DHS’ Detention And Removal Operation Is Failing

Arrests and detentions of illegal immigrants have increased, but poor planning has resulted in inadequate resources to support the Detention and Removal Operation (DRO). Consequently, tens of thousands of illegal immigrants have been released into U.S. communities. Of those released 80-90% fail to appear for deportation proceedings.

9. The DHS “One Face at the Border” Initiative Faces Serious Implementation Challenges

The “One Face at the Border” initiative was intended to streamline inspections on the border, yet the implementation of this initiative has caused led to a reduction in expertise which may, unless addressed, have long term security consequences at ports-of-entry.

10. The Administration Has Failed To Develop A Comprehensive Long-Term Border Strategy

Instead, our government relies upon a series of uncoordinated tactical initiatives that merely react to emergencies and cause additional problems along the border. Up to now, strategies have either been tactical or ad hoc in nature – resulting in merely pushing a local problem of either illegal immigration or narcotics smuggling somewhere else along the border.

To address these major security gaps along the Southern Border, we recommend that the Administration and Congress to take the following, immediate steps:

Develop a Comprehensive Border Strategy. There is a need for a national strategy to secure our borders that takes into account economic, immigration and security issues. The merger of all border agencies within DHS offers an opportunity to develop such a strategy in conjunction with other federal agencies and the border communities.

Create \$1 Billion Infrastructure Investment Fund. While the comprehensive strategy is being developed, a \$1 billion infrastructure investment fund should be established as down payment for the infrastructure needs at our ports-of-entry. Roads around ports-of-entry must also be improved and preclearance programs such as SENTRI and FAST must be expanded.

Double Law Enforcement Personnel Along the Southern Border, Increase Other Support Functions. The number of border inspectors needs to be doubled to provide the needed level of security and support technological improvements. Border patrols should increase by 1,000 per year. Commensurate personnel increases are also needed for functions consular, prosecutorial, judicial, and detention agencies.

Monitor the Entire Border 24/7; Screen All Cargo Trucks for WMD. The Department of Homeland Security should deploy technology to ensure that every mile of the border is monitored 24 hours a day, 7 days a week. Technology to screen cargo trucks for nuclear and radiological material should be deployed at all Southern Border ports-of entry immediately.

Connect Border Security Intelligence Databases. Consistent with the recommendations of the 9/11 Commission, the Administration must build an integrated, interoperable entry-exit system that links all relevant border security systems so an inspector can enter one query and search all the information the federal government has on the individual trying to enter the country.

Prepare Communities and Ports for US-VISIT. The Administration needs to create a forum for border communities to participate in plans to implement the US-VISIT program; infrastructure improvements must be made to support this system to ensure that it does not impose a burden on commerce and travel.

Coordinate Border Enforcement on Federal Lands. A Southern Border Coordinator should be appointed to manage the multiple federal agencies that have responsibilities along the border and at ports-of-entry, with special emphasis on federal land management agencies and tribal nations.

Expand Detention and Removal Operations. To ensure that all persons who are caught crossing the border illegally can be either detained, or returned to their home country, Detention and Removal Operations should be immediately expanded to support daily occupancy of 22,500 beds (up from 19,444).

Require Spanish and Other Specialized Training for Inspectors. All border inspectors should be required to pass a Spanish language requirement. Specialized training must be reinstated under the “One Face at the Border” program.

Findings and Observations

1. The Southern Border is Porous

Crossing the U.S. borders illegally is not difficult. The number of those attempting to enter the United States illegally across our land borders is staggering. Approximately one million illegal immigrants were apprehended in 2003. DHS predicts that more than 1.2 million will be apprehended in 2004.¹² Approximately 150,000 to 600,000 succeed every year in illegally entering the United States. While many seek only employment, the problem is that the porous border can be exploited by terrorists intending to do our country harm.



¹² Materials provided by CBP Congressional Affairs Office, June 21, 2004.

The Terrorist Interest in the Southern Border

The number of illegal immigrants successfully crossing the Southern Border highlights the gaps in our border security system, raising the question that if it is so easy for them to illegally cross the border, what will stop a determined terrorist? Especially as more resources are brought to bear against the other methods for terrorists to enter, such as those used by the 9/11 hijackers, it can be presumed that the border will become a more attractive means of entering the United States.

It comes as no surprise that those who work every day to attempt to control our porous borders are concerned about this situation. Their frustrations and concerns are best summed up in the words of T. J. Bonner, president of the National Border Patrol Council, who discussed the state of the border when in releasing a homeland security survey of Border Patrol agents:

Prior to September 11, 2001, it was extremely easy to enter the United States illegally, either by sneaking across the border or by securing permission to enter temporarily and then never leaving. Incredibly this has not changed in any meaningful way. With very few exceptions, any individual who is determined to enter the United States illegally will eventually be successful.

We cannot pretend that our homeland is secure if our borders are not. Every year millions of illegal aliens cross our borders, and fewer than half of them are apprehended. If it is so easy for impoverished and poorly-educated people to illegally cross our borders, consider how much easier it is for well-financed and highly-trained terrorists to do the same.¹³ (emphasis added)

Terrorists such as al Qaeda recognize the vulnerability of the Southern Border. In 2002, al Qaeda's website noted that:

In 1996, 254 million persons, 75 million automobiles, and 3.5 million trucks entered America from Mexico. At the 38 official border crossings, only 5 percent of this huge total is inspected.... These are figures that really call for contemplation.¹⁴

This interest in the Southern Border is reinforced by the border-wide alert announced on August 18, 2004 for a suspected al Qaeda cell leader that the FBI believed was attempting to

¹³ National Border Patrol Council President T.J. Bonner Statement, "How Secure Are America's Borders?" (Washington, D.C., August 23, 2004).

¹⁴ Abu Ubayd al-Qurashi, "America's Nightmares," Al-Ansar [Internet], February 13, 2002. In *Imperial Hubris*, Anonymous, p. 84. Washington: Brassey's Press, 2004.

cross into the United States from Mexico, along with the recent apprehension of two terrorist suspects who had entered across the Southern Border.¹⁵

Farida Goolam Mahomed Ahmed, a Pakistani citizen, traveling on a South African passport, was arrested July 19, 2004, by Border Patrol agents at McAllen International Airport after agents noted her passport was missing four pages and found a pair of muddy, wet pants in her baggage. Subsequent inquiry showed that the pages torn from her passport had reflected travel to Pakistan. The investigation also showed that she had flown into Mexico City on a British Airways flight from London on July 14, 2004, and within a week had apparently walked across the Rio Grande and entered the United States illegally.¹⁶

On August 5, 2004, federal officials charged Kamran Ahktar, also known as Kamran Shaikh, a Pakistani citizen, with immigration violations after he was detained in Charlotte, North Carolina on July 20, 2004, while videotaping the downtown area of Charlotte.¹⁷ The affidavit supporting the complaint detaining him noted that immigration records show that Shaikh entered the United States by illegally crossing the border from Mexico in 1991.

Equally disturbing, a border intelligence analyst reported to the staff that two Syrian nationals were apprehended prior to 9/11 attempting to cross the border between the remote Del Rio and Eagle Pass, Texas, crossings. Among the items seized from these individuals were cameras with pictures of the nuclear power plant and other important buildings in the Mexican port of Vera Cruz. The analyst also noted that depending upon wind factors, an incident at the Vera Cruz nuclear plant could affect thousands of lives on the U.S. side of the border. The staff confirmed the arrests, but was unable to officially corroborate either the material seized from the individuals or its significance, if any, from a counter terrorism perspective.

Exacerbating this problem is the possibility that a corrupt official in Mexico or another country would wittingly or unwittingly assist a terrorist intent upon entering the United States. Last November, it was reported that a Mexican diplomat who served in Lebanon was arrested for her part in providing Mexican travel documents to unnamed Middle Easterners. In the last two years, more than 50 Mexican immigration officials have been charged with corruption.¹⁸

¹⁵ *Op. cit.*, Arizona Daily Star.

¹⁶ Lennox Samuels, "Mexican tourist spots, oil platforms seen as potential targets", *Dallas Morning News*, August 7, 2004.

¹⁷ Department of Homeland Security News Release, "*Pakistani Man Charged With Criminal Immigration Violations*," (Washington, D.C., August 10, 2004).

¹⁸ Ricardo Sandoval, "Mexico Says Border Breaches May Be Tied To Terror activity," *Dallas Morning News*, August, 17, 2004.

More Illegal Immigrants from Countries of National Security Concern Are Crossing the Southern Border

Adding to this security concern, the Southern Border bears the brunt of the tide of illegal immigration into the United States.¹⁹ For the first seven months of 2004 there have been 660,538 apprehensions on the Southern Border, which is a 31% increase from the same period for fiscal year 2003. It is projected by the Border Patrol that apprehensions will total roughly 1.2 million for the full year.²⁰ These numbers, of course, only represent those who are apprehended. The actual number of those who successfully evade detection and cross our borders remains somewhat of a mystery – with estimates ranging from 150,000 to 600,000 per year.²¹

While apprehension data does not provide information on people successfully crossing the border, it is generally accepted that the data provides a similar picture. In fiscal year 2002, nationals of 186 countries were apprehended with illegal immigrants from Mexico, representing 94% of the total.²² In fiscal year 2003, 95% of the illegal immigrants apprehended were Mexican nationals. The remaining 5% (49,545) individuals, termed “OTMs” (Other Than Mexicans) by DHS, were scattered from countries throughout the world – Honduras, El Salvador and Guatemala being the top three nationalities.²³

Official Border Patrol records reveal a disturbing trend on the Southern Border indicating a growth in OTMs crossing into the United States from Mexico. A number of Border Patrol officials commented that they were arresting more OTMs this year. Data corroborates these observations. It shows that for the first seven months of fiscal year 2004 40,739 OTMs were apprehended – representing a 36% increase over the 29,910 OTMs apprehended during the same time period in fiscal year 2003.²⁴ In the Brownsville Sector alone, Border Patrol officials reported they caught 23,178 OTMs through August 2004, compared with 14,919 in all of fiscal year 2003. Of these, 16,616 were released, on bond, into the United States.

¹⁹ DHS, “Deportable Aliens Located by Program, Border Patrol Sector and Investigations District, Fiscal Years 1996-2002,” *2002 Yearbook of Immigration Statistics* (formerly, Statistical Yearbook of the Immigration and Naturalization Service), p. 171 and Table 40; available from <http://uscis.gov/graphics/shared/aboutus/statistics/ENF2002list.htm>.

²⁰ A review of government apprehension data shows that Southern Border apprehensions previously reached a high of 1,615,844 in fiscal year 1986 and then decreased for three consecutive years after the passage of the Immigration Reform and Control Act, which contained an amnesty program for certain illegal immigrants. From a low of 852,506 in 1989, the number of apprehensions steadily increased every year until 2000 when it set an all time high at 1,643,679. Border apprehensions then declined 25% to 1,235,717 in 2001, another 25% in 2002 to 929,809 and finally another 2% to 905,065 in 2003.

²¹ U. S. House, Committee on Government Reform, Report of the Subcommittee on Criminal Justice, Drug Policy and Human Resources, *Federal Law Enforcement at the Borders and Ports of Entry: Challenges and Solutions*, Report 107-794, (Washington, D.C.: July 2002), p. 30; Final Report of the National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, p. 383; Center for Strategic and International Studies (CSIS), *Managing Mexican Migration to the United States: Recommendations for Policymakers*, (Washington, D.C., April 2004), p. 1-3.

²² *Op. cit.*, 2002 Yearbook of Immigration Statistics, p. 174 and Table 39.

²³ CBP Congressional Affairs briefing materials emailed on July 13, 2004 to staff indicate that in the first seven months of fiscal year 2004, 95% (752,749) of the 793,488 apprehensions were Mexican nationals. Honduras, El Salvador and Guatemala were the top three countries in the remaining 5% or 40,739 OTMs.

²⁴ Data provided by Border Patrol, July 13, 2004.

Border officials warned that within the increasing numbers of OTMs, they were seeing more foreign nationals from countries of national security/terrorism interest, commonly referred to as “countries of interest” or “COIs.” Border agents noted that 3,000– 4,000 COI apprehensions occurred yearly on the Southern Border. They provided anecdotal evidence of finding passports, “pocket trash” and other documents indicating foreign nationals from countries of interest were crossing the Southern Border. For example, the tribal police on the Tohono O’odham Nation reported finding an Iranian passport on their reservation.

The staff obtained a partial list of COI apprehensions for fiscal year 2004 for the Southern Border which included foreign nationals from Afghanistan (16), Egypt (18), Kazakhstan (2), Kuwait (2), Indonesia (19), Iran (13), Iraq (10), Lebanon (13), Pakistan (109), Saudi Arabia (7), Somalia (5), Sudan (6), Syria (10), Tajikistan (3), Turkey (26), Uzbekistan (13) and Yemen (3). These figures are partial and do not reflect the total numbers of COIs apprehended.²⁵

Miles of Unprotected Border Attract Illegal Crossings

The attraction of the Southern Border to anyone contemplating crossing it illegally is that the 1,933 mile-long land border with Mexico is vast and offers hundreds of potential illicit crossings. It encompasses terrain as diverse as the suburban neighborhoods of San Diego, California to the stark Chihuahuan desert outside Presidio, Texas.



Rugged terrain of Southern Border outside of El Paso, Texas.

The Rio Grande River marks about half of the border, including the entire Texas-Mexico border from Brownsville to New Mexico. In the Brownsville area, the river is too deep to walk

²⁵ *Ibid.*

across, however illegal immigrants use inflatable inner tubes to float across. The staff observed hundreds of inner tubes discarded along the shore during its sight visit to the Brownsville area.

Elsewhere, the river offers a very limited barrier to illegal crossings as it is relatively easy to cross either on foot or in a vehicle – especially during the summer when many stretches dry up. While traveling with Border Patrol agents, the staff witnessed numerous people, both at night and during daylight hours, illegally attempting to cross the border.



Discarded inner tubes are abandoned along the banks of the Rio Grande near Brownsville, Texas.

West of El Paso, the Rio Grande turns to the north and no longer serves as a clear marker of the international boundary. Through most of New Mexico, Arizona, and California, nothing more than two or three strands of barbed wire fencing mounted on wooded posts serves as a barrier to border crossings. In many places illegal immigrants simply cut the strands or climb over it. Along one stretch in Arizona, the staff was shown a section of the barbed wire fence that had been removed by a Mexican rancher and relocated about ten yards away to the northern edge of his property. Clearly this type of fencing is not an effective obstacle or deterrent to those intent on illegally entering the United States.

Other more mountainous areas of the border have no fencing or infrastructure in place to deter illegal entry. The government has relied on the remoteness and terrain of these areas to deter illegal border crossers. In these areas, there are white pillars located several miles apart, usually on a peak of a mountain, to designate the international boundary. The pillars are “line of sight” meaning that if a person is standing at one, one pillar will be visible to the east and to the west.



The U.S.-Mexico border west of El Paso, Texas, is separated by barbed wire fencing. Looking West, Mexico is on the left and the United States on the right.

Except at the ports-of-entry and in the larger border towns, there are no walls or other barricades in place to block illegal entry into the United States. In a few stretches of desert land in Arizona there are approximately 30 miles of vehicle barriers. These vehicle barriers, however, do not appear to act as an adequate barrier to border crossers. In Organ Pipe Cactus National Park, construction has begun on vehicle barriers along the border. When completed, these vehicle barriers will span about 30 miles of the border. Even though vehicles will be stopped, individual illegal immigrants will still be able to travel through these barriers on foot.²⁶ Indeed, the staff noted fresh evidence of vehicle traffic that had just driven around the new barrier.

²⁶ It was stressed to the staff by Department of Interior personnel that this 30 mile stretch of vehicle barriers is not a complete solution. Vehicles simply have to travel around this span to circumvent its effectiveness. In addition, the staff was shown pictures of a truck that was modified to assist other vehicles to go over the vehicle barriers. The modified truck had a set of rails that extended along its top (parallel to the ground), and were hinged to other rails extending in front and behind the truck. The modified truck could park perpendicular to the vehicle barrier, fold the front set of rails to extend over the barrier and fold the back set of rails behind it. Other vehicles could then drive up the back of the modified truck, across its top and down its front, over the vehicle barrier and into the United States.



Vehicle barriers under construction in Organ Pipe Cactus National Monument.

This type of vehicle barrier is rare along the 1,933 mile land border with Mexico. The construction of vehicle barriers at this location was due to Organ Pipe being voted the most dangerous national park by the National Park Rangers Lodge of the Fraternal Order of Police from 2001 through 2003.²⁷ In addition, National Park Service Ranger Kris Eggle was murdered in the line of duty at this park by drug smugglers fleeing from Mexican authorities on August 9, 2002.

One could, figuratively as well as literally, drive a truck through the porous U.S. border. One striking example occurred when the staff, while flying in broad daylight from El Paso to Presidio in an Immigration and Customs Enforcement (ICE) Blackhawk helicopter, observed three large panel trucks, two buses and four 18-wheel tractor trailers parked in a remote box canyon not far from the border. Upon landing, ICE Air and Marine Operations (AMO) officers accompanying the staff were unable to find any people present or other indications of the purpose of these vehicles in such a remote location that close to the border. The windows on the buses were blacked out and the trucks were parked close to one another in an apparent attempt to deter entry. The nearest farm was some miles away.

²⁷ National Park Rangers Lodge of the Fraternal Order of Police Press Release, “*Most Dangerous National Parks 2003*,” June 23, 2003, available at <http://www.rangerfop.com/danger03.htm>.



Trucks and buses parked in canyon on U.S. side of Rio Grande.

Upon our return from touring the Presidio port-of-entry a few hours later, the four tractor trailers were spotted again, but this time, on the Mexican side of the border, having illegally driven back across the Rio Grande from the United States into Mexico. The river along that stretch of the border could easily be crossed.

Border agents advised that vehicles cross the border all the time. For example, the Tohono O’odham police reported that they towed approximately 7,000 stolen vehicles from their reservation in 2003. Many of them had been abandoned by smugglers or “coyotes” after having broken down. Border agents who sweep the sand along the border as a method to determine if there were crossings in the night reported that they regularly found evidence of vehicular or foot traffic in the morning.

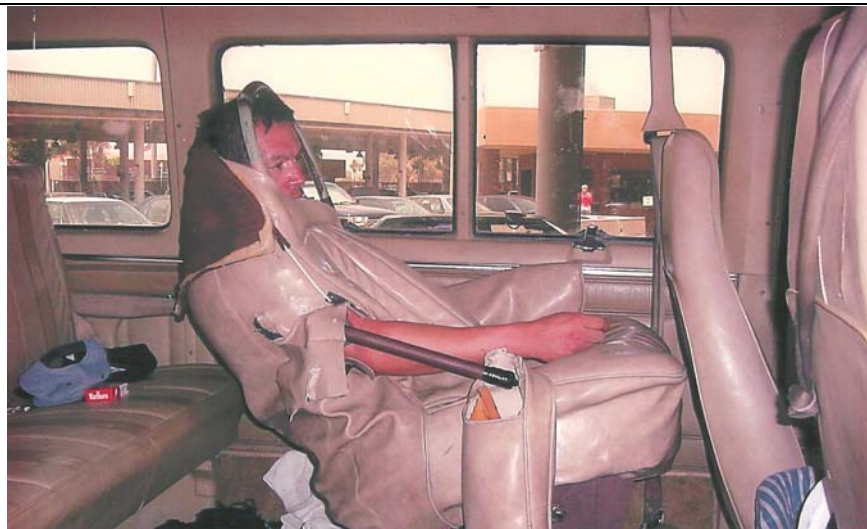


Five of the vehicles spotted from helicopter located in a canyon between Presidio and El Paso, Texas.

The methods employed to illegally enter the United States are only limited by the smuggler's imagination. Beyond just walking or driving across in remote sections, smugglers can use one of the dozens of smaller, unmanned crossings ("B" crossings) that, although now closed, still dot the border. Although many have barricades in place, others do not and all are still easily crossed. Other methods regularly used to smuggle people and contraband into the United States include tunneling beneath the border as well as concealment in cars, trucks, and trains.²⁸



Class B crossing between El Paso and Presidio.



Illegal immigrant concealed in a vehicle's seat attempting to enter the United States.

²⁸ Staff observations and interviews of border agents.

The Southern Border is Porous Conclusions and Recommendations

Hundreds of thousands of illegal immigrants and tons of contraband successfully cross our Southern Border every year. There is nothing to stop equally determined terrorists and their sympathizers from taking advantage of the same loopholes in our border security system to cross into our country, bringing with them their weapons and finances. The relative ease by which, drug smugglers, illegal immigrants, and potential terrorists can cross our porous borders reveals glaring weaknesses in our border security system.

The answer, however, is not to build walls between the United States and our neighbors. “Great powers have been building great walls throughout history. The Great Wall of China, the Maginot Line, and the Berlin Wall went up at considerable expense in sweat and treasure and all ultimately failed to block or contain the forces that prompted their construction.”²⁹ Rather, as Stephen E. Flynn recommended in testimony earlier this year:

The outline for transformed border management is clear. It requires a risk management approach to policing cross-border flows which includes the close collaboration of the major beneficiaries of an increasingly open North American continent – the United States’ neighbors to the North and the South, and the private sector. The stakes of getting this right are also clear. Transforming how the border is managed is an essential step towards assuring the long-term sustainability of hemispheric economic integration within the context of the transformed security environment of the post-9-11 world.³⁰

We must start treating border security as a matter of national security and economic prosperity. One of the intended goals of this report is to attempt to address the challenges posed by our current porous border without negatively affecting legitimate travel and commerce. To succeed will involve the resolve and imagination of the Congress and the Administration in developing and implementing a truly bipartisan national border strategy with an accompanying increase in funding to staff and build a modernized border regime for the 21st century. Only then, can there be an effective deterrent to those who attempt to cross the Southern Border, bent on harming this country.

²⁹ U.S. Senate, Committee on Foreign Relations, *Prepared Statement of Stephen E. Flynn, PhD., Commander, U.S. Coast Guard (Ret.)*, March 23, 2004.

³⁰ *Ibid.*

2. The Southern Border's Infrastructure Is Inadequate At Ports-Of-Entry

Infrastructure at Southern Border ports-of-entry cannot effectively handle hundreds of millions of inspections annually. In addition, the Southern Border's infrastructure cannot support the implementation of new border security programs without harming the economies of border communities.

There is a need to balance the competing tension between screening people and vehicles for terrorist weapons, contraband, smuggled immigrants and other prohibited items with the need to ensure an efficient flow of commerce. Substantial investment in border infrastructure is needed to ensure national security while sustaining economic prosperity caused by increased cross-border trade over the last ten years.



Southern Land Border Ports-of-Entry: Congestion Impairs Security and Inhibits Commerce

There are 309 official ports-of-entry in the United States including land, airports and seaports.³¹ Of these, 166 are land ports-of-entry, 43 of which are located on the Southern Border.³² These Southern Border ports are equipped with 86 pedestrian lanes, 216 passenger vehicle lanes and 70 cargo lanes.³³ These ports-of-entry are generally large facilities with a high volume of pedestrian, vehicular, and commercial traffic.



Truck traffic from Mexico at Laredo's "World Trade Bridge."

According to Bureau of Transportation statistics, in 1994, there were 2.7 million truck crossings into the United States through the 24 ports-of-entry open to commercial traffic on the Southern Border.³⁴ In 2003, this traffic increased to 4.2 million crossings.³⁵ In 1996, there were more than 286,000 incoming containers being shipped by rail.³⁶ In 2003, the number of rail containers more than doubled, increasing to over 607,000.³⁷ In 1994, there were 66.4 million

³¹ *Op. cit.*, DMIA Task Force Second Report, p.2.

³² DHS, *Data Management Improvement Act (DMIA) Task Force – First Annual Report to Congress*, (Washington, D.C., December 2002), p.14.

³³ DHS, Customs and Border Protection briefing to the House Select Committee on Homeland Security, June 2, 2004.

³⁴ *Op. cit.*, US-Mexico Border Crossing Data, Table 1.

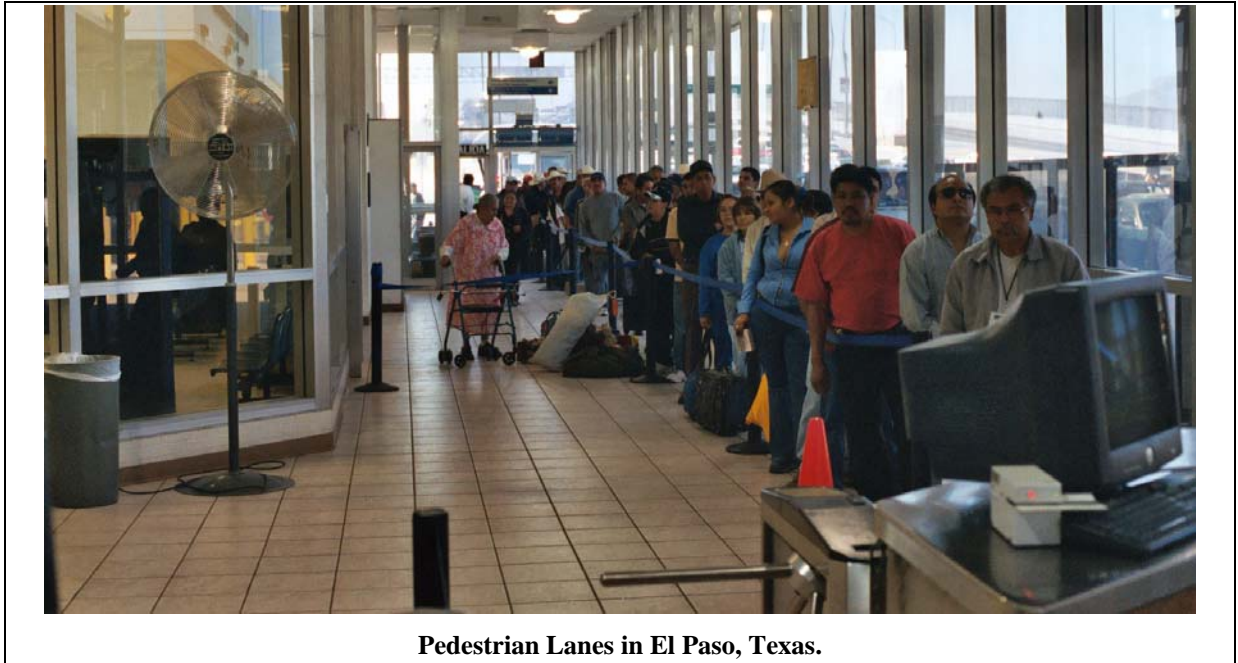
³⁵ *Ibid.*

³⁶ *Ibid.*, Tables 5-6.

³⁷ *Ibid.*

personal vehicles crossing into the U.S. from Mexico through Southern Border ports-of-entry.³⁸ These vehicles carried a total of 169 million passengers.³⁹ In 2003, the number of personal vehicles rose to 88.1 million, carrying 193.7 million passengers.⁴⁰ During this same timeframe, yearly pedestrian crossing rose from 34.9 million to 48.7 million.⁴¹

Commercial trade through land ports-of-entry has increased from \$88 billion in 1994 to \$201 billion in 2001, when the North American Free Trade Agreement (NAFTA) went into effect.⁴² Mexico is now the United States' second largest trading partner, with total merchandise trade at \$220.3 billion in 2003.⁴³



With the increase in pedestrians, commercial, and passenger vehicles, delays at Southern Border ports-of-entry have become unsatisfactory. For example, at the San Ysidro port-of-entry, it often takes more than two hours to get through the inspection process.⁴⁴ Crossing times at smaller ports-of-entry, such as Nogales, can average from 20-40 minutes, with longer wait times during morning and afternoon commutes.⁴⁵ Factors contributing to border congestion include

³⁸ *Ibid*, Table 8.

³⁹ *Ibid*, Table 9.

⁴⁰ *Ibid*, Tables 8-9.

⁴¹ *Ibid*, Table 12.

⁴² *Op. cit.*, DMIA Task Force Second Report, p.15-16. The Commissioner of the Texas Department of Transportation testified in 2003 that NAFTA-related truck traffic comprises 16.5% of all truck traffic on Texas highways; and that more than half of the total trucks passing through Texas land border ports had origins or destinations outside Texas. The Commissioner further testified that "NAFTA trade is hampered by choke points at the border... For example, border infrastructure is often located in congested downtown areas, complicating commercial traffic flows.... Additionally, location in a fully developed area limits the possibilities for needed expansion." United States Senate, Committee on Environment and Public Works, *Statement of Commissioner John W. Johnson, Texas Department of Transportation*, August 14, 2003.

⁴³ *Op. cit.*, CRS Report RL32399, p.3.

⁴⁴ U.S. House, Select Committee on Homeland Security, *Hearings before the Subcommittee on Infrastructure and Border Security*, Testimony of Randel K. Johnson, Vice President for Labor, Immigration & Employee Benefits, U.S. Chamber of Commerce, June 15, 2004.

⁴⁵ *Ibid*.

inadequate roads, the layouts of inspection plazas, space limitations, the number of inspection booths and lanes and staffing.⁴⁶ Compounding these factors are the high volumes of travelers and cargo shipments moving through the ports as well as the inspection process required by law and the heightened security concerns since 9/11.



Primary vehicle inspection booths in El Paso, Texas.

This congestion has an impact on both security and commerce. It is estimated that given the current infrastructure, individual passenger vehicles inspections cannot take longer than 30 seconds in order to adequately facilitate traffic flows at most land border ports-of-entry.⁴⁷ It has been reported that if the average inspection were to increase by only nine seconds, the peak wait time at a typical port-of-entry could increase by more than eleven hours.⁴⁸

Accordingly, for 98% of international travelers inspected, inspectors at ports-of-entry generally take less than one minute to ascertain whether the traveler is a legitimate traveler, a

⁴⁶ *Op. cit.*, DMIA Second Annual Report at p. 34. See also, GAO, *U.S.-Mexico Border: Better Planning, Coordination Needed to Handle Growing Commercial Traffic*, GAO/NSIAD-00-25, (Washington, D.C. March 2000), p. 5, which lists among the factors contributing to border congestion: lack of land to expand port of entry operations; inadequate roads leading to some ports-of-entries; and poor port-of-entry planning among U.S. agencies.

⁴⁷ *Op. cit.*, DMIA Task Force First Annual Report, p. 49.

⁴⁸ GAO, *Department of Homeland Security's US-VISIT Program*, (Washington, D.C., October 23, 2003), p.22. This estimate related to an increase in inspections time and peak times at the Blaine Peace Arch in Washington State.

smuggler, an immigrant not qualified to enter the United States, or a potential terrorist.⁴⁹ In this time, an inspector must try to determine a traveler’s citizenship and intent, query a database for a background check, conduct a visual inspection of the vehicle and belongings, and form an opinion as to whether the traveler should be sent to secondary inspection or allowed into the United States – a daunting task further exacerbated by the lack of personnel, technology, infrastructure, and adequate intelligence.

