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### WEDNESDAY, MAY 24, 2006

**BORDER SECURITY—MISSION OF THE NATIONAL GUARD**

**STATEMENTS PRESENTED BY MEMBERS OF CONGRESS**

- Hunter, Hon. Duncan, a Representative from California, Chairman, Committee on Armed Services
- Skelton, Hon. Ike, a Representative from Missouri, Ranking Member, Committee on Armed Services

**WITNESSES**

- Aguilar, David V., Chief of Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security
- Blum, Lt. Gen. H. Steven, Chief, National Guard Bureau, U.S. Army
- McHale, Hon. Paul, Assistant Secretary of Defense for Homeland Defense, Department of Defense

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BORDER SECURITY—MISSION OF THE NATIONAL GUARD

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,

The committee met, pursuant to call, at 9 a.m., in room 2118, Rayburn House Office Building, Hon. Duncan Hunter (chairman of the committee) presiding.

OPENING STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE FROM CALIFORNIA, CHAIRMAN, COMMITTEE ON ARMED SERVICES

The CHAIRMAN. Committee will come to order. The Committee on Armed Services meets this morning to learn more about the Administration's plan for using the National Guard to protect the United States' southwest border. As everyone knows, the President announced a five-point immigration reform initiative in a nationally televised address on May 15th. Of those five points, the most important point in my view is securing the border.

To do that, the Administration plans to increase the number of Border Patrol agents from about 12,000 to about 18,000 and to make greater use of barriers and high tech surveillance on the border. Since it will take some time to recruit, hire and train those 6,000 new agents, and it will take considerable logistical know-how and muscle to rapidly construct new barriers and install surveillance systems, the President has asked the National Guard to help in the interim.

One thing I am sure of, the National Guard will be up to the task and will perform ably. What we want to ensure though that is the National Guard will be asked to conduct missions appropriate for the skill and training of the unit. While most Americans believe that our borders should be secured, there are understandable international sensitivities to deploying troops on the border. And we as a committee must be assured that those troops are trained for the missions they will be asked to perform. And on that point I was watching, I was down on the border doing a response to the President's speech and we had National Guard Caterpillars driven by National Guardsmen behind me operating at that time and grading the roadbed for the fence that we are building in the San Diego sector. And I noticed a lot of folks in the media were shocked and awed with the prospect of the National Guard going to the border. And I had to point to the guy behind me driving that Caterpillar. We have been operating, we have been building infrastructure on the border now for many years. The National Guard has been sending rotating units to the border, and that appears to
be something that has been lost on a great portion of the media and the general public. But the National Guard has been at the border and been doing, I might add, a good job.

So while we support the President’s aggressive initiative to secure the southwest border, we also I think need to make sure that we undertake the right priorities, that we do this practically and in a practical and in a smart way, and that we look at the entire border and look at several urgent priorities. And one thing we looked at when we put together the House plan for building the fence, incidentally, the 700-plus miles of fence that is in the House plan, we looked at the hot season that is on us right now and the fact that some 400 people die in the desert each year of sun stroke or dehydration, and these are people who are smuggled across the line by the coyotes, by the smugglers. They are often told that the road is just a few miles to the north and in some cases it is 20 miles to the north and you end up with people dying in the heat, and one humanitarian aspect of the House plan was that we mandated interlocking cameras be established before May 31st, which now is just a few days away, and the other body of the Senate still doesn’t have that bill obviously off the floor yet, but that we would at least have interlocking cameras on that corridor through which most of the heat stroke victims travel, and the dehydration victims. And that is the area of the 392 miles between Calexico, California and Douglas, Arizona, the major smugglers corridor through which right now is about 110 degrees in the shade and which is very, very difficult for people to cross and does cause a lot of deaths.

We talked and I know Secretary McHale—incidentally, it is great to have you here—is a great colleague and former Member of the House. We are glad you are in this position because you bring a lot of care and concern and capability and background that I think lends itself well to this aspect of national security.

And we have looked at this one sector that is adjacent to the Yuma Training Grounds that comprises the military training and testing ranges which borders Mexico. And the fact that we have had, now we have had a lot of training that has had to be set aside, put off, platforms have had to be sent back to their home units and we have millions of dollars of Marine training time, and this is one of the places where we train our Marines and our other services to prepare them for the warfighting theater in Afghanistan and Iraq. And because of the massive number of people being smuggled through that 37 miles of training range that is adjacent to the border, we have lost valuable training. We have lost money. And obviously having people walk into this training range also presents a safety factor on top of the safety factor inherent in the extreme weather right now that has caused the deaths by dehydration and sun stroke.

