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MASTER OF MILITARY STUDIES

TITLE:

DEPARTMENT OF DEFENSE INVOLVEMENT IN HOMELAND SECURITY; THE
MILITARIZATION OF THE
SOUTHWESTERN BORDER IN THE U.S.

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

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Executive Summary

Title: Department of defense involvement in homeland security; the militarization of the southwestern border in the U.S.

Author: Major Michael A. Thompson, United States Army

Thesis: The increase in military participation since 9/11 along the Southwestern U.S. border has significantly enhanced the security capabilities of the Bureau of Customs and Border Protection.

Discussion: After the September 11, 2001 terrorist attacks against the U.S., the President of the United States mandated the creation of the Department of Homeland Security (DHS) in order to prevent terrorist attacks within the U.S., reduce America's vulnerability to terrorism, and minimize the damage and facilitate the recovery from attacks that occur. The Department of Defense was given the lead role in Homeland Defense and soon after stood up Northern Command which began implementing plans and policies in order to defend against future terrorist attacks.

The Bureau of Customs and Border Protection (CBP) was established as a department under the Department of Homeland Security and was charged with the mission of protecting the borders of the U.S. from terrorism, human and drug smuggling, illegal migration, and agricultural pests while concurrently facilitating the movement of legal travel and trade. President Bush made a commitment to increase border patrol agents, augment immigration enforcement along the border, and temporarily use National Guard to assist DHS in securing the southern border of the U.S. The commitment provided the southern border states of the U.S. with 6,000 National Guard troops for a period of one year; permitting CBP to hire, train, and inculcate new agents within the force. The total agent force objective was projected to be 18,300 by the end of December 2008, with another 1,700 agents by end year 2009.

DOD has augmented local, state, and federal law enforcement agencies for almost two decades providing support for counter-drug operations. This mission continues today along with augmenting the CBP along the maritime and terrestrial borders of the U.S.

Conclusion: The Customs and Border Protection (CBP) has been augmented by DOD assets from all three service components, the Active duty forces, Reserve forces, and National Guard forces. The Army, Air Force, Marines, and Coast Guard have all played a significant role in securing our nation's border along the southwestern United States. The CBP received support from DOD after 9/11 in order to provide an immediate increase to the security posture of the land and maritime ports of entry. Traditionally, there have been legal ramifications with utilizing armed forces within the confine of the continental U.S. but these laws were ratified or amended after 9/11. The majority of DOD assets utilized are National Guard forces under Title 32 status which keeps them under state control and not federal control. The DOD assets that are under federal control provide assistance to CBP in a "support" role only which falls within the legal guidelines of federal and state statutes. In order to deter future terrorist attacks against the U.S., it is imperative that DHS and DOD work in conjunction with one another now and in the future.

Chapter I – Introduction

“The world changed on September 11, 2001. We learned that a threat that gathers on the other side of the earth can strike our own cities and kill our own citizens. It’s an important lesson; one we can never forget. Oceans no longer protect America from the dangers of this world. We’re protected by daily vigilance at home. And we will be protected by resolute and decisive action against threats abroad.”¹

President George W. Bush
September 17, 2002

Prior to the devastating attacks on U.S. soil in 2001, DOD assets were being utilized to enhance the capabilities of the U.S. Border Patrol by assisting with counter-drug operations along the southern and maritime borders of the United States. After the attacks, President Bush mandated the establishment of the Department of Homeland Security. This brought many organizations under one authority. Overall, “22 federal entities with vital roles to play in protecting our Nation and preventing terrorist attacks within the United States.”² The Department focuses on three national security priorities:

- 1) Preventing terrorist attacks within the United States.
- 2) Reducing America’s vulnerability to terrorism.
- 3) Minimizing the damage and facilitating the recovery from attacks that do

occur.

DOD was given the lead role in Homeland Defense and stood up Northern Command and began instituting plans, policies, and procedures to defend the nation against another possible terrorist attack.

Purpose

This paper will focus on how the Department of Defense became involved in Homeland Security and Homeland Defense. It will examine the military participation since the 9/11 terrorist attacks along the Southwestern border and discuss if security capabilities have been enhanced. It will also discuss the role of the Customs and Border Protection (CBP) and how

DOD assets have augmented CBP to date.

Research Strategy

The research conducted on this paper was supported by books, congressional reports, national security strategies, journals, research papers and web sites. All the aforementioned materials focus on Homeland Defense, Homeland Security, and joint military doctrine.

Key Terms and Their Definitions

There are three key terms (Homeland, Homeland Defense, and Homeland Security) that are mentioned throughout this paper and within the confines of strategies produced by the U.S. government that need to be defined prior to delving into the framework of why and how DOD has the current mission of securing the Homeland.

The first key term is Homeland. The definition of Homeland “is the physical region that includes the continental United States, Alaska, Hawaii, US territories and possessions, and surrounding territorial waters and airspace, is exposed to the possibility of harm from hostile states or non-state actors at all times.”³

The second key term is Homeland Defense (HD) and its definition is: “HD is the protection of US sovereignty, territory, domestic population and critical infrastructure against external threats and aggression or other threats as directed by the President.”⁴

The third key term is Homeland Security (HS) and its definition is: “a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”⁵

Problems

There are several major associated problems that arise when DOD assets are utilized to augment or support the Bureau of Customs and Border Protection. One problem is the federal legality system (Posse Comitatus Act) that governs what capability or type of support can be provided by DOD to a civilian enforcement agency. In essence, this affects the overall mission of protecting the U.S. border as it restricts the DOD from employing all of its' personnel, equipment, and kinetic capabilities.

The second problem concerns the division of labor between DOD assets and the CBP. Homeland security primarily constitutes defense of the U.S. territories from within by utilizing local, state, and federal level agencies. This poses a problem as DOD assets are considered for use as an "external defense" capability and not internal. This is an extremely volatile issue as DOD assets are being continually forward deployed to combat the targeted threats against the U.S.

The third and final problem is one of intelligence collection, analysis, and sharing. Intelligence agencies within DOD and the civilian sector continue to have problems collecting, analyzing, and sharing data collected because these agencies have different levels of security clearances which do not permit or severely hinder intelligence collection and sharing.⁶

Chapter II – Responsibilities and Constraints

Responsibilities

a. The overall responsibility of Homeland Security within the U.S. is charged to the Secretary of the Department of Homeland Security (DHS). The DHS administration is responsible for preventing the entry of terrorists, securing the borders, and carrying out immigration enforcement functions. DHS is comprised of five directorates: Border and

Transportation Security (BTS), Information Analysis and Infrastructure Protection (IAIP), Emergency Preparedness and Response (EP&R), Science and Technology (S&T), and Management.⁷ The directorate correlating directly with the theme of this paper is the Border and Transportation Security directorate. The primary goal of the BTS is “to prevent the entry of terrorists and instruments of terrorism while simultaneously ensuring the efficient flow of lawful traffic and commerce.”⁸ Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) are aligned under DHS as part of the directive mandating this occur after 9/11.

b. The Department of Defense is primarily responsible for providing support to DHS and other foreign, federal, state, and local law enforcement agencies when requested. The particular support capabilities DOD provides and unauthorized support capabilities will be discussed later in this paper. The support provided to DHS by DOD extends from all services of the Armed Forces.

c. The Department of Justice (DOJ) mission is:

“To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.”⁹

DOJ assists with the enforcement of the border by providing Federal Bureau of Investigation (FBI), Alcohol, Tobacco, Firearms & Explosives (ATF), Drug Enforcement Agency (DEA) and the U.S. Attorney Office assets. This includes other federal, state, tribal, and local law enforcement agencies that provides enforcement along the border and directly assists the CBP.