More than one port director described the pressure they were under to keep the back-log under control and to move people as quickly as possible across the border. None of the port managers would admit that this in any way affected security, but all admitted they were under constant pressure to keep the lines moving and were required to notify officials in Washington, D.C. in writing with an explanation if delays exceeded an hour.

Port managers told the staff that if they started to experience delays they would assign more inspectors and open more lanes for additional vehicles and passengers. However, this is not a realistic alternative in many cases since there are no “additional” lanes due to infrastructure limitations or, as will be discussed in the subsequent section, there are no additional staff to open new lanes. As a result, border inspectors told us they were encouraged to “flush” the traffic, i.e., shorten the waiting time by simply waving the traffic through the border.



Congestion at ports-of-entry has potential to create unreasonable delays, crippling trade with Mexico.

Likewise, border congestion has the potential to cripple trade with Mexico by causing unreasonable delays for commercial shipments, for Mexican citizens with work visas, and for

⁴⁹ GAO, Letter to U.S. Customs and Border Protection Commissioner Robert C. Bonner, *Land Border Ports of Entry*, GAO-03-1084R, (Washington, D.C., August 18, 2003), p. 3.

Mexicans who shop at U.S. stores. It has been estimated that a 1% permanent decline in cross-border commerce and trade will result in a loss of \$76 million in sales, a loss of 1,549 jobs, a loss of \$531,000 in sales tax rebates, and \$726,000 in bridge revenues.⁵⁰ This assessment estimates the impact only for the Brownsville, McAllen, Laredo, and El Paso metropolitan areas, not the entire United States. These numbers underscore the importance of striking a balance between securing the borders against terrorists and criminals and in facilitating the flow of commerce and legitimate travelers through the nation's ports-of-entry.

The Infrastructure at Ports-of-Entry Is Inadequate To the Challenge

Port-of-entry infrastructure has not kept pace with the threat of terrorism, criminal activity or the flow of commerce. Many of the ports are old:

- 1 port-of-entry was constructed prior to 1900;
- 31 ports-of-entry were constructed between 1900 and 1940;
- 81 ports-of-entry were constructed between 1940 and 1970; and
- 45 ports-of-entry were constructed between 1970 and present.⁵¹

Infrastructure problems have been identified for years by a number of agencies that have studied the border. In 2003, the Data Management Improvement Act (DMIA) Task Force reported that more than 70% of the 166 land ports-of-entry have inadequate infrastructure:

- 64 ports have less than 25% of required space;
- 40 ports have between 25% and 50% of required space; and
- 13 ports have between 50% and 75% of required space.⁵²

Likewise, the U.S. Government Accountability Office (GAO) visited eleven Southern Border ports-of-entry commercial vehicle inspection areas and assessed whether or not they were deficient in existing infrastructure and expansion space.⁵³ The GAO found that five had “limited room to expand,” four had a “lack of docking space,” five had “inadequate area to park trucks,” four had “limited room to deploy new technology,” eight had “poor port of entry road connections,” and five had “inadequate exits.”⁵⁴ Even the DHS has acknowledged some of these problems and admitted that 62 of their ports have inadequate space.⁵⁵

⁵⁰ Michael Patrick, *US VISIT: A Preliminary Impact Assessment on the Border and Texas Economies*, Texas Center for Border Economic and Enterprise Development, (Laredo, TX: Texas A&M University, April 2004), p. 3.

⁵¹ DHS, *US-VISIT Industry Day Briefing*, July 8, 2003, slide 22, available from http://www.dhs.gov/interweb/assetlibrary/USVISIT_IndustryConfBrief.pdf.

⁵² *Op. cit.*, DMIA Task Force Second Report, p.33. The report notes that since the creation of the Department of Homeland Security, the U.S. Customs and Border Protection agency stated that there are no changes or updates to these statistics since 2001.

⁵³ GAO, *U.S.-Mexico Border: Better Planning, Coordination Needed to Handle Growing Commercial Traffic*, GAO/NSIAD-00-25, (Washington, D.C., March 2000), p.20.

⁵⁴ *Ibid.*

⁵⁵ *Op. cit.*, US-VISIT Industry Day Briefing materials.

Complicating the infrastructure problem is that many Southern Border ports-of-entry are landlocked by other development, and thus there is little or no room for expansion. For example, the “Bridge of the Americas” in El Paso is landlocked between a national park, an interstate, and Mexico. The “Gateways To Americas” Bridge in Laredo is located in Downtown Laredo and is surrounded by privately owned land and buildings. Being landlocked not only restricts port expansion, but also restricts improvements to existing infrastructure.

Another concern caused by the existing infrastructure on the Southern Border is the phenomena of “spotters.” Spotters assist smugglers by watching port operations to determine exploitable vulnerabilities. For instance, at the “Gateways to Americas Bridge,” the spotters are able to observe port operations from public places, such as adjacent sidewalks or inside adjacent buildings. The port can neither relocate the public nor erect barriers that would screen the inspection process. Spotters were cited as a concern at nearly every facility toured on the Southern Border.



Ports-of-entry in downtown areas often have no expansion room. Spotters can easily observe port operations from public areas.

Planned improvements such as the installation of radiation portal monitors are also limited due to space constrictions. For example, at the Otay Mesa port-of-entry, radiation portal monitors are planned to be installed immediately after commercial vehicles pass through the primary inspection booths. Port officials said that this port’s design could not incorporate the installation of the portal monitors prior to entering the primary booth due to space constrictions.⁵⁶ Therefore, due to limited port expansion space, vehicles suspected of carrying

⁵⁶ Staff briefing at Otay Mesa Port-of-Entry, June 29, 2004.

radiological weapons cannot be detected and inspected until after they are already inside the port-of-entry. Once inside the port, the suspected presence of radiation is a safety issue and may also interfere with other commercial vehicles' ability to move through the port.

Another troubling example of inadequate infrastructure is at the Presidio port-of-entry. The Mexican government is constructing a new seaport in Topolobampo and building a new four-lane highway that stretches from this seaport to Presidio. Currently, the Presidio port-of-entry has 52 Customs and Border Protection officers who are responsible for inspecting an average of 2,000 cars, 20 commercial vehicles, and 70 pedestrians a day.⁵⁷ Once the Mexican highway is completed (summer of 2005), this route is anticipated to decrease shipping times from Pacific Rim countries to eastern U.S. destinations by four days; due in part to congestion at the Port of Los Angeles and in part to the relative proximity of Topolobampo to major highways leading to eastern U.S. destinations. It is further anticipated that as much as one-third of El Paso port-of-entry commercial traffic (220,000 vehicles annually or about 730 per day) will be diverted through Presidio.⁵⁸ The port director at the Presidio port said that they will only be able to efficiently process 150-200 commercial vehicles a day.⁵⁹ Therefore, there has been a failure to proactively construct new infrastructures or expand existing infrastructures, even in the face of publicized reports of the new Mexican highway.⁶⁰



A single bridge in Presidio carries passenger and commercial traffic north and southbound. This infrastructure will not support the anticipated traffic.

One of the most glaring problems on the Southern Border is the current state of the “southbound” infrastructure. It is woefully inadequate in almost every port visited.

The number of southbound lanes is significantly lower than the numbers of lanes coming into the United States. For example, at San Ysidro there are 24 lanes into the United

⁵⁷ *Op. cit.*, US-Mexico Border Crossing Data.

⁵⁸ Staff briefing from U.S. Border Patrol Chief Patrol Agent Simon Garza, Jr., Marfa Sector, (Presidio, TX: April 1, 2004).

⁵⁹ Staff briefing from Presidio Port Director, (Presidio, TX: April 1, 2004).

⁶⁰ John MacCormack, “Praise, Anger Collide on a New Highway,” *San Antonio Express-News*, June 10, 2001; and Dan Keane, “Officials Travel Mexican Leg of La Entrada,” *The Big Bend Sentinel*, April 12, 2001.

States, and eight lanes into Mexico. This 3-to-1 ratio of northern/inbound versus southern/outbound lanes is consistent with staff observations across the Southern Border. Staffing levels at outbound lanes are also lower than inbound lanes. Many ports lack the staff to monitor outbound lanes on a regular basis. Those ports that can staff outbound regularly, do so for limited periods of time due to staffing shortages. For example, the DeConcini port in Nogales staffs its outbound lanes eight hours a day with 12 inspectors. During the hours that there are no inspectors assigned to outbound lanes, people and vehicles are free to cross into Mexico without a U.S. inspection.



Southbound lanes in Laredo without any booths or other inspection infrastructure.

There are simply not enough southbound lanes to conduct any dedicated enforcement operations such as the critically important “outbound currency” investigations meant to stop the millions of dollars of bulk currency being smuggled out of the United States every year. Current outbound enforcement operations are aimed at finding bulk currency – usually the proceeds from smuggling operations – and are generally limited to random two hour “blitzes.” The blitzes are generally coordinated with Immigrations and Customs Enforcement agents and may only occur a few times a year at each port. According to figures obtained from ICE, from July 2003 to August 2004, about \$95 million in bulk currency was seized from outbound lanes at Northern and Southern Border ports-of-entry.⁶¹ Based on the current limited infrastructures dedicated for outbound lanes, when blitzes occur, lines of vehicles extend into the United States for miles from the border. As the San Diego Chamber of Commerce reported, when outbound blitzes take place at San Ysidro, it takes about three hours to cross the border.

⁶¹ Data received August 19, 2004 from the Immigration and Customs Service. Although an exact figure was not available, it was stated that the vast majority of the \$95 million was seized from Southern Border ports-of-entry.

The lack of outbound infrastructure also presents a particularly acute challenge for construction of the “exit” portion of the US-VISIT program. The program is charged with tracking when foreign visitors enter and leave the United States. The lack of virtually any exit infrastructure at U.S. ports-of-entry means that implementing US-VISIT is likely to be an extraordinarily expensive initiative. (See, Finding 6 regarding US-VISIT for a further discussion of this issue.) The “exit” portion of US-VISIT cannot be implemented until this problem is addressed.⁶²

Rail infrastructure on the Southern Border also cannot meet the demands of heightened security and trade. For example, in fiscal year 2003, 74% of all commercial rail shipments (about 200,000 containers) coming into the United States from Mexico went through the rail facility in Laredo.⁶³ There is a single railroad track that runs across the border between Laredo and Nuevo Laredo. This single track was built in 1907, and is owned by the Tex-Mex Railway. This track is open to carry rail cargo shipments 24 hours a day, seven days a week. For 12 hours a day rail cars carrying commercial goods travel north into the United States, and for 12 hours they travel back south. This single railroad track is essential to the economy of the Laredo region and beyond. A terrorist act destroying this one bridge would result in the rerouting of nearly 200,000 containers to ports-of-entry unprepared to deal with increased rail volume.



Laredo rail crossing built circa 1902.

⁶² Staff interviews with border community officials and CBP port management officials.

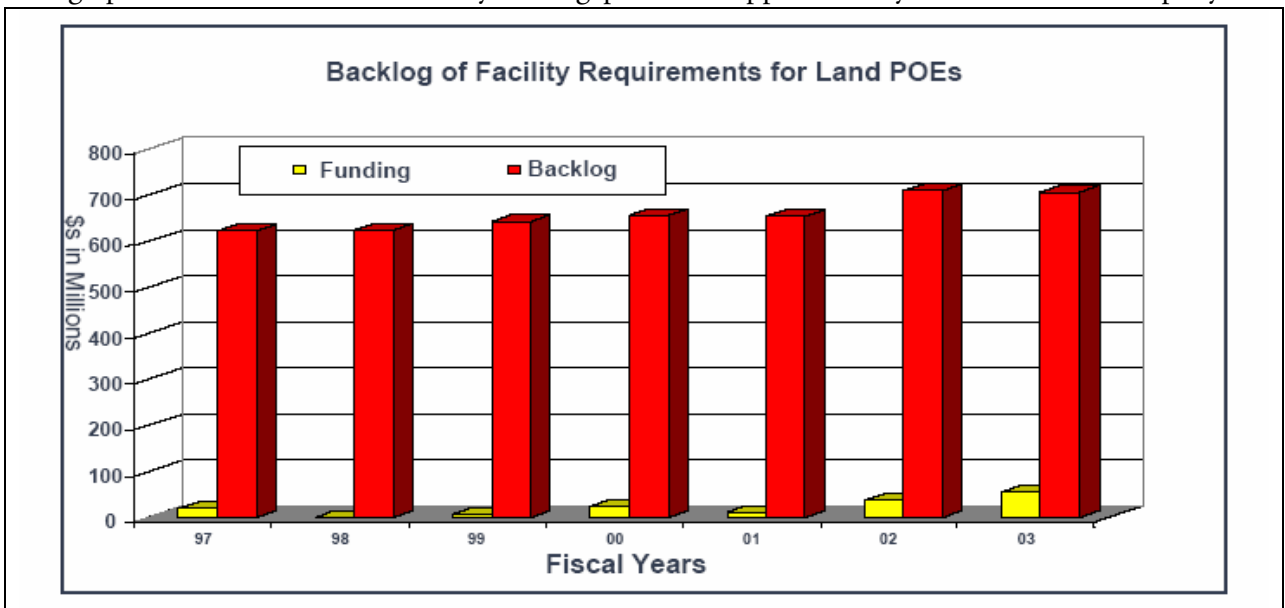
⁶³ *Op. cit.*, US-Mexico Border Crossing Data, Table 5.

Only Limited Infrastructure Modernization Investments for Southern Border Ports-of-Entry Have Been Made

According to the GAO, between 1988 and 2000, about \$341 million in federal funds were spent to build or improve Southern Border ports-of-entry.⁶⁴ About \$157 million were used to construct new ports-of-entry and the remaining \$184 million was spent to improve existing ports.⁶⁵ The improvements made covered lane and station expansions, safety enhancements, adding administrative office space and replacing buildings.⁶⁶ In addition, \$240 million was invested in Northern and Southern ports-of-entry from 2001 through 2004.⁶⁷

Therefore, the total amount spent on building new and improving old port-of-entry infrastructures on the Southern Border in the last 16 years is less than \$581 million, an average of only \$36.3 million per year.

To put this \$36.3 million a year into perspective, the planned expansion of the San Ysidro port-of-entry alone will take seven years to complete at an estimated cost of \$233 million.⁶⁸ According to the DMIA Task Force, from 1997 through 2003, there has consistently been a gap between the facility capacity requirements actually funded at port-of-entry versus the capacity that would be required to be funded for ports to have adequate space.⁶⁹ As the below graph illustrates, in each of these years, a gap exists of approximately \$600-\$700 million per year.



Source: DMIA Task Force, Second Report to Congress

⁶⁴ *Op. cit.*, GAO/NSIAD-00-25, p. 29.

⁶⁵ *Ibid.*, p. 44. The investments in new ports-of-entry included \$55 million for Calexico East, \$27 million for Otay Mesa, \$13 million for Tecate, \$19 million for Los Tomates, \$15 million for Los Indios, \$18 million for Pharr, and \$10 million for Santa Teresa.

⁶⁶ *Ibid.*

⁶⁷ CBP briefing to the House Select Committee on Homeland Security, June 2, 2004.

⁶⁸ Committee Trip to San Ysidro Port-of-Entry, June 29, 2004.

⁶⁹ *Op. cit.*, DMIA Task Force Second Report, p. 33.

Likewise, inadequate funding has been provided for some of the improvements in land port infrastructures that could greatly enhance security and increase commerce. In particular, pre-screening programs, such as Secure Electronic Network for Travelers Rapid Inspection (SENTRI) and Free and Secure Trade (FAST) appear to be very successful but have not been adequately funded.⁷⁰ These programs (SENTRI for passenger vehicles and FAST for commercial vehicles) rely upon pre-screening of participants and utilize special lanes to speed entry into the country. They mitigate the risk of terrorism by subjecting the vehicles' occupants to a rigorous background check as well as lessening the time primary inspectors have to spend on them, thereby allowing the inspectors to devote more of their limited time on other, unknown travelers crossing the border. The efficient flow of traffic through ports-of-entry is essential to striking a balance between national security and business interests.



Despite the benefit of these lanes, however, only six ports-of-entry on the Southern Border are equipped with SENTRI lanes.⁷¹ Seven additional Southern Border ports are scheduled to include SENTRI lanes in fiscal year 2005.⁷²

⁷⁰ Under the FAST program, importers, commercial carriers, and truck drivers qualify for expedited clearance at the border after passing an intensive background check. In addition, the truck driver must be driving for a company enrolled in the Customs-Trade Partnership Against Terrorism (C-TPAT). SENTRI is a pre-clearance program that subjects enrollees to intensive background checks which, if successful, allow them to cross the border through dedicated lanes and receive an expedited inspection. Enrollment in SENTRI is limited to drivers and passengers of non-commercial vehicles.

⁷¹ U.S. Customs and Border Protection briefing to staff, (Washington, D.C., June 2, 2004).

⁷² *Ibid.* It was unclear from the briefing whether the seven additional SENTRI lanes would be newly constructed lanes or existing vehicle lanes that would be converted to SENTRI. If these lanes are being

Converting regular vehicle lanes to SENTRI lanes costs about \$420,000 per lane.⁷³ In addition, yearly average maintenance costs per lane are \$130,000. Other costs include the construction and maintenance of an enrollment center, costing about \$1.3 million.⁷⁴

Despite the costs associated with converting SENTRI lanes, it appears that the lanes are able to pay for themselves through the collection of fees.⁷⁵ In order to enroll in SENTRI, travelers must pay \$129 in fees annually, \$80 of which is classified as a “System Cost Fee.” As of March 2004, the SENTRI lanes in El Paso had 18,301 enrollees, bringing in system cost fees of over \$1.4 million.⁷⁶ As of June 2004, the SENTRI lanes in San Ysidro and Otay Mesa had about 64,000 enrollees, bringing in system cost fees of over \$5.1 million.⁷⁷

Currently, seven ports-of-entry on the Southern Border have FAST lanes.⁷⁸ In fiscal year 2005, CBP has plans to create FAST lanes at an additional 11 Southern ports.⁷⁹ Nevertheless, even if the fiscal year 2005 FAST infrastructures are completed, there will still be eight Southern ports without FAST lanes.

In addition to the lack of sufficient pre-clearance lanes, the SENTRI and FAST programs are not as effective as they could be because pre-cleared passengers are often unable to get to the dedicated inspection lanes due to traffic backups. Improvements, such as building unimpeded access lanes for pre-cleared travelers and equipping additional inspection lanes with pre-clearance technology, are necessary to realize the full value of these programs.⁸⁰



Pre-cleared trucks are slowed down due to traffic backups limiting access to the dedicated FAST lanes.

converted from existing lanes, there is a concern that non-SENTRI traffic will experience longer wait times than are currently experienced.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Op. cit.*, CRS Report RL 32339, p.41.

⁷⁶ Number of enrollees obtained during staff trip to El Paso, March 30, 2004.

⁷⁷ Number of enrollees obtained during staff trip to San Diego, June 29, 2004.

⁷⁸ U.S. Customs and Border Protection briefing to staff, June 2, 2004.

⁷⁹ *Ibid.*

⁸⁰ *Op. cit.*, DMIA Task Force Second Report, p. 112.

The Southern Border's Infrastructure is Inadequate at Ports-Of-Entry Conclusions and Recommendations

Any investment in infrastructure enhances the ability to effectively screen for terrorists and criminals and furthers the ability to move goods, services, and people across the border. For decades, there has been inadequate infrastructure at Southern Border ports-of-entry. Poor infrastructure has repeatedly forced frontline CBP officials at the ports-of-entry to almost make daily choices between favoring either national security or the U.S. economy. There is no need for this dilemma if proper funding is made available to truly modernize our ports-of-entry's infrastructures.

The Administration and Congress must recognize the importance of modern land ports-of-entry to national security and to the U.S. economy, and should therefore develop an aggressive strategy to expand and improve their infrastructure. Specifically, we recommend:

1. The Administration should conduct a thorough infrastructure assessment that looks at both the security vulnerabilities and the economic demands on the land borders. The Administration should conduct a national land border security vulnerability assessment as soon as practicable and advise Congress on the costs required to build a truly modern and secure land border system. In doing so, existing ports-of-entry should be studied to determine how improvements can be made to facilitate a more orderly flow of traffic.

2. The Department of Homeland Security must work and coordinate with state's Departments of Transportation to ensure adequate road infrastructure around ports-of-entry as well as from ports to major highways.

3. In the interim, while this study is being conducted, a \$1 billion dollar Border Infrastructure Improvement Fund should be established and funded to start the border modernization effort. This is a down-payment toward resolving long-standing border problems and enhanced security concerns and should be immediately spent on eliminating the backlog of long-standing problems previously identified and in expanding ports-of-entry. These expenditures must be coordinated with state and local communities in order to ensure their effectiveness.

4. The Administration should expand pre-clearance programs, including SENTRI and FAST to all major southern ports-of-entry. Access lanes should be expanded to facilitate the free flow of traffic and rapid inspection of those who have been pre-cleared. The Administration should ensure that sufficient funds are dedicated for regular upgrade and maintenance of SENTRI and FAST systems.

3. More Staffing Is Needed On the Southern Border

Just as sufficient infrastructure is necessary to achieve both security and the efficient flow of commerce at the border, it is also necessary for the government to have the appropriate numbers of border agency personnel in order to achieve its trade and security goals. Government officials and community leaders have strongly asserted that staffing levels for all agencies responsible for border security are inadequate. Yet, three years since 9/11, no comprehensive staffing plan has been developed for the border.



In 2002, an independent panel of experts directed by Congress to study the border (the DMIA Task Force) found insufficient staffing was universally recognized as one of the most critical issues to be addressed at our borders.⁸¹ Border entities historically have struggled to strike the balance as to appropriate staffing levels to effectively carry out their mission as part of a comprehensive border strategy. Further complicating this problem, since March, 2004, the DHS agencies involved in border security have been under a hiring freeze, whose consequences have been widely felt on the border. A recent survey by the National Border Patrol Council revealed that nearly two-thirds of officers believe that the hiring freeze has had a negative impact on the ability of DHS to accomplish its vital mission.⁸²

There are many players on the Southern Border that play critical roles in its security. The following discusses their roles as well as their current staffing problems.⁸³

Customs and Border Protection Inspections

Customs and Border Protection (CBP) is the first line of defense responsible for regulating the flow of goods and people across the 43 ports-of-entry at the Southern Border.⁸⁴ Post 9/11, CBP's most important mission is to prevent individuals or cargo that might present a threat from entering the United States at ports-of-entry.

As previously mentioned, in 2002 the DMIA Task Force reported that the number of inspection employees to accomplish this mission has historically been seen as insufficient at ports-of-entry.⁸⁵ Since 9/11, CBP inspections staffing at Southern Border ports-of-entry has increased from 4,371 to 5,102 (as of April 3, 2004).⁸⁶ But this increase is viewed by CBP employees and border organizations as only a first step and not sufficient to address the mounting responsibilities thrust upon CBP in light of additional inspections, record seizures, and an array of new technologies currently being used and anticipated in the near future.

⁸¹ *Op. cit.*, DMIA Task Force Second Report, p.143.

⁸² Statement of T.J. Bonner, President of the National Border Patrol Council, *How Secure are America's Borders? Front-line Border Protection Personnel Speak Out*, August 23, 2004.

⁸³ Customs and Border Protection (CBP) inspectors at ports-of-entry; U.S. Border Patrol that operates between ports-of-entry; U.S. Consulate General Offices in Mexico responsible for issuing visas and Border Crossing Cards; Immigration and Customs Enforcement (ICE) Detention and Removal Operation (DRO) which detain and remove illegal aliens; and within ICE Office of Investigations, the largest investigative arm for DHS. Other agencies such as the Department of Justice (DOJ), U.S. Attorneys Office, which prosecute criminal violations; and the Department of Interior (DOI) responsible for more than 50% of the Southern Borders.

⁸⁴ CBP inspectors are charged with enforcing interdiction related activities at the border to include the apprehension of illegal immigrants, interdiction of illegal narcotics and other contraband, inspecting for agricultural pests and diseases, regulating and facilitating international trade, collecting import duties, implementing export control regimes, and enforcing United States trade laws.

⁸⁵ *Op. cit.*, DMIA Task Force First Report, Executive Summary, p.iii; DMIA Task Force Second Report, p.143. See also, GAO *U.S.-Mexico Trade: Survey of U.S. Border Infrastructure Needs*, GAO/NSIAD-92-56,(Washington, D.C., November 27, 1991).

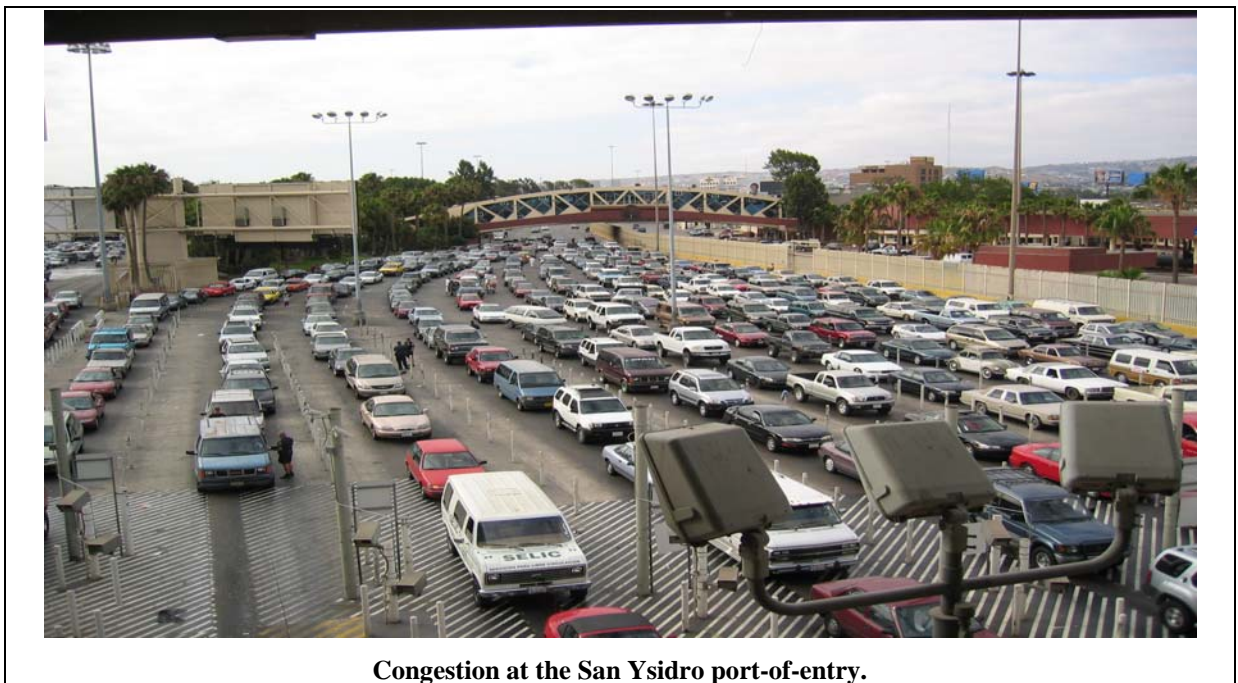
⁸⁶ CBP Congressional Affairs provided staffing levels on the Northern and Southern Border to the staff for fiscal years 2001, 2002, 2003, ending April 3, 2004.

CBP is conducting more inspections of passengers and goods than ever before, with record-breaking results in arrests and seizures in fiscal year 2003.⁸⁷ In fiscal year 2004, the record pace is continuing.⁸⁸

National Treasury Employee Union (NTEU)⁸⁹ officials in El Paso advised that despite these demands, the number of inspectors has not kept pace and their ports are currently understaffed by 30 to 50%. At the busiest land port in the world, San Ysidro, California, management reported that staffing was at only 70 to 80% of what is currently needed. Laredo management advised they too were suffering from manpower shortages.

Staffing shortages cause an array of concerns at ports-of-entry. Inspectors interviewed reported that staffing shortages often cause traffic lanes to be closed. This impedes the flow of commercial and cargo vehicles, which has a tremendous financial impact on trade, particularly on border towns. Collateral effects include the ecological hazards to travelers, surrounding cities, and port employees as exhaust fumes fester in crowded traffic congestion.

The closing of lanes and resulting back log of traffic has additional consequences to ports-of-entry management which are required to report to officials in Washington reasons for any delay exceeding one hour. Inspectors reported that when these delays increased they felt pressure from management to expedite the inspection process, and several stated there were often instances of “traffic flushing” – a term used to reduce the traffic backlog at prime times by minimal to no inspection.



⁸⁷ U.S. House, Committee on Government Reform and House Select Committee on Homeland Security, *Prepared testimony of Robert C. Bonner, Commissioner Customs and Border Protection*, Washington D.C., July 2004.

⁸⁸ *Ibid.*

⁸⁹ The National Treasury Employees Union (NTEU) represents 150,000 federal employees from 30 agencies and departments including CBP officers.

Adding to these staffing shortages, new technology has, and continues to be, deployed at ports-of-entry. Since 9/11, the number of large-scale x-ray scanning systems has doubled. More technology is coming in the near future, to include radiation portal monitors in fiscal year 2005 and US-VISIT at the 50 largest land ports by December 2004.⁹⁰ Despite this continued roll out of needed security technology, DHS officials recently stated that no new staffing was planned in fiscal year 2005 for radiation portal monitor technology or US-VISIT.⁹¹ As noted in a subsequent section, we support these efforts to deploy more technological tools at the ports-of-entry, and note that insufficient funding has been allocated to fully actualize their benefits.



Laredo truck crossing primary inspection booth.

As a consequence of this poor planning, there currently is not enough staff to fully utilize this equipment. Inspectors at several ports reported that some of the devices, including mobile truck X-rays and VACIS machines, were only operated 8 to 12 hours a day due to staffing shortages.⁹² Consequently, any prospective smuggler or terrorist need only wait until the end of these shifts to increase his odds in successfully crossing the border or bringing dangerous material into the country.

⁹⁰ *Op. cit.*, Bonner testimony.

⁹¹ Staff briefing with DHS concerning US-VISIT, July 26, 2004.

⁹² Staff briefing in El Paso, Texas and San Diego, California.

Border Patrol

The U.S. Border Patrol is responsible for patrolling the expansive areas between the ports-of-entry for illegal immigration. Like CBP, they are our first line defense against terrorism and average more than one million illegal immigrant apprehensions a year.