So this is an area that I think we can focus on and hopefully get up barriers fairly quickly.

We understand that the details of the plan are being worked out, but we would like to see as much detail today as possible. And I note that the Department of Defense is to be reimbursed for their work here, but the reimbursement, so-called reimbursement, will come from cuts to previously submitted supplementals. If we adopt-
ed that kind of funding scheme across the Federal Government, we could save a lot of money.

But we want to make sure that we don’t cut into important resources going to the warfighting theaters as we move into this important area, this important priority of securing the border.

Let me just say one other thing. I can remember years ago, I think it was 1996, when, and then we have a picture there—I think that is the California piece of the California border, where we had the number one smugglers corridor in America, and we built the double fence, which is a fence that is right on the border, then you have a 50-yard wide Border Patrol road through which Border Patrol can move high speed vehicles, and then you have a stopper fence, which is 15 feet high with a major overhang, meaning that a smuggler has to come across the first fence, cross the Border Patrol road, sit down with his welding gear and work for 45 minutes or an hour to cut a hole in that fence, and if everyone is not at the Dairy Queen, we catch him. And as a result of that we took down this smugglers’ corridor through which most of the cocaine and most of the smuggling of people in this country took place and took it down to virtually zero. We eliminated the border gangs that were murdering an average of 10 people a year, robbing, raping and murdering these bands of people being smuggled into this country in what was known as a no man’s land between San Diego and Tijuana.

In fact it was so bad that Joseph Wambaugh wrote his best selling book, Lines and Shadows, about that no man’s land and our effort to control it, and it was a story of how San Diego had to have people, teams dressed like illegal aliens on the border waiting to be accosted by these border gangs.

When we built the border fence, we took away the mobility for the border gangs. They could no longer move from the south pursued from the north or move to the north and pursued from the south. When we took away their mobility, their ability to move back and forth on the international border, we put them out of business. And if you look now at the murder rate along that border it is nonexistent. So the average of 10 murders a year that we had before that fence has gone to zero.

So we have a couple of places we have a priority for in our bill. One is for the area between Calexico, California and Douglas, Arizona, through which most people travel to end up dying in the desert, those 400 or so deaths a year in the Southwest desert, and we also gave a priority to the section adjacent to Laredo and as you know, Nuevo Laredo, the town on the other side of the border has massive backpack cocaine trade coming into the Texas brush country out of Nuevo Laredo and we had a priority for a double fence on 15 miles on each side of Laredo and also large segments near Eagle Pass between Del Rio and Eagle Pass, Laredo and Brownsville, Columbus, New Mexico and El Paso and of course a sector that I just discussed.

So I want to turn this over to my ranking—the gentleman from Missouri, the ranking member, but just give one piece of credit where it is due and that is that I think it was 1996, when Silve Reyes, who was then Chief of the Border Patrol in the El Paso sector, in my estimation one of the finest chiefs who ever wore the
uniform, where he sat there with the Representatives from the Clinton Administration and when we asked him, we asked him if a border fence would work, he said yes, it would, even as we were being told by the Administration that they didn't want to do it. He said it would work and it would have a salutary effect on the smuggling operations in the San Diego sector. We built that fence over lots of objections, mandated it into law. It worked.

And we have taken down smuggling to virtually zero in that sector of fence and incidentally we pulled in Border Patrol agents off that area, because once you have the impediment in place you don't require the intensive labor pool, the intensive personnel pool to attend that area.

So, Mr. Secretary, that is what we are looking at, the idea of using the military to help us provide infrastructure and support to attend to this very, very difficult challenge which I think to some degree is a security challenge. 155,000 people came across that border from Mexico last year who weren't citizens of Mexico. They came from virtually every country in the world. I think 1,100 of them came from Communist China. We had people come across from Iran. People have come across from North Korea. People now understand if you want to get into the United States illegally you no longer come through Los Angeles (L.A.) International Airport. You come across a land border between Mexico and the United States.

So there is a dimension of homeland security that is concerned about terrorism that needs to be focused on this, and this no longer is simply an immigration issue. It is a security issue. And I know that you take it very seriously and, General Blum, I know you take it very seriously and Chief Aguilar, same with you, and, General Rowe, same with you. We appreciate your focus on this very critical issue right now.

Having said that, let me turn to my partner on this committee, the gentleman from Missouri, Mr. Skelton, for any remarks he would like to make.

STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE FROM MISSOURI, RANKING MEMBER, COMMITTEE ON ARMED SERVICES

Mr. SKELTON. Thank you, Mr. Chairman, and let me join you in welcoming our old friend, Secretary McHale, General Blum, General Rowe, Chief Aguilar. We appreciate your being with us today. Today's hearing is particularly timely and important to our work on the Armed Services Committee.

Now, Mr. Chairman, I am somewhat familiar with border problems. We still have them between Missouri and Kansas, and not exactly like the ones we have with Mexico. But those of us that live in that area realize there can still be leftover problems with border conflicts of yesteryear. Just an historical footnote for you.

On May the 15th, the President outlined several policy initiatives to address the issue of immigration. One of those ideas was to task the National Guard to assist our Border Patrol in securing our southern border. This proposal represents a significant shift in thinking about the traditional role of the military on domestic soil, and today we look forward to hearing from each one of you and I
particularly hope, Secretary McHale, you will be able to give us the legal authority under the United States statutes for this capability. This may be a serious question that lays ahead. So I hope you can do that.

No one disputes the fact that we need stronger border security. As a sovereign nation we have a right and responsibility to control our own borders. American people deserve to know that we have a border security plan and one that works. However, so our border can be truly secure we continue shifting responsibilities for their protection from the Department of Homeland Security, where I think it belongs, to the National Guard.

This administration has consistently underfunded the needs for the Border Patrol to fulfill its mission across our southern borders. As a matter of fact the Administration recommended only 210 additional border patrolmen. Congress upped that considerably, but in my opinion not quite enough. In shifting National Guard to fulfill the foreseeable need, we could leave ourselves overall less secure today.

For this reason, we must examine carefully the impact this plan will have on the National Guard. Which units will be used? What consideration will be given to previous or upcoming deployments? Will military personnel be armed? What are the rules of engagement, if any, for units performing tasks not directly related to the specific training requirements and their specialities, will this affect their readiness? We do not yet fully understand the full scope of the plan or its impact on other missions and hopefully we can learn about them today, Mr. Secretary.

Department of Defense is going to be spending a lot of resources to support this plan, both in financial and personnel terms. When the details have been fully worked out, let us know that.

I also would like to know the justification behind the specific cuts made to requests in the supplemental that were first classified as emergency and now being foregone or postponed.

On the surface it appears that this initiative is being funded to the detriment of our troops in Iraq and Afghanistan. Men and women in the National Guard have been called on to rise to the occasion many times over the past years, and to visit with some of them at home that are getting ready to get called up a second time, it is an interesting challenge for those families.

National Guard has done remarkably well and my admiration for their strength and dedication could not be stronger. However, I am deeply concerned. It seems likely we will have men and women dedicated to protect their home States as citizen soldiers being sent for a second deployment in the Iraqi desert, and now we are being asked to come home and spend another year in the Arizona desert. According to limited details that have been made available, not all units being used in this mission rotate to the border on 2-week assignments.

We need a secure and a strong border, Mr. Chairman. We have a dedicated law enforcement personnel dedicated to protecting that, and we need more of them. We also need a strong military to respond to any threat we may face anywhere in the world. This plan seems to shift responsibility for both goals to our military.

Mr. Chairman, thank you.
The Chairman. I thank the gentleman for his statement. And you know I do recall that the Missouri National Guard have come into California under team engineer, which has a nucleus of about 75 California National Guardsmen permanently on the border, and then the State engineering units have rotated through and have constructed fences, roads and lights on the border. They have done a great job. And one thing, I just note as we go to our witnesses, morale was always, when I visited the units there that are building the border fence, they felt they were doing something good for America.

We took that drug flow down from 300 drug trucks a month streaming through there with cocaine to virtually zero. And one thing that struck me during those rotations was that the Guard had a high morale. They felt they were really doing something that was tangible and real in the drug war, and it was also great training because the people operating the road grading equipment, the people that built the bed, did the cut and fill to build the bed for the fence, were getting great training with their military equipment. People doing the welding on the fence and the construction of the fence were getting trained in their particular skills. And they had a lot of stick-to-it-iveness.

And at one point we had snipers shooting, drug people shooting from the other side of the border and I will never forget Captain Wade Ralley, who came from a logging family in Oregon. Ralley ordered all his guys to put flack jackets on and they kept on working and they kept putting that fence up. But it is an extraordinary story of accomplishment for what the Guard has already done at least on our section of the border.