Constraints – Legal Restrictions / Authorizations

There are restrictions on military participation in civilian law enforcement within the United States. These restrictions date back to the Civil War timeframe and were put in place to prevent the military from executing policing duties on behalf of the federal government. The primary restriction is the Posse Comitatus Act (PCA) of 1878.¹⁰ The definition of the PCA is:

“Posse Comitatus Act 1878, U.S. federal law that makes it a crime to use the military as a domestic police force in the United States under most circumstances. The law was designed to end the use of federal troops to supervise elections in the post-Civil War South. The posse Comitatus (from which the term posse derives) is the power or force of the county, and refers to citizens above the age of 15, who may be summoned by a sheriff to enforce the law. The act specifically prohibited the use of the U.S. army as a posse Comitatus; the prohibition was later extended by legislation to the air force and by government directive to the Marine Corps and navy. The restriction does not apply to the coast guard during peacetime or the National Guard when it is under state authority. There are legal exceptions to the law, particularly in aspects of drug law enforcement, in emergency situations, and in cases of rebellion.”¹¹

DOD issued policies and procedures in the form of Directive 5525.5, which address supporting federal, state, and local law enforcement agencies. The Directive outlines forms of direct assistance that are prohibited. The forms are: (1) interdiction of a vehicle, vessel, and aircraft or other similar activity; (2) a search or seizure; (3) an arrest apprehension, stop and frisk, or similar activity; and (4) use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators. These restrictions may not apply to the National Guard when under state control and not entered into federal service.¹²

There are legislative authorizations that allow DOD assets to support federal, state, and local law enforcement including support for border security and immigrations control. For example, the U.S. Constitution (Article I) empowers the Congress to call forth the militia to execute the laws of the Union.

The majority of current DOD assistance and homeland security was mandated in 1981 and can be located in Chapter 18 of Title 10 of the U.S. Code – Military Support for Civilian Law Enforcement Agencies. “Chapter 18 permits Congress to authorize DOD to:

- 1) Share information.
- 2) Loan equipment and facilities.
- 3) Provide expert advice and training.
- 4) Personnel may maintain and operate equipment in conjunction with

counterterrorism operations or the enforcement of counterdrug laws, immigration laws, and customs requirements.”¹³

The National Defense Act for FY1991 authorized DOD to support federal, state, and local law enforcement agencies (LEAs) in direct connection to counter drug operations. This defense bill added training of law enforcement personnel by DOD, military training exercises in drug-interdiction areas, including the mission of detect, monitor, and communicate movements of air, sea, and surface traffic outside the U.S. and within 25 miles of the border if the detection occurred outside the U.S.¹⁴

The National Defense Authorization Act for Fiscal Year (FY) 2006 (H.R. 1815) has a provision authorizing the military to deploy assets to the border in order to assist the Department of Homeland Security in denying terrorist, drug traffickers, and unauthorized aliens entry at ports of entry (special emphasis on the southern border).¹⁵ The primary role of DOD in homeland defense and civil support operations is in a supporting role or providing an augmenting capability to federal, state, and local LEAs.

The provision that outlines the capabilities of DOD assets is the National Defense Act (FY1991). This act authorizes the military to:

“maintain, upgrade, and repair military equipment; transport federal, state, local, and foreign law enforcement personnel and equipment within or outside the U.S.; establish bases for

operations or training; train law enforcement personnel in counterdrug activities; detect, monitor, and communicate movements of air, sea, and surface traffic outside the U.S., and within 25 miles of the border if detecting occurred outside the U.S., construct roads, fences, and lighting along the U.S. border; provide linguists and intelligence analysis services; conduct aerial and ground reconnaissance; and establish command, control, communication, and computer networks for improved integration of law enforcement, active military, and National Guard.”¹⁶

This 1991 Defense Act mandates how DOD supports or augments LEAs and discusses all three components of the Armed Forces (Active, Reserve and National Guard). Active and Reserve forces have separate mandates and federal restrictions as noted earlier. The National Guard is a military force shared by the States of the Union and the federal government, it is permitted to conduct operations the other two components are not authorized to. The majority of the Southern border-states have utilized NG assets under either Title 10 U.S. or Title 32 U.S. Code in order to conduct counter-narcotic or counter-terrorism operations.

Constraints – Current Operational Tempo of DOD CONUS Based Assets

Prior to the September 11, 2001 terrorist attacks in the United States, most of the U.S. Department of Defense forces were concentrated in the Continental U.S. (CONUS), Europe, and East Asia. By the end of 2003, the area of operation remained in all of the aforementioned areas and included the Middle East. Statistics show there were 14,000 plus troops deployed to the Middle East in 2002 and in 2003 that number grew to more than 200,000.¹⁷

The deployment rate of CONUS based DOD assets from 2000-2005 fluctuated between 20,000 to 40,000 throughout this time period reflecting a slight increase in troops forward deployed from the U.S.¹⁸ These numbers depict an increase to a pre-planned deployment template but one that did not significantly hinder active, reserve, nor National Guard (NG) forces conducting missions within the U.S. or forward deployed. Table 1, on page 32, depicts the number of NG forces deployed within the Continental U.S., Iraq, and Afghanistan. This table specifically illustrates the total number of Army and Air National Guardsmen that supported Operation Jump Start which is discussed in further detail later in this document.

An executive summary on homeland defense suggested freeing up (NG) and Reserve assets in order to provide homeland security and boost port security. The strategy of the summary proposed increasing the number of active duty troops in the combat service and combat service support units thus alleviating the necessity of utilizing NG units who traditionally fill these roles.¹⁹

During an Operation and Maintenance, Defense-Wide revised request addressed to Congress, the Honorable J. Dennis Hastert (Speaker of the House of Representatives) testified about information obtained from the Acting Director of the Office of Management and Budget (Clay Johnson III). Hastert stated that there were enough NG members to augment the Border Patrol along the southern border, respond to natural disasters and win the War on Terror.²⁰

Constraints – Aspects of Border Security

The Bureau of Customs and Border Protection has to focus its assets on three different areas concerning border security. The three areas of concern focus on terrorism, economics, and crime. When analyzing these three areas it affects the planning, coordination, and execution of missions along the border. DHS and CBP have to determine what forms of deterrence and enforcement will be pursued while simultaneously not neglecting one of these three areas. The director of DHS has proposed moving towards providing economic assistance to Mexico as an effort to deter or mitigate illegal migration. His proposal recommends this program be instituted instead of erecting physical borders similar to the “San Diego Fence” barrier.²¹

Chapter III – Supporting Documents

Military Assets Assisting S.W. Border

The strategic document that canvasses all security issues within the U.S. is the National Security Strategy (NSS). The NSS identifies national level security goals, describes foreign policy and military capability to fulfill those goals, evaluates these capabilities, and

outlines how national power will place these capabilities into operation.²²

There are four major action steps identified in the NSS which are:

- 1) Strengthen alliances to defeat global terrorism and work to prevent attacks;
- 2) Prevent our enemies from threatening us with weapons of mass destruction;
- 3) Ignite a new era of global growth through free markets and free trade; and
- 4) Transform America's national security institutions to meet the challenges and opportunities of the twenty-first century.²³

All of these steps tie into DOD and CBP initiatives to secure the southern border of the United States. We must strengthen our alliances with Mexico, deter weapons of mass destruction (WMD), continue free market and trade with Mexico, and ensure the Department of Homeland Defense, DOD, and CBP transform their policies and procedures in the 21st century.

The National Strategy for Homeland Defense was issued by President Bush July of 2002. This strategy ties directly into the NSS. This strategy addresses terrorism as a threat to the U.S. and focuses on the domestic efforts of federal, state, local, and private organizations. "It aligns and focuses homeland security functions into six critical mission areas, set forth as:

- 1) Intelligence and warning;
- 2) Border and transportation security;
- 3) Domestic counterterrorism;
- 4) Protecting critical infrastructure and key assets;
- 5) Defending against catastrophic threats, and;
- 6) Emergency preparedness and response."²⁴

Once again, these critical mission areas directly align themselves with policies and procedures as well as federal mandates for DOD and CBP assets securing the southern border of the U.S. The National Strategy for Homeland Defense specifically identifies six major initiatives for border and transportations security. The strategy states there must be; accountability with border & transportations security, “smart borders” created, increase shipping container security initiatives, recapitalizing of the Coast Guard, implementation of the Aviation & Transportation Act of 2001 and reform of the immigration services.²⁵ The majority of these initiatives have began and the few that are remaining have dates of completion assigned to them.