The Border Patrol has increased staffing since fiscal year 2001 from 9,821 agents to 10,951 as of July 2004.⁹³ Despite increases, including those mandated by the Patriot Act, Border Patrol agents at the Southern Border are being re-assigned to the Northern Border and to other initiatives (e.g. Arizona Border Coordination – or ABC initiative). In fiscal year 2005, total Border Patrol staffing is actually being reduced by 15 positions.⁹⁴

Border Patrol agents reported that despite these increases they are currently inadequately staffed to effectively monitor the expansive Southern Border. For example, the McAllen, Texas, Border Patrol Chief stated that his office was authorized 1,700 agents but only had 1,500, with nine agents diverted to the ABC initiative. This is troubling inasmuch as the Brownsville/McAllen Border Patrol Sectors are bearing the brunt of illegal immigration from “other than Mexicans” (OTMs) and people from countries of interest (COI). They report more apprehensions of OTMs and COIs than any other sectors. (This is due to the area being the most direct route to the United States from South and Central America.) The San Diego Sector claimed that it was also understaffed with 2,044 authorized positions but currently staffed at 1,810.

Another staffing deficiency detailed by the Border Patrol offices concerned the desperate need for more support staff. Despite the hiring of an additional 2,600 agents since fiscal year 1999, the support staff for the Border Patrol increased by only 4 positions.⁹⁵ Support personnel are critical for the efficiency of the Border Patrol’s efforts on the border. They are responsible for monitoring an ever-increasing number of technologies to include cameras, underground sensors, radios and computers. These technologies are responsible in some sectors for as much as 60% of all apprehensions.

One support employee explained what this staffing shortage means in terms of his responsibilities. He reported that he is responsible for simultaneously viewing 26 cameras for illegal crossings and notifying agents when he sees any crossings. He is also responsible for notifying agents of buried sensor activations which amount to as many as 100 to 150 alerts an hour. In addition to this, he runs computer checks on all detainees and often serves as radio dispatcher at the same time. He acknowledged that he cannot do all the computers checks requested, which could result in agents releasing or returning illegal immigrants to Mexico erroneously.

⁹³ CBP Congressional Affairs data provided to the staff on August 5, 2004.

⁹⁴ CBP Congressional Affairs data provided to the staff on August 16, 2004, based on fiscal year 2005 budget.

⁹⁵ CBP Congressional Affairs provided yearly agent and support staffing levels to the staff on August 5, 2004.

The United States Consulate General Office in Mexico

One significant aspect of the integrity of the entry/inspection process at the border is to prevent those that present a threat from obtaining a visa to legally enter our country. The State Department at nine Foreign Service posts within Mexico issues principal travel documents in the form of immigrant visas, nonimmigrant visas, and Border Crossing Cards/B-1 and B-2, also referred to as laser visas.

The U.S. Consulate General office in Ciudad Juarez, Mexico, was visited by staff and found this office to be inundated with stifling work loads, overcrowded conditions, and insufficient personnel. There were 13 Consular Officers (six on temporary assignments) to handle more than 400,000 immigrant and non-immigrant applications per year. As a result of 9/11, additional security checks and personal interviews are required for virtually all visa applicants. These demands, plus a hiring freeze and budget restraints, has caused morale issues and may exacerbate previous corruption allegations in this office. It may also encourage others, who would otherwise go through the legal process to enter the United States, to resort to illegal immigration.

One Consular Officer stated that Mexican citizens and other than Mexicans often find it more expeditious to illegally cross the border than to pay the approximate \$100 fee to go through the lengthy administrative processes for a visa. Another Consular Officer recollected an applicant who made application for entry in Mexico, was denied, and later that day served him at a fast food restaurant inside the United States.

The integrity of the legal entry process demands that our consulates be able to efficiently process foreign travelers. In fiscal year 2004, 93 new consular positions were created and 60 new positions have been requested for fiscal year 2005 for the State Department.⁹⁶ There remains a concern that increases will be disproportionately placed in “at risk” areas in the Middle East leaving staffing insufficient to meet demand on the Southern Border.

Immigration and Customs Enforcement (ICE) Office of Investigations

The Office of Investigations is the largest investigative arm of the Department of Homeland Security. Its primary mission is to detect vulnerabilities and prevent violations that threaten homeland security. ICE offices are responsible for investigating a range of issues, including national security investigations; human smuggling; narcotic smuggling; weapons and all other contraband smuggling; export enforcement, such as illegal arms exports or dual use exports; money laundering; commercial fraud; cyberfraud; intellectual property rights, including commercial counterfeiting violations; child pornography; immigration crime; and human rights violations.

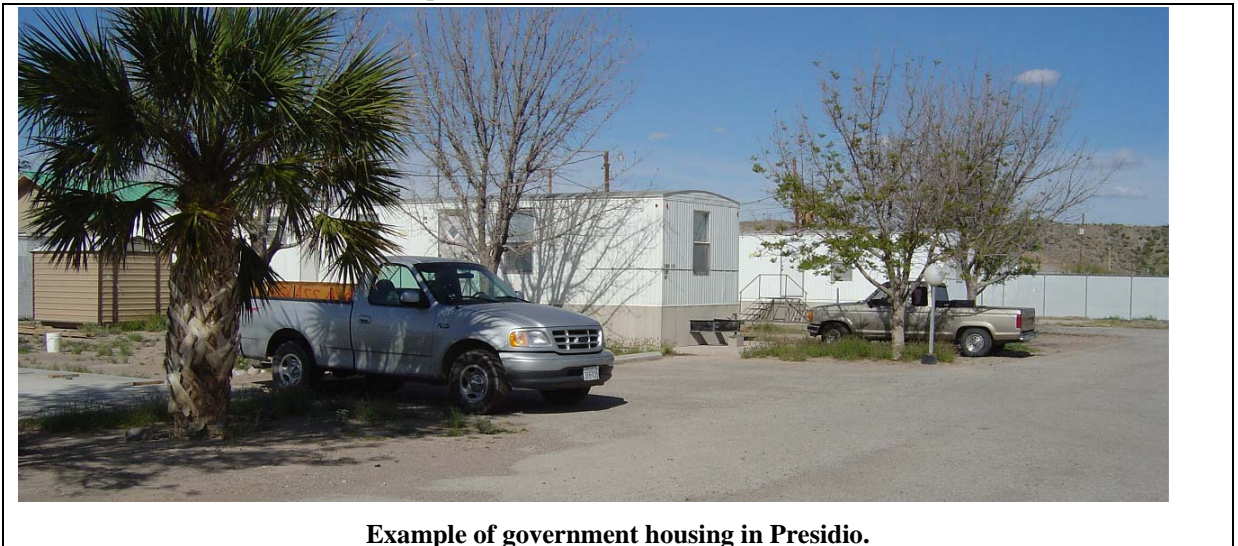
⁹⁶ U.S. House, Select Committee on Homeland Security, *Hearings before the Subcommittee on Infrastructure and Border Security*, Prepared testimony of Maura Harty, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State, January 28, 2004.

From October 1, 2001 to August 13, 2004, the Office of Investigations has hired an additional 157 special agents at the Southern Border.⁹⁷ Despite these additions, in each city visited, ICE management and agents reported that the border offices were being overwhelmed with case work on the Southern Border and due to severe staff shortages compared to investigative case load, there was little time to conduct complex long-term investigations.

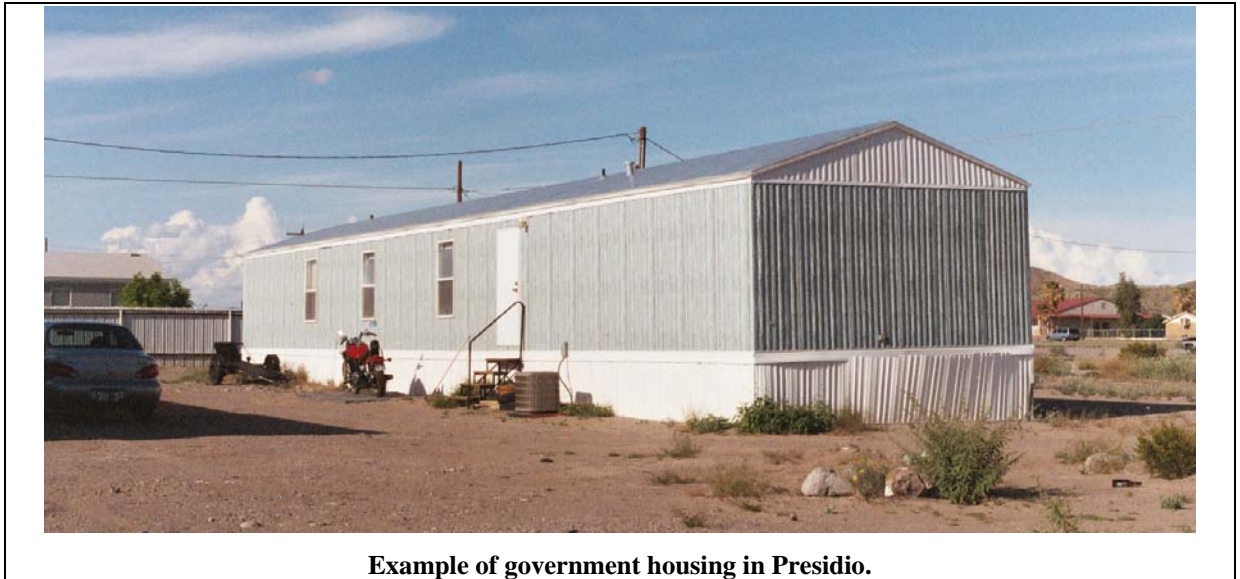
For example, in the El Paso office, which leads the nation in cases per agent and seizures, each agent is designated as the “duty agent” as a collateral responsibility to respond to reactive calls every sixth day. During the typical duty assignment, the agent gets 12 new cases. Many times this includes going to a port-of-entry, interviewing witnesses, gathering evidence, arresting and transporting the violator, possibly conducting controlled deliveries, surveillance on additional co-conspirators, presenting the case to the United States Attorneys Office for prosecution, writing reports, seeking intelligence, and possibly preparing for trial.

The agents stated they often cannot keep up with these reactive duty calls and have little to no time to proactively pursue larger more complex investigations. ICE investigations offices also advised that Border Patrol is now referring all illegal immigrant calls for enforcement inside the immediate border area to ICE. One ICE manager advised they are getting more than 80 calls a day concerning illegal immigrants that they cannot answer due to staffing shortages.

Many offices on the border such as Eagle Pass, Falcon Dam, and Presidio are seen as hardship posts. The nearest hospital from the Presidio office is 90 miles away, the nearest shopping mall is 250 miles. There is minimal housing in the area with most border personnel living in government housing or trailers. There are non-existent or substandard community services to support family needs such as schools, medical care, and recreational services. These factors make it difficult to retain personnel.



⁹⁷ Immigration and Customs Enforcement, Office of Investigations, Congressional Affairs Office provided staffing levels to the staff on August 17, 2004.



Example of government housing in Presidio.

Many agents and several managers suggested these inundated, isolated, and high cost of living offices need to be seen as hardship posts with special considerations such as funded rotation policies for isolated offices and cost of living adjustments for high cost of living offices.

United States Attorneys Office

Although the U.S. Attorneys Offices are in the Department of Justice (DOJ) not DHS, they are a critical part of a comprehensive border strategy. The U. S. Attorneys Offices are responsible for prosecuting a wide variety of federal violations from all federal agencies. This office in each district has considerable discretion in setting policy as to acceptable prosecutorial guidelines. These offices, like most other agencies on the Southern Border, were found to carry an excessive workload.

In fiscal year 2003, criminal cases filed nationwide increased by 6%—the highest number filed in the past ten years.⁹⁸ A staff visit to the McAllen office revealed there are 12 attorneys: six criminal, two civil, one forfeiture, one appellate, and two management. Each criminal attorney handles a staggering case load of 100 to 150 cases at any given time and they indicated that other offices such as Laredo, Texas, caseloads were even greater. Despite increases in case loads, the number of attorneys in the past three years has remained constant.

The lack of staffing often means that certain case categories cannot be pursued for prosecution. In McAllen, as a result of limited resources the U.S. Attorneys Office does not prosecute Intellectual Property Rights (IPR) cases despite the fact that these cases have been used to fund terrorist activity and have a large impact on American jobs.⁹⁹ Also, lacking additional

⁹⁸ U.S. Department of Justice, Fiscal Year 2005, Performance Budget United States Attorneys Congressional Submission, p 13.

⁹⁹Statement of Carol Hallett, Counsel for U.S. Chamber of Commerce at Center for Strategic and International Studies (CSIS) on July 20, 2004. Carol Hallett, former Commissioner of U.S. Customs and current counsel for U.S. Chamber of Commerce, stated Intellectual Property Rights (IPR) cases have funded terrorist activity and is a recognized means of laundering illicit proceeds. These cases cause the lost of 750,000 American jobs and drain \$250 billion a year from the U.S. economy.

aggravating circumstances, they do not prosecute illegal immigrant entry until the violator has been caught 13 times; and minimal resources have limited investigations/prosecutions on important border issues such as bulk currency smuggling.

The Committee staff was briefed by DOJ Headquarters personnel concerning manpower shortages. DOJ officials stated they were currently looking at the Southern Border situation and that several attorney positions were planned for fiscal year 2005 for the ABC initiative but that “nothing significant” was planned for other border locations.¹⁰⁰ These officials also reported there were no plans for additional judges on the border or additional manpower for support such as Pre-Trial Services and Probation and Parole offices.

Detention and Removal Operations

The Office of Detention and Removal Operations (DRO) is a division of ICE.¹⁰¹ The DRO is the final step of the immigration enforcement process and is responsible for detention and removal of unauthorized immigrants from the United States.

In fiscal year 2004, DRO facilities nationwide were funded for 19,444 beds a night although they average 22,500, with approximately 200,000 illegal aliens being detained a year.¹⁰² These overages have created a large funding shortfall that must be absorbed from other areas of the ICE /DRO budget of \$1.3 billion dollars.

The staff visited DRO facilities at El Paso, Texas, at Port Isabel, Texas and San Diego, California. All facilities were holding detainees over the maximum capacities for detention, and with the exception of illegal immigrants mandated by law to detain, all were forced to deny or release illegal immigrants apprehended from custody due to bed space and staffing shortages.

The DRO Service Processing Center facility at Port Isabel, Texas advised that Border Patrol staffing in the area has increased more than five times since 1998, from 300 to 1,700 agents. These increases have lead to additional apprehensions in the area; however, DRO bed space, personnel, and immigration judges have remained constant.

A specific example that illustrates severe shortages at DRO is with deportation officers responsible for facilitating the release of detained aliens on parole, bond, and monitoring aliens' compliance with orders of supervision. A May 2004, GAO report cited one DRO facility with 19 deportation officers responsible for 131,000 cases of nondetained aliens, including 1,200 cases of aliens released on orders of supervision.¹⁰³ This is almost 700 cases per officer.

¹⁰⁰ Department of Justice Headquarters staff briefing to Select Committee on Homeland Security, Washington D.C., July 23, 2004.

¹⁰¹ Divisions of ICE include: Office of Investigations, Office of Air and Marine Operations, Office of Federal Air Marshal Service, Office of Federal Protective Service, and Office of Intelligence.

¹⁰² Statistics provided to the staff by ICE Congressional Affairs in July 2004.

¹⁰³ GAO, *Immigration Enforcement: Better Data and Controls Are Needed to Assure Consistency with the Supreme Court Decision on Long Term Alien Detention*, GAO-04-434, (Washington, D.C., 2004) p. 18.

Nationally the numbers are even worse, 675 deportation officers manage 800,000 active cases or roughly 1,200 cases per officer.¹⁰⁴

As a result of staffing and bed shortages, the vast majority of apprehensions, not mandated by statute to detain, must be voluntarily returned to Mexico or released on bond inside the United States for scheduled immigration/deportation proceedings (approximately 80 to 90% of those released on bond never appear for deportation proceedings). Tremendous numbers of apprehensions are continuing on our Southern Border, however, DRO resources have not kept pace. The fiscal year 2005 DRO budget offers little relief with only an additional 117 beds. (For more details on the DRO situation, please see section 8.)

¹⁰⁴ Victor Cerda, Director of Detention and Removal Operations, briefing to staff of Select Committee on Homeland Security, Washington D.C., August 26, 2004.

More Staffing Is Needed On the Southern Border Conclusions and Recommendations

To better protect America from terrorism, while maintaining the important economic vitality of the border, we must identify the personnel level necessary to staff our myriad of consular, interdiction, enforcement, prosecutorial, judicial, and detention agencies. Specifically we recommend:

1. The Administration should immediately develop and implement a comprehensive national border staffing strategy that will allow DHS and other agencies to effectively deploy its personnel (inspectors, Border Patrol agents, special agents, and support staff) based on a national threat and vulnerability assessment to prioritize the threats facing our land borders and areas between our ports-of-entry.

2. In the interim, the Administration needs to immediately double the number of CBP personnel; increase Border Patrol agents by at least 3,000; increase the number of ICE special agents by at least 225; increase the number of DRO employees by 541, and increase the staff for the U.S. Consulate General staff in Mexico by 25%. In addition, the Administration needs to increase the support personnel for the various border agencies by at least 25%, with complementary staffing increases made for judicial and prosecutorial offices.

4. Modern Technology Must be Deployed on the Entire Southern Border

The process of protecting and monitoring the border is still a labor-intensive job, and DHS has failed to deploy adequate technology to help screen the millions of people, thousands of vehicles, and tons of cargo that cross the Southern Border. Little planning and inadequate funding have gone into technological advancements to modernize the border. Much of the technology found on the Southern Border is over 25 years old. Although some new technologies have been introduced in certain areas of the border, especially in video surveillance and communications, these limited deployments cannot meet the challenges at hand.



Border Monitoring Technology Between The Ports-Of-Entry Is Inadequate

Technology has long been recognized as a force-multiplier.¹⁰⁵ It provides an opportunity to monitor areas where it is otherwise unsafe or impractical to station personnel around the clock – for example, in the mountains or remote deserts of the Southern Border. Technology also allows agents to spend more time responding to real threats instead of constantly chasing “false alarms.” Monitoring technologies currently exist to identify threats coming across our borders. Yet, there is currently no strategy for deployment of a comprehensive monitoring system to cover all 1,933 miles of the U.S.-Mexico border 24-hours a day, seven days a week. Instead, technology has been used haphazardly and mainly in support of several agent-intensive operations along the Southern Border such as “Hold the Line” in El Paso, Texas and “Operation Gatekeeper” in San Diego, California. These operations made only limited use of technology – and the technology that was deployed was dependent upon individual agents (night vision goggles, forward-looking infra-red radar “FLIR” camera systems that require an agent to monitor on-site). The lack of a comprehensive monitoring system continues to leave large stretches of the Southern Border unmonitored, thus presenting opportunities for the entry of terrorists and illicit cargo.

Cameras and Sensors

The Border Patrol currently uses about 10,600 seismic, magnetic, and thermal sensors along the Southern Border – most of these utilize quarter-century-old technology, but it is technology that works.¹⁰⁶ The sensors, approximately two feet square, are buried in the ground to detect movement (seismic) and heat (thermal) sources within a 50-foot radius, and metal (magnetic) within 250 feet. This means the sensors can detect foot traffic, vehicles, and, unfortunately, even animals or falling tree limbs. They cost between \$1,000 and \$1,200 per sensor, and older sensors have to be dug up on a monthly basis to replace their batteries.¹⁰⁷

The sensors relay information via radio signal to a central monitoring location, and can be set to varying degrees of sensitivity – for example, desert-based sensors might be set at a higher level of sensitivity, since there is less “foot traffic,” than city-based sensors. When a sensor registers an event, it sends out a signal and an agent must be dispatched to check on it. This is very labor-intensive, with sectors such as El Paso getting over 30,000 hits per month – all requiring agents to be dispatched.¹⁰⁸

¹⁰⁵ Testimony of David Aguilar, Tucson Sector Border Patrol Chief. U.S. House, Infrastructure and Border Security Subcommittee of the House Select Committee on Homeland Security, *Protecting the Homeland: Building a Layered and Coordinated Approach to Border Security*, June 15, 2004.

¹⁰⁶ Number provided to the staff by Border Patrol Office of Legislative Affairs, August, 2004.

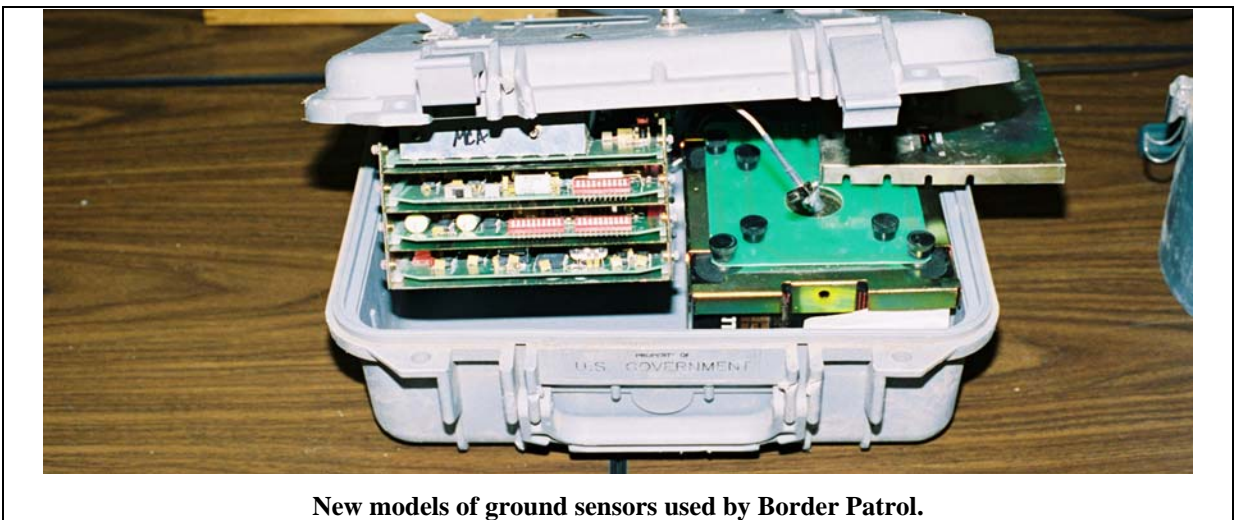
¹⁰⁷ Staff interviews at El Paso Border Patrol station, March 29, 2004.

¹⁰⁸ *Ibid.*



Quarter century-old ground sensors used by Border Patrol.

Because the Border Patrol does not have enough sensors to cover the entire Southern Border, sensors are constantly required to be moved to respond to changes in smuggling patterns. This requires them to be manually dug up, moved, and then re-buried in a new location – a very time-consuming and labor-intensive process performed by Border Patrol agents since the agency lacks funds for support staff or contractors to perform this task.



New models of ground sensors used by Border Patrol.

For almost 30 years, the Border Patrol used only these sensors to detect movement along the border.¹⁰⁹ They continue to constitute the bulk of the Border Patrol's sensor inventory. However, over the past seven years, the Border Patrol has begun deploying comprehensive detection systems called Integrated Surveillance Intelligence Systems (ISIS), or Remote Video Surveillance systems. Each system includes a central command center, ground sensors, and four cameras (two infrared and two daytime/color) mounted on a tall pole to provide a three to five-mile, 360-degree viewing range. The system incorporates most of the ground sensors already in use.

These comprehensive systems allow agents at computer consoles to identify why a sensor has been tripped. The cameras save field agents the trouble of checking on false alarms which are commonly caused by wandering domesticated or wild animals.



ISIS Control Center at Laredo, Texas.

Even where ISIS exists, staffing shortages mean that one agent is often responsible for several technology-related duties. For example, when staff visited El Paso, Texas to inspect an ISIS system, only one support employee was available to monitor 26 cameras and dispatch agents to respond to sensor activations with as many as 200 to 300 sensors alerting in a two-hour period. As described in a previous section, the employee must log all this activity, run computer checks on detainees, and serve as a radio dispatcher.

¹⁰⁹ Tillett, L. Scott, "Cameras, GPS integrated to fight illegal immigration," *Federal Computer Week*, October 20, 1997. Available at <http://www.fcw.com>.

Unfortunately, these systems have been deployed on an ad hoc basis, and are not part of a larger technology deployment plan to cover the entire border. The Border Patrol currently has 200 camera surveillance systems covering a fraction of the 1,933 mile-long Southern Border.¹¹⁰ Border Patrol officials recently stated that it would cost \$2 billion to fully deploy video surveillance systems along the Northern and Southern Borders, and yet DHS has only requested \$64 million in its Fiscal Year 2005 budget for border enforcement technology, such as cameras and sensors.¹¹¹

The staff viewed video surveillance system operations in three of the Border Patrol's busiest sectors. In Laredo, the Border Patrol Chief praised the utility of such systems and indicated he would like to see them expanded. The Laredo surveillance systems cover only 32 of the 171 total miles of border in the Laredo sector, but are responsible for 25 to 50 apprehensions per day. Chief Montoya indicated that each camera costs approximately \$650,000 to buy and operate, which is still less than it would be to position two agents at mile-intervals to provide around-the-clock border monitoring.¹¹² In El Paso, the ISIS system covers 21 miles of the border. It incorporates 850 sensors and 29 camera systems covering 42 of the 289 total border miles in the El Paso sector. The costs per site were estimated to be approximately \$750,000.¹¹³ In the McAllen sector, the ISIS system covers approximately 112 miles of the 284 miles of river border. It utilizes 36 separate camera sites and 300 ground sensors, and is responsible for 60% of all apprehensions in the sector. With an additional 50-60 cameras, the system could completely cover the river border in that sector.¹¹⁴

Tethered Aerostat Radar System

As part of the layered approach to border security, DHS uses data from the Tethered Aerostat Radar System (TARS) to identify low-flying (100 – 500 feet) air traffic attempting to illegally cross our Southern Border. The TARS provides complete coverage of the 1,933-mile U.S.-Mexico border through six high-altitude balloons that survey 165 to 200 nautical miles in any direction. This capability allows law enforcement officers to identify potential targets in Mexico headed toward the United States or even planes that “fade” from radar just short of the U.S. border and reappear just north of the border.

The TARS system is owned and operated by the Department of Defense as part of its counter narcotics mission and originated in the 1980s as an illegal drug trafficking monitoring system for the Southern Border, Gulf Coast, Florida Keys, and Puerto Rico. The Defense Department gradually reduced the overall number of operational blimps to eight and now spends about \$30 million annually to maintain the system.¹¹⁵ The radar information from the TARS is routed to the Air and Marine Operations Center in Riverside, California, which is part

¹¹⁰ Testimony of Stewart Verdery, Assistant Secretary for Border and Transportation Security Policy and Planning (DHS), U.S. Senate, Committee on Foreign Relations, March 23, 2004.

¹¹¹ Testimony of Stewart Verdery, Assistant Secretary for Border and Transportation Security Policy and Planning (DHS), U.S. Senate, Committee on Foreign Relations, March 23, 2004; and Sarkar, Dibya, “Border guards eye surveillance,” *Federal Computer Week*, August 5, 2004. Available at <http://www.fcw.com>.

¹¹² Staff interviews at Laredo ISIS Command Center, March 29, 2004.

¹¹³ Staff interviews at El Paso Border Patrol Station, March 29, 2004.

¹¹⁴ Staff interviews at McAllen Border Patrol Station, June 9, 2004..

¹¹⁵ Office of the Secretary of Defense, Counternarcotics, briefing for staff, May 13, 2004.

of ICE. There, data from several sources are combined to provide a comprehensive picture of air traffic in and around the continental United States.

The TARS is currently the only fixed system that can provide information on low-flying aircraft and has produced impressive seizure statistics: of the total number of suspect planes identified in fiscal year 2002, 83% were identified by TARS. In addition, TARS was responsible for seizures totaling 21,600 kilograms of marijuana, 565 kilograms of cocaine, and 2.3 kilograms of heroin in fiscal year 2002.¹¹⁶

Despite its unique capabilities, however, the TARS has critical operational limitations – most notably, the balloons cannot be flown in bad weather. This makes their enforcement capabilities erratic and reduces their operational availability from 100% to 60-70%.¹¹⁷ In addition, the blimps are extremely expensive to buy and maintain: it costs \$1.8 million to purchase the balloons and \$3 million a year for maintenance (helium, personnel to monitor and deploy) over the five-year lifespan of the balloon.¹¹⁸ This means that AMO must continue to use P-3s when a TARS balloon is not available until a new and less-expensive means of identifying low-flying planes is identified.

Unmanned Aerial Vehicles (UAVs)

A less-costly alternative to TARS may be unmanned aerial vehicles, or UAVs, which range in price from \$350,000 to \$4.5 million depending upon their capabilities.¹¹⁹ There are two categories of UAVs: drones and remotely piloted vehicles (RPVs). Both drones and RPVs are pilotless, but drones are programmed for autonomous flight; RPVs require a ground control operator to fly remotely. Both are flown at high altitudes and carry a variety of monitoring equipment.

A report issued by DHS in March, 2004 concludes “UAVs appear to be particularly applicable to monitoring the Southern land borders.”¹²⁰ In reaching this conclusion, the report cites several of the unique efficiencies of UAVs including their ability to:

- cover “remote border areas with multiple possible crossing points and...extending across the border;
- operate day or night;
- track covertly;
- maintain continuity of observations [until agents can intercept]; and
- monitor or follow activities taking place over extended border areas.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

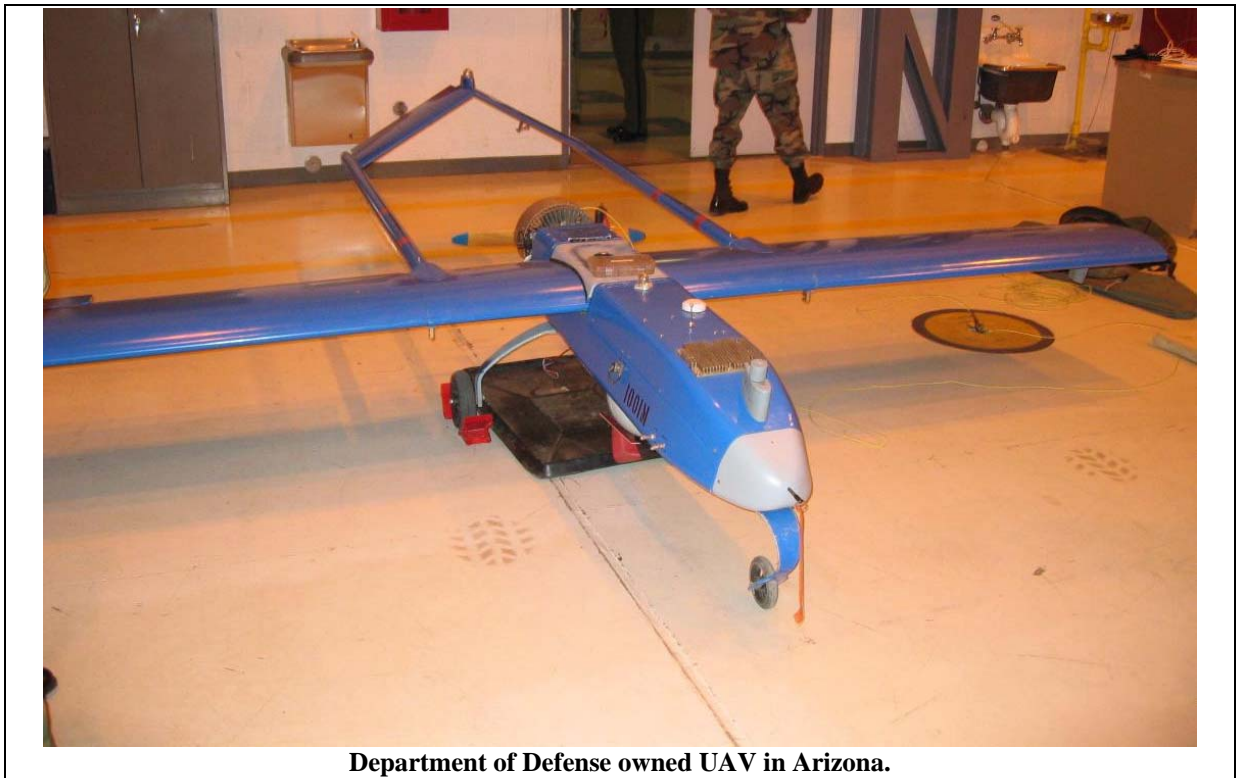
¹¹⁸ *Ibid.*

¹¹⁹ Christopher Bolkom, Homeland Security: Unmanned Aerial Vehicles and Border Security. June 28, 2004. Washington, D.C., Congressional Research Service, Report number RS21698.