We want to thank all of them for that great service and so Mr. Secretary, you have got a really challenge here, and it is going to require a lot of balancing and a lot of careful consultation with your folks who are supplying people to the warfighting theaters. What do you think?

And good morning.

Secretary McHale. Good morning. Chairman Hunter, Representative Skelton, distinguished members of the committee, I have already submitted my formal statement for the record and, sir, with your permission I will proceed to a brief informal opening statement.

The Chairman. Certainly and without objection, we will take all of the prepared statements by all witnesses into the record.

**STATEMENT OF HON. PAUL MCHALE, ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE, DEPARTMENT OF DEFENSE**

Secretary McHale. Thank you, sir.

As the members of this committee are aware, the task of maintaining the integrity of U.S. international borders is assigned by law to the Department of Homeland Security.

The deployment of military forces along the southwest border will be in support of the Department of Homeland Security. The military forces will be drawn largely from the National Guard, and all National Guard forces will be under the command and control of the Governor in whose State the forces are then operating.
The initial commitment of up to 6,000 military forces on a rotational basis for up to 12 months will be the first phase of deployment.

Military support will not exceed 3,000 personnel during a possible second year of deployment.

As noted by the chairman, the Department of Defense will pay the costs on a reimbursable base.

The missions will include, for example, surveillance and reconnaissance, engineering support, transportation support, logistics, vehicle dismantling, medical support, barrier and infrastructure construction, road building, and language support.

I want to emphasize to the members of the committee that the Department of Defense will play no role in the direct apprehension, custodial care or security associated with those who are detained by civilian law enforcement authorities. Law enforcement along the border will remain a civilian function.

Again, as noted by the chairman, the National Guard missions will be substantially similar to the annual training missions executed as part of the counter drug program along the southwest border during the past 2 decades. The difference is that the size of the force and the commitment of resources will be far greater than anything we have done in the past.

The missions assigned to our soldiers and airmen will be directly related to their military skills normally associated with their warfighting and disaster response missions.

In addition, the Department of Defense (DOD) and the Department of Homeland Security (DHS) will use civilian contractors when appropriate.

The National Guard deployment along the southwest border in support of DHS is an important but temporary bridge to improved civilian security capabilities. We will draw down our forces consistent with the ongoing mission requirements.

The men and women of the Department of Defense will work diligently and professionally to support DHS, improving our land border security, while providing excellent training to our soldiers and airmen.

Mr. Chairman, I look forward to your questions.

[The prepared statement of Secretary McHale can be found in the Appendix on page 39.]

The CHAIRMAN. Thank you very much, Mr. Secretary, and you are concise as always.

And Lieutenant General Steven Blum is the Director of the National Guard Bureau, and General, you have quite a challenge here. As you handle the requirements in the warfighting theaters and other domestic requirements, how are you going to make this thing work?

STATEMENT OF LT. GEN. H. STEVEN BLUM, CHIEF, NATIONAL GUARD BUREAU, U.S. ARMY

General BLUM. Chairman Hunter, distinguished members of the committee, it is my honor to come before you today and discuss the most recent mission for the National Guard, and that would be assisting civilian law enforcement authorities on our southwest border.
The National Guard, along with the States, will once again provide joint forces in Title 32 delivering military capabilities in support of civilian law enforcement. This provides Federal resources, dollars and equipment to the States while leaving the command and control of the National Guard under the State governors.

The mission will be executed in a State-Federal partnership with shared interests, responsibilities and authorities, and Title 32 we felt was the best solution to accomplish this. This provides us the flexibility so that there are no long deployments, Congressman Skelton, so no one has to spend a year on the border in involuntary call to active duty. It allows us to leverage our 2 and 3-week annual training rotations that are statutory and expected by both the Guard members, their families and their employers.

It takes a normal operational model, it meets their normal expectations, and it just directs their military occupational specialties, that technical training, their military skills in both the Army and the Air Guard and applies them to skills that are very transferable that we would practice overseas in a warfight. We would just do it here in support of civilian law enforcement.

And Chairman Hunter, you alluded to that in addition to the Army National Guard engineers that you saw operating heavy equipment in Arizona. You will see Air National Guard today on the border, actually in support of Customs and Border Patrol, building barriers in the same place or at least putting up obstacles to vehicles and putting channelizing in where people move along the border.

This is not a new mission, as has been said, for the National Guard. We want to build on a time proven model that has been on the southwest border now for almost 2 decades. Since 1989 we have been conducting or performing counternarcotics support to civilian law enforcement agencies, Drug Enforcement Agency (DEA), Immigration and Customs Enforcement (ICE), Customs and the Border Patrol (CBP).