The next document is the National Defense Strategy of 2005 (NDS). The NDS lists its top priority as the dissuasion, deterrence, and defeat of direct threats to the United States. The 2005 Strategy utilizes active layered defenses that are designed to defeat the most dangerous threats early and before they reach the U.S. It also directs DOD as its number one priority of defending the U.S. homeland. This directive gives DOD the mission of supporting federal, state, and local LEAs in securing the southern border of the U.S.²⁶

The last document is the Strategy for Homeland Defense and Civil Support. This 2005 Strategy aims to mitigate unforeseen threats and addresses a broad spectrum of challenges over the next decade.²⁷

This document openly states that terrorist groups are the largest future threat to our nation through 2015. This is important because one main point of entry for terrorist may be the southern border which can be crossed via land or air by these groups. This is portrayed in the following excerpt from the Strategy:

“In the next ten years, these terrorist groups, poised to attack the United States and actively seeking to inflict mass casualties or disrupt US military operations, represent the most immediate challenge to the nation’s security.”²⁸

The Strategic Planning Guidance integrates the objectives and guidance of all of the aforementioned strategies in order to guide DOD operations to protect the nation. It is important

to understand each of these security documents and how they are linked in order to understand the President and Congress's directives for utilization of DOD assets to secure the nations borders.

Management and Budget Considerations

The Office of Management and Budget (from the Executive Office of the President), issued a revised supplemental proposal for DOD, Department of Homeland Security (DHS), and Department of Justice (DOJ) that addressed the Presidents' commitment to increase Border Patrol agents, augment immigration enforcement along the border, and temporarily use the National Guard to assist DHS in securing the southern border.²⁹

The supplemental proposal for fiscal year (FY) 2007, provided \$756 million to DOD in order to support NG deployments in support of U.S. border control efforts (primarily the southern border). This monetary amount was for the rotation of 6,000 NG members (not to exceed 6,000 at one time) for an initial commitment period of one year.³⁰

In 2006, the Customs and Border Patrol (CBP) received \$300 million for construction and resources to add vehicle barriers, all weather patrol roads, and permanent lighting and fencing along the border. These funds were also intended to be utilized to accommodate the additional Border Patrol agent workforce.³¹

Other departments and agencies that received funds from this supplemental proposal are as follows:

- 1) \$327 million for Immigrations and Customs Enforcement (ICE) for catch and release programs, transportation cost of detention and removal of personnel operations.

- 2) \$25 million for Federal Law Enforcement Training Center to increase the number of Border Patrol agents in the field.

- 3) \$15 million for "Operation Stone garden" in order to increase border security and augment CBP by funding federal, state, local, and tribal law enforcement operations along

the southwestern border.

4) \$20 million for DOJ Immigration review, Immigration litigation, and U.S. Attorney support for border enforcement.³²

The border appropriations for 2006-2007 for construction and infrastructure can be located in Table 2 (Border Patrol tactical infrastructure appropriations) on page 33. The table sourcing data located at the base of the table explains that prior to FY 2003, the infrastructure estimates were taken from an analysis conducted by the former Immigration and Naturalization Service (INS). DHS has submitted all requests for tactical infrastructure appropriations since Fiscal Year 2003.

Chapter IV – Roles and Capabilities of Customs and Border Protection

Customs and Border Protection (CBP) falls within the Department of Homeland Defense. The CBP's primary mission is to protect the borders of the United States from terrorism, human and drug smuggling, illegal migration, and agricultural pests while concurrently facilitating the movement of legal travel and trade.

The focus of the Border Patrol along the South Western border of the United States prior to the September 11, 2001 terrorist attacks was directed towards inhibiting the flow of illegal drugs and immigrants. The South Western border had over 9,000 border agents conducting operations along the 2,062 mile southern edge. An illustration of the southwestern border of U.S. is shown in Figure 1 on page 28. This amount of border security may initially depict an adequate number but an analysis conducted by the Bush Administration concluded this was far below the recommended or required amounts.

President Bush mobilized approximately 1,600 National Guardsmen to augment federal border enforcement due to the Border Patrol being insufficiently resourced with the adequate amount of manpower and equipment to conduct the task of securing the Southern border of the

U.S. after the 9/11 attacks.³³

CBP is responsible for guarding 7,000 miles of terrestrial border the U.S. shares with Mexico and Canada to include 2,000 miles of coastal waters surrounding the Florida peninsula and off the coast of Southern California. The CBP is responsible for sharing the mission of protecting 95,000 miles of maritime border in conjunction with the U.S. Coast Guard.³⁴

CBP has three entities that comprise the entire organization. The entities are the Border Patrol, Air and Marine Operations, and Agriculture Specialists. The mission sets for these three are:

- Border Patrol agents prevent illegal entry into the United States of people and contraband between the ports of entry.
- Air and Marine Operations patrol the land and sea borders to stop terrorists and drug smugglers before they enter the United States.
- Agricultural Specialists prevent the entry of exotic plant and animal pests, and confront emerging threats in agro- and bioterrorism.³⁵

With a mission set of this magnitude the Department of Homeland Security directed the Department of Defense to assist and support the CBP with border security. This has alleviated the necessity to rapidly train new border agents and permitted the CBP to fulfill its mission to date.

The Armed Border of the Southwest United States

The use of the word “armed” is being used in the context of what forces, equipment, and capabilities CBP and DOD utilize to secure the border. The Customs and Border Protection is the unified border agency under the Department of Homeland Defense that is responsible for securing the border. CBP consists of U.S. Customs, U.S. Immigration, Animal and Plant Health Inspection Service and the U.S. Border Patrol. All of these agencies combine forces daily to interdict and deter illegal narcotic-trafficking, immigration, terrorism and protection from

agricultural pests. Of course, as previously discussed these agencies are supported and augmented by the Department of Defense as directed by USNORTHCOM or a designated JTF.³⁶

One aspect of arming the southern border is utilizing natural or man-made barriers that are already in place. Some examples are mountainous terrain (surpassing 3,500 feet in elevation in some areas), barrenness desert terrain, large gullies or ravines, privately owned lands (owned by minute-men), and tribal lands. All of these natural or man-made barriers either deter, inhibit, or severely affect illegal activities along the border.

The southern border of the United States is protected and patrolled by land, air, and maritime (including the U.S. Coast Guard) forces from a majority of the aforementioned organizations. Other arming capabilities along the border are physical borders (anti-vehicle barriers, fences, walls), active foot and vehicle patrols, aerial reconnaissance (manned and unmanned), and infrared and regular camera surveillance.³⁷ Some examples of physical borders are shown in figures 2-4 on pages 29-31. Figure 2 depicts a diagram of a physical vehicle barrier while figure 3 shows an actual illustration of a vehicle barrier along the southwestern border of the U.S. Figure 4 illustrates what a particular fence line looks like along the border of San Diego, California and Tijuana, Mexico.

In addition to the previously mentioned arming capabilities along the border, the Department of Homeland Security (specifically CBP) administration has outlined plans for increasing border security by adding more personnel and infrastructure. The administration plans to implement the following measures by December 31, 2008:

- Accumulate a total Border Patrol agent workforce of 18,300
- Add 370 miles of fencing
- Add 300 miles of vehicle barriers
- Emplace 105 Camera and radar towers

- Purchase three additional Unmanned Aerial Vehicles (UAVs)³⁸

Other arming capabilities utilized by CBP are intensified passenger processing, cargo targeting and inspection, and non-intrusive technology inspections. All of these arming capabilities provide the CBP with the ability to orchestrate a layered defense designed to interdict, deter, and prosecute illegal individuals or activities along the southern border. Chart 1 on page 34 illustrates the decline in illegal apprehensions at various San Diego, CA which is comparable to Tucson, AZ sector stations. The contrast in apprehensions directly correlate to the added enforcement measures instituted by CBP and the state of California (“San Diego Fence”) which has deterred possible illegal immigrants from attempting to cross at highly defended or enforced sites and sectors.