¹²⁰ U.S. Department of Homeland Security, “Unmanned Aerial Vehicle Applications to Homeland Security Missions,” March 31, 2004.

Although not noted in the report, UAVs also eliminate the safety concerns faced by helicopter pilots on patrol.¹²¹

The Border Patrol does not own any UAVs but has had to rely upon arrangements with the Department of Defense to obtain them for limited initiatives and testing. For example, in December 2003, the Border Patrol conducted joint UAV demonstrations along the Arizona Border using a UAV owned by Joint Task Force-Six (JTF-6).¹²² Nine AMO support staff were also present to observe JTF-6 staff operate the UAV.¹²³ The UAV operated 10 to 12 hours per day for 14 days. The on-board camera system allowed agents to see 10 miles into Mexico, where they could watch human traffic “loads” stage and develop. The “loads” were followed to the U.S. border, allowed to enter the United States, and then arrested by border agents.



Department of Defense owned UAV in Arizona.

Although Border Patrol’s experience with UAV technology has been positive, its dealings with the Department of Defense have been mixed. In the Laredo sector, for example, agents have requested aerial support from JTF-6, but the operations took up to six months to be deployed, and Border Patrol had no say in which aircraft was employed – helicopter, airplane, or UAV.¹²⁴ The Border Patrol’s use of JTF-6’s UAV is also limited by the military’s need for UAVs to support military operations in Afghanistan and Iraq.

¹²¹ *Op. cit.*, CRS Report RS21698.

¹²² Joint Task Force-Six, JTF-6, is a multi-branch group of servicemen dedicated to the counternarcotics mission within the Department of Defense (DOD). Specifically, JTF-6 coordinates all DOD support to law enforcement agencies in counternarcotics missions. JTF-6 also provides operational, training, and intelligence support to agencies’ efforts to combat terrorism.

¹²³ This included, one person to pilot the UAV, three to monitor sensors, two for maintenance, two ICE special agents and one Border Patrol agent.

¹²⁴ Merv Leavitt, Deputy Border and Transportation Security Portfolio Manager (DHS), “Responses to Questions, Select Committee on Homeland Security,” May 13, 2004.

Despite these problems, the Border Patrol has pursued other opportunities to test a variety of UAVs. For example, the Border Patrol requested commercial vendors to fly products that came “off-the-shelf” in September, 2003. The vendors paid the costs associated with flying the UAVs, but the DHS Science and Technology Directorate provided \$3.3 million to evaluate the different UAVs flown during the demonstrations.¹²⁵

The demonstrations, and the evaluations resulting from them, will ultimately help the Border Patrol to make an informed decision about needed UAV capabilities. To that end, the Border Patrol requested \$10 million in its fiscal year 2005 budget for the development of a UAV to meet their specific requirements. In the meantime, it appears that the Border Patrol has stopped working with JTF-6 to acquire temporary UAV support. The staff was told that this is short-sighted and if it continues, will deny useful assistance for the years it will take for Border Patrol to develop and deploy their own UAVs. Rather, the staff was told that the Border Patrol should pursue a Memorandum of Agreement with the Department of Defense to continue using their UAV assets as often as practicable while also pursuing innovative private sector participation, as it has done with the ABC initiative, to acquire UAV support for the near term.

Air and Marine Operations Division

The Office of Air and Marine Operations (AMO) has a limited border security role. Specifically, AMO uses long-range radar, fixed wing planes, known as P-3s, to monitor the Southern Border when TARS is not operable. These planes are about the size of 737s and carry a large array of radar, camera, and other monitoring equipment. The P-3s provide more general support, however, for AMO’s two primary missions: providing air and marine support to ICE investigations, and monitoring U.S. airspace for unauthorized intrusions. The success of these two missions depends on the quality – and quantity – of their technology and air and marine assets.

AMO has more than 1,000 dedicated law enforcement and support personnel who operate a fleet of 83 vessels and 134 aircraft, including 16 P-3 aircraft.¹²⁶ Ten P-3s are stationed at the AMO branch in Corpus Christi, Texas, and the remaining P-3s are stationed in Jacksonville, Florida.

The P-3s provide live video and radar feeds to operations centers and computer laptops, which make them valuable to many federal agencies. For example, the live video feed helps Border Patrol agents respond more quickly to illegal crossing activities, and helps national disaster workers determine asset deployment needs. In addition, P-3 aircraft are capable of carrying nuclear sensors for the Department of Energy if a nuclear event occurred. This would help the Department of Energy to determine the precise location of radiation concentrations and advise public health officials accordingly. Since P-3s are still capable of flying a 4,000 mile, 12-hour mission, these aircraft have also been used extensively to support ICE investigations in South and Central America. The aircraft are also used to support one of the AMO primary missions – to monitor U.S. airspace for unauthorized intrusions – by continuously monitoring

¹²⁵ *Ibid.*

¹²⁶ Air and Marine Operations Division (ICE), “Role in Securing the Homeland: Report to Congress by the Undersecretary for Border and Transportation Security,” January, 2004, p. iv.

airspace for most U.S. special events, such as the Olympics, State of the Union addresses, Democratic and Republican political conventions, and to enforce the restricted air zones around the National Capital Region.

While the P-3 is a versatile asset, the aircraft face one primary problem: their age. The AMO P-3 fleet has an average service life of approximately 20 years, but the average age of the fleet is 37 years.¹²⁷ This means the fleet requires continuous maintenance, which costs approximately \$23.2 million each year.¹²⁸ The Administration has not provided adequate funding to cover the high maintenance costs and this has resulted in delayed repairs which keep a P-3 grounded longer than otherwise necessary.

Initial concerns over the age of the aircraft and related maintenance costs were addressed by a cost-comparison chart provided by AMO staff during a staff briefing at the Corpus Christi P-3 branch. The chart indicated that modernization of one P-3 plane (which includes putting on new wings and a new tail, as well as installing new equipment) would cost approximately \$15 million, compared to \$90-100 million to buy an entirely new plane – not including the wait time for the plane to be built. Staff also received an operational briefing and observed a training tracking flight in Corpus Christi that also identified a need for updated avionics equipment such as electro-optical/infrared sensors, real-time video downlink systems, and radar enhancements.¹²⁹

Finally, while P-3 aircraft provide an important border security function, the other aircraft in the AMO fleet pose similar concerns: most of the fixed-wing and rotary aircraft are Vietnam-era, require significant maintenance costs, and AMO management indicated they have drafted a modernization plan for their fleet, but that plan is still under review within DHS.

Border Patrol Air and Marine Assets

The Border Patrol air and marine assets are assigned to individual sectors to provide mission support although it is not clear that there is a coordinated, planned approach to how these assets are used, or that they are distributed in the most effective manner possible. Combined, the Border Patrol has 116 aircraft; about 70% are helicopters and the rest are fixed-wing planes. On average, Border Patrol aircraft record three apprehensions for every hour they fly.¹³⁰

One of the problems identified during staff site visits is the lack of qualified pilots available to fly or man the aircraft and vessels. For example, the McAllen sector had 10 operational aircraft, but only four pilots – two of whom were in training.¹³¹ The staff was told

¹²⁷ *Ibid.*, p. 7.

¹²⁸ Figure provided by ICE in fiscal year 2005 budget briefing to staff.

¹²⁹ *Op. cit.*, AMO, “Role in Securing the Homeland,” p. 9.

¹³⁰ U.S. House, joint hearing of the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security and the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the Committee on Government Reform, *Counternarcotics at the Department of Homeland Security: How Well Are Anti-Drug Trafficking Operations Being Supported and Coordinated?*, Testimony of Robert Bonner, Commissioner, Customs and Border Protection, July 22, 2004.

¹³¹ Staff briefing by Border Patrol, McAllen Sector, June 9, 2004.

that this disparity may be due to a continued reliance upon ground enforcement, which is reflected in hiring decisions made by sector chiefs.

The pilot shortage problem may soon be addressed. There are current Administration proposals to merge Border Patrol air and marine assets with the AMO Division of ICE and place the new organization under CBP jurisdiction. Air and Marine currently has more qualified pilots than planes, so this merger would improve the chance that these assets are used as efficiently as possible. However, the staff was warned that in merging these entities, care should be taken to preserve the mission support responsibilities of both assets.

Monitoring Technologies at the Ports-Of-Entry Have Been Deployed on an Ad Hoc Basis

In 1995, the federal government reorganized the way inspections at the land ports-of-entry were conducted.¹³² The new approach used a “layered inspection” process, incorporating multiple, overlapping examination methods. Today, CBP continues to rely on non-intrusive inspection technologies to detect weapons of mass destruction (WMD) or terrorists entering through ports-of-entry. These technologies include radiation portal monitors (RPMs), personal radiation detector devices (PRDs), handheld isotope identifiers, and Vehicle and Cargo Inspection System (VACIS) machines. However, the Administration has consistently failed to provide CBP with sufficient funding to deploy many of these technologies. Without them, a comprehensive technological barrier to prevent terrorists from exploiting our borders does not exist.

Radiation Portal Monitors

Despite the significant threat posed by a nuclear or radiological weapon smuggled into the United States, the Department has yet to install any RPMs on the Southern Border.¹³³ The RPM is a large device that scans a vehicle or cargo as the vehicle moves slowly through the monitor, and can be integrated into normal operations at border crossings. This allows the ports to maintain the flow of commerce.

The Department has a six-phase plan to deploy RPMs at all major ports-of-entry, including the Southern Border. The first three phases have begun, but are not complete. Phase four addresses the Southern Border, but only site surveys have been completed. The remaining tasks include purchasing and installing the monitors. These are not planned to be fully installed and operational until December, 2005 at the earliest. This leaves the Southern Border ports-of-entry without effective means to detect radioactive material.

¹³² Office of National Drug Control Policy, *Future Enforcement Strategy and Capability*, Report to Congress, 1997. Found at <http://www.whitehousedrugpolicy.gov/publications/enforce/rpttocong/truckfut.html>.

¹³³ The U.S. Intelligence Community assesses that our country is more likely to be attacked with a weapon of mass destruction delivered by a ship, truck, or airplane than by a ballistic missile. See, U.S. Central Intelligence Agency, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, National Intelligence Estimate December 2001. Found at http://www.cia.gov/nic/special_missilethreat2001.html.

The Administration has requested only \$50 million in fiscal year 2005 for RPM installation. This funding is inadequate since it only provides about half the monitors needed to complete installation on the Southern Border.¹³⁴ Thus, by the fourth anniversary of the September 11 attacks, the Southern Border still will not have a comprehensive detection system installed to screen cargo for weapons of mass destruction.

Personal Radiation Detection Devices (PRD)

CBP has issued over 9,400 PRDs to Border Patrol agents and CBP inspectors, at a cost of approximately \$1,200 each.¹³⁵ Personal Radiation Detection Devices are small, pager-like devices worn by individual inspectors to detect radiation. Officials at the Department of Energy have stated that PRDs are primarily safety devices – not search instruments designed to detect weapons with usable nuclear material such as enriched uranium.¹³⁶ The reason the pagers only work as safety devices is because they have to be in close proximity to a nuclear or radiological source to detect it. Despite this, CBP Commissioner Bonner continues to declare PRDs “an important tool to detect radioactive materials moving through a port.”¹³⁷

During staff visits, several CBP inspectors reported that the PRDs give off a high number of “false positives,” initially indicating that a radiological source is present, when subsequent tests proved that not to be the case. Some inspectors expressed concern that the high number of false positives is “desensitizing” agents and inspectors, so that when there *is* a real nuclear or radiological source present, agents will ignore the pager’s signal, and allow the device to pass into the United States.

Another non-intrusive detection technology used by CBP, often in conjunction with the PRDs, is the radiation isotope identifier device, or RIID. A RIID is about the size of a large power strip and must be held by an inspector close to the source to identify a specific type of radiological or nuclear material found, such as plutonium. RIIDS are used at the Southern Border only as a secondary inspection device. This means that another detection device, such as a RPM must provide the initial indication that a radiological or nuclear source is present before a RIID is used. The unreliability of initial indicators like PRDs, coupled with the limited use of identifier devices, does not provide the accuracy needed to ensure dangerous materials are prevented from crossing our borders.

¹³⁴ U.S. Department of Homeland Security, Budget briefing to staff, February, 2004.

¹³⁵ U.S. Department of Homeland Security, Customs and Border Protection, “Commissioner Bonner Unveils High-Tech Equipment to Detect Radiological Weapons,” *CBP News Highlights*, March 22, 2004. Available at: <http://www.customs.gov/xp/cgov/newsroom/highlights/032404rad equip.xml>.

¹³⁶ U.S. House, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, *Customs Service: Acquisition and Deployment of Radiation Detection Equipment*. Testimony of Gary L. Jones, U.S. Government Accountability Office, October 17, 2002.

¹³⁷ Testimony of Bureau of Commissioner Robert Bonner, Customs and Border Protection, Before the National Commission on Terrorist Attacks Upon the United States, January 26, 2004. Available at: http://www.cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/jan262004.xml.

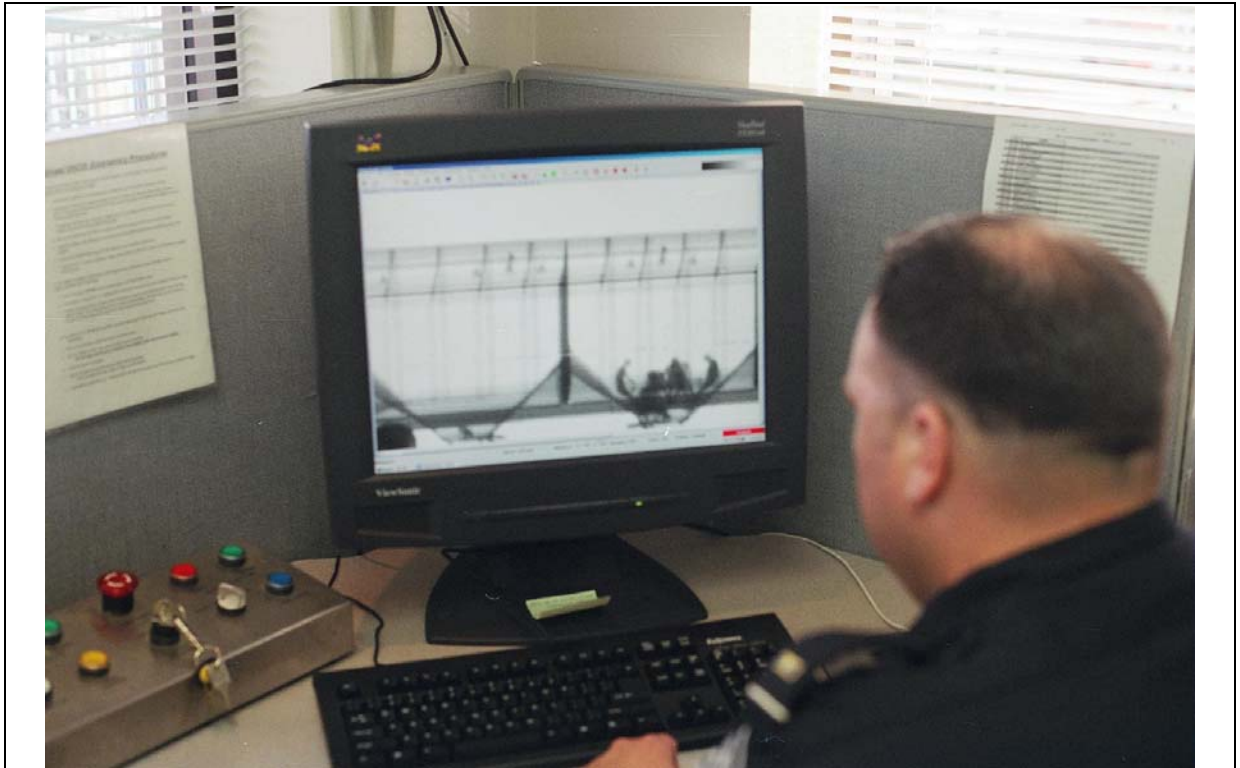


VACIS

Of CBP's 151 VACIS machines deployed nationwide to screen commercial trucks and passenger vehicles for contraband, 71 are deployed along the Southern Border.¹³⁸ VACIS machines are one of the most effective cargo inspection tools available today because they provide a detailed x-ray picture of the entire contents of a container in seconds. This allows the inspector to determine if contraband is being smuggled without having to conduct a labor-intensive inspection. There are two types of VACIS machines: mobile and stationary; most of the Southern Border ports-of-entry have at least one type of VACIS machine.

Although VACIS machines are effective inspection devices, they cannot detect a shielded source of nuclear or radiological material. According to a CBP supervisor at Otay Mesa, California port-of-entry, VACIS could be used as a secondary inspection device to provide a "picture" of the truck to determine the specific location of the suspect material. The truck would then go through a second radiation detection device to identify the type of radiological or nuclear material.

¹³⁸ CBP, Office of Field Operations, data provided to staff, August 30, 2004.



Rail VACIS in Laredo detects illegal immigrants concealed in a rail car.

K-9 Units

Canine, or “K-9,” units are used by the government to detect narcotics, illegal immigrants, unreported currency, bombs, or chemicals that may be smuggled through our ports-of-entry. The cost to train each dog for the K-9 program is approximately \$5,000, and they are a very effective detection technology: K-9s are ten times more successful at detecting illicit cargo than human inspectors.¹³⁹ In fact, 60% of all drug seizures result from K-9 detections.



Border Patrol Canine Unit trained to detect hidden illegal immigrants outside of Laredo, Texas.

¹³⁹ U.S. Customs and Border Protection, “Canine Enforcement Program,” found at: http://www.cbp.gov/xp/cgov/enforcement/canines/canine_program/.

Despite their effectiveness, there are only about 500 dogs working for CBP, in either the Border Patrol K-9 program or the CBP K-9 program at the ports-of-entry. This number is insufficient to provide a continuous K-9 presence at the Southern ports-of-entry. K-9s are used at the ports-of-entry to check cars waiting to enter U.S. primary inspection booths. K-9 teams are also used to screen cargo trucks before and immediately after the initial primary checkpoint. The Border Patrol frequently uses their dogs to detect illicit drugs and illegal immigrants at checkpoints established many miles from the border.¹⁴⁰ Each K-9 handler reported that there are gaps in the K-9 coverage because there are not enough dogs, and the dogs they do have are strictly limited as to the number of hours they can work per day.¹⁴¹

One concern raised was the possible inefficiencies caused by maintaining separate K-9 training programs. Both the Border Patrol and CBP K-9 programs have the same basic mission in safeguarding America's borders, but CBP maintains separate programs due to differing work environments that include different policies, procedures, and operational needs. This programmatic split means that there are duplicative training sites, with separate sets of facilities, staff, and programs. For example, K-9s working with CBP Officers at the ports-of-entry are trained at a facility in Front Royal, Virginia, while the Border Patrol trains its dogs in El Paso, Texas. Additionally, the two programs obtain their dogs from significantly different sources: CBP tests and adopts dogs from the local animal shelters, while the Border Patrol chooses dogs with specific genetic characteristics that they have determined make the dogs uniquely qualified to work in the Border Patrol environment.¹⁴² While a few substantive training differences may exist, CBP should immediately examine whether the programs can be combined at one site to enhance efficiencies, and save money.

Other Types of Non-intrusive Inspection Technologies

Border inspectors have used a variety of technological devices to screen for illegal immigrants, narcotics, and other illegal contraband as part of the layered approach to border security, but that technology has been deployed unevenly and sporadically. Hand-operated devices such as laser range finders (used to determine truck length to detect false walls and compartments), density detectors (to identify false compartments), and fiber optic scopes to look into gas tanks, can be effectively used in the secondary inspections process, but the equipment varies from port-of-entry to port-of-entry.¹⁴³ This means secondary inspections vary by port, and could result in weapons or terrorists getting through the ports undetected.

Two types of cargo imaging systems, x-ray and gamma ray, have also been deployed unevenly across the Southern Border. X-ray devices provide a detailed picture of a truck's contents, while gamma-ray imaging systems can identify the chemical makeup of a truck's contents. Both imaging technologies were used prior to 9/11 to detect illegal immigrants hidden in vehicles and large trucks; however, these devices used to detect immigrants or drugs are also likely to detect terrorist weapons, or even smuggled terrorists. For example, large cargo trucks

¹⁴⁰ For example, the Border Patrol has several fixed checkpoints 25 miles north of the U.S.-Mexico border.

¹⁴¹ Staff interviews at Laredo, El Paso, Brownsville, McAllen, and San Diego ports-of-entry.

¹⁴² Information obtained from written explanation of CBP K-9 policy differences provided to staff June 14, 2004.

¹⁴³ *Op. cit.*, Office of National Drug Control Policy, "Future Enforcement Strategy and Capability."

that are “capable of concealing thousands of pounds of narcotics in numerous areas” can also conceal a terrorist weapon, or even terrorist behind a false wall or floor compartment.¹⁴⁴ That is why the Department should continue to use these technologies in combination with other monitoring and detection devices.



Mobile X-Ray scans commercial vehicles at Laredo, Texas.

Radio Communications

There is still a significant problem with adequate radio communication at the ports-of-entry. For example, staff observed that there is still no interoperability between legacy INS and legacy Customs radios. A CBP inspector stated that 3-4 radio systems are currently being used at the San Diego ports-of-entry and that none of the systems can communicate with the other systems. While staff was visiting the San Ysidro port-of-entry in San Diego, California, they observed a situation in which an individual was trying to run through the port. Several legacy INS inspectors were not even aware of the situation, even though they were the closest responders, because they were on a separate radio system. Senior CBP management at the port stated they have received \$7 million to fund interoperable radios for the port, and that the system could be installed and functioning as early as autumn, 2004.

In addition, many of the inspectors in the primary booths do not have working radios. For example, in El Paso, Texas, only about half the inspectors have radios, which often makes it impossible to call for back-up. The Tucson Port Director reported that he did not have the budget to purchase encrypted radios, which cost approximately \$2,500 each, for every inspector. However, he recognized that access to a radio is an officer safety issue. Therefore, he purchased each inspector an off-the-shelf “Motorola TalkAbout Two Way Radio,” which cost approximately \$40 each. Generally, these radios use open public frequencies and have a limited

¹⁴⁴ *Ibid.*

range of two miles which can be overheard by others outside the port. The Tucson port director, for this reason, cautioned his inspectors that the radios should only be used for immediate safety needs.

Modern Technology Must be Deployed on the Entire Southern Border Conclusions and Recommendations

A layered approach to border security necessarily involves a variety of monitoring and detection technologies. Yet DHS has failed to consistently and evenly deploy technology along our Southern Border and at the ports-of-entry. In fact, hundreds of miles of our border go unmonitored by personnel or technology every day, despite the fact that technology currently exists to close this gap to terrorists and illicit cargo. There is no comprehensive plan to implement new technologies along the border to assist the border agencies in their important tasks of defending our borders and promoting commerce.

To remedy this deficiency, we recommend that:

1. DHS should immediately develop a detailed technology deployment plan to ensure every mile of the border is monitored 24 hours a day, seven days a week. Once a plan is developed, the Administration should commit sufficient funding to allow CBP to deploy the necessary devices at all the ports-of-entry. This plan should include, but is not limited to:

- Assessing the success of existing technologies to determine if one technology is better than another or whether there is a way to combine the capabilities of various detection devices into one;
- Requiring the Border Patrol to work with the Science and Technology Directorate to analyze high-altitude monitoring technologies [UAVs, Tethered Aerostat Radar System (TARS)] for use with land-based monitoring technologies;
- Accelerating deployment of radiation portal monitors to all ports-of-entry;
- Expanding the number of K-9 units by 20% the number of K-9 units assigned to Southern Border ports-of-entry, and outline a plan to add more bomb-detection dogs as part of the layered approach to border security.

2. The Administration must also commit sufficient funding to CBP to fully deploy the detection technologies identified by the comprehensive plan so that we can ensure no terrorist weapon enters the United States. As a down-payment toward that goal, DHS needs immediately commit at least \$49 million to fully deploy portal monitors at the Southern Border and an additional \$200 million to deploy additional remote video surveillance systems between the Southern Border ports-of-entry by the end of this year.

5. Border Officials Do Not Receive the Intelligence They Need to Perform Their Counter-Terrorism Mission

Three years after 9/11, antiquated intelligence databases available to frontline border officials are not fully integrated or interoperable. Millions of travelers are still not checked against any database. Unintended intelligence stovepipes have formed within border agencies with a proliferation of uncoordinated and duplicative intelligence centers. Complicating this is the fact that the vast majority of border investigators lack clearances to work their number one priority – counterterrorism.



More and better intelligence is needed to secure our borders. In a July, 2004 congressional hearing, Customs and Border Protection Commissioner Robert C. Bonner acknowledged the need for better intelligence for border agents and inspectors. He stated the “majority of CBP seizures were the result of “cold” hits...not the result of actionable intelligence or information received from other agencies.” He added “the need for border awareness, i.e. actionable and strategic intelligence has never been greater...the means to bring together all threat information is needed in order to significantly increase effectiveness to terrorists and terrorists weapons.”¹⁴⁵

Commissioner Bonner’s candid admission was confirmed by the work of the 9/11 Commission, which placed great emphasis on interoperability and the sharing of information between government agencies. It noted that the greatest impediment to “connecting the dots” was the “systemic resistance to sharing information.”¹⁴⁶

Indeed, the Commission documented the many failed opportunities to identify and stop the 9/11 terrorists by U.S. immigration, customs and law enforcement personnel. They noted that in the months leading up to September 11, the government officials adjudicating the entries of the hijackers did not have adequate information on them even though such information was already in various databases maintained by a number of government agencies.¹⁴⁷ If the patchwork of intelligence databases had been properly merged the inspectors adjudicating entries may have detected the 9/11 hijackers. These problems still exist at our Southern Border.

Millions Entering the United States Are Still Not Checked Against Any Databases

The 9/11 Commission called targeting the travel of terrorists one of the most important tools in our government’s arsenal to stop terrorism.¹⁴⁸ However, most travelers entering the United States at our land borders are still not checked against any databases.¹⁴⁹ Millions enter without their names being checked against any terrorist watch list or other law enforcement database of known or suspected criminals. Currently, the primary means of defense for millions crossing our Southern Border is a cursory inspection by a border official that usually lasts less than a minute.

As indicated in the charts below, in fiscal year 2003 there were a total of 427,690,094 inspections of those seeking entry into the United States. Of this total, approximately 80% or 38,297,020 inspections were conducted at land ports-of-entry.¹⁵⁰ Of these an estimated 85% or approximately 287 million, arrive in vehicles.¹⁵¹

¹⁴⁵ *Op. cit.*, Bonner Testimony of July 22, 2004.

¹⁴⁶ 9/11 Commission Report, p. 416.

¹⁴⁷ *Ibid.*, p. 383-389.

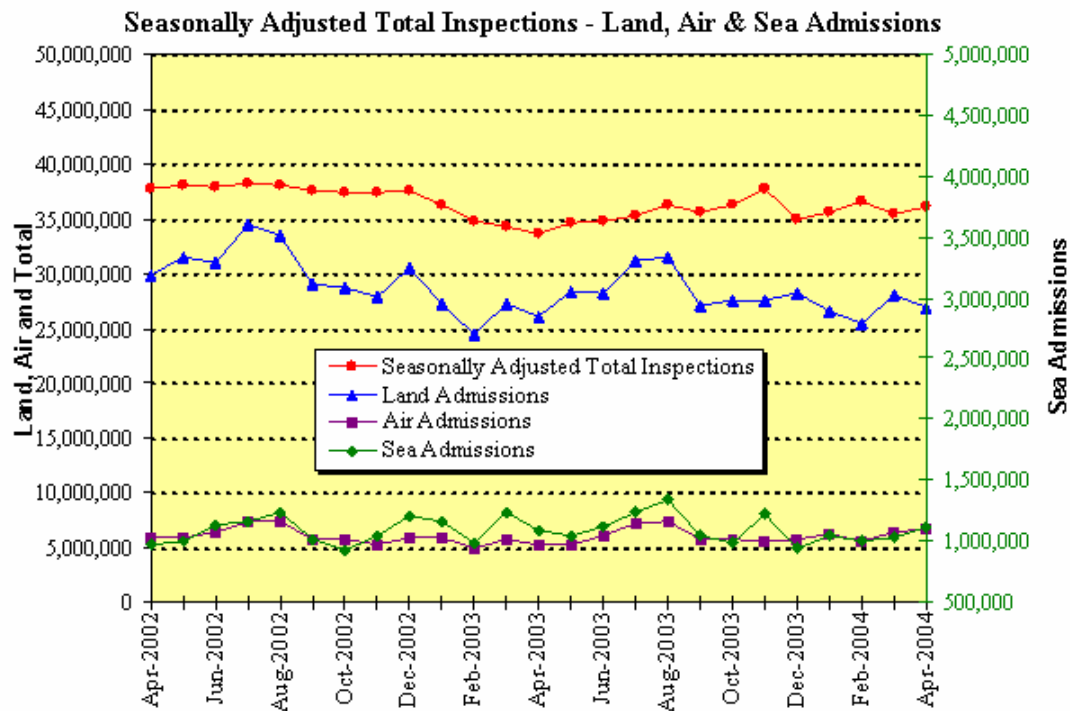
¹⁴⁸ *Ibid.*, p. 385.