We are just going to be performing this mission on a much larger scale to buy the Border Patrol expanded capabilities in a time while they are developing recruiting, training and developing new capabilities of their own. This will be a temporary mission as was airport security after 9/11. The Guard was in every airport around this Nation. We are no longer there because Transportation Security Agency (TSA) recruited, trained, equipped and assumed the mission and we came off the mission, and that is exactly what we intend to have occur here.

We expect to work ourself out of a job here as quickly as Border Patrol and Customs law enforcement agencies and DHS are able to assume the mission. National Guard combat readiness will not—will not—be degraded by doing this mission because the up to 6,000 represents less than 2 percent of the available Army and Air National Guard forces that we have in our inventory today.

Thankfully, this Congress has funded our authorized end strength to a sufficient level where we are able to handle the Border Patrol mission and be prepared for hurricanes and natural disasters as there should be coming in the seasonal storms that will be coming against our coastline, and we can handle that. At the
same time, we are still able to provide forces, about 71,000 right now, that are involved in the overseas warfight.

So if you take the 71,000 that are overseas, and you take the 6,000 or up to 6,000 at any given time that may be on the southwest border, that still leaves a pretty robust inventory of over 350,000 citizen soldiers and airmen with the appropriate skills to respond to natural disasters and hurricanes.

Once again, your Guard has been called for the security of our Nation, and once again we will answer that call. This is a mission, as you stated, the National Guard can do, and do well.

I look forward to your questions, sir.

[The prepared statement of General Blum can be found in the Appendix on page 46.]

The CHAIRMAN. Thank you, General Blum. Major General Richard Rowe is Chief of Operations of the United States Northern Command. General Rowe, please give us your perspective.

STATEMENT OF MAJ. GEN. RICHARD J. ROWE, JR., DIRECTOR OF OPERATIONS, U.S. NORTHERN COMMAND, U.S. ARMY

General Rowe. Thank you, Chairman Hunter, Congressman Skelton, members of the committee. On behalf of the men and women of the United States Northern Command, thank you for the opportunity to explain our role in border security.

Secretary McHale has given a clear explanation of the Homeland Security Act of 2002 and the responsibilities assigned to the Secretary of Homeland Security for the responsibilities of securing our Nation's international borders.

U.S. Northern Command's role in border security has been to provide support to civilian authorities, principally the Department of Homeland Security, when directed by the President or Secretary of Defense. We do this under the authority of chapter 18 of Title X where the Secretary of Defense may provide support for the activities of law enforcement agencies.

Our support has historically been along our borders in support of the United States Border Patrol and counter drug operations.

For the current effort, military support will be provided primarily by the National Guard forces operating under the command of the Governors.

The National Guard emphasis is not new to the efforts to support the Customs and Border Patrol. There have been small Title X forces also in addition to that that you may have seen, Mr. Chairman, over the time:

Military support for this particular effort provided by the National Guard, we will lay as closely with the National Guard Bureau to ensure that U.S. Northern Command Joint Task Force North (JTF-N), our joint task force in El Paso, Texas, as well as the State adjutant generals have a common site picture on the location, task and purposes of all military forces committed to the support of the lead agency.

If directed by the President or the Secretary of Defense, U.S. Northern Command will provide Title X forces in support of the Department of Homeland Security.

Over the past 2 years, our subordinate organization, Joint Task Force North, or Joint Task Force (JTF) North, has supported U.S.
customs and border protection on border security operations in numerous northern and southern Border Patrol sectors.

In each operations, JTF North served as a force multiplier to Federal law enforcement agencies by enhancing their effectiveness as well as was part of an operational team interagency with National Guard State adjutant generals, other law enforcement agencies, all in support of the Customs and Border Patrol.

They have brought special technical capabilities that reside within the Title X force as well as have taken advantage of the training opportunity for reconnaissance, surveillance, target acquisition, striker battalions forming and prepare for their deployments to Operation Iraqi Freedom (OIF) to go and work primarily in the El Paso sector as part of these efforts.

Joint Task Force North have led to a significant expansion of partnership among active duty forces, the National Guard and Reserve, the Nation’s law enforcement agencies and partner nations in securing our Nation’s borders.

We will continue to act to support civil authorities in responding to natural disasters and securing our borders. At the same time, we will maintain our focus on our primary mission of homeland defense. One fact remains constant, our enemy should make no mistake about our resolve or our capabilities.