CBP Geographic Environments

The CBP traditionally conducts operations in three types of geographic environments: urban, rural, and remote. All of these environments pose their own unique issues and challenges to the Border Patrol and DOD personnel that operate within their sphere of influence.

The urban environment poses a disadvantage to border enforcement personnel due to the infrastructure and population density. It is the preferred method of entry for a majority of smugglers and potential illegal aliens due to the advantages of immersing themselves into the local populace and evading enforcement personnel by infiltrating infrastructure. In order to combat this type of environ, border enforcement utilizes a combination of tactical infrastructure (lighting and fencing) and technology directly supported by quick response forces able to respond to intrusion alarm sensors.³⁹

The rural environment provides border enforcement personnel more time to respond due to the area having lower population densities and fewer infrastructures for points of entry. In this environ, the enforcement methodology utilized is detection technology which tracks an assailant from the point of entry to the point of interdiction by enforcement personnel. The area

provides quick response time to the border and anti-vehicle barriers are emplaced to delay the speed and transportation capability of the intruder.⁴⁰

The third and final type of environment is classified as a remote area. This environ is so desolate it may take the intruder hours or up to days to traverse the vast terrain. Border enforcement in these types of areas relies heavily upon detection technology. Barrier networks are utilized extensively in order to canalize the intruder which provides border enforcement personnel adequate time to respond and interdict. Forward operating bases are strategically positioned in order to extend reach capability and decrease man-hours along with costs traditionally associated with shift changes.⁴¹

Chapter V – Roles & Capabilities of DOD Assets

“Some believe that, with the U.S. in the midst of a dangerous war on terrorism, now is not the time to transform our armed forces. I believe that quite the opposite is true. Now is the time to make changes. The impetus and the urgency added by the events of September 11th powerfully make the case for action.”

Secretary of Defense Donald Rumsfeld, January 31, 2002⁴²

Military forces are constrained by law and historic public policy which affects their employment in order to conduct missions on U.S. territory securing the homeland.

“DOD’s role in preventing terrorist attacks within the U.S. land domain is defined by the President’s constitutional authority related to military support to civilian law enforcement. Domestic security has traditionally been a civilian law enforcement function”⁴³

There are three tiers in which the military may operate in regards to securing the homeland. The tier’s are:

“Tier 1: Local and Federal law enforcement. When directed by the President or the Secretary of Defense, DOD will provide appropriate defense assets in support of domestic law enforcement authority, normally in support of a lead Federal agency such as the FBI.”⁴⁴

“Tier 2: National Guard forces not on Federal Active Duty. When directed by the Governor or appropriate state authority, National Guard forces and assets in state active duty status can respond quickly to perform homeland security activities within U.S. territory.”⁴⁵

“Tier 3: U.S. military forces responding to Presidential direction. If circumstances warrant, the President or the Secretary of Defense may direct military forces and assets to

intercept and defeat threats on U.S. territory. When conducting land defense missions on U.S. territory, DOD does so as a core, war-fighting mission, fulfilling the Commander in Chief's Constitutional obligation to defend the nation."⁴⁶

The 2003 National Defense Authorization Act states that the Assistant Secretary of Defense for Homeland Defense is the primary supervisor for DOD's homeland defense operations. This provides DOD with improved policy guidance throughout all of its components as it relates to homeland defense and civil support operations. The second individual in the hierarchy is the Chairman of the Joint Chiefs of Staff. This individual coordinates and assists all combatant commands (specifically U.S. Northern Command and North American Aerospace Defense Command {NORAD}) with strategic level direction, planning, and execution of homeland defense and civil support missions. These two positions are necessary in providing DOD the leadership representation within the federal government's administration which ensures homeland defense remains a high priority.⁴⁷

The primary combatant command that fulfills the command and control of DOD homeland defense efforts is the U.S. Northern Command (USNORTHCOM). USNORTHCOM was established October 1, 2002 in order to defend America's homeland after the 9/11 terrorist attacks. The mission of USNORTHCOM is:

"To anticipate and conduct Homeland Defense and Civil Support operations within the assigned area of responsibility to defend, protect, and secure the United States and its interests."⁴⁸

Prior to the establishment of USNORTHCOM, there was no one unified command to coordinate and plan missions for DOD assets for homeland defense. The development of this command provided unity of command and unity of effort essential to mission accomplishment.

USNORTHCOM is responsible for all air, land and sea approaches and encompasses the continental United States, Alaska, Canada, Mexico and the all water ways out to approximately 500 nautical miles. The commander of USNORTHCOM is responsible for conducting theater security operations with Canada and Mexico and ensuring DOD assets are planned for,

organized, and prepared to execute homeland defense and civil support missions. The command has few permanent forces assigned to its organization and is assigned DOD assets whenever required to perform operations, as mandated by the President or the Secretary of Defense.⁴⁹

USNORTHCOM forms Joint Task Forces which are subordinate commands that are tasked with conducting homeland defense or civil support missions which can range from securing the nations' border against possible terrorist attack, counter-drug operations, to assisting with national disasters. This is an integral part of the connectivity between DOD assets and federal, state, and local law enforcement activities.

Chapter VI – Joint Operations

DOD Contributions to Border Security

The Defense Authorization Act of 1989, permitted the military to contribute in the areas of aerial and maritime detection and monitoring of trafficking of illicit drugs. These operations have been on-going for almost two decades. Joint Task Forces (JTF) have been established in Key West Florida, Alameda Texas, and Fort Bliss Texas in order to combat illicit drug trafficking along our nations' land and maritime borders.⁵⁰

One of the Texas based JTF; JTF-6 (now called JTF-North) was established specifically to serve as the planning and coordinating headquarters to support federal, state, and local law enforcement agencies operating in the southwest border region. In countering the flow of illicit drugs, JTF-North has conducted over 5,800 missions supporting LEAs along the S.W. border.⁵¹

Recently, JTF-North has been directed by USNORTHCOM to support the U.S. Border Patrol in testing U.S. Army Hunter aerial drones as a method to deter illegal immigration. The drones provide an aerial reconnaissance capability by utilizing radar and camera systems placed on board the aircraft. In 2006, operations utilizing the Hermes 450 drone aided in 780 apprehensions of illegal migrants, 11 narcotic detections, and the seizure of over 500 lbs of illegal narcotics.”⁵²

The United States National Guard has provided the largest contribution to border security for the last two decades and has increased its support since 9/11. As of June 2006, the NG has placed over 450 National Guardsmen along the four southern border states (California, Arizona, New Mexico, and Texas) conducting counter-narcotics missions. The NG has provided liaison officers at the CBP headquarters, sector levels, and tactical ground levels in order to facilitate mission de-confliction and provide feedback to the NG senior leadership on mission accomplishment.⁵³

The NG has also supported CBP participating in operations specifically designed to augment CBP agents in the field, sector level, or headquarters which permits the CBP to gradually increase its agent workforce and place much needed manpower along the border in a tactical enforcement role.

Aside from the counter-narcotics mission, the NG has been conducting what it calls the Innovative Readiness Training Initiative (IRTI) mission with CBP. This mission consists of Army and Air National Guardsmen providing engineering, surveying, communication, and medical skills along the border which allows them to receive “real-world” training. This scenario works for the NG as well as enhances the CBP posture along the border. The majority of the mission accomplishments of the IRTI have been conducted in California where the NG erected walls and gates, constructed anti-vehicle barriers in the roads and emplaced fencing along the California – Mexico border.⁵⁴

In addressing the Congress on June 5, 2006, LTG H. Steven Blum; Chief of the National Guard Bureau, elaborated on how the National Guard enhanced the CBP capabilities during Innovative Readiness Training Initiative and Operation Jump Start.