¹⁴⁹ Similar finding in: U.S. Government Accountability Office, *Land Border Ports of Entry: Vulnerabilities and Inefficiencies in the Inspection Process*, GAO-03-782, (Washington, D.C.: July 2003), p. 2; and Data Management Improvement Act (DMIA) Task Force, First Annual Report to Congress, December 2002.

¹⁵⁰ U.S. Citizenship and Immigration Services, “Inspections,” found at: <http://uscis.gov/graphics/shared/aboutus/statistics/msrapr04/INSP.HTM>

¹⁵¹ *Op. cit.*, GAO-03-782, p. 8.

	Month			FY2004 to Date	Fiscal Year		Total
	Apr-2004	Apr-2003	% Change		FY2003 to Date	% Change	
Total							
Inspections	35,272,026	32,912,646	7	242,372,362	241,587,871	0	427,690,094
Air Admitted	6,727,122	5,263,674	28	41,995,628	38,859,610	8	70,690,316
Land Admitted	26,946,302	26,107,526	3	190,144,577	192,004,983	-1	338,297,020
Sea Admitted	1,124,469	1,083,077	4	7,358,904	7,666,939	-4	13,458,254
Inadmissible	55,430	52,595	5	353,428	381,707	-7	673,966



Source: U.S. Citizenship and Immigration Services

While the primary inspector at vehicle lanes has the discretion to check a traveler’s name against the main lookout database, most travelers are not checked.¹⁵² Rather, only the vehicle’s license plate is checked automatically by a license plate reader located at each inspection lane. As the vehicle enters the primary inspection lane, the license plate reader checks the registration and name of the registered owner of the vehicle with a multi-agency lookout system called the Interagency Border Inspection System (IBIS).¹⁵³ It will advise the inspector if the vehicle is

¹⁵² *Ibid.*, p. 16.

¹⁵³ The Interagency Border Inspection System (IBIS) is a shared database of lookout and enforcement data contributed by two dozen Federal agencies, including the Department of State, legacy Immigration and Nationality Service, legacy U.S. Customs Service, Department of Agriculture, and the FBI. DHS lookout information is provided through the National Automated Immigration Lookout System (NAIIS) into IBIS. The 14 year old IBIS system interfaces with the following systems: Department of State Consular Lookout and Support System (CLASS), Consolidated Consular Database (CCD), and the Claims 3, FBI (NCIC), and legacy INS systems to include Central Index System (CIS), Deportable Alien Control System (DACS), Refugee, Asylum, and Parole System (RAPS), Student Exchange Visitor Information System (SEVIS), Arrival Departure Information System (ADIS), Advanced Passenger Information System (APIS), Portable Automated Lookout System (PALS), TIPOFF, NVC, VWPASS, NSEERS, and the Non-Immigrant Information System (NIIS) which consolidates the multiagency “lookout” checks into one primary query.

legally registered, to whom it is registered, as well as the recent history of border crossings for that vehicle. It also will check the name of the “registered owner” against lookout and terrorist data bases – but only the registered owner, not the driver, if different, or any of the occupants of the vehicle unless they are manually entered into the system to be checked.

From interviews and observation of the inspection process, it is clear that inspectors may, but rarely do, run the driver or passenger(s) names through the IBIS system or any other database due to time pressures on the border. In the vast majority of cases, the inspector merely glances at the identification of the driver and passenger(s) and asks a few questions, usually to the driver, concerning his nationality and purpose for entering the country. As reported by GAO and confirmed by staff observations, this entire process takes less than a minute, with many inspections observed taking less than 20 seconds.¹⁵⁴

Significantly, this is the full extent of the inspection process for 98%, or over 281 million, visitors annually entering our land borders by vehicle.¹⁵⁵ Consequently, this process leaves millions of travelers entering the country without being checked against any intelligence database that could help identify a potential terrorist or even a convicted criminal.

Compounding the intelligence shortfall, interviews with inspectors indicated that IBIS is an aging system that often breaks down. CBP agents report that it is inoperable ranging from less than 10% to as much as 33% of the time. Additionally, one inspector in California reported that IBIS is of little use because almost all smugglers use stolen vehicles therefore an IBIS query will give the primary inspector no intelligence information.¹⁵⁶

US-VISIT was cited by some as a possible answer to the intelligence problems at the primary inspection stations. However, currently US-VISIT is only scheduled to be placed in the secondary examination area where only 2% of all land border examinations occur.

Interoperability of Databases Needed for Inspection Integrity – Inspectors Must Query as Many as Eight Databases with Eight Distinct Passwords

During the primary inspection process, if irregularities are noticed, the traveler or vehicle is referred to secondary examination. Approximately nine million, or 2%, of all travelers at land ports-of-entry were referred to more intensive secondary examination.¹⁵⁷ The intelligence databases used at secondary have not been merged and are not interoperable. Depending on inspections conducted, the inspector at secondary may have to log in and out of eight separate databases requiring eight unique password configurations that may expire as often as every 30 days.

¹⁵⁴ *Op. cit.*, GAO-03-782, p. 7.

¹⁵⁵ *Ibid.*, p. 16.

¹⁵⁶ The inspector stated that smugglers use stolen vehicles because the IBIS system at primary inspection will only report the registered owner of the vehicle and the number of times the vehicle has crossed the border. Additionally if apprehended, the violator will lose only the stolen vehicle, and not their own.

¹⁵⁷ *Op. cit.*, GAO-03-782, p. 9.

The secondary inspectors found this process to be burdensome and time consuming. They reported that the process of entering the same traveler information and remembering frequently changing passwords in each query was counter-productive and cumbersome. These procedures slowed the secondary inspection process, took inspectors away from other duties, and increased the chance that an inspector would forget to check a particular database resulting in a wrong decision about a traveler's admissibility.¹⁵⁸

The 9/11 Commission criticized such stand alone systems and recommended that the Department of Homeland Security complete "as quickly as possible, a biometric entry-exit screening system" that combined all of these databases. The Commission noted that:

The current patchwork of border screening systems, including several frequent traveler programs, should be consolidated in the US VISIT system to enable the development of an integrated system, which in turn can become part of the wider screening plan we suggest.

All points in the border system – from consular offices to immigration services offices – will need appropriate access to an individual's files. Scattered units at Homeland Security and the State Department perform screening and data mining; instead a government-wide team of border and transportation officials should be working together.

A modern border and immigration system should combine a biometric entry-exit system with accessible files on visitors and immigrants, along with intelligence on indicators of terrorist travel.¹⁵⁹

Congressional and Executive Branch Plans to Build an Interoperable Border Security System Still Not Met

The need for integration and interoperability is not new. After the terrorist attacks of September 11, 2001, Congress and the Administration reached a consensus on the need to eliminate various obstacles to information sharing. In passing the USA PATRIOT Act six weeks after the 9/11 attacks, Congress urged rapid development of an "integrated entry and exit data system" and required the development of a biometric technology standard as the "basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully integrated means to share law enforcement and intelligence information" for entry-exit screening.¹⁶⁰

In May, 2002, Congress expanded upon this theme in Section 202 of the Enhanced Border Security and Visa Entry Reform Act of 2002, in which it mandated the creation of an "interoperable law enforcement and intelligence data system... to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence

¹⁵⁸ *Ibid.*, p. 28.

¹⁵⁹ 9/11 Commission Report, p. 388-389.

¹⁶⁰ *USA PATRIOT Act*, 2002, Public Law 107-56, Title III, Section 403 (c) (2).

community that is relevant to determine whether to issue a visa or to determine the admissibility or deportability of an alien (also known as the Chimera system).¹⁶¹ In July 2002, the Senate Commerce, Justice, State Appropriations Subcommittee appropriated \$83 million for the Chimera system, noting that “it will serve as the searchable, shareable repository of data bases migrated from existing (legacy) INS systems that are incompatible with one another and with other law enforcement, State Department, and intelligence community systems.”¹⁶²

A strong consensus on the importance of creating an interoperable border security system had also developed in the Executive Branch. In January, 2003, the Bush Administration submitted a detailed plan to Congress that outlined the major investments that would need to be made in the INS, FBI, and State Department to build a fully interoperable system, including biometrics, which could meet the counterterrorism goals required after September 11. It further stated that unless a cross-agency, “end-to-end” concept of operations were developed “before major investments are made, the estimated cost and expected results of the investment will be at risk.”¹⁶³

Soon after the Department of Homeland Security was created, it appeared to be in accord with the White House plan as its budget justification for fiscal year 2004 (submitted in February 2003), noted the importance of these programs and stated that:

Atlas/Chimera is the infrastructure platform that will enable the DHS to meet requirements stipulated in the Border Security Act.... DHS will not be positioned to enhance its data sharing efforts throughout DHS (let alone with other Federal, State and Local law enforcement entities) through our Entry-Exit System initiative without funding for Atlas/Chimera to provide critical information technology infrastructure pieces as the foundation for these efforts. (Emphasis added).

In March, 2003, Undersecretary Asa Hutchinson reiterated DHS' commitment to proceeding with Chimera. At a hearing of the Senate Judiciary Committee, Undersecretary Hutchinson was asked if \$245 million appropriated for fiscal year 2003 would be “dedicated to the interoperable systems such as Chimera?” He responded, “The answer is yes. We're working very diligently to accomplish the goals of the interoperable system.”

Unfortunately, this integration has not occurred on the Southern Border. As described to the staff by various border enforcement personnel, this continues to cause critical problems with the ability of border agencies to effectively identify potential terrorists.

¹⁶¹ Public Law 107-173, Title II, Section 202 (a) (2).

¹⁶² Senate Report 107-218, Fiscal Year 2003 Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Bill.

¹⁶³ Report to Congress submitted jointly by the Attorney General, Secretary of State, and the National Institute of Standards and Technology, *Use of Technology Standards and Interoperable Databases with Machine-Readable, Tamper-Resistant Travel Documents*, January 2003, p. 24.

Key Databases Still Not Integrated

Failure to integrate various intelligence databases into an interoperable system that could be used by front-line agents has been a particular problem for the Border Patrol. On average, the Border Patrol apprehends more than one million illegal immigrants a year attempting to enter the United States. The Border Patrol must quickly determine the identity of those apprehended illegal immigrants in order to determine which are a danger to our country and thereby should be detained for prosecution.¹⁶⁴

Two separate databases must be searched to correctly make such a determination. These are the legacy-INS IDENT system and the FBI's IAFIS system.¹⁶⁵ They are not integrated despite calls since 1998 by the Department of Justice Inspector General that they need to be.¹⁶⁶ Their integration has moved slowly and still may take years to complete.¹⁶⁷ Two cases arising from the Southern Border demonstrate the tragic consequences of the failure to adequately integrate these systems.

In 1998, Rafael Resendez-Ramirez (Resendez), a Mexican citizen with an extensive criminal record inside the United States, was apprehended by Border Patrol in Texas and New Mexico seven times while illegally crossing the border. Because Ramirez had been apprehended fewer times than the threshold for prosecution, he was returned to Mexico.¹⁶⁸ In 1999, state and federal warrants were issued for Resendez for connection to several murders. Border Patrol again apprehended Resendez for illegal entry and again returned him to Mexico. They did not check the FBI's IAFIS system, which would have detected the outstanding warrants. Within days, Resendez illegally crossed the border and committed four murders.¹⁶⁹

In January 2002, Victor Manuel Batres (Batres), a Mexican citizen with an extensive criminal record to include kidnapping, narcotics violations, and robbery, was apprehended twice

¹⁶⁴ Aliens may be detained for prosecution based on multiple illegal entries, reentry after deportation, arrest warrant, terrorist links, or for aggravated felonies delineated in Title 8 U.S.C. sec. 1101 (a) (43).

¹⁶⁵ The IDENT system, which began in 1994, is the "Automated Biometrics Identification System." To place an individual in the IDENT system, the right and left index fingers are placed on the scanner, a photograph is then taken with the IDENT camera and biographical information is entered into the computer. IDENT then electronically compares the fingerprints to a legacy INS "lookout" database and "recidivist" database. The IAFIS system, which began in 1999, is the "Integrated Automated Fingerprint Identification System" run by the FBI. It contains more than 40 million ten-print fingerprint records in its criminal master file. Fingerprints submitted are electronically compared against IAFIS records for "hits."

¹⁶⁶ See, U.S. Department of Justice, Office of Inspector General, *Review of the Immigration and Naturalization Service's Automated Biometric Identification System*, (Washington, D.C.: March 1998); U.S. Department of Justice, Office of Inspector General, *The Rafael Resendez-Ramirez Case: A review of the INS' Actions and the Operation of its IDENT Automated Fingerprint Identification System*, (Washington, D.C.: March 2000); U.S. Department of Justice, Office of Inspector General, *Status of IDENT/IAFIS Integration*, (Washington, D.C.: December 2001); U.S. Department of Justice, Office of Inspector General, *Status of IDENT/IAFIS Integration*, (Washington, D.C.: June 2003); and U.S. Department of Justice, Office of Inspector General, *IDENT/IAFIS: The Batres Case and the Status of the Integration Project*, (Washington, D.C., March 2004).

¹⁶⁷ U.S. Department of Justice, Office of the Inspector General, *IDENT/IAFIS: The Batres Case and the Status of the Integration Process*, (Washington, D.C.: March 2004).

¹⁶⁸ The staff found, during interviews, that the threshold number of apprehensions before prosecution widely varies on the Southern Border from as few as six to as many as 15.

¹⁶⁹ On May 21, 2003, Resendez' capital murder conviction and death sentence were affirmed.

in two days as he illegally crossed the border into the United States. Both times, Batres was returned to Mexico after conducting an IDENT check which was not integrated with the FBI IAFIS database. If the IAFIS and IDENT databases had been interoperable, it would have shown aggravated felony convictions and prior deportations which generally carry substantial prison terms. Instead, Batres illegally reentered the United States, traveled to Oregon where he brutally raped two Catholic nuns, resulting in the death of one of the nuns.

The Department of Justice Inspector General noted that Resendez and Batres cases could have been avoided if they had been checked in a unified IDENT/IAFIS database. These cases “tragically illustrated the danger of requiring immigration agents at individual Border Patrol stations to decide when they should research an apprehended alien’s criminal history rather than relying on an integrated database...”¹⁷⁰

Despite this criticism, these systems are still not integrated and as the Department of Justice Inspector General noted in his March, 2004 report, these problems could happen again. The Inspector General report concluded that only 12% of all ports-of-entry and 20% of all Border Patrol sites have access to an integrated IDENT/IAFIS database. The staff observed only two Border Patrol stations, Laredo, Texas and Nogales, Arizona, with fully integrated IDENT/IAFIS databases. The Presidio, Texas, station lacked any IAFIS machines. The Nogales integration has resulted in the identification of 21 illegal aliens with criminal records per day, on average.

Progress continues to move slowly, partially as a result of attention placed on other technology projects such as US-VISIT, and interoperability is still years from completion.¹⁷¹ On July 26, 2004, DHS personnel reported that full interoperability with IAFIS was still two to three years away.¹⁷²

Detection of Fraudulent Documents a Major Concern

A serious homeland security concern on the Southern Border involves the use of fraudulent documents by terrorists to conceal their true identity or to otherwise obtain entry into the country by falsely claiming U.S. citizenship. The recent 9/11 Commission Report brought this issue into focus by noting the importance of false documents to terrorists:

For terrorists, travel documents are as important as weapons. Terrorists must travel clandestinely to meet, train, plan case targets, and gain access to attack. To them, international travel presents great danger, because they must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent

¹⁷⁰ U.S. Department of Justice, Office of Inspector General, *IDENT/IAFIS: The Batres Case and the Status of the Integration Project*, (Washington, D.C.: March 2004), p. 15.

¹⁷¹ *Ibid.*, p. 39.

¹⁷² Staff meeting with U.S. Department of Homeland Security, US-VISIT staff on July 26, 2004.

inspection points. In their travels, terrorists use evasive methods, such as altered and counterfeit passports and visas...¹⁷³

As an example of the extent of the problem, in 2002, inspectors at land ports intercepted nearly 60,000 fraudulent documents.¹⁷⁴ GAO reported that one Southern Border port director advised them that about one-third of all port enforcement actions involved aliens falsely claiming United States citizenship. Another legacy INS official stated that false claims of U.S. citizenship were common.¹⁷⁵ False documents are a key to such attempts.

The task confronting the inspector of identifying fraudulent documents is daunting. Inspectors are forced to decide in a minute or less the validity of an overwhelming number of documents; as many as 200 countries use unique passports, official stamps, seals, and visas. More than 8,000 state and local offices issue different types of birth certificates, driver's licenses, and other documents that may be used fraudulently to gain entry into the United States. Inspectors stated that counterfeit IDs were readily available at the Mexican border, utilizing simple technology.

Many complained that when illegal immigrants were caught using fraudulent documents for attempted entry there were rarely any consequences. Local U.S. Attorney Offices' routinely decline to prosecute due to a lack of resources. The only consequence reported in most cases was the seizure of the fraudulent documents and denial of entry. One inspector stated it was the "equivalent of a thief who when caught stealing had no consequences for his actions." Inspectors at many of the larger ports-of-entry reported this has led to the proliferation of vendors openly "selling their wares" of fraudulent documents on the Mexican side of the border.

Better intelligence and training on document fraud was a common request of those interviewed on the border. An example of what can be accomplished with better training and intelligence is shown by the Pharr port-of-entry in McAllen, Texas. There, CBP has developed a world recognized database and program for fraudulent document detection. At this facility, al Qaeda training manuals and other terrorist writings on travel documents are used to extensively train inspectors from the United States as well as from foreign nations. One student, upon returning to his host country, credited this training in detecting the attempted entry of a terrorist with a "dirty bomb." As a result of this in-depth training, the Pharr seizure rate of fraudulent documents, averages as many as 400 a month, exceeding other ports-of-entry.

¹⁷³ *Op. Cit.*, 9/11 Commission Report, p. 384.

¹⁷⁴ *Op. Cit.*, GAO-03-782, p. 15.

¹⁷⁵ *Ibid.*, p. 14-15.

Intelligence on Threat Level Increase Not Specific

In each city visited, the CBP Port Directors, Border Patrol Chiefs, agency managerial personnel and front line workers were questioned about the quantity and quality of specific information given to them when as the national threat level was increased. All responded that little, if any, useful information was given to assist them in evaluating the elevated threat at their specific location on the border. Managers at ports-of-entry reported they did not have clearances or secure faxes to receive specific intelligence concerning threat level increases and were generally dependent on notification from headquarters or other investigative agencies. Nevertheless, they did not receive any specific information they found useful for their important border mission.

The border managers stated when the threat level increased typically a general sense of heightened security was implemented with additional inspections and more referrals to secondary examinations.¹⁷⁶ Other consequences were additional overtime expenditures and significantly increased waiting periods for border crossing – for example, the waiting time increased by up to three hours in El Paso during the last code orange alert.

They also indicated that the increased threat level was an expensive proposition for the border agencies. CBP Congressional Affairs reported that the increase in security caused by the elevation to the orange level cost CBP, alone, more than \$1.1 million a week and sustaining this level of operations for 30 days cost more than \$80 million dollars.¹⁷⁷ Border community groups, including local Chambers of Commerce and mayors, across the border advised that the increased threat level added a significant fiscal burden on border trade, tourism, and security costs.¹⁷⁸

A Proliferation of Intelligence Functions

One of the consequences of the need for more and better actionable intelligence has been the uncoordinated emergence of more intelligence functions. In March 2003, at the forming of DHS, the legacy Customs Service was divided into Customs and Border Protection (CBP) and the Immigration and Customs Enforcement (ICE). In the re-organization the intelligence function was transferred to ICE.

Interdiction agencies (CBP inspectors and Border Patrol agents) complained they were not receiving adequate intelligence on a timely basis to assist their responsibilities. They reported that although they provide ICE with intelligence gathered from interdictions, little information

¹⁷⁶ The staff found in Laredo, Texas, during orange alerts a 24/7 Port Director Command Center is activated, the number of Border Crossing Cards (BCC) entered into readers increased from 50% to 75%, all names of truck drivers are queried in TECS and the National Targeting Center (NTC) and the Laredo Document Analysis Unit (DAU) increase the number of inspections.

¹⁷⁷ Statistics provided to the Committee by CBP on August 17, 2004. Costs include personnel expenses associated with salaries and benefits and financial costs to include increased expenses for motor vehicles, aircraft fuel, etc., associated with more intensive inspections/monitoring at the border.

¹⁷⁸ Andy Soloman, The United States Conference of Mayors press release, *War, Threat Alert Increase City Security Costs by \$70 Million per Week Nationwide*, March 27, 2003. Found at: http://www.usmayors.org/uscm/news/press_releases/documents/surveyrelease-032703.pdf.

was returned to allow CBP inspectors and Border Patrol agents to “close the loop or cycle” or “connect the dots” on smuggling patterns, trends, or most importantly, on suspected terrorist activity.

As a result, many CBP and Border Patrol offices have started developing “stand alone” intelligence units. This was especially noted in the many Border Patrol sectors. GAO has also identified the growth of these independent intelligence units, which often lack standard operating procedures and do not share information with other border agencies.¹⁷⁹

General Patrick Hughes, DHS Assistant Secretary for Information Analysis acknowledged that there was limited sharing of databases/intelligence with federal agencies. He stated agencies have “shades of autonomy” which “are very much a concern.” This, taken in consideration with the 9/11 Commission findings that “all” agencies are failing to share information, is an exploitable vulnerability on the border.

Partially contributing to this disjointed effort is that Border Patrol is still operating under pre-merger Memoranda of Understanding (MOU) to coordinate narcotic efforts with Drug Enforcement Agency, money laundering efforts with Internal Revenue Service, and national security issues with the Federal Bureau of Investigation. There is often no coordination with ICE, Border Patrol’s investigative arm under DHS. As a result of these MOUs, the Border Patrol does not share the massive amounts of intelligence it develops through the capture of approximately one million illegal aliens a year with other border components of the Department of Homeland Security. Rather, following pre-merger policies, the Border Patrol shares this information with IRS, DEA and the FBI.¹⁸⁰

An exception to this otherwise bleak intelligence picture was observed in the Arizona Border Control (ABC) initiative. This multi-agency initiative is driven with intelligence as its centerpiece. All agencies feed intelligence into a central command under the initiative called the “Intelligence Task Force and Reporting Center” (ITFRC). Once collected, this shared intelligence is then collated, analyzed, and disseminated back to the appropriate agencies as “actionable intelligence.” This operation was uniformly viewed as effective and lauded as an example to be used elsewhere on the border to better coordinate the efforts of various border agencies.

¹⁷⁹ Despite the fact that federal land border agencies are responsible for more than 50% of the land on the Southern Border, a June 2004 GAO report found Border Patrol does not coordinate intelligence and threat assessments matters of concern with these agencies. See, U.S. Government Accountability Office, *Border Security: Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands*, GAO-04-590, (Washington, D.C., June 2004), p. 37.

¹⁸⁰ See, testimony of Robert C. Bonner, Commissioner, Customs and Border Protection, U.S. House, joint hearing of the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security and the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the Committee on Government Reform, *Counternarcotics at the Department of Homeland Security: How Well Are Anti-Drug Trafficking Operations Being Supported and Coordinated?*, July 22, 2004. Commissioner Bonner testified that “Border Patrol is one of the most robust collectors of human intelligence in law enforcement with more than one million apprehensions a year with thousands of intelligence reports a year.”

Duplicative Intelligence Operations

Another concern raised is the number of intelligence and operations centers that may be duplicative and perhaps in competition with each other. Currently operating on the Southern Border are: the Border Patrol intelligence center, Operation Alliance; Border Patrol field intelligence units called BORFIC; Intelligence Collection Analysis Teams (ICAT) from ICE; High Intensity Drug Trafficking Area (HIDTA) multi-agency investigative intelligence groups; the High Intensity Financial Crime Area (HIFCAs); the Organized Crime Drug Enforcement Task Forces (OCDETF); the Joint Terrorism Task Force Six (JTF-6); and the El Paso Intelligence Center (EPIC). Joining these is the Border Interdiction Support Center (BOSIC) to be co-located at EPIC.¹⁸¹ The latter was just announced in July by the DHS Counter Narcotic Officer, Roger Mackin who argued the need for one more intelligence center to combat the growing threat of illegal narcotics, widespread smuggling and potential terrorist activities on the Southern Border. It appears that this proliferation of intelligence and operations centers has led to stovepiping, the very thing DHS was formed to prevent.

Homeland Security Lacks Security Clearances to Investigate Terrorists

As noted, ICE is the primary investigative arm for DHS with a specific mission to prevent terrorism. Despite this mandate, the overwhelming majority of the ICE special agents on the Southern Border do not have Top Secret security clearances. In the majority of ICE offices visited, only two to three special agents assigned to the FBI Joint Terrorism Task Force (JTTF) and the head of the office had such clearances.¹⁸² ICE management and agents alike complained that this situation interfered with investigations.

¹⁸¹ Testimony of Roger Mackin, Director of Counter Narcotics, Department of Homeland Security, U.S. House, joint hearing of the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security and the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the Committee on Government Reform, *Counternarcotics at the Department of Homeland Security: How Well Are Anti-Drug Trafficking Operations Being Supported and Coordinated?*, July 22, 2004.

¹⁸² ICE offices visited in Southern Border include Laredo, El Paso, Presidio, Tucson, Corpus Christi, Brownsville, McAllen, and San Diego.

Border Officials Do Not Receive the Intelligence They Need to Perform Their Counter-Terrorism Mission Conclusions and Recommendations

Intelligence is a critical tool in the arsenal used by our border agencies to combat potential terrorists from crossing the border. Currently, intelligence is not being used effectively on the Southern Border. CBP inspectors, Border Patrol agents and ICE special agents, complained about the utility of the intelligence information currently received. It is neither enough nor timely. Unless it is improved, they cannot be expected to accurately and efficiently “connect the dots” and identify the terrorist threat on the Southern Border in a timely manner. Specifically, we recommend:

1. Consistent with the recommendations of the 9/11 Commission, the Administration must build an integrated, interoperable entry-exit system in a timely manner that links the databases of, and allows for, complete information sharing between each pillar of our border security and immigration control system: consular offices abroad, federal law enforcement, customs and border security agencies, and transportation agencies. As part of this system, it is imperative that the following occur:

- The IDENT/IAFIS integration process should proceed expeditiously as a national priority to avoid additional Resendez and Batres-type atrocities.
- Secondary inspection databases should be made interoperable immediately, thereby moving from the cumbersome eight-database system to a single consolidated system.
- This system should also interface with IBIS as an indicator to the first line officers for further examination of travelers.

2. There must be a coordinated federal approach for a uniform set of standards for all state driver’s licenses and official identification cards to significantly reduce unauthorized persons from entering the United States by using fraudulent documents. In the interim, additional and re-occurring training for inspectors on detecting fraudulent documents should be required. Every port-of-entry should be provided a scanning system to interface with the DHS National Document Lab, whereby any questionable travel documents would be reviewed by highly trained document specialists for validity and authenticity. There must be certainty of consequences for violators apprehended with fraudulent documents.

3. When threat levels are raised, border officials must be provided greater guidance on the specific threat to the Southern Border and the additional security procedures that need to be implemented.

4. All ICE special agents and national security analytical support staff should receive Top Secret clearances. Newly trained ICE special agents should be processed for Top Secret clearances, similar to FBI and Secret Service special agents, at the completion of basic training.

Current ICE special agents in the field offices should have clearances up-graded during mandatory five-year background reviews.

5. Better coordination and cooperation is needed among border agencies to maximize intelligence driven operations and avoid duplicative intelligence functions. The Undersecretary for Border and Transportation Security should develop a strategy for intelligence collection, analysis and distribution; rationalize various collection and analytical units in the Directorate; and ensure that these units are fully coordinated with DHS' intelligence analysis officers.

6. The US-VISIT Initiative Has Serious Implications For the Southern Border

There is a critical need for additional staffing and infrastructure investments before the US-VISIT program is implemented on the Southern Borders. Border communities, along with many DHS officials at the ports-of-entry, expressed grave concerns over the implementation of this initiative. These concerns are focused on insufficient infrastructure and staffing requirements needed to support this new security initiative. The Department of Homeland Security also needs to better coordinate the implementation of US-VISIT with border communities. For it to succeed, border communities' concerns must be addressed.



US-VISIT Implementation Faces Challenges at Land Borders

US-VISIT is the system being put in place at our airports, seaports, and land borders to comply with the statutory mandates¹⁸³ to develop an automated system to track the arrival and departure of certain foreign visitors to the United States. The system is designed to capture biometric information from foreign visitors when they apply for a visa at U.S. embassies and consulates or arrive at U.S. ports-of-entry.¹⁸⁴ On arrival, visitors will have their fingerprints and photographs taken, which are compared to data in the US-VISIT database to ensure that the person who is trying to enter the country is the same person who received the visa abroad. Personal and biometric information is also compared against certain government immigration and criminal databases to determine whether the visitor should be permitted to enter the United States. When the system is fully completed, visitors will record their departure from the United States, which will enable authorities to identify visitors that have overstayed their visas.

The US-VISIT program began operations at 115 airports and 14 seaports on January 5, 2004. The program is scheduled to be implemented at the 50 busiest land border ports-of-entry on December 31, 2004.¹⁸⁵ This will include several of the ports toured by staff, including San Ysidro, Nogales, Brownsville, Laredo and El Paso. As of January 1, 2005, US-VISIT enrollment at land border ports-of-entry will be limited to secondary inspections.¹⁸⁶ In addition, Mexican citizens with Border Crossing Cards initially will not be enrolled in the program unless they are planning to stay in the United States longer than 72 hours or travel farther than 25 miles.¹⁸⁷ This is an interim solution as the DHS explores the long term solution of how to record the entry and exit of all foreigners at land ports-of-entry.¹⁸⁸ Implementation at the remaining land border ports-of-entry is scheduled for December 31, 2005.¹⁸⁹

¹⁸³ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), sec. 110 mandated that the former Immigration and Naturalization Service implement an automated entry and exit data system for the arrival and departure of every immigrant. The Visa Waiver Permanent Program Act of 2000 required the implementation of a “fully automated entry and exit control system” covering all aliens who enter the United States under the Visa Waiver Program at airports and seaports. The USA PATRIOT Act and the Enhanced Border Security and Visa Reform Act of 2002 directed that biometric identifiers be used in passports, visas and other travel documents; and in addition required all U.S. ports of entry to have equipment and software installed that will allow biometric comparison and the authentication of all travel and entry documents by October 26, 2004. U.S. Library of Congress, Congressional Research Service, *U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)*, RL32234, L. Seghetti and S. Vina, (Washington, D.C.: updated August 3, 2004), Summary.