He stated, “We take National Guard units-Army National Guard units and Air National Guard units-from around the country, and they have been brought to the Southwest border for quite some time now to bring their engineering skills, to bring their survey skills, to bring communications and medical skills to the border...”⁵⁵

LTG Blum also stated, "...military support in support of our federal law enforcement agencies that have responsibility for the security of our borders. So what we will be doing is actually bringing military skills, military equipment, military expertise and experience to assist at the request of the Department of Homeland Security and Customs and Border Protection-assist them doing those tasks they think will make them better able to do their job of law enforcement better, faster, and more effective and efficient..."⁵⁶

Operation Jump Start is another operation the NG has been involved in. In June of 2006, the NG began placing Army and Air National Guardsmen along the four southern border-states. By the end of June the force structure consisted of approximately 2,500 troops, with a total force of 6,000 troops by the year's end. The force consists of liaison officers (project managers), engineers, entry-identification teams, administration and communication specialists.

The primary mission of Operation Jump Start is:

- 1) Provide administrative and communications support to the CBP headquarters.
- 2) Erect lighting and fencing along the borders of the California, Arizona, New Mexico, and Texas.
- 3) Construct anti-vehicle barriers, build and grade road networks.
- 4) Establish liaison relationships with Customs and Border Protection leadership and personnel.
- 5) Provide entry-identification teams capable of observing, detecting, and reporting possible illegal migration across the southern border of the U.S.
- 6) Provide intelligence analysis and mapping.
- 7) Provide aviation reconnaissance and transportation
- 8) Provide medical support.⁵⁷

The National Guard while conducting Operation Jump Start assisted with:

- Apprehending nearly 124,000 illegal aliens
- Seizing more than 900 vehicles

- Seizing 250,000 pounds of marijuana and nearly 5,000 pounds of cocaine
- Seizing more than \$68,000 in currency.⁵⁸

The Department for Homeland Security accounted for a twenty percent reduction in apprehensions of illegal aliens along the southern border of the U.S. during the fiscal year of 2007.⁵⁹ Not only is this an indication that fewer attempts are being made to gain entry into the U.S. illegally, but also that the NG augmenting the CBP during Operation Jump Start has had a significant impact on illegal immigration.⁶⁰

It is imperative to note that all of the NG assets mobilized to participate in Operation Jump Start were relinquished by their respective state governor and placed under the operational control of one of the four southern border state governors. Another significant fact is that the NG personnel are authorized to be armed if working directly along the border, but this is solely for force protection purposes and not law enforcement or illegal alien interdiction. The law enforcement and interdiction mission pertains to federal, state, and local law enforcement and excludes the NG, Reserve and Active duty military forces.

Chapter VII - Conclusion

One essential piece from the definition of Homeland Security mandates a concerted national effort to prevent terrorist attacks within the United States. This particular piece explicitly outlines the necessity to utilize all elements of the nations' defense in order to deter, mitigate, or recover from any and all future terrorist attacks against the U.S.

The Customs and Border Protection (CBP) has been augmented by DOD assets from all three service components, the Active duty forces, Reserve forces, and National Guard forces in order to assist in counter-drug and counter-terrorism efforts. The Army, Air Force, Marines, Navy and Coast Guard have all played a significant role in securing our nation's border along the southwestern United States. The CBP received support from DOD after 9/11 in order to provide

an immediate increase to the security posture of the land and maritime ports of entry. The support was also directed by USNORTHCOM in order for the CBP to hire, train, and inculcate a new Border Patrol Agent workforce. This augmentation enabled CBP to remove agents from headquarters administrative and logistical positions and place them on the “front line” of defense along the border.⁶¹

Although there are some significant problems that remain at large relating to judicial, intelligence, or labor issues; a majority of these issues have been either addressed or are in the process being alleviated. The Homeland Security Administration has implemented numerous initiatives in order to strengthen the southern border. Some of these initiatives are:

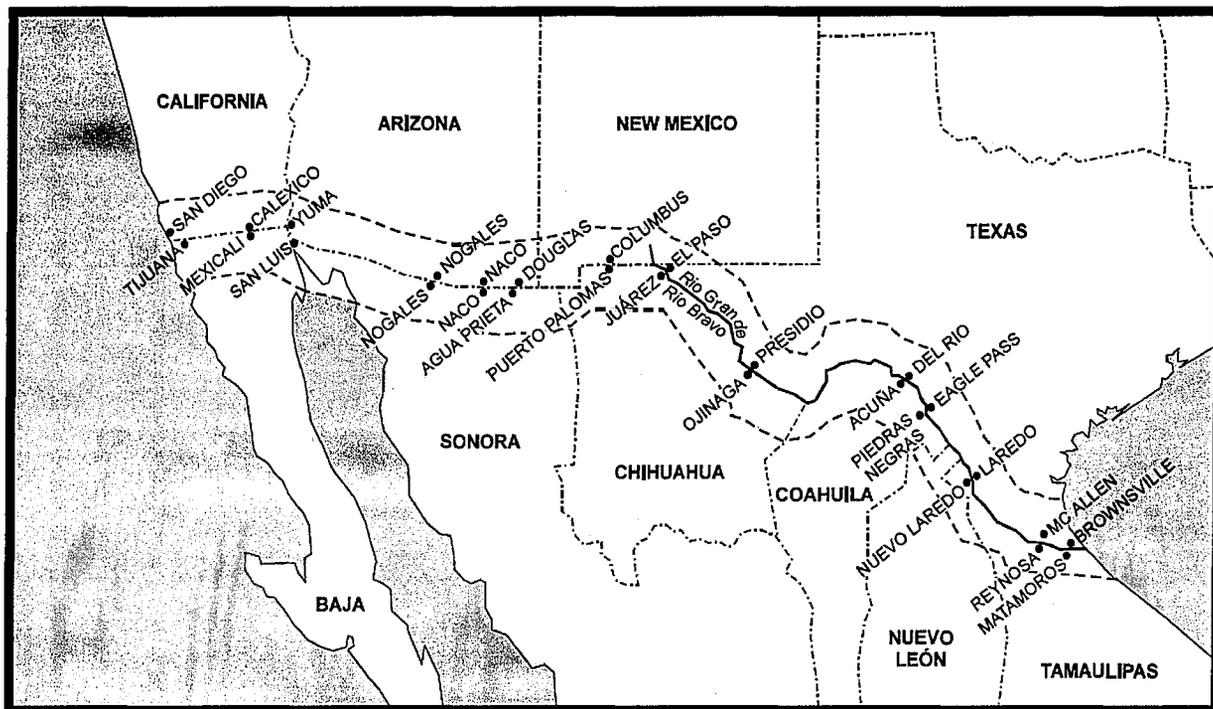
- a. Increase border patrol agents to 18,300 by December 2008
- b. Hire an additional 1,700 border patrol agents by December 2009
- c. Add three more UAVs in 2008
- d. Add over 300 miles of fencing and barriers along the border¹

It is undeniably evident what skills and support mechanisms are provided by the National Guard as stated previously. The active duty and reserve forces provide some of the same types of skill sets to include aerial reconnaissance, intelligence analysts, and counter-terrorism and counter-narcotics trainers. All of these assets are critical force enablers that augment and enhance the Customs and Border Protection capabilities along the southern border of the United States.

¹ White House Office of Communications. “Improving Border Security and Immigration within Existing Law”, Washington, DC, August 2007.

The majority of DOD assets utilized are National Guard forces under Title 32 status this keeps them under state control and not federal control. The DOD assets that are under federal control provide assistance to CBP in a “support” role only which falls within the legal guidelines of federal and state statutes. In order to deter future terrorist attacks against the U.S., it is imperative that DHS, CBP, and DOD work in unison with one another today and in the future.

Figure 1: Illustration of the southwestern border of the United States and Mexico.



Source: EPA Semiannual Report on U.S. – Mexico Border Contingency Planning Activities; EPA 550-B-99-020, September 1999; Issue Number 4

Retrieved from WWW on DEC 25, 2007: <http://epa.gov/oem/docs/chem/issue4.pdf>

Figure 3: Illustration of permanent vehicle barriers along the southwestern border of the U.S.

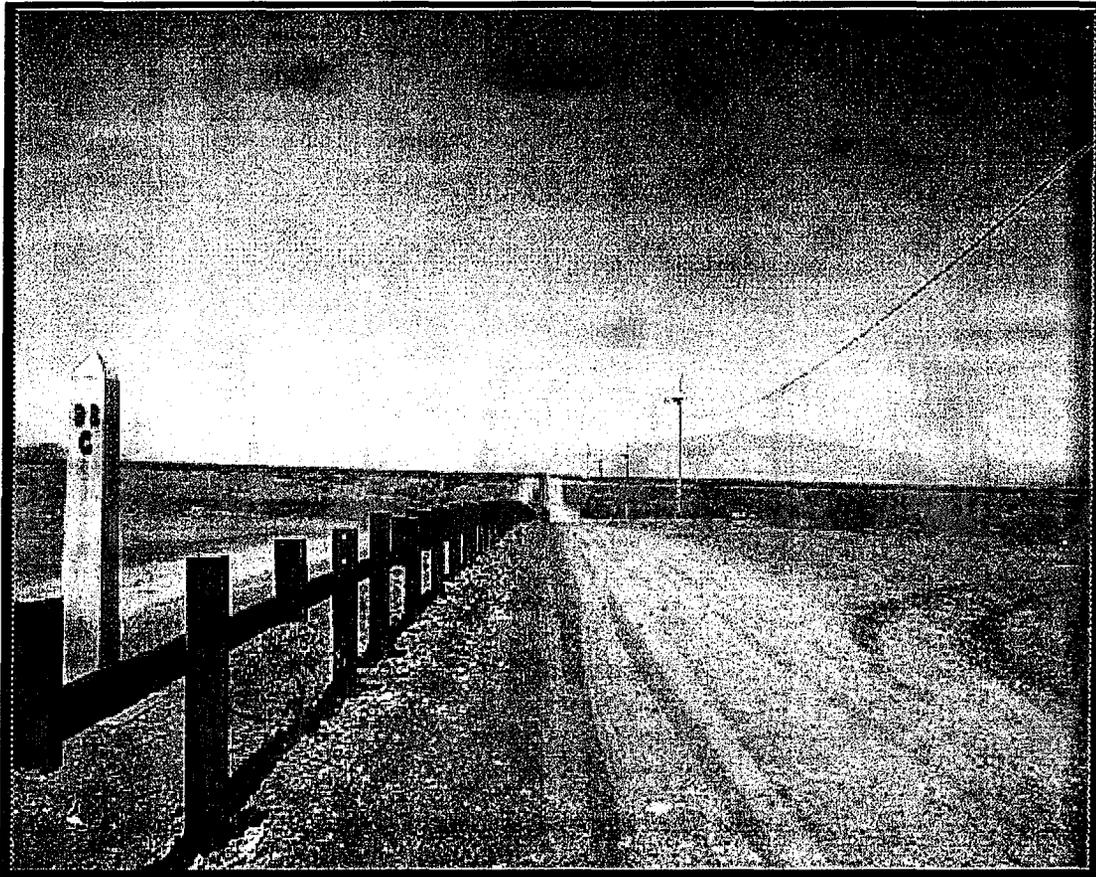
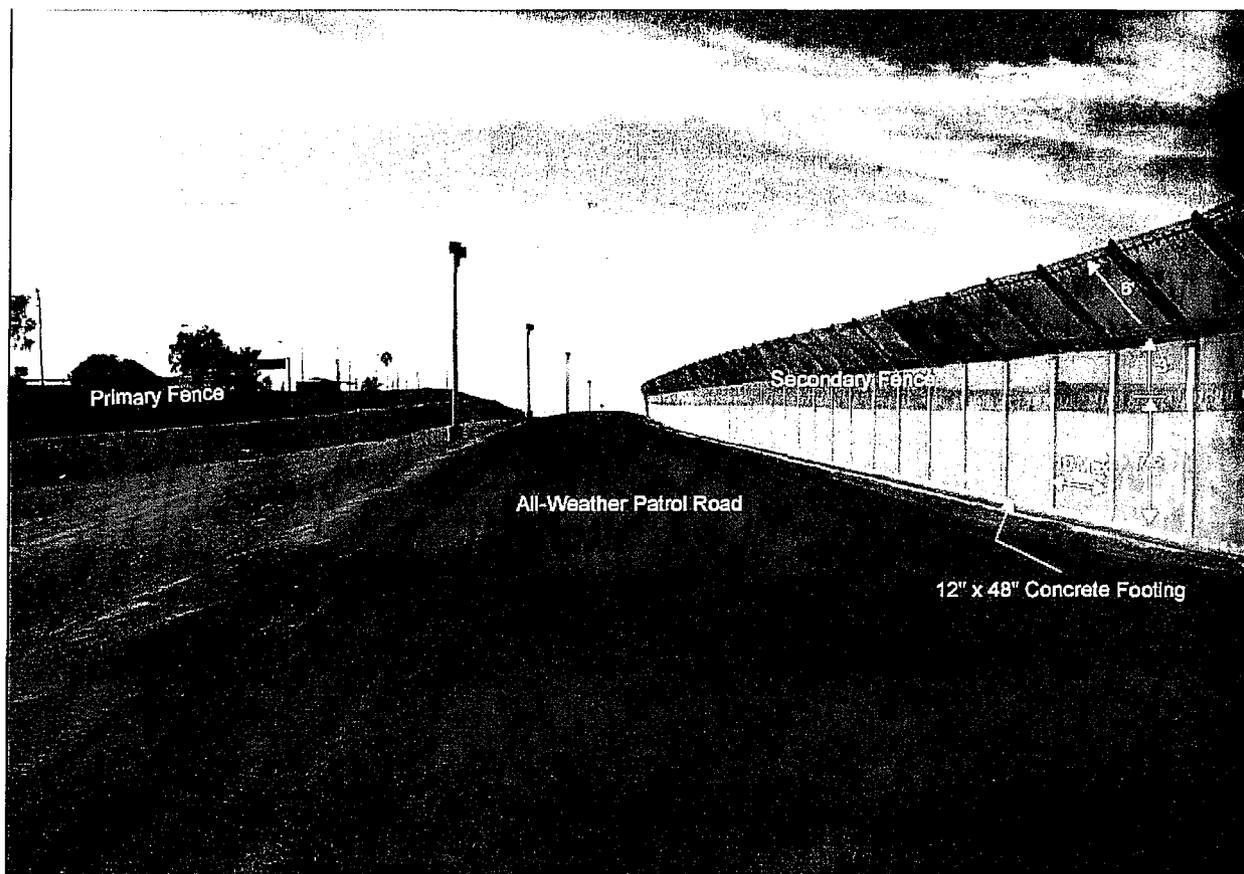


Figure 4: The “San Diego Fence” fence erected to deter illegal immigration into San Diego, Ca.



Source: U.S. Department of the Interior, National Park Service, *Proposed Vehicle Barrier Environmental Assessment*, April, 2003.