¹⁸⁴ There has been debate on the extent to which US-VISIT will add integrity to the immigration process. For example, citizens of the 27 mostly-European and English speaking “visa waiver” countries are currently exempt from the program. Thus, under current procedures, people like British national Richard Reid, the “shoe bomber,” or French national Zacarias Moussaoui, the alleged al Qaeda operative, would not be subject to an US-VISIT inspection.

¹⁸⁵ U.S. Government Accountability Office, *Homeland Security: Risks Facing Key Border and Transportation Security Program Need to Be Addressed*, GAO-03-1083, Washington, D.C.: September 2003), 42.

¹⁸⁶ U.S. Department of Homeland Security, US-VISIT Fact Sheet: U.S. Land Borders, found at: <http://www.dhs.gov/dhspublic/display?theme=19&content=3946>.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

The challenges of implementing US-VISIT at the Southern land ports however, are far greater than their implementation at seaports or airports. First of all, there is a far higher volume of traffic at the land borders. About 80% of the 440 million inspections that take place every year occur at land ports-of-entry.¹⁹⁰

In addition, the infrastructure at the borders is quite different than at airports. Generally, land ports-of-entry also experience a constant flow of vehicles and pedestrians through ports with limited space, as opposed to seaports and airports that experience a limited number of passengers per cruise ship or airplane. Lastly, travelers including shoppers and workers on the Southern Border are generally free to decide to turn back and not wait in excess lines once they arrive at land ports. Airport and seaport travelers must present themselves for inspection upon arrival at the port.

Chambers of commerce across the Southern Border are rightly concerned that an increase in port-of-entry inspection times due to the implementation of US-VISIT will cause a decrease in commerce and a rise in unemployment in their locales. They argue that any implementation must be coordinated and timed to occur only after the completion of necessary improvements in the border ports-of-entry infrastructures.

The Department of Homeland Security has acknowledged that implementing US-VISIT at land ports will be a challenge due to a vast majority of ports being undersized, traffic circulation restrictions, aging infrastructure, officer safety issues, and processing time concerns.¹⁹¹ As already discussed in “Infrastructure” section of this Report, current infrastructure at most land ports-of-entry is already severely constrained by antiquated buildings, inadequate space and limited room for expansion.

Infrastructure, Staffing and Technology Issues Plague the Implementation of US-VISIT

Expanding US-VISIT to cover the land borders will require a significant investment in infrastructure.¹⁹² Depending on how the Administration chooses to implement the US-VISIT program, most ports-of-entry will, at the very least, require additional space in already overburdened inspection facilities in which to place US-VISIT equipment and in which to accommodate visa holders while they await enrollment.

Equally important to the “entry” component of US-VISIT is the “exit” component. Implementing the “exit” requirements of US-VISIT, especially at land borders, will be a substantial undertaking. Under nearly any conceivable implementation plan for this program, an entirely new exit infrastructure will be required at all land border crossings.

¹⁹⁰ *Op. cit.* DMIA Task Force Second Report, p. 15.

¹⁹¹ U.S. Department of Homeland Security, *US-VISIT Industry Day Briefing*, July 8, 2003, slide 22. http://www.dhs.gov/interweb/assetlibrary/USVISIT_IndustryConfBrief.pdf.

¹⁹² *Op. cit.* DMIA Task Force First Report, p. 33.

As previously discussed, most Southern land ports-of-entry have far fewer “exit” lanes than “entry” lanes. For example the San Ysidro port-of-entry has 24 northbound lanes and only eight southbound lanes. The 24 northbound lanes currently experience wait times in excess of two hours. If the same travelers coming north also have to be processed going south, through one-third the number of lanes, wait times will far exceed the time it takes to come north. Even after the San Ysidro port is re-constructed in 2011, the current plan calls for only twelve southbound lanes. The San Diego Alliance for Border Efficiency and the San Diego Regional Chamber of Commerce are very concerned that the exit requirements will create a ten mile backup, congesting highways and surface streets and negatively impacting commerce.¹⁹³ Attendees at this meeting told staff that when port inspectors conduct southbound “blitzes” in the current eight lanes, it can take up to three hours to cross the border. They stressed that rather than endure two hour lines to come north and then three hour lines to go south, many people would simply chose not to make the trip, negatively effecting the economy.

Staffing at ports-of-entry is also a severe limiting factor for the successful implementation of US-VISIT on the Southern Border. As previously discussed in “Finding 3” of this Report, staffing levels at ports-of-entry have not kept pace with current record levels of inspections, arrests and seizures as well as with new technologies continuing to be deployed. Added to this serious shortfall, the Department of Homeland Security announced a hiring freeze for CBP officers in March 2004, due to a potential \$1.2 billion budget shortfall. As a member of the Laredo business community wrote:

...this understaffing dilemma is going to kill any possibility of the border being congestion free. Since it takes two years to recruit and deploy an agent, this hiring freeze puts the last nail in the coffin as there is no possibility that US-VISIT can be implemented without causing huge delays which is absolutely contra[ry] to the implementation conditions mandated by Congress.¹⁹⁴

Implementation of US-VISIT without increasing staffing or enhancing the infrastructure will result in unreasonable delays at the border. Land border communities are deeply concerned that US-VISIT requirements will be implemented without the needed infrastructure and staffing investments, which will lead to large delays upon entry to and departure from the U.S., increased traffic congestion and pollution on both sides of the border, and a reduction in the economic vitality of the border region.¹⁹⁵

According to the Department of Homeland Security, the consequences of even small increases in the time of delays can have cascading effects. The Department of Homeland Security estimates that if the wait time at a port-of-entry such as Nogales was increased by just 9-

¹⁹³ Staff briefing with the Alliance for Border Efficiency and the San Diego Regional Chamber of Commerce, San Diego, CA, June 28, 2004.

¹⁹⁴ March 31, 2004 letter to staff from Dennis E. Nixon, President, International Bank of Commerce, Laredo, TX.

¹⁹⁵ *Op. cit.*, DMIA Task Force Second Report, p. 34-35.

seconds per vehicle, there would be a domino effect that would increase the maximum wait time to 600-700 minutes.¹⁹⁶

National security concerns require the implementation of an “entry/exit” system such as US-VISIT. But, it must be done wisely and consider the impact on the overall situation at the border.

Lack of DHS Outreach to Border Communities

To ensure that the implementation of US-VISIT is done wisely and with adequate coordination with all interested parties on the border requires outreach to the border communities. Unfortunately, the Administration has done an inadequate job reaching out to these communities to learn their concerns about the possible impact of US-VISIT implementation and engaging them in the planning process.

Commerce groups in San Diego stated that information regarding US-VISIT seems only to “trickle down” from the DHS headquarters to DHS local officials.¹⁹⁷ As a result, it is difficult for commerce groups to receive accurate information. A similar concern was expressed by the U.S. Chamber of Commerce when testifying about new border initiatives, including US-VISIT: “Our largest concern is that new policies seem to have been put in place with inadequate consideration of the need for coordination and communication with the private sector, or the real resource needs to efficiently carry out these changes.”¹⁹⁸

Several port directors along the Southern Border stated that they did not know what the full implications of US-VISIT would be on their ports. For instance, none that were asked knew what the “exit” solution would be; most believed that additional manpower would be needed, but they were not sure how many additional inspectors would be needed. Most stated that their port lacked the space to expand to make room for additional equipment and immigrant processing areas. One port director told us that some of the US-VISIT equipment had been received, but he did not know where it was going to be placed or which immigrants would be required to be entered into the system.

With three months to go before the implementation of US-VISIT at the 50 busiest land ports-of-entry, the failure to provide adequate information from DHS headquarters to frontline DHS officials endangers the implementation of the system.

¹⁹⁶ *Op. cit.* US-VISIT Industry Day Briefing, slide 26.

¹⁹⁷ Staff briefing with the Alliance for Border Efficiency and the San Diego Regional Chamber of Commerce, (San Diego, CA: June 28, 2004).

¹⁹⁸ U.S. Chamber of Commerce, *Testimony of Randel K. Johnson, Vice President for Labor, Immigration & Employee Benefits, Before the Subcommittee on Infrastructure and Border Security of the House Select Committee on Homeland Security*, House of Representatives, June 15, 2004.

The US-VISIT Initiative Has Serious Implications For the Southern Border Conclusions and Recommendations

The Administration has an important responsibility to implement an effective interoperable entry-exit system such as US-VISIT. In doing so, the Administration must prepare the border community and ports-of-entry for its implementation. We recommend that:

1. The Administration needs to be more open with the border communities and initiate an immediate outreach program to them to discuss the proposal for US-VISIT implementation and provide community leaders the opportunity to fully participate in the planning and implementation process.

2. To prepare the ports-of-entry for US-VISIT, the Administration needs to expand or restructure inspection areas; fully staff ports-of-entry; identify technology to provide a secure and expedited inspection process; and expand highways and access roads necessary to implement US-VISIT. US-VISIT budget submissions must contain specific information on these necessary expansions to ensure that technology is not implemented until the staff and infrastructure are in place to support it.

7. Federally-Owned and Tribal Lands on the Southern Border Are Not Secure

The Administration needs to better coordinate and fund border security activities on federally-owned or tribal lands that are adjacent to roughly 50% of the Southern Border. The agencies that oversee and manage federal and tribal lands are not adequately equipped to secure the U.S. border from the threat of terrorists and other criminals from gaining entry to the United States on these lands.

The Department of Homeland Security needs to take a lead role in coordinating the border enforcement activities of the federal land management agencies. The Arizona Border Control Initiative is a good first step, however, it is limited to specific sections of the Arizona Border. A similar effort needs to be made along all of the United States' land borders.



United States Border Patrol Strategy Has Pushed Illegal Immigrants Toward Remote Routes Through Federal Lands

In 1994, the Border Patrol designed and implemented a national strategy to control the entrance of illegal immigrants between the ports-of-entry. The general strategy was to deter smugglers and immigrants from entering near urban areas, where there was easy access and infrastructure to support the illegal entry. Increased enforcement around urban areas has driven the flow of smugglers and illegal immigrants to more dangerous rural routes, many of which are across federal lands.

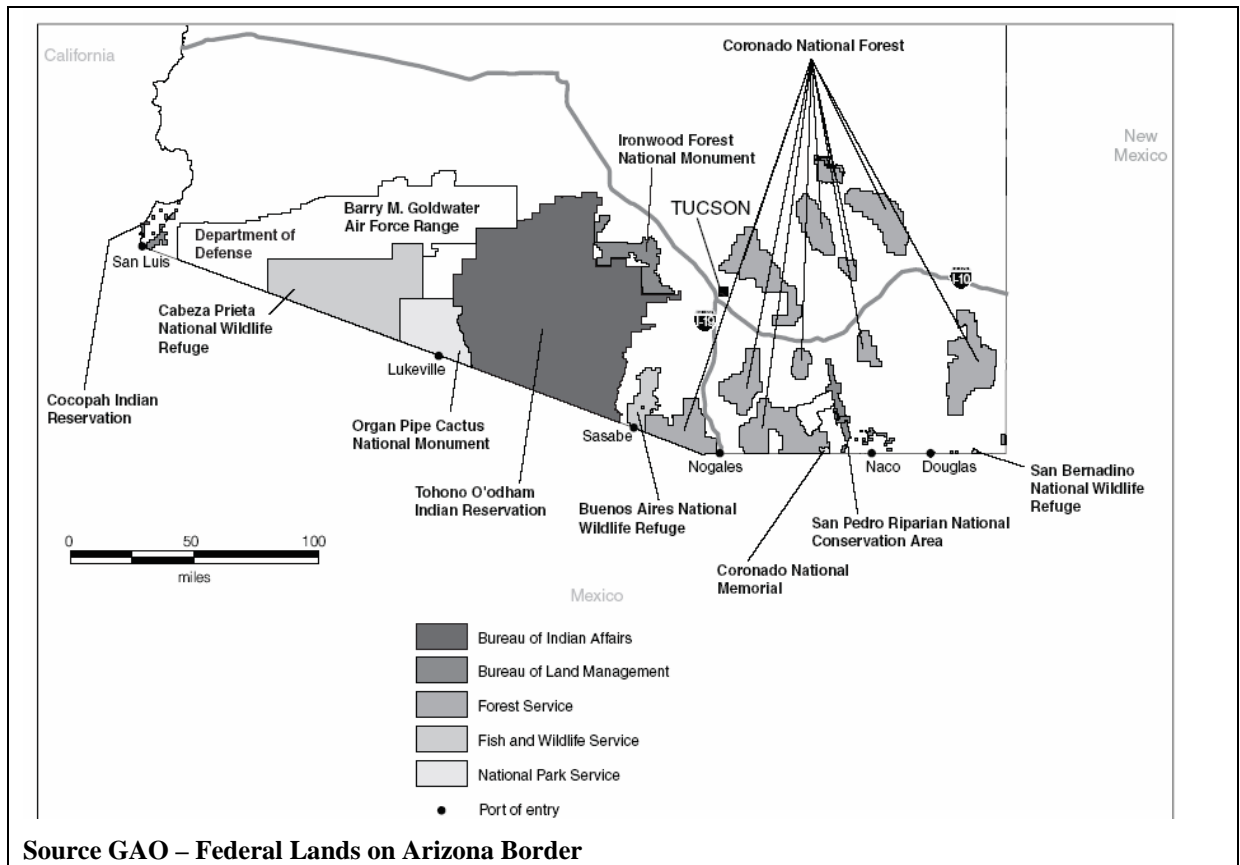
The Southern Border is approximately 1,933 miles, 50% of which is federal land.¹⁹⁹ The federal lands are those designated areas managed and preserved by Department of Interior and Department of Agriculture's "land management agencies." These agencies include: Bureau of Land Management, Fish and Wildlife Service, National Park Service, Bureau of Indian Affairs, and the Forest Service.²⁰⁰

Generally, the land management agencies are responsible for maintaining and preserving the health and diversity of the lands as well as the wildlife, cultural and historical resources. They are also charged with enforcing federal conservation laws such as the Wilderness Act and Endangered Species Act.²⁰¹ Each agency has a law enforcement component to enforce these laws as well as to protect visitors and personnel. The jurisdiction of these law enforcement components does not extend to border security and they are not budgeted for border security functions, such as constructing vehicle barriers, or detecting and tracking human and narcotic smuggling rings.

¹⁹⁹ U.S. Government Accountability Office, *Border Security: Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands*, GAO-04-590, (Washington, D.C.: June 2004), p.1.

²⁰⁰ The Department of Interior's Bureau of Land Management (BLM) is responsible for 261 million acres of federal land, primarily located in 12 Western states. BLM seeks to sustain the health, diversity, and productivity of these public lands for the use and enjoyment of present and future generations. Found at <http://www.blm.gov/nhp/index.htm>. The Department of Interior's Fish and Wildlife Service is responsible for 94 million acres of federal land which consists of 542 refuges, 200 waterfowl production areas and 50 wildlife coordination areas. *Op. cit.*, GAO-04-590, p. 9. The FWS mission is to "conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." Found at <http://www.fws.gov>. The Department of Interior's National Park Service is responsible for 78 million acres including 387 national parks, historic sites, lakeshores, seashores, recreation areas, reserves, preserves and scenic rivers and trails. NPS is responsible for the conservation and protection of the natural, cultural and historic resources of the United States. *Op. cit.*, GAO-04-590, p. 9. The Department of Interior's Bureau of Indian Affairs is responsible for 56 million acres and includes land held in trust by the United States for American Indians, Indian Tribes and Alaska Natives. There are 562 federal recognized tribes. *Ibid.* The Department of Agriculture's Forest Service is responsible for 192 million acres including 155 national forests, 20 national grasslands, and 80 other areas including research and experimental project areas. *Ibid.*

²⁰¹ *Wilderness Act*, 1964. United States Code. Vol. 16, sec. 1131; and *Endangered Species Act*, 1973. United States Code. Vol. 16, sec. 1531.



The Department of Interior has the third largest number of sworn “law enforcement officers” among federal agencies,²⁰² including law enforcement rangers, refuge officers, special agents, police officers, law enforcement officers and criminal investigative agents. However, the land management agencies have only 148 law enforcement officers assigned to federal lands on the Southern Border.²⁰³ Excluding the Bureau of Indian Affairs, these agencies have an average of one law enforcement officer assigned for approximately every 264,000 acres. In order to effectively patrol federal lands subject to the conservation laws, Department of Homeland Security agencies must coordinate with land management agencies and the Department of Interior to find mutually acceptable methods of ensuring homeland security as well as preserving the federal lands for future generations.

Tribal lands are also categorized as federal lands. These lands are held in trust by the United States through the Department of Interior for American Indians, Indian Tribes and Alaska Natives. American Indian Nations are sovereign nations and are governed by the tribal governments residing on the land. The tribal governments are comprised of tribal leaders who legislate laws covering their nation as well as determine tribal policy, such as the class of people allowed access to specific areas of the nation or where new structures are to be located. This special status of tribal lands complicates Border Patrol activities.

²⁰² Department of Interior briefing to the House Select Committee on Homeland Security, June 30, 2003.

²⁰³ *Op. cit.*, GAO-04-590, p. 28-29. Number of law enforcement officer as of September 30, 2003.

Land Management Agencies and Tribal Governments Lack the Resources to Provide Border Security

Border Patrol and Department of Interior personnel stated that it is generally accepted that Border Patrol can use the 60-foot strip of land established in 1907 to conduct its border enforcement.²⁰⁴ However, areas immediately adjacent to the 60-foot strip are subject to the protections of federal conservation laws. Therefore, the Border Patrol is able use the 60-foot strip to apprehend illegal immigrants entering the United States, but if the illegal immigrants move past the 60-foot strip, federal conservation laws prevent the Border Patrol from pursuing them. This legal framework has led to decreased enforcement in many areas due to the near-impossibility of sighting an illegal immigrant and responding to that location before the immigrant moves beyond the 60-foot strip.

Due to the decreased enforcement of these areas by Border Patrol, it has fallen on the land conservation law enforcement officers to close the security gap along their portions of the border. Despite the fact that the land conservation agencies have law enforcement components, this law enforcement mission almost always receives less attention and funding than other goals of these agencies.²⁰⁵ Furthermore, most law enforcement officers are under the direction of managers who have limited or no law enforcement experience or training. According to the Department of Interior's Inspector General's Progress Report, of the 25 recommendations for law enforcement, only 8 had been fully implemented.²⁰⁶ These unaddressed recommendations included: addressing immediate shortages impacting officer safety, enhancing the accountability of field operations, completing staffing models and methodologies, and developing senior level, full time security managers.

Department of Interior law enforcement shortages were apparent during the staff trip to Tucson. Officials from the Cabeza Prieta National Wildlife Refuge reported that there are only three full-time law enforcement officers patrolling the refuge's 860,000 acres. On Organ Pipe Cactus National Monument, there are 14 law enforcement officers patrolling 330,689 acres. The Department of Interior conducted a staffing assessment which estimated that Organ Pipe should have 21 full-time law enforcement officers to effectively enforce conservation laws. The staffing assessment did not take into account the number of law enforcement officers needed for the additional burden of border security.²⁰⁷

²⁰⁴ Presidential Proclamation of May 27, 1907. This Presidential Proclamation reserved a 60-foot wide strip of land running parallel to the international boundary for patrol and protection purposes.

²⁰⁵ Interviews with Department of Interior personnel during staff trip to Tucson, April 27, 2004.

²⁰⁶ U.S. Department of Interior, Office of Inspector General, *Progress Report: Secretary's Directives for Implementing Law Enforcement Reform in the Department of Interior*, No. 2003-I-0062, (Washington, D.C.: August 2003). Officer safety, the most immediate concern noted in this report, remained relatively unaddressed.

²⁰⁷ Interviews with Department of Interior personnel during staff trip to Tucson, April 27, 2004.

Border Patrol and Department of Interior officials both acknowledged that when the Border Patrol increased its presence in urban areas, the smuggling and illegal immigrant traffic shifted to more rural and dangerous routes, including Cabeza Prieta and Organ Pipe.

Cabeza Prieta Wildlife Refuge is approximately 860,000 acres and shares 56 miles of the international border with Mexico. It is immediately to the west of Organ Pipe Cactus National Monument. Cabeza Prieta officials stated that smugglers and illegal immigrant traffic was not a major concern as little as four years ago. Officials estimated that there are more than 1,000 illegal immigrants per night attempting to enter the United States through Cabeza Prieta. In addition, Cabeza Prieta has approximately 200 miles of illegal roads created by smugglers and illegal immigrant traffic and generally has between 20 and 25 abandoned vehicles on it. Law enforcement officers stated that they cannot keep pace with removing the abandoned vehicles before new ones are abandoned.

Similarly, Organ Pipe Cactus National Monument is being overrun by smugglers and illegal immigrants due to Border Patrol efforts in urban areas. Officials estimated that they have about 1,000 illegal immigrants attempting to gain entry into the United States at any given time. Organ Pipe is less than half the size of Cabeza Prieta and claims to have 50 miles of illegal roads created each year by illegal immigrant traffic. Organ Pipe staff stated that they spend a majority of their time on border issues including tracking and detaining illegal immigrants, towing abandoned vehicles, repairing fences and documenting environmental damage. In fiscal year 2003, Organ Pipe spent approximately \$250,000 for illegal immigrant apprehensions and related activity.²⁰⁸

Further, Department of Interior officials reported that it is not just Mexicans who are using federal lands to enter the United States illegally. They reported that illegal immigrants have been apprehended from countries including: Iran, Iraq, Pakistan, Yeman, Jordan, Lebanon, Syria, Algeria, Libya, Nigeria, Somalia, Sri Lanka, Indonesia, Malaysia, Thailand and the People's Republic of China.²⁰⁹ Similarly, the Tohono O'odham Police Department reported that an Iranian passport had been found discarded on tribal land within the past year.²¹⁰

Staff met with tribal leaders from the Tohono O'odham Nation during briefings in Washington, D.C. as well as in Arizona. The Tohono O'odham Nation shares 75 miles of the Mexico/Arizona Border and consists of 2.8 million acres. In 2003, the Tohono O'odham Police Department reported that they towed about 7,000 abandoned vehicles from illegal traffic. In addition, 517 vehicles were stolen from Tohono O'odham. Averages of 400 to 600 illegal immigrants are apprehended daily on Tohono O'odham. The 69 officer police department spends more than \$3 million a year responding to border related incidents.²¹¹

²⁰⁸ Briefing with Department of Interior law enforcement officers assigned to Organ Pipe Cactus National Monument and Cabeza Prieta Wildlife Refuge, April 27, 2004.

²⁰⁹ *Ibid.*

²¹⁰ Briefing by Tohono O'odham Police Department, April 28, 2004. Illegal Immigrants often discard identification documents when confronted by the authorities. This gives them the option of claiming to be a Mexican citizen. A Mexican citizen can be voluntarily returned to Mexico, while other immigrants may be detained and questioned by law enforcement agencies. When illegal border crossers are returned to Mexico, they often attempt illegal entry into the United States again.

²¹¹ Briefing with Tohono O'odham Police Department, April 28, 2004.

Better Coordination is Needed to Secure the Southern Border

Department of Interior and tribal leaders told staff that better coordination and communication needs to occur between the Department of Homeland Security agencies and them. The GAO has made similar findings.²¹²

As GAO found, Border Patrol did not coordinate with land management agencies prior to instituting their strategic plan to strengthen security. Therefore, the land management agencies could not prepare by hiring more law enforcement, procuring vehicle barriers or other infrastructure, or by entering into a memorandum of agreement with the Border Patrol to allow for greater access to federal land.

Once the federal lands began feeling the impact, they attempted to obtain funding to overcome the initial lack of coordination. In 2003, Organ Pipe Cactus National Monument obtained the authorization and funding to have a vehicle barrier constructed along the 30 miles border it shares with Mexico. This funding is for approximately \$17 million over three years (fiscal years 2003-2005). According to Department of Interior officials, this funding was nearly removed from Interior's budget by the Office of Management & Budget in fiscal year 2005.²¹³ The rationale was that vehicle barrier funding more properly falls under the Department Homeland Security. Similarly, GAO reported:

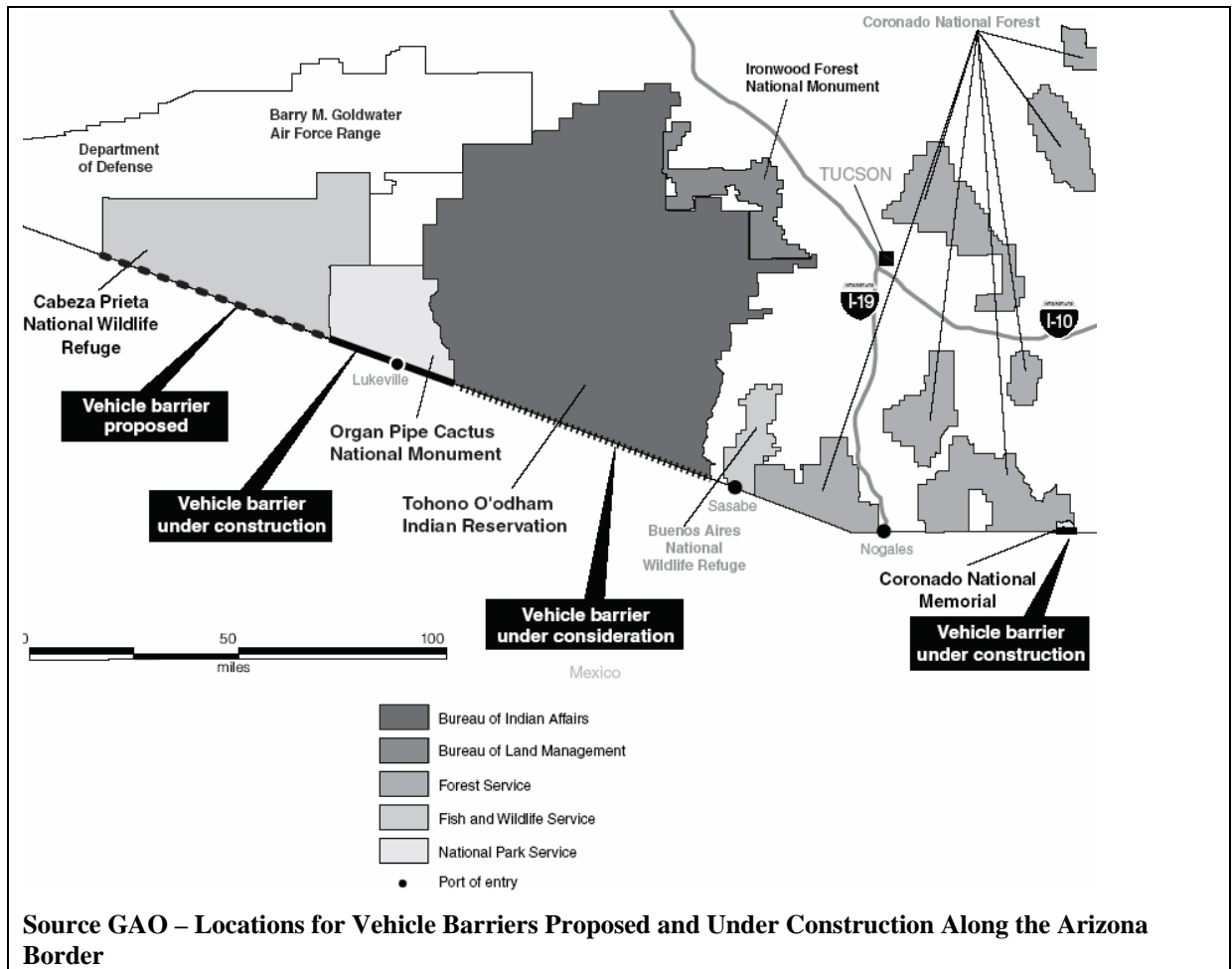
OMB representatives said that some of the funding land management agencies have proposed has not been consistent with their missions. ...[W]hen considering agency requests ... they focus on each agency's mission and how requests relate to mission. ...[T]hey view the construction of vehicle barriers along federal properties to be primarily in keeping with the Border Patrol's security mission and generally not land management agencies' mission.²¹⁴

An official from Cabeza Prieta Wildlife Refuge told staff that they had requested \$24 million to construct vehicle barriers. This request was made after Organ Pipe's barriers had been approved. However, consistent with OMB's request/mission analysis, Cabeza Prieta's request was denied. According to Department of Interior officials, once the Organ Pipe barriers are completed, illegal immigrant vehicle traffic will simply shift to adjacent Cabeza Prieta.

²¹² *Op. cit.*, GAO-04-590.

²¹³ Briefing with Department of Interior law enforcement officers assigned to Organ Pipe Cactus National Monument, April 27, 2004.

²¹⁴ *Op. cit.*, GAO-04-590, p. 35.



The Tohono O’odham Tribal Council stated that there is a lack of “Nation to Nation” consultation between the United States Government and its agencies and the Tohono O’odham Nation. The Tohono O’odham Tribal Council representatives reported that they are not consulted on homeland security plans and that this strains the relationship between their Nation and the DHS agencies. This puts them in the awkward position of reacting to policy decisions handed down by the DHS, as opposed to proactively working together. The Department of Justice has a policy that recognizes American Indian sovereignty and establishes guidelines for having government-to-government relations with Indian Nations.²¹⁵ According to the Tohono O’odham Tribal Council Representatives, the Department of Homeland Security does not adhere to this policy, nor has it drafted a similar policy that respects their sovereign nation status.

The Tohono O’odham Tribal Council also noted the problems caused by the lack of direct funding for Department of Homeland Security initiatives and grants. According to the Tribal Council, under current DHS funding rules, states may provide funding to Indian Nations. However, there is no mechanism for an Indian Nation, a sovereign government, to receive direct funding.

²¹⁵ Department Of Justice Policy On Indian Sovereignty And Government-To-Government Relations With Indian Tribes, available at <http://www.usdoj.gov/otj/sovtrb.htm>.