Table 1: Current Major National Guard Deployments.
(As of 1/1/07)

In Iraq — Operation Iraqi Freedom (OIF)	14,618
Army National Guard	13,508
Air National Guard	1,110
In Afghanistan — Operation Enduring Freedom (OEF)	4,932
Army National Guard	4,569
Air National Guard	363
In the United States — Operation Jump Start (OJS) as of 1/5/07	5,670
Army National Guard	4,536
Air National Guard	1,134

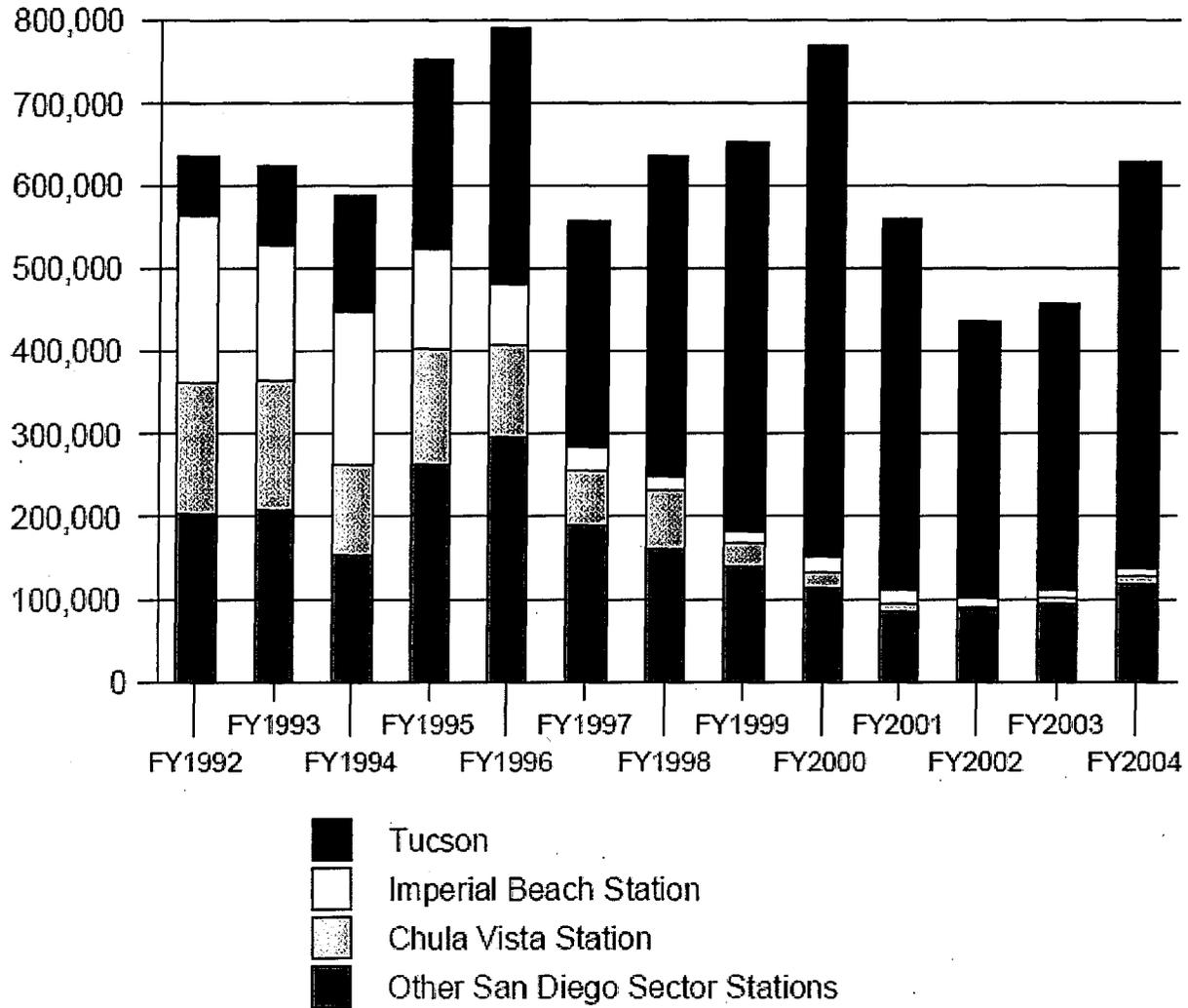
Source: Department of Defense, Office of Joint Chiefs of Staff, Legislative Affairs; January 2, 2007; and National Guard Bureau, Public Affairs, January 10, 2007.

**Table 2: Border Patrol Tactical Infrastructure Appropriations
(Millions of Dollars)**

Fiscal Year	Construction Account (total)	Tactical Infrastructure Construction
2007 (request)	256	106
2006	298	93
2005	92	15
2004	89	14
2003	235	23
2002	128	6
2001	133	3
2000	100	9
1999	90	4
1998	76	8
1997	10	4
1996	25	4

Sources: For FY2006-FY2007, the amounts appropriated for construction and tactical infrastructure were identified from the FY2007 DHS Congressional Budget Justifications. For FY2004-FY2005, the amounts appropriated for construction and tactical infrastructure were identified from the FY2006 DHS Congressional Budget Justifications. FY2003 construction and tactical infrastructure funding was identified from the FY2005 DHS Congressional Budget Justifications. FY1996-FY2002 tactical infrastructure funding was identified in the FY2003 INS Congressional Budget Justifications; funding for FY1998-FY2000 includes San Diego fencing as well as fencing, light, and road projects in El Centro, Tucson, El Paso, and Marfa. FY2001 and FY2002 construction funding identified from the FY2002 INS Congressional Budget Justifications. FY2000 construction funding identified from the FY2001 INS Congressional Budget Justifications and H.Rept. 107-278. FY1999 construction funding identified from P.L. 105-277. FY1998 construction funding identified from P.L. 105-119. FY1997 funding identified from P.L. 104-208. FY1996 construction funding identified from P.L. 104-134.

Chart 1: Apprehensions at San Diego Sector Stations and Tucson Sector



Source: CRS analysis of CBP data.

Thesis Interview Q&A Results

Department of Defense Involvement in Homeland Security; the Militarization of the Southwestern Border of the U.S.

Interview Location and Date: Center for Strategic & International Studies (CSIS) – March 24, 2001 (11:30-12:30 p.m.).

Interview conducted by: Major Michael Thompson, U.S. Army, Graduate Student at USMC Command & Staff College, Quantico, VA.

Individual Interviewed: Christine Wormuth, Senior Fellow, International Security Program, and Center for Strategic & International Studies.

Interview Points of Discussion:

1. Briefly discussed how the Department of Defense (DOD) has become involved in homeland security since September 11, 2001; specifically concentrating on the border of the U.S. and Mexico.

- Initially began with airport and transportation security; later on moved towards border security
- Example of another operation is Operation Winter Freeze (centered around Vermont and Canada); NG troops became federalized instead of remaining in a Title 32 status which led to the troops be unable to carry arms; this operation led to future operations like Jump Start keeping troops in a Title 32 status
- Operation Jump Start was a political point by the current administration in order to display legislative reform was being enacted
- Jump Start was initially slated to deploy NG troops to the border for their two week Annual Training (AT); not sure if this policy is still in effect; not aware of current NG man-power manning the S.W. border; Jump Start was planned to augment CBP through 2008 in order to allow CBP personnel to be recruited and trained

2. Elaborate on some of the legal restrictions of utilizing DOD assets within the U.S to augment or support the Bureau of Customs and Border Protection (CBP).

- NG under Title 32 status provides capability for NG to carry arms; cannot engage personnel crossing the border
- Survey study on NG and Reserves depicts an increase in morale when the mission supports the Global War on Terrorism (GWOT) and not land defense (Homeland security)

3. Has the Posse Comitatus Act of 1878 been circumvented by the current administration in order to utilize DOD assets for homeland security? If yes, how has it been circumvented? If not, please explain.

- Act has not been circumvented; this is due to keeping forces on the U.S. border consistently traditionally NG

4. Title 10 of the U.S. Code (Chapter 18; dated 1981) discusses DOD assistance by providing military support for civilian law enforcement. It covers sharing information, loaning equipment and facilities, providing expert advice and training, and authorizes personnel to maintain and operate equipment in conjunction with counterterrorism, counterdrug, immigration laws, and customs requirements. Have you seen a major increase in these areas? Have new areas been added to this U.S. Code?

- Law enforcement, Intelligence agencies, and DOD has done more information sharing; specific example is NORTHCOM having liaison with Intel agencies
- NG combining Army and Air Guard within each state (Joint Task Force HQ in each state)
- Department of Homeland Security forming Fusion Centers bringing local, state, federal law enforcement agencies together for information sharing
- Effectiveness is still a challenge due to terra-line on security clearances between the DOD and civilian law enforcement agencies

5. Do you believe the current operational tempo of the U.S. Armed Forces has affected the mission of homeland security? Has it affected the mission and role of the U.S. National Guard of assisting state governors in times of state crisis?

- OPTEMPO has affected the homeland security mission; e.g. The Katrina mission – this is due to NG military equipment being forward deployed to Iraq, directly effects troop readiness levels because they cannot train on equipment at CONUS home-station; troop strength is not the issue, equipment availability is
- Military has not placed significant emphasis on homeland security due to GWOT
- DOD is not keen on supporting the mission at home (Afghanistan & Iraq are focal point)
- Need military assets at CONUS locations in order to deter, mitigate, or defeat possible terrorist attacks
- Homeland security mission is not solely affected by current OPTEMPO but it plays a part

6. Do you believe the approved budgetary proposal for FY 2007 and any supplemental packages provided to DOD to augment CBP was adequate for the assigned mission along the southern border of the U.S.?

- N/A

7. What are some of the areas along the southwestern border of the U.S. that continue to have immigration / security concerns? What programs or tactics have CBP or DOD instituted to counter these concerns?

- Securing the border cannot be done with an additional 8,000 NG troops utilized to augment CBP
- Terrorist can come through Canada easier than Mexico; Canada is strengthening its border travel and border security posture

8. Do you believe the U.S. should erect a barrier fence similar to the “San Diego” fence along the entire southern U.S. border? Would it be effective against illegal immigration, counterdrug and counterterrorism efforts?

- Mr. Chertoff (DHS Director) suggested focusing on the demand of illegal immigrants for economic reasons through a legal process; do not focus solely on the physical barriers of fences, vehicle barriers, or check points
- Agrees with Director DHS on pursuing other forms of deterrence vice physical barriers along U.S. borders (economic aide to Mexico, etc.)

9. Can you elaborate on “Operation Jump Start” and how this operation has assisted CBP in its mission of homeland security? Also, are you aware of other operations similar to Jump Start that have been conducted along the southern border of the U.S.?

- Previously discussed

10. What do you consider as the “Way Ahead” for DOD and CBP working in conjunction with each other in order to provide the Nation with a secure homeland security posture?

- The military should not be shouldered with the border land defense mission within the U.S., the mission should belong to CBP; the military has too much already to address
- The military is not culturally comfortable with land defense within the U.S. and the U.S. populace is not comfortable with the military conducting the mission either
- Easy out for the government to task the military to accomplish the mission
- Morale of NG could potentially suffer if the NG is continually utilized to conduct the homeland security land defense mission; will affect the recruiting and retention of the NG

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- ¹ Strategy for Homeland Defense and Civil Support; Exe. Summary
 - ² National Security Strategy; 2006 at IX page 48
 - ³ JP 3-26; Homeland Security; Page 6
 - ⁴ JP 3-27; Homeland Defense; Page 18
 - ⁵ Strategy for Homeland Security and Civil Support; Page 11
 - ⁶ CSIS Interview of Senior Fellow Christine Wormuth; International Security Program Specialist
 - ⁷ Bullock et. Al; Intro to Homeland Security; Page 96
 - ⁸ Bullock et. Al; Intro to Homeland Security; Page 104
 - ⁹ DOJ Official website; <http://www.usdoj.gov/02organizations/>
 - ¹⁰ 18 U.S.C.; 1385
 - ¹¹ The Columbia Encyclopedia, Sixth Edition. Copyright 2007 Columbia University Press
 - ¹² CRS Report RS22443 at CRS 3
 - ¹³ CRS Report RS22443 at CRS 3
 - ¹⁴ CRS Report RS22443 at CRS 5
 - ¹⁵ CRS Report RL33181 at CRS 4
 - ¹⁶ CRS Report RS22443 at CRS 5
 - ¹⁷ Tim Kane, Ph.D., Troop Deployment Dataset, 1950–2003
 - ¹⁸ Tim Kane, Ph.D., Troop Deployment Dataset, 1950–2003
 - ¹⁹ 9712-1, Executive Summary on Homeland Defense
 - ²⁰ Estimate No. 6, 109th Congress, 2nd Session; O&M Defense-Wide Revised Request
 - ²¹ CSIS Interview of Senior Fellow Christine Wormuth; International Security Program Specialist
 - ²² Forest; Homeland Security; PG 290
 - ²³ National Security Strategy; 1-2
 - ²⁴ Forest; Homeland Security; PG 293
 - ²⁵ Forest; Homeland Security; PG 299
 - ²⁶ Strategy for Homeland Defense and Civil Support; PG 6
 - ²⁷ Strategy for Homeland Defense and Civil Support; PG 7
 - ²⁸ Strategy for Homeland Defense and Civil Support; PG 7
 - ²⁹ Estimate No. 6, 109th Congress, 2nd Session; Asst. Director Letter to the President
 - ³⁰ Estimate No. 6, 109th Congress, 2nd Session; O&M Defense-Wide Revised Request
 - ³¹ Estimate No. 6, 109th Congress, 2nd Session; O&M Defense-Wide Revised Request
 - ³² Estimate No. 6, 109th Congress, 2nd Session; O&M Defense-Wide Revised Request
 - ³³ Major Gen Timothy J. Lowenburg, The Role of the NG in National Def & HM LD SEC
 - ³⁴ CBP Fact Sheet; PG 1
 - ³⁵ CBP Fact Sheet; PG 1
 - ³⁶ CBP Webpage Fact Sheet; PG 1
 - ³⁷ Forest; Homeland Security; PG 28
 - ³⁸ Fact Sheet: Improving Border Sec. and Immigration w/in the existing Law; PG 1
 - ³⁹ Deputy Chief of Border Patrol brief to Congress; PG 4
 - ⁴⁰ Deputy Chief of Border Patrol brief to Congress; PG 4-5
 - ⁴¹ Deputy Chief of Border Patrol brief to Congress; PG 5
 - ⁴² Strategy for Homeland Defense and Civil Support; PG 26
 - ⁴³ Strategy for Homeland Defense and Civil Support; PG 32
 - ⁴⁴ Strategy for Homeland Defense and Civil Support; PG 32-33
 - ⁴⁵ Strategy for Homeland Defense and Civil Support; PG 33
 - ⁴⁶ Strategy for Homeland Defense and Civil Support; PG
 - ⁴⁷ Strategy for Homeland Defense and Civil Support; PG 8
 - ⁴⁸ USNORTHCOM Official web page; Command page
 - ⁴⁹ USNORTHCOM Official web page; Command page
 - ⁵⁰ Forest; Homeland Security; PG 30
 - ⁵¹ Forest; Homeland Security; PG 30
 - ⁵² Forest; Homeland Security; PG 31
 - ⁵³ CBP Press Briefing, NG support of Border Security; PG 1
 - ⁵⁴ CBP Press Briefing, NG support of Border Security; PG 2-3
 - ⁵⁵ CBP Press Briefing, NG support of Border Security; PG 2

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- ⁵⁶ CBP Press Briefing, NG support of Border Security; PG 2
⁵⁷ CBP Press Briefing, NG support of Border Security; PG 3-4
⁵⁸ Fact Sheet; Border security and Immigration enforcement; PG 1
⁵⁹ Fact Sheet; Border security and Immigration enforcement; PG 1
⁶⁰ CBP Press Briefing, NG support of Border Security; PG 3-4
⁶¹ CBP Press Briefing, NG support of Border Security; PG 4

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