Staff was informed that the Tohono O’odham Nation attempted to get DHS funding for border related security expenses from the State of Arizona. The State told the Tribal Council Chairwoman that money is passed from the state to the county, and that she would have to apply with the county. The Chairwoman made inquiries with Pima County and was initially told that in order to receive DHS funding, the Tohono O’odham Nation would have to waive its sovereign nation status; which the Nation refused. Since that time, the Chairwoman was told Tohono O’odham would be receiving \$66,000 in DHS funding, without waiving its sovereign nation status. The Nation maintains that the process of obtaining funding needs to be streamlined for Indian Nations and that \$66,000 is insufficient to offset costs that the Nation has already incurred.²¹⁶

Coordination Between the Department of Homeland Security and the Department of Interior Has Begun, But it is Limited to Arizona

Coordination of assets, resources and missions has taken place in some sections of the Southern Border. In March 2004, Department of Homeland Security Under Secretary Asa Hutchinson announced the “Arizona Border Control (ABC) Initiative” as a multi-agency approach to curtail illegal immigration along the Arizona Border.²¹⁷ Under the ABC Initiative, Border Patrol Tucson Sector Chief David Aguilar was named the “Chief Integrator,” and was responsible for bringing all of the interested agency representatives and law enforcement officials together for the purpose of formulating a coherent plan to curb illegal immigration. Staff were briefed by participating agencies including the Border Patrol, Immigration & Customs Enforcement (ICE), the Detention & Removal Office of ICE, the Air & Marine Office of ICE, the Intelligence Task Force & Reporting Center, the Transportation Security Agency, the National Park Service, Customs & Border Protection, the Department of Defense, and the High Intensity Drug Trafficking Area Task Force.²¹⁸

Although all of the initial goals and deadlines of the ABC Initiative have not been fulfilled, credit must be given to the Department of Homeland Security in recognizing the problem of illegal immigration over the Arizona Border and that the solution should be forged with the input of all of the affected agencies working together toward mutually acceptable goals.²¹⁹

²¹⁶ Additionally, there was recently a \$100 million county bond issue for interoperable radios. The Tohono O’odham Nation has been told that they will be receiving \$26,000 from this bond issue. The Environmental Protection Agency further informed the Nation that they would be awarding them a \$50,000 grant to determine if a sustainable economy could be created by recycling trash left by illegal immigrants. Neither of these grants was funded by DHS and neither had been received as of the staff trip.

²¹⁷ DHS, Press Office, “Department of Homeland Security Announces Arizona Border Control Initiative Multi-Agency Effort, Additional Resources Added to Stem Illegal Immigration,” March 16, 2004.

²¹⁸ Staff trip to Tucson, April 26, 2004.

²¹⁹ For example, staff were briefed that interior repatriation was critical to the success of ABC. An agreement with the Mexican government on interior repatriation was reached; however, the program did not begin until July 2004, instead of the June 1, 2004 beginning of ABC. Additionally, illegal immigrants can only be repatriated to the interior of Mexico if they consent. DHS, Press Office, “DHS To Begin Pilot Program For Voluntary Interior Repatriation of Mexican Nationals,” June 29, 2004. Another example is in the number of additional Border Patrol Agents that would be permanently or temporarily assigned to the Tucson Sector of the Border Patrol. According to DHS, 60 agents would be temporarily assigned and 200 would be permanently

However, the ABC initiative is limited to portions of the Arizona Border, whereas coordination is needed along the entire Southern Border. This initiative is also limited in duration, starting on June 1, 2004 and ending on September 30, 2004.²²⁰ In addition, Border Patrol agents said that increased enforcement in Arizona would likely cause illegal immigrants to attempt to cross in New Mexico, where most of the border also runs along federal land. In fact, there is already evidence to suggest that the ABC Initiative is causing a shift to neighboring rural areas. As of June 2004, the Deming, New Mexico Border Patrol Station recorded a 15% increase in apprehensions over last year and the Lordsburg, New Mexico Border Patrol Station experienced a 141% increase.²²¹

assigned. See DHS, Press Office "Arizona Border Control Initiative," March 16, 2004. Under Secretary Hutchinson acknowledged the temporary agents had reported for duty in Arizona, however, the permanent agents had not. In fact, only 159 of the 200 positions had agents selected to fill them. See Susan Carroll and Daniel González, "Border Control Initiative Run Into Troubles," *Tucson Citizen*, June 3, 2004. Finally, unmanned aerial vehicles were set to begin patrolling the skies over the border on June 1, 2004. Instead, due to agents lacking the training to fly the UAVs, the first flights were delayed until June 30, 2004. *Ibid.*

²²⁰ According to information obtained from CBP, Congressional Affairs Office on August 26, 2004, certain components of the ABC Initiative will cease on September 30, 2004, but other components will likely continue into the new fiscal year.

²²¹ Leslie Hoffman, "Immigrant Dies Trying to Cross New Mexico Desert," *Associated Press*, June 22, 2004.

Federally-Owned and Tribal Lands on the Southern Border Are Not Secure Conclusions & Recommendations

It is critical that the Department of Homeland Security coordinate plans and carry out missions with Department of Interior, Department of Agriculture and Tribal Nations. To improve security on federal and tribal lands, the Administration should:

1. Require the Department of Homeland Security to produce a comprehensive border security plan that takes into account the needs and missions of each agency that has a stake in border security, including land management agencies and tribal nations. See Finding 10, discussing the recommendation for a comprehensive plan.
2. Prior to the comprehensive border security plan being drafted, implement a mechanism to allow the Department of Interior, including tribal nations, to receive Department of Homeland Security funding for border security related projects. After the comprehensive plan is implemented, DHS entities should properly be responsible for directly funding border related projects on federal lands.
3. Prior to the comprehensive border security plan being drafted, the Department of Homeland Security should designate coordinators for the Northern and Southern Borders. These coordinators would be responsible for coordinating all federal security activities along the border, including both at and between the land border ports-of-entry. The Northern and Southern Border Coordinator positions would have the effect of expanding the ABC Initiative to the entire Northern and Southern Borders. These positions should be continued after the comprehensive plan is implemented to continue to monitor and address the changing circumstances and needs of each participating agency.
4. Create an Office of Tribal Security within the Department of Homeland Security, reporting directly to the Secretary, for coordinating DHS efforts with Sovereign Indian Nations. Along the Southern Border, there are 32 separate Indian Nations adjoining or within 50 miles of the border. Along the Northern Border, there are 20 such Nations.

8. DHS' Detention and Removal Operation is Failing

Despite a number of border security initiatives aimed at increasing arrests and detentions, due to poor planning, the Detention and Removal Operation has not been adequately funded. The failure to support this critical aspect of an immigration enforcement system has resulted in the voluntary return to Mexico of hundreds of thousands of apprehended illegal immigrants and the release within the United States of tens of thousands on bond, 80 to 90% of whom fail to appear for court and deportation proceedings.



DRO Resources Have Not Kept Pace with Increased Apprehensions

The Detention and Removal Operation (DRO), a component of the DHS' Immigration and Customs Enforcement (ICE), has a critical mission in securing our Nation's borders. It is solely responsible for detaining and monitoring the cases of illegal immigrants in removal proceedings. Its general mission is to provide custody management to support the removal of illegal immigrants through the immigration courts and to ultimately enforce their departure from the United States.

To fulfill this mission the DRO has a multitude of critical responsibilities from the time an illegal immigrant is apprehended to eventual deportation. It includes transporting apprehended illegal immigrants from the interdiction agencies, primarily Border Patrol, to DRO facilities where they are fed, housed, and given medical care while in detention. Once there, the DRO is responsible for processing the illegal immigrant through immigration courts including any appeals. If ordered released, DRO handles that process. Likewise, if the illegal immigrant is ordered deported or otherwise returned to his or her country of nationality, DRO is responsible for securing the appropriate legal travel documents from the foreign governments and for transporting the person back to that country, at U.S. government expense.

Historically, DHS and its predecessors have mainly focused resources toward the apprehension side of the border equation with little, if any, increase in resources to other key border components, especially the detention and removal process. For example, in 1998 the DRO area of responsibility in Brownsville, Texas, had 300 Border Patrol agents to make apprehensions, today there are 1,700 agents. Despite this large build up, DRO has added no new bed space or manpower at the Port Isabel Service Facility.²²² Likewise, the recent Arizona Border Control (ABC) initiative significantly increased Border Patrol assets to that specific area of the Arizona border with minimal addition to the DRO budget or staff.

Approximately one million illegal immigrants were apprehended last year, and it is predicted that, more than 1.2 million will be apprehended in fiscal year 2004.²²³ The DRO, however, is only capable of detaining approximately 200,000 illegal immigrants per year. In fiscal year 2004, DRO facilities were funded for 19,444 beds for illegal immigrants; the current daily average is 22,500.²²⁴ To fund these additional 3,056 beds at a \$90 per bed daily average, the DRO facilities are delaying purchases of vehicles, cutting training, and cutting costs in all other means possible.

In the first seven months of fiscal year 2004, the U.S. Border Patrol apprehended 660,538 illegal immigrants on the Southern Border; a 31% increase for the same period in fiscal year 2003.²²⁵ It has been reported that this significant increase in apprehensions has

²²² ICE DRO briefing to staff at Port Isabel Service Center, Port Isabel, Texas. One additional dormitory has been planned for fiscal year 2005.

²²³ CBP Congressional Affairs provided Border Patrol apprehension statistics to the staff.

²²⁴ ICE Congressional Affairs provided DRO statistics to staff as of July 2004.

²²⁵ *Ibid.*

overwhelmed DRO facilities and their resources for housing, medical attention, feeding, court proceedings and removal.

The fiscal year 2005, DRO budget does not present much relief as only an additional 117 beds are proposed. Even worse, in fiscal year 2005, the total number of beds could be significantly reduced pending a breached bond reduction issue currently under negotiations with DRO. On August 26, 2004, Victor Cerda, Director of the DRO briefed staff of the Select Committee on Homeland Security on the possible 1,400 bed reduction, \$46 million loss of revenue in fiscal year 2005, pending negotiations and legal proceedings with bond surety companies for monies owed.

Releases Caused by DRO Shortfalls Compromise Security

Because DRO resources have not kept pace with increased apprehensions of illegal immigrants, DRO has become the weakest link in an already tenuous chain of border enforcement. Lacking sufficient detention space or funds to pay for detention in other facilities, apprehending agencies have been forced to return hundreds of thousands of illegal immigrants, who claim to be Mexican nationals, to Mexico under a “voluntary return” provision.

There is little consequence to those who “voluntarily return.” They usually spend just a few hours in either a holding cell or a larger DRO facility until their paperwork is finished and transportation can be arranged to return them to the nearest port-of-entry where they are released to cross back to Mexico. Border Patrol agents advised that sometimes they apprehend and release the same person a number of times in the same week or even the same day.

Border officials report that illegal immigrants have learned that as long as there is no violence related to their illegal entry or capture, they will usually not be prosecuted. Depending upon the resources of the local U.S. Attorney and DRO facilities, an illegal immigrant may be apprehended as many as 15 times before being prosecuted. Some Border Patrol agents confided that they had been told there was no limit on the number of apprehensions. As a consequence, there is no disincentive to the illegal immigrant to keep trying to cross the border since the process has evolved into a game of “catch and release.”

Insufficient resources and detention space have similar, but more dangerous, security consequences in cases dealing with OTMs caught crossing the Southern Border. Unlike with Mexican apprehensions, which are released back to Mexico, OTMs will not be accepted by Mexican authorities. As a result, tens of thousands of OTMs are directly released into U.S. communities on a personal recognizance bond, many times with no local forwarding address and only with an order to appear before an immigration court at some future date. Under Secretary Asa Hutchinson recently acknowledged that over 90% of those released never appear for their appointed court appearance or final deportation.²²⁶

²²⁶ Media Roundtable with Under Secretary Asa Hutchinson on Immigration Policy Changes, August 10, 2004. Available at <http://www.dhs.gov/dhspublic/>.

For example, at the Port Isabel, Texas, DRO facility, which serves Brownsville Border Patrol, the daily log book reflected 101 calls for OTMs detention. Of these, 72 OTMs were refused that day; an OTM acceptance rate of approximately 30%. Management advised that on average approximately 40 OTMs a day were rejected for lack of space at this facility alone. In Brownsville, the Border Patrol reported that out of 14,000 OTMs apprehended through May of fiscal year 2004, 9,500 were released due to lack of DRO capacity.

The release of such a high percentage of OTMs into the interior of the United States is a significant security gap. DRO and/or apprehending authorities do not always know who they are actually releasing because many illegal immigrants do not carry identification or use aliases or spelling variations of their names. United States databases including those of the DRO do not interface with foreign country databases for criminal checks for crimes committed by the illegal immigrant in their home country.²²⁷ Staff learned that a number of Federal judges along the border have repeatedly expressed their concerns with this situation to ICE officials.²²⁸

Border Patrol agents have uncovered evidence that organized smuggling rings have capitalized on this security gap and are using it to recruit and smuggle potential Brazilian immigrants into the United States. Coyotes have advertised this loophole in Brazil and are telling the Brazilians to bring proof of Brazilian nationality so U.S. officials will treat them as OTMs, not Mexicans. The coyotes are also instructing the Brazilians that once they cross the Rio Grande, they should immediately seek out and surrender to Border Patrol agents so that they can hasten the release process.²²⁹

Even if the illegal immigrant is from a country of interest, typically defined as those countries recognized by the State Department as sponsoring terrorism (for example Syria and Iran) this alone will not guarantee detention. By statute, DRO is only required to detain illegal immigrants who are aggravated felons, known terrorists, associates of terrorists, or persons suspected of certain other criminal violations.²³⁰

DRO facilities will often only detain immigrants from a COI if the apprehending agency advises DRO that they have made a determination that the individual meets one of the statutory requirements for mandatory detention referenced in the prior paragraph. DRO officials at some facilities stated that they or the apprehending agency will contact their local Joint Terrorism Task Force (JTTF) to offer them an opportunity to interview the COI detainee. In short, there is no statutory requirement to detain illegal immigrants from COIs and some are being released into the United States.

²²⁷ Foreign country databases are not interoperable with U.S. law enforcement databases. The DRO databases do interface with Interpol for international lookouts.

²²⁸ ICE management briefing in Corpus Christi, Texas, reported this was a repeated concern of federal judges in the Corpus Christi, Texas, judicial district.

²²⁹ Staff interview.

²³⁰ United States Code. Vol. 8, sec. 1101 (a) (43).

DRO is Ineffective at Removing Nondetained Aliens

Of additional concern is a February 2003, Department of Justice Office of the Inspector General report summarizing failures to remove nondetained persons from the United States including those from states that sponsor terrorism.²³¹ The report found that only 13% of nondetained aliens with final removal orders were actually removed from the country. Even more troubling is the report is finding that only 6% of nondetained aliens with final removal orders from countries identified by the U.S. Department of State as state sponsors of terrorism had been removed from the United States.

A recent arrest illustrates this possible terrorist concern. On July 20, 2004, Kamran Akhtar, aka Kamran Shaikh, a Pakistani foreign national, was stopped and questioned when a police officer witnessed him videotaping downtown banks in Charlotte, North Carolina. Akhtar gave evasive and false statements concerning his actions and citizenship and was subsequently arrested. A review of Akhtar's videotape revealed footage of the Texas State Capitol building, the governor's mansion, and downtown Austin businesses as well as structures in Houston, Dallas, Atlanta and New Orleans. Akhtar, a nondetained alien, who claimed he entered the United States through Mexico, had been under a final immigration removal order since 1998.²³²

Foreign Governments Unreasonably Delay or Limit Repatriation

DRO bed space shortages have been exacerbated by the refusal of some foreign countries to take their nationals back. Some foreign governments refuse to accept their nationals; others will only take a limited number of them. Vietnam, China, India, Jamaica, Iraq, Iran, Poland, Nigeria, former Soviet Republics, Laos, Eritrea, and Nigeria, for example, have refused or otherwise delayed issuing travel documents for the return of their nationals. El Salvador will only accept ten of their citizens a month to be returned from the DRO. Consequently, 141 El Salvadorians were found occupying needed bed space at the time of our visit to the Port Isabel facility alone.²³³

Innovative Programs Must be Implemented

Also contributing to the shortage of DRO bed spaces are the number of federal, state, and local prisoners who have completed their sentences but are being housed in DRO facilities awaiting the conclusion of their deportation proceedings. DRO officials recommended to staff that the deportation proceedings should begin while the convict is serving his or her prison term in a non-DRO facility so that the illegal immigrant would immediately be deported upon completion of their sentence and not occupy limited DRO bed space.

²³¹ U.S. Department of Justice Office of the Inspector General, I-2003-004, "The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders," February 2003, p ii-iii.

²³² Affidavit from ICE Special Agent on arrest of Kamran Shaikh, August 5, 2004.

²³³ Staff field visit at Port Isabel, Texas, DRO detention facility on June 8, 2004.

DRO has plans in place to accomplish this objective, but this effort needs more funding and staffing. To accommodate this and other programs, there is a critical need for additional DOJ immigration judges who have to adjudicate the immigration and deportation petitions.

DRO officials have also initiated a program of using “home-monitoring” as an alternative to incarceration for some of the illegal immigrants determined to be less likely to flee and not appear for their deportation hearing. Immigrants in this program wear an electronic monitoring device around their ankle, which is capable of reporting their location. DRO officials reported that it has been relatively successful, is more cost effective than detention, and could be expanded if additional funding were provided.

In an attempt to break the “catch and release” cycle, DHS has instituted a plan to repatriate illegal immigrants from Mexico to the interior of that country instead of directly on the border. The theory is that this will make it more difficult for them to again try to cross the border since they will have to pay for their transportation back to the border from the interior location.

This has been a controversial proposal that was initially opposed by the Mexican government when tried as part of the ABC initiative. Subsequently, a compromise was arranged where it is totally voluntary. Only those illegal Mexican immigrants who want to be transported back to the interior of their country will be sent there. To date, only 7,584 illegal Mexican immigrants of the 316,293 apprehended in the ABC initiative have volunteered to be repatriated to the interior.²³⁴ The rest are still being released on the border to repeat the cycle of “catch and release.”

²³⁴ CBP Congressional Affairs provided ABC initiative statistics as of August 25, 2004.

DHS' Detention and Removal Operation is Failing Conclusions and Recommendations

The “catch and release” cycle must be broken. For the United States to have a coherent border security strategy, there must be some consequence for trying to illegally enter our country. Due to increased apprehensions and security concerns, detention facilities need to be built or expanded to meet the need for additional bed space. Penalties need to be enhanced and resources need to be provided to the Department of Justice to prosecute and imprison those illegal immigrants who routinely flaunt our immigration laws by repeatedly crossing the borders illegally. Specifically we recommend:

1. A comprehensive assessment needs to be completed to determine the amount of additional detention space and resources required to detain all persons presenting a possible threat to homeland security. In conducting this assessment, it is important to assess the needs of all of the agencies involved in the detention and removal operation, including immigration judges, prosecutors, detention guards, deportation and removal specialists and support staff.

2. In the interim, DRO should immediately be funded to adequately support the current average daily bed occupancy rate of 22,500 from the 19,444 funded levels. This will allow the DRO to continue to fund needed infrastructure improvements such as fleet repair, equipment needs, and training, routinely cut by bed space overages. This will also provide for additional apprehensions reasonably expected to result from ongoing enforcement actions such as the ABC initiative.

3. DHS needs to increase support for innovative programs that can reduce the current shortage of DRO bed space. This includes, but is not limited to, current programs to alternative means of detention such as electronic monitoring, telephonic voice recognition programs for those on bond, and conducting deportation proceedings prior to prisoners' release from federal, state, and local prisons.

4. The Administration needs to encourage other countries to expedite their acceptance of their nationals caught illegally entering the United States. This should be a priority for negotiations on foreign assistance and trade agreements with these countries. If countries will not take back their nationals caught illegally entering our country, then the State Department should decline to issue visas for their nationals seeking to enter our country.

5. DHS should consider placing Detention and Removal Operations within Customs and Border Protection. This allows the primary apprehension agency, Border Patrol, and the detention agency, Detention and Removal Operations, to better coordinate apprehension resources and initiatives with detention resources.

9. The DHS “One Face At The Border” Initiative Faces Serious Implementation Challenges

The “One Face at the Border” initiative was intended to streamline inspections on the border, yet, the implementation of this initiative has led to a dilution of expertise among inspectors that could result in diminished security.



The Customs and Border Protection (CBP) agency within the Department of Homeland Security (DHS) has implemented an initiative known as “One Face at the Border.” Under it, a single CBP officer is now responsible for interacting with the traveling public, processing their applications for entry, inspecting identification documents, and facilitating the entry of legitimate goods. International travelers no longer have to “run the gauntlet” through three different agency’s inspection processes.²³⁵ The merger of these agencies and their responsibilities was also intended to streamline their leadership into one chain of command, make the port-of-entry inspection process more efficient, and to show the traveling public that the agencies had merged through a single uniform, patches, and other symbols.

The “One Face” merger, however, has led to potential inefficiencies and security risks at the border, including the elimination of critical training for new CBP officers that will create serious gaps in critical port-of-entry assignments that necessitate specialized skills.

Critical Skills No Longer Being Taught to New Inspectors

With the merger, a new training curriculum was created for the new CBP officer. A comparison of the new curriculum with the former training reveals the elimination of two critical areas of training. Notably missing from the curriculum for new CBP officers is Spanish language training. Passing a Spanish proficiency course was a job requirement for legacy Immigration and Naturalization Service (L-INS) inspectors. However, legacy U.S. Customs Service (L-USCS) inspectors were not required to speak or understand Spanish, and therefore, it was not a part of their training. When the training programs merged under CBP, the Spanish courses were among the courses to be cut.

Because language training is not compulsory, new CBP officers are not required to demonstrate a proficiency in Spanish prior to being hired or being placed at a port-of-entry. The Minority staff was repeatedly warned that new CBP officers will not be effective if they are assigned to the Southern Border without Spanish language skills.²³⁶ Experienced inspectors advised that the ability of frontline CBP officers to speak Spanish is critical to determining citizenship; as well as detecting fraud and misrepresentations made by immigrants intent on gaining access to the United States for employment, criminal or terrorist purposes. Given that in fiscal year 2003, port inspectors stopped 13,235 immigrants falsely claiming to be U.S. citizens, the loss of this critical skill could have devastating effects.²³⁷ Moreover, in 2003, inspectors at these primary assignments interacted with over 242 million people on the Southern Border and in 98% of the cases cleared the travelers to cross into the U.S. without being referred for secondary inspection. The lack of a Spanish speaking requirement for a position solely

²³⁵ U.S. Department of Homeland Security, CBP, *Written Statement of Commissioner Robert C. Bonner before the Trade Subcommittee of the House Ways and Means Committee*, U.S. House of Representatives, June 15, 2004.

²³⁶ Legacy INS inspectors who had taken the five week Spanish Immersion Course communicated to staff that it helped them perform their job as new officers. Some inspectors stated that a 16 week course, similar to the U.S. Border Patrol’s Spanish course, would have been even more helpful.

²³⁷ Data obtained from facsimile provided by CBP Office of Congressional Affairs, August 16, 2004.

responsible for making the determination on admissibility into the U.S. for this volume of immigrants is a security risk that DHS cannot overlook.

According to experienced inspectors at various Southern ports-of-entry, many of the international travelers who attempt to cross the border speak only Spanish. They explained that knowledge of Spanish accents among Central and South American countries is critical to being able to determine the veracity of nationality claims. An experienced inspector can often determine the home country of a Central and South American traveler based on accent. For instance, immigrants from Spanish-speaking countries other than Mexico will claim to be Mexican and attempt to falsely use a genuine Border Crossing Card (BCC) or Laser Visa Card to enter the United States. In a case where an immigrant is using a genuine BCC but his or her accent indicates a country of origin other than Mexico, an experienced inspector is able to engage the immigrant in conversation in an attempt to find inconsistencies or a lack of knowledge of basic facts about Mexico.

Also removed from the merged curriculum is the L-INS adjudication training. Despite the creation of U.S. Citizenship and Immigration Services, some adjudications are still performed exclusively at ports-of-entry. For example, ports still adjudicate I-94 travel documents (which are used to travel more than 25 miles from the border or for more than 72 hours).²³⁸ In addition, when a person is approved for permanent residency in the United States, they arrive at ports-of-entry with a “visa package.” Inspectors stated these adjudications are complicated, in large part, due to the number of different visa types issued by the U.S. government. Several L-INS inspectors stated that these port-of-entry adjudication functions are no longer being taught in the new CBP officer training. Further, they were unaware of plans to cover this topic in an advanced training class. They are concerned that when current L-INS inspectors retire or quit, no one at ports-of-entry will have the proper skills to perform these adjudications.

Merger and Consolidation of Training Programs Has Diluted Skills of New CBP Officers

Part of the reason for cutting the language and other training from the new curriculum of CBP officers is because DHS expects the new CBP officer to be versed in both L-INS and L-USCS rules, regulations, and procedures. In essence, they are being trained to perform both functions. New CBP officers are now required to more than double their knowledge of laws, regulations, policies, and procedures directly relating to their mission, and thus training programs have increased from 118 hours to 258 hours.²³⁹

²³⁸ On August 10, 2004, DHS Under Secretary Asa Hutchinson announced that Mexicans with a Border Crossing Card would be permitted to travel in the United States for up to 30 days. This announcement did not change the 25 mile limitation. It is unclear when this change would go into effect, only that it would begin “prior to the implementation of US-VISIT at the 50 busiest land border ports-of-entry, scheduled to start on Dec. 31, 2004.” U.S. Department of Homeland Security, Press Office, “DHS Announces Expanded Border Control Plans,” August 10, 2004.

²³⁹ Based on documentation provided by DHS, legacy USCS Inspector training was 51 days in length, totaling 403 training hours. According to the syllabus, about 118 hours of the 403 total training hours related directly to processing and trade facilitation. The remainder of hours included firearms training, less-than-lethal methods of

Many non-supervisory inspectors acknowledged that it was unrealistic to require inspectors to be cross-trained for L-INS and L-USCS procedures, policies, regulations, and criminal violations. These inspectors stated that it is barely possible to know all of the intricacies of either agency's jurisdictions, much less both. For instance, there are over 400 Customs laws and trade regulations that have to be considered by inspectors at ports-of-entry.²⁴⁰ In addition, extensive cross-training could water-down the new CBP agent's level of knowledge on an array of topics including: passenger processing, trade facilitation, immigration status, asylum seekers, agriculture processing, crew members, types of documents, and grounds of admissibility. Instead of each legacy agency's inspectors knowing a great deal about a smaller subject matter, under "One Face at the Border," experienced inspectors warned, new CBP inspectors would know a smaller amount about a large subject matter – they would turn into generalists.

It appears that DHS has already reached the same conclusion concerning the agriculture component of the merger. The February 12, 2004 policy that "One face at the border' initiative, ... will cross-train officers to perform three formerly separate inspections - immigration, customs and agriculture" was changed prior to July 13, 2004, because DHS recognized that it was impossible for new CBP officers to also know agricultural laws and regulations in addition to customs and immigration specialties.²⁴¹ On that date, the Department announced that it had created two new positions: "CBP Officer" and "CBP Agriculture Specialist."²⁴² The CBP Agriculture Specialist would take the place of L-APHIS inspectors; and the CBP Officer would replace only the L-USCS and L-INS inspectors. This decision is a proper, although belated, recognition by DHS management that the agriculture and other CBP functions require a level of specialization and skill that could not be merged. Based upon warnings received by experienced field inspectors, the decision to merge L-USCS and L-INS functions may have to be revisited.

control, physical conditioning, and legal training. When the two training programs were merged to form a CBP Officer training program, the length of training was increased to about 71 days, totaling about 568 hours. Processing and trade facilitation courses relating to legacy USCS, legacy INS and legacy APHIS now comprise approximately 258 hours. See CBP Integrated Training Program, Syllabus SH-102, April 2004.

²⁴⁰ CRS, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, RL31549, p. 11. The concern that inspectors' ability to learn and become experienced in vast amounts of complex areas is also noted in Congressional Research Service, *Border Security: Inspections Practices, Policies, and Issues*, p. 49-50.

²⁴¹ DHS, *Written Testimony of Secretary Tom Ridge, before the House Select Committee on Homeland Security, U.S. House of Representatives*, February 12, 2004.

²⁴² See, U.S. Department of Homeland Security Customs and Border Protection Press Office, "U.S. Customs and Border Protection Graduates First Class of CBP Agriculture Specialists," July 13, 2004.



Agriculture Secondary Inspection Station, Mariposa port-of-entry, Arizona.

Frontline inspectors advised that despite the merged curriculum and position description, a legacy-agency distinction is still made for each inspector at the ports-of-entry. For example, CBP_i designates a CBP officer from L-INS; CBP_a designates a CBP officer from L-APHIS; CBP_c designates a CBP officer from L-USCS; and CBP_o designates a newly commissioned CBP officer. Each officer's designation dictates the assignment that he or she is able to work: For instance, CBP_i personnel may be assigned to work in passenger secondary, whereas CBP_c personnel will be placed in secondary cargo lanes. Therefore, the current effect of these agencies merging was, in large part, in name only.

In fact, during the staff trip to the San Diego ports-of-entry, it appeared that port officials recognized the inability of new CBP officers (CBP_o) to work at every position. New CBP officers at the San Ysidro and Otay Mesa ports-of-entry were limited to working only in a primary vehicle/pedestrian inspection lane or the "Customs secondary areas." They were not permitted to work positions at the cargo lanes or in the "INS secondary areas."

Non-supervisory officers explained that the secondary inspection area is unofficially split up between a "Customs Area" and an "INS Area." Although the Port Director did not acknowledge this separation, several officers in these areas readily explained the distinction. They stated that when a vehicle comes through primary, the primary inspector either has a suspicion that the vehicle contains contraband or that there is a problem with the occupant's citizenship. If the vehicle is being sent to secondary due to contraband, the primary inspector

places a folded slip of paper under the windshield wiper. If the vehicle is suspected of citizenship violations, the slip of paper is folded the opposite way. At the entrance to secondary, an inspector will note the direction of the fold in the slip of paper and will direct the vehicle to either the L-USCS or L-INS inspection area.

This division of responsibilities is an implicit admission that there still remains a need for multiple agencies and multiple missions with multiple skill sets existing under the name of CBP. The creation of the new “generalist” CBP officer fails to recognize the need for specialized skill sets. Combined with the loss of the language skills, it raises a number of security and efficiency concerns which will only be exacerbated as attrition takes its toll on CBP with the loss of the expertise of legacy officers.

If the merged curriculum has not adequately prepared new CBP officers to conduct inspections at cargo facilities, rail facilities, or “INS secondary,” then new security and commerce concerns will arise as more experienced inspectors retire or quit. New CBP officers will undergo a “trial by fire” as they are required to work new positions with inadequate training. This could also potentially cause a slowdown in inspections affecting commerce as new CBP officers learn new regulations and procedures.

“One Face at the Border” Transition Has Caused Morale Problems

The merger of the three legacy agencies under the “One Face” policy has not been a trouble-free transition. The staff was inundated with complaints from inspectors across the Southern Border. Some of the issues were resolved by the DHS during the course of this investigation. These issues included complaints about “common journeyman” pay grades, salary enhancements for language skills, “on-the-spot” awards for significant seizures, and overtime pay limits.

However, many other complaints remain unresolved, specifically, that a majority of the new senior management positions under CBP were filled with L-USCS personnel. It is alleged that the L-USCS supervisors have implemented port policies and practices that favor L-USCS programs and employees over other agency programs. Many L-INS inspectors claim that morale has suffered due to their legacy agency’s practices and programs being “phased out” without adequate justification from port leadership. T.J. Bonner, president of the National Border Patrol Council, recently reiterated this concern when he stated, “This mismanagement and lack of support has caused morale to plummet precipitously.”²⁴³

²⁴³ Statement of T.J. Bonner, president, National Border Patrol Council, August 23, 2004. This statement was made in conjunction with the release of an August, 2004 survey which reported that out of 500 port-of-entry inspectors and Border Patrol agents, 60% of those surveyed said that morale was low among their co-workers. About 45% said that they had considered leaving their jobs within the past two years. The survey was conducted by the National Homeland Security Council and the National Border Patrol Council. Peter D. Hart Research, *Attitudes among Front-Line Border Protection Personnel*, August 20, 2004. http://www.afge.org/Documents/HartSurveyDHS_BP.pdf.

The DHS “One Face At The Border” Initiative Faces Serious Implementation Challenges Conclusions and Recommendations

The merger of border agencies under CBP has the promise to streamline inspections in a more effective and coordinated agency. The single agency can also more efficiently share information than when the agencies were separated between three cabinet offices: Department of Justice, the Department of Treasury, and the Department of Agriculture. Merging the agencies under common leadership is a positive step toward closing the border security gaps. However, the implementation of “One Face at the Border” has created an undue burden on inspectors at U.S. ports-of-entry. CBP officers are required to master far too many laws, rules and regulations to perform their job adequately. The new cadre of CBP officers will become “generalists,” lacking essential language skills and knowledge of specific immigration regulations, trade facilitation processing, or false document detection. The result raises serious security and management concerns for the future, as the current skill set in CBP decays due to natural attrition.

We recommend that:

1. The Department of Homeland Security create new positions in CBP that recognize the intricacies and wealth of knowledge needed to adequately perform the L-INS and L-USCS missions. CBP has already acknowledged the uniqueness of the CBP Agriculture Specialist. Similar positions should be created which recognize the specialty areas of immigration and trade facilitation and, if appropriate, create separate CBP Customs and Immigration Specialist positions.
2. CBP officers on the Southern Border be required to attend and pass a training course in Spanish prior to being assigned to the border, and that salaries be adjusted to reflect this additional requirement.
3. A study be conducted on the merging of L-INS and L-USCS training classes. This study should focus on the content of the curriculum to determine the levels that topics were expanded, reduced or eliminated; and the ability of trainees to adequately perform all aspects of immigration and trade facilitation.

10. The Administration Has Failed to Develop a Comprehensive Long-Term Border Strategy

The U.S. government relies upon a series of uncoordinated tactical initiatives that react to emergencies and precipitate problems along the border. Strategies have been tactical or ad hoc in nature, resulting in merely pushing a local problem of either illegal immigration or narcotics smuggling somewhere else along the border. A national strategy to secure U.S. borders that takes into account economic, immigration and security issues is long overdue. The merger of all border agencies within DHS offers an opportunity to develop such a strategy in conjunction with other federal agencies, the border communities, and foreign neighbors — all interested stake-holders in the development of a sound border policy for the twenty-first century.



Securing America's borders is a complex issue which must balance many interests, some of which are in conflict. For example, a locked-down border would turn the U.S. frontier into an area more like the demilitarized zone (DMZ) that separates North and South Korea or the Berlin Wall that formerly separated East and West Berlin. Such a measure may offer security from terrorists, but will impose an unacceptable burden on commerce and the flow of goods and services, as well as civil liberties.

A more sound and reasoned approach would consider not only security but also commerce and travel. It would coordinate the multitude of federal, state and local government agencies as well as national and local communities and trade groups that have vested interests in security and commerce at our borders. To ensure long-term success and prosperity, a border strategy must weigh all of these issues and their respective constituencies. A piecemeal approach, although perhaps successful for a time, will ultimately fail.

The Administration does not appear to have a broad border control strategy that encompasses all of the interrelated issues and stake-holders that come to play in protecting U.S. borders. Rather, DHS has merely continued to devote resources and execute policies based upon a pre-existing, 1994 INS criminal enforcement strategy, discredited by GAO since it was originally announced almost ten years ago.²⁴⁴

That strategy is solely a law enforcement strategy — placing an emphasis on decreasing the number of illegal immigrants coming into the United States by increasing controls at discrete locations on the border. It does not involve other agencies; indeed, it does not involve the entire border, but merely devotes resources to a few areas of the border that have experienced increases in illegal border crossings. In essence, this policy has been reactive to specific problems on the border, rather than designed to proactively address the challenges of the twenty-first century.

Since 1994, this strategy has added resources, including personnel, equipment, technology, and infrastructure at specific border patrol sectors along the Southern Border experiencing the highest levels of illegal immigration activity.²⁴⁵ The strategy has included a series of enforcement initiatives including Operation Gatekeeper in San Diego, California; Operation Safeguard in Tucson, Arizona; Operation Hold-the-line in El Paso, Texas; and Operation Rio Grande in McAllen, Texas.²⁴⁶

Despite devoting enormous resources to these operations, this approach has had limited success in reducing illegal immigration or effectively strengthen border security. The latest GAO review of the strategy questioned its effectiveness and particularly whether it had actually

²⁴⁴ U.S. Government Accountability Office, *Illegal Immigration: Southwest Border Strategy results Inconclusive: More Evaluation Needed*, GAO/GGD-98-21, December 11, 1997; *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, GAO/GGD-99-33, April 2, 1999; *Illegal Immigration: Status of Southwest Border Strategy Implementation* GAO/GGD-99-44, May 19, 1999; *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem* GAO/GGD-00-103, May 1, 2000; and , *INS Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, GAO-01-842, August, 2001.

²⁴⁵ U.S. Department of Justice, INS Fact Sheet, *INS' Southwest Border Strategy*, May 1, 1999.

²⁴⁶ *Op. cit.*, GAO-01-842, p.4-6.

decreased illegal immigration along the border.²⁴⁷ From an analysis of INS detention data, the GAO was unable to conclude whether it was the enforcement strategy or the Mexican and U.S. economies that caused a drop in apprehensions in 2001. GAO noted that the only “primary discernable effect of the strategy, based on INS’ apprehension statistics, appears to be a shifting of the illegal alien traffic” from one sector to another – especially from heavily trafficked crossings in urban settings to more rural areas.²⁴⁸ The consequences have been an increase in crime rates and added social costs to these more remote areas along with more deaths and injuries to the illegal immigrants.²⁴⁹



A sign at the border in Organ Pipe Cactus National Monument warns illegal immigrants of the dangerous conditions.

DHS’ Arizona Border Control (ABC) initiative is a continuation of the same 1994 Border Patrol strategy. Border Patrol and other law enforcement resources in Arizona have been strengthened to respond to increased illegal immigration in more remote regions of that state. Government officials have publicly admitted this new initiative is necessary in order to respond to increased illegal immigration caused by their prior enforcement initiatives in the urban centers of San Diego, Tucson and El Paso.²⁵⁰ Like squeezing a balloon, the policy has moved the illegal immigration from one sector to another without decreasing the overall volume of illegal crossings.

²⁴⁷ *Op. cit.*, GAO 01-842.

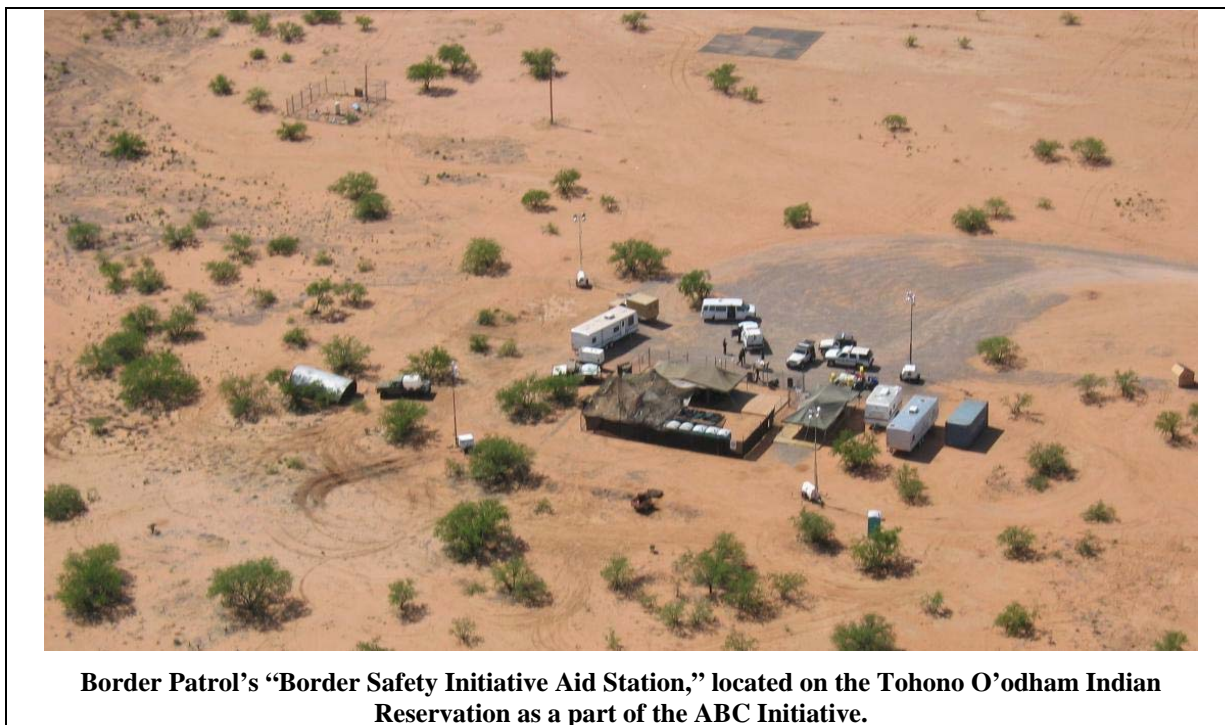
²⁴⁸ *Op. cit.*, GAO 01-842.

²⁴⁹ *Op. cit.*, CRS, August 8, 2002 memorandum, p. 5.

²⁵⁰ Staff trip to Tucson, August 26, 2004.

Consequently, officials and community leaders have warned that the ABC initiative will force illegal immigration elsewhere, such as the inadequately enforced segment of the border in New Mexico. Indeed, recent press accounts corroborate this fact – reporting increased apprehensions in Lordsburg, New Mexico (up 85%) and Deming, New Mexico (10%) over the previous year.²⁵¹

Although the ABC initiative has improved coordination in specific areas of operations, there is no indication that DHS has coordinated with the surrounding communities, New Mexico government officials, or their border communities, to prepare them for the expected onslaught of illegal immigration — a criticism that GAO has repeatedly made in their past reviews of this approach.²⁵²



Border Patrol’s “Border Safety Initiative Aid Station,” located on the Tohono O’odham Indian Reservation as a part of the ABC Initiative.

Similar coordination problems have been identified in a previous section of this report which has described in more detail the lack of coordination with federal and tribal authorities responsible for security issues on their border lands. In a June 2004 report, GAO noted not only that the Border Patrol’s 1994 strategy was still guiding its efforts, but that, once again, the consequence of the program was to force illegal immigration to other areas of the border – in this case federal lands controlled by federal land management agencies. GAO noted that little, if any, coordination had been done prior to this initiative.²⁵³

²⁵¹ Leslie Hoffman, “New Mexico Becomes Key Border Crossing,” *Associated Press*, April 18, 2004.

²⁵² *Op. cit.*, GAO 01-842.

²⁵³ GAO, *Border Security: Agencies Need To Better Coordinate Their Strategies and Operations on Federal Lands*, GAO-04-590, June, 2004.

The lack of a coordinated border strategy also leads to an overloaded criminal justice system. By failing to coordinate with the Department of Justice, the impact of DHS' enhanced enforcement activities have been limited by insufficient numbers of prosecutors or immigration judges to hear cases against illegal immigrants. DHS also failed to plan for detention space to house increased numbers of detainees. As explained previously, DHS failed to plan, or budget for, the consequences of enhanced enforcement with its own Office of Detention and Removals Office, forcing the office to release an unacceptable number of illegal immigrants into the United States due to a lack of detention space.

Proposals by DHS to implement the new US-VISIT program at the ports-of-entry on the Southern Border are also indicative of the lack of planning. Border officials and community leaders have complained that proposals to implement US-VISIT do not take into account the unique challenges of the land border not faced at airports and seaports. The GAO raised similar concerns about its implementation, including the lack of input from the appropriate stakeholder organizations, as well as its failure to address "interim and permanent" infrastructure challenges. GAO noted that:

Construction of US-VISIT facility solutions, both interim and permanent, pose serious challenges for a number of reasons. For example, existing facilities do not support existing entry and exit processes at a number of the land ports-of-entry, border crossing wait times are very sensitive to very small increases in processing times at certain high-volume land ports of entry, and interim facility solutions must satisfy yet-to-be defined program requirements.²⁵⁴

Congress recognized the need for a broader, more coordinated border strategy when it passed the Immigration and Naturalization Service Data Management Improvement Act (DMIA) of 2000, creating a task force to evaluate and make recommendations on ways to improve the flow of traffic at our U.S. ports-of-entry while enhancing security.²⁵⁵ This DMIA Task Force was originally chaired by the Attorney General or his designee and consisted of 17 representatives from six federal agencies, two state and local government groups, and nine private industry trade and travel organizations. The Task Force was required to file annual reports and was funded through 2008.

In its first report, issued in December, 2002, the Task Force included an entire chapter on subjects it would "continue to research and make recommendations on" in 2003 and 2004.²⁵⁶ Those subjects included the development of INS technology, coordination efforts among federal agencies, interaction between border agencies and the Foreign Terrorist Tracking Task Force, infrastructure in ports of entry, biometrics, and other issues related to the development of an interoperable exit-entry border security system.

²⁵⁴ GAO, *Homeland Security: Risks Facing Key Border and Transportation Security Program Need to Be Addressed*, GAO-03-1083, September 2003, p. 3.

²⁵⁵ Public Law 106-215, signed June 15, 2000.

²⁵⁶ *Op. cit.*, DMIA Task Force First Report.

In the statute creating the DHS, the responsibilities of the Attorney General for this Task Force were transferred to the Secretary of the DHS. However, before the DHS was established in March, 2003, Attorney General Ashcroft, on December 3, 2002, renewed the Task Force's charter to study these issues, provided it a \$5.6 million budget for fiscal years 2003 and 2004, and assigned it seven staff positions. The Task Force was authorized to continue working until December, 2004, subject to renewal.

Despite these factors, the DMIA Task Force was abruptly disbanded in January 2004 after issuing a report stressing the need for investments in interoperability and calling for an independent assessment of US-VISIT.

The minutes of a January 27, 2004, meeting of the Task Force note that Assistant Secretary Stuart Verdery informed the Task Force, "that Under Secretary Asa Hutchinson has determined that their work has met the statutory requirements of DMIA 2000." This story was corroborated by briefings to Congressional staff. Issues relating to a coordinated border strategy that deals with improvements in staffing, facilities and infrastructure as well as information technology interoperability along the border were left unresolved. In light of that, the Department's decision to shut down this professional and highly productive Task Force four years early is highly questionable.

The Administration Has Failed to Develop a Comprehensive Long-Term Border Strategy Conclusions and Recommendations

A comprehensive, government-wide strategy to secure U.S. borders that addresses the long-term economic, immigration and security issues is long overdue.

Such a strategy must involve all of the various government agencies involved in border issues, such as the Commerce Department, Government Services Administration, Transportation Department, Central Intelligence Agency, Justice Department, State Department and Defense Department and not just DHS.

Such a policy cannot be designed by the federal government without the inclusion of other non-federal governmental stake-holders, including state and local governments, border communities, and industry, trade, union and tourist groups. It also needs to include representatives from NAFTA partners Canada and Mexico. All of these organizations will be impacted on a daily basis by any border strategy, and can play significant roles in its successful design and implementation.

The Administration needs to develop and implement such a strategy as soon as possible. To assist it in this task, the Administration should immediately reconstitute the DMIA Task Force and instruct it to continue its work for 2004. In addition, the Task Force should be continued until 2008 to report to Congress on Administration efforts to develop and implement the new border strategy.

Transforming the Southern Border: Providing Security & Prosperity in the Post-9/11 World Conclusions and Recommendations

Ten years ago, the late Congresswoman Barbara Jordon, who chaired the bipartisan Commission on Immigration Reform, noted in her first report to Congress that a credible immigration and border policy can be measured by a simple yardstick:

People who should get in, do get in.
People who should not get in, are kept out; and,
People who are judged deportable, are required to leave.²⁵⁷

Using this measurement, our current system deserves a failing grade. Given the various obstacles to the legal flow of goods and people across our borders, the relative ease of illegal entry, and the mounting inability to keep detained deportable illegal immigrants once they are caught, it is apparent that our current border and immigration policy needs to change to be a credible deterrent to terrorists.



²⁵⁷ U.S. Commission on Immigration Reform, *First Interim Report: Immigration Policy: Restoring Credibility*, (Washington, D.C., September 30, 1994).

Approximately 400 million people annually cross our land borders at legal ports of entry. In addition every year another 150,000 to 600,000 enter illegally without inspections across America's thousands of miles of land borders. The challenge for our country, as noted by the 9/11 Commission, "in an age of terrorism is to prevent the very few people who may pose overwhelming risks from entering or remaining in the United States undetected."²⁵⁸

The following are recommendations to return credible deterrence to the Southern Border of the United States.

Border Infrastructure

Any investment in infrastructure enhances the ability to effectively screen for terrorists and criminals and furthers the ability to move goods, services and people across the border. For decades there has been inadequate infrastructure at Southern Border ports-of-entry. Poor infrastructure has repeatedly forced frontline CBP officials at the ports-of-entry to almost make daily choices between favoring either national security or the U.S. economy. There is no need for this dilemma if proper funding is made available to truly modernize our ports-of-entry's infrastructures.

The Administration and Congress must recognize the importance of modern land ports-of-entry to national security as well as the U.S. economy, and should therefore develop an aggressive strategy to expand and improve their infrastructure. Specifically, we recommend:

1. The Administration should conduct a thorough infrastructure assessment that looks at both the security vulnerabilities and the economic demands on the land borders. The Administration should conduct a national land border security vulnerability assessment as soon as practicable and advise Congress on the costs required to build a truly modern and secure land border system. In doing so, existing ports-of-entry should be studied to determine how improvements can be made to facilitate a more orderly flow of traffic.

2. The Department of Homeland Security must work and coordinate with state's Departments of Transportation to ensure adequate road infrastructure around ports-of-entry as well as from ports to major highways.

3. In the interim, while this study is being conducted, a \$1 billion dollar Border Infrastructure Improvement Fund should be established and funded to start the border modernization effort. This is a down-payment toward resolving long-standing border problems and enhanced security concerns and should be immediately spent on eliminating the backlog of long-standing problems previously identified and in expanding ports-of-entry. These expenditures must be coordinated with state and local communities in order to ensure their effectiveness.

²⁵⁸ *Op. cit.*, 9/11 Commission Report, p. 383.

4. The Administration should expand pre-clearance programs, including SENTRI and FAST to all major southern ports-of-entry. Access lanes should be expanded to facilitate the free flow of traffic and rapid inspection of those who have been pre-cleared. The Administration should ensure that sufficient funds are dedicated for regular upgrade and maintenance of SENTRI and FAST systems.

Border Staffing

To better protect America from terrorism, while maintaining the important economic vitality of the border, we must identify the personnel level necessary to staff our myriad of consular, interdiction, enforcement, prosecutorial, judicial, and detention agencies. Specifically we recommend:

1. The Administration should immediately develop and implement a comprehensive national border staffing strategy that will allow DHS and other agencies to effectively deploy its personnel (inspectors, Border Patrol agents, special agents and support staff) based on a national threat and vulnerability assessment to prioritize the threats facing our land borders and areas between our ports-of-entry.

2. In the interim, the Administration needs to immediately double the number of CBP personnel; increase Border Patrol agents by at least 3,000; increase the number of ICE special agents by at least 225; increase the number of DRO employees by 541, and increase the staff for the U.S. Consulate General staff in Mexico by 25%. In addition, the Administration needs to increase the support personnel for the various border agencies by at least 25%, with complementary staffing increases made for judicial and prosecutorial offices.

Technology Improvements

A layered approach to border security necessarily involves a variety of monitoring and detection technologies. Yet DHS has failed to consistently and evenly deploy technology along our Southern Border and at the ports-of-entry. In fact, hundreds of miles of our border go unmonitored by personnel or technology every day, despite the fact that technology currently exists to close this gap to terrorists and illicit cargo. There is no comprehensive plan to implement new technologies along the border to assist the border agencies in their important tasks of defending our borders and promoting commerce.

To remedy this deficiency, we recommend that:

1. DHS should immediately develop a detailed technology deployment plan to ensure every mile of the border is monitored 24 hours a day, seven days a week. Once a plan is developed, the Administration should commit sufficient funding to allow CBP to deploy the necessary devices at all the ports-of-entry. This plan should include, but is not limited to:

- Assessing the success of existing technologies to determine if one technology is better than another or whether there is a way to combine the capabilities of various detection devices into one;
- requiring the Border Patrol to work with the Science and Technology Directorate to analyze high-altitude monitoring technologies [UAVs, Tethered Aerostat Radar System (TARS)] for use with land-based monitoring technologies;
- accelerating deployment of radiation portal monitors to all ports-of-entry;
- expanding the number of K-9 units by 20% the number of K-9 units assigned to Southern Border ports-of-entry, and outline a plan to add more bomb-detection dogs as part of the layered approach to border security.

2. The Administration must also commit sufficient funding to CBP to fully deploy the detection technologies identified by the comprehensive plan so that we can ensure no terrorist weapon enters the United States. As a down-payment toward that goal, DHS needs immediately commit at least \$49 million to fully deploy portal monitors at the Southern Border and an additional \$200 million to deploy additional remote video surveillance systems between the Southern Border ports-of-entry by the end of this year.

Improved Intelligence

Intelligence is a critical tool in the arsenal used by our border agencies to combat potential terrorists from crossing the border. Currently, intelligence is not being used effectively on the Southern Border. CBP inspectors, Border Patrol agents and ICE special agents, complained about the utility of the intelligence information currently received. It is neither enough nor timely. Unless it is improved, they can not be expected to accurately and efficiently “connect the dots” and identify the terrorist threat on the Southern Border in a timely manner. Specifically, we recommend:

1. Consistent with the recommendations of the 9/11 Commission, the Administration must build an integrated, interoperable entry-exit system in a timely manner that links the databases of and allows for complete information sharing between each pillar of our border security and immigration control system: consular offices abroad, federal law enforcement, customs and border security agencies, and transportation agencies. As part of this system, it is imperative that the following occur:

- The IDENT/IAFIS integration process should proceed expeditiously as a national priority to avoid additional Resendez and Batres-type atrocities.
- Secondary inspection databases should be made interoperable immediately, thereby moving from the cumbersome eight-database system to a single consolidated system.

- This system should also interface with IBIS as an indicator to the first line officers for further examination of travelers.

2. There must be a coordinated federal approach for a uniform set of standards for all state driver's licenses and official identification cards to significantly reduce unauthorized persons from entering the United States by using fraudulent documents. In the interim, additional and re-occurring training for inspectors on detecting fraudulent documents should be required. Every port-of-entry should be provided a scanning system to interface with the DHS National Document Lab, whereby any questionable travel documents would be reviewed by highly trained document specialists for validity and authenticity. There must be certainty of consequences for violators apprehended with fraudulent documents.

3. When threat levels are raised, border officials must be provided greater guidance on the specific threat to the Southern Border and the additional security procedures that need to be implemented.

4. All ICE special agents and national security analytical support staff should receive Top Secret clearances. Newly trained ICE special agents should be processed for Top Secret clearances, similar to FBI and Secret Service special agents, at the completion of basic training. Current ICE special agents in the field offices should have clearances up-graded during mandatory five-year background reviews.

5. Better coordination and cooperation is needed among border agencies to maximize intelligence driven operations and avoid duplicative intelligence functions. The Undersecretary for Border and Transportation Security should develop a strategy for intelligence collection, analysis and distribution, rationalize various collection and analytical units in the Directorate, and ensure that these units are fully coordinated with DHS' intelligence analysis officers.

US-VISIT

The Administration has an important responsibility to implement an effective interoperable entry-exit system such as US-VISIT. In doing so, the Administration must prepare the border community and ports-of-entry for its implementation. We recommend that:

1. The Administration needs to be more open with the border communities and initiate an immediate outreach program to them to discuss the proposal for US-VISIT implementation and provide community leaders the opportunity to fully participate in the planning and implementation process.

2. To prepare the ports-of-entry for US-VISIT, the Administration needs to expand or restructure inspection areas; fully staff ports-of-entry; identify technology to provide a secure and expedited inspection process; and expand highways and access roads necessary to implement US-VISIT. US-VISIT budget submissions must contain specific information on these necessary expansions to ensure that technology is not implemented until the staff and infrastructure are in place to support it.

Federally-owned and tribal lands

It is critical that the Department of Homeland Security coordinate plans and carry out missions with Department of Interior, Department of Agriculture and Tribal Nations. To improve security on federal and tribal lands, the Administration should:

1. Require the Department of Homeland Security to produce a comprehensive border security plan that takes into account the needs and missions of each agency that has a stake in border security, including land management agencies and tribal nations. See Finding 10, discussing the recommendation for a comprehensive plan.
2. Prior to the comprehensive border security plan being drafted, implement a mechanism to allow the Department of Interior, including tribal nations, to receive Department of Homeland Security funding for border security related projects. After the comprehensive plan is implemented, DHS entities should properly be responsible for directly funding border related projects on federal lands.
3. Prior to the comprehensive border security plan being drafted, the Department of Homeland Security should designate coordinators for the Northern and Southern Borders. These coordinators would be responsible for coordinating all federal security activities along the border, including both at and between the land border ports-of-entry. The Northern and Southern Border Coordinator positions would have the effect of expanding the ABC Initiative to the entire Northern and Southern Borders. These positions should be continued after the comprehensive plan is implemented to continue to monitor and address the changing circumstances and needs of each participating agency.
4. Create an Office of Tribal Security within the Department of Homeland Security, reporting directly to the Secretary, for coordinating DHS efforts with Sovereign Indian Nations. Along the Southern Border, there are 32 separate Indian Nations adjoining or within 50 miles of the border. Along the Northern Border, there are 20 such Nations.

Detention and Removal Operation

The “catch and release” cycle must be broken. For the United States to have a coherent border security strategy, there must be some consequence for trying to illegally enter our country. Due to increased apprehensions and security concerns, detention facilities need to be built or expanded to meet the need for additional bed space. Penalties need to be enhanced and resources need to be provided to the Department of Justice to prosecute and imprison those illegal immigrants who routinely flaunt our immigration laws by repeatedly crossing the borders illegally. Specifically we recommend:

1. A comprehensive assessment needs to be completed to determine the amount of additional detention space and resources required to detain all persons presenting a possible threat to homeland security. In conducting this assessment, it is important to assess the needs of all of the agencies involved in the detention and removal operation, including immigration judges, prosecutors, detention guards, deportation and removal specialists and support staff.

2. In the interim, DRO should immediately be funded to adequately support the current average daily bed occupancy rate of 22,500 from the 19,444 funded levels. This will allow the DRO to continue to fund needed infrastructure improvements such as fleet repair, equipment needs, and training, routinely cut by bed space overages. This will also provide for additional apprehensions reasonably expected to result from ongoing enforcement actions such as the ABC initiative.

3. DHS needs to increase support for innovative programs that can reduce the current shortage of DRO bed space. This includes, but is not limited to, current programs to alternative means of detention such as electronic monitoring, telephonic voice recognition programs for those on bond, and conducting deportation proceedings prior to prisoners' release from federal, state, and local prisons.

4. The Administration needs to encourage other countries to expedite their acceptance of their nationals caught illegally entering the United States. This should be a priority for negotiations on foreign assistance and trade agreements with these countries. If countries will not take back their nationals caught illegally entering our country, then the State Department should decline to issue visas for their nationals seeking to enter our country.

5. DHS should consider placing Detention and Removal Operations within Customs and Border Protection. This allows the primary apprehension agency, Border Patrol, and the detention agency, Detention and Removal Operations, to better coordinate apprehension resources and initiatives with detention resources.

“One Face at the Border”

The merger of border agencies under CBP has the promise to streamline inspections in a more effective and coordinated agency. The single agency can also more efficiently share information than when the agencies were separated between three cabinet offices: Department of Justice, the Department of Treasury, and the Department of Agriculture. Merging the agencies under common leadership is a positive step toward closing the border security gaps. However, the implementation of “One Face at the Border” has created an undue burden on inspectors at U.S. ports-of-entry. CBP officers are required to master far too many laws, rules and regulations to perform their job adequately. The new cadre of CBP officers will become “generalists,” lacking essential language skills and knowledge of specific immigration regulations, trade facilitation processing, or false document detection. The result raises serious security and management concerns for the future, as the current skill set in CBP decays due to natural attrition.

We recommend that:

1. The Department of Homeland Security create new positions in CBP that recognize the intricacies and wealth of knowledge needed to adequately perform the L-INS and L-USCS missions. CBP has already acknowledged the uniqueness of the CBP Agriculture Specialist. Similar positions should be created which recognize the specialty areas of immigration and trade facilitation and, if appropriate, create separate CBP Customs and Immigration Specialist positions.

2. CBP officers on the Southern Border be required to attend and pass a training course in Spanish prior to being assigned to the border, and that salaries be adjusted to reflect this additional requirement.

3. A study be conducted on the merging of L-INS and L-USCS training classes. This study should focus on the content of the curriculum to determine the levels that topics were expanded, reduced or eliminated; and the ability of trainees to adequately perform all aspects of immigration and trade facilitation.

Comprehensive Border Strategy

A comprehensive, government-wide strategy to secure U.S. borders that addresses the long-term economic, immigration and security issues is long overdue.

Such a strategy must involve all of the various government agencies involved in border issues, such as the Commerce Department, Government Services Administration, Transportation Department, Central Intelligence Agency, Justice Department, State Department and Defense Department and not just DHS.

Such a policy cannot be designed by the federal government without the inclusion of other non-federal governmental stake-holders, including state and local governments, border communities, and industry, trade, union and tourist groups. It also needs to include representatives from NAFTA partners Canada and Mexico. All of these organizations will be impacted on a daily basis by any border strategy, and can play significant roles in its successful design and implementation.

The Administration needs to develop and implement such a strategy as soon as possible. To assist it in this task, the Administration should immediately reconstitute the DMIA Task Force and instruct it to continue its work for 2004. In addition, the Task Force should be continued until 2008 to report to Congress on Administration efforts to develop and implement the new border strategy.