We thank the members of the House Armed Services Committee for your unwavering support of America’s military, and I look forward to your questions, sir.

[The prepared statement of General Rowe can be found in the Appendix on page 50.]

The CHAIRMAN. Thank you, General.

David Aguilar is the Chief of the United States Border Patrol. And Chief, you obviously are in a very important position at a critical time in our history, and the time has been described by some folks as a time of national emergency with respect to Border Patrol.

We welcome you this morning.

STATEMENT OF DAVID V. AGUILAR, CHIEF OF BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. AGUILAR. Thank you, sir. It is an honor to be here. Chairman Hunter, Ranking Member Skelton and distinguished committee members, I am truly elated to be here this morning to have the opportunity to speak in partnership with my Northern Command (NORTHCOM), DOD and National Guard Bureau partners about this very critical and important initiative that has been announced.

One of the things that has been mentioned on several occasions, and of course this is correct, is that this is going to be an interim, short-term initiative. But I want to qualify that by saying that in addition to that, that it is going to be not only very impacting but a very important effort in accelerating our resourcing of the Border Patrol to help us gain the control that we are looking to gain of our Nation’s borders with Mexico and eventually of course with Canada. It is an acceleration of the resourcing, it is an acceleration of building tactical infrastructure, therefore an acceleration of building toward the border security that we all feel we need to bring to our borders.
One of the things that has been mentioned of course is the fact that the National Guard will not be engaged in law enforcement duties, but some of the critical things that they will be involved in will be the administrative and operational support to the Border Patrol, first and initially to primarily relieve Border Patrol agents that are currently doing non-direct law enforcement duties because of the requirement that we have to conduct those functions.

Very critical at this point in time, and it was mentioned earlier, then Chief Reyes, now Congressman Reyes when he began his operations in El Paso we were concentrating on urban areas of operation along our Nation's borders with Mexico. San Diego was one of those areas. Then the Guard and the DOD assets were absolutely critical to helping us gain control, the level of control that we have gained in those urban areas of operation.

Today as we speak we have now gone over to what I refer to as rural areas of operations, some of which have been spoken about this morning, in the Sonoran Desert, Arizona desert, where critical tactical infrastructure is of the utmost necessity. The engineering missions, engineering mission capabilities that the Guard will be bringing to us in this initiative are absolutely critical to our success as we move forward.

The combination of the regular forces and rotational forces that are being looked at are going to be a tremendous resourcing capability for us as we move forward.

Surveillance systems, surveillance systems of operations, intel analysis, road building, fencing, vehicle barriers, pedestrian fence, things of this nature are going to be the things that are going to be brought to the forefront by the Guard, accelerate and again accelerate our capabilities and capacity on bringing control to the borders. The missions will be defined by the Border Patrol.

As we move forward, one of the things that I would like to close out with is that we have had a very, very proud history with the military, DOD, and with the National Guard.

This is a building upon that history that we have. It is a proud history and we look forward to the continued joint efforts of working together to continuing to protect this country.

Thank you, and I look forward to any questions that you may have of me, sir.

[The prepared statement of Mr. Aguilar can be found in the Appendix on page 54.]

The CHAIRMAN. Thank you, Chief Aguilar. And I apologize, I am going to have to step out. I have got a meeting on Iraq here. I need to step out for just a minute. But let me just follow up on your statement that the Guard is going to be continuing to work on infrastructure, and that includes fencing.

The fence works, doesn’t it?

Mr. AGUILAR. Yes, sir.

The CHAIRMAN. Could you tell us a little bit about the salutary effect that the fence, for example in the San Diego sector, has had compared to what we had before we had any infrastructure there?

Mr. AGUILAR. Yes, sir. Fencing works in areas that demand fencing, and one of the things that we speak about now is the 21st century type of fence. But the fence that San Diego has, in fact, we brought that shot over there because that depicts the San Diego
border infrastructure system that the Guard had a tremendous amount of work put into that.

Before this type of fencing was there, San Diego’s peak year of apprehensions was over 600,000, 620,000 I believe. Today as we speak this year, year to date there are about 77,000, a tremendous reduction in the amount of illegal incursions across that area of the border.

Now, the right mix of resources, fencing technology, sensors, that type of mix of resources, along with personnel, is what is critical. Now fencing along our Nation’s entire border with Mexico, there are going to be areas where fencing is absolutely critical, and there are areas that do not lend themselves to fencing. But that is our responsibility to identify where, in fact, along our Nation’s borders fencing is required.

But a tremendous tool, yes, sir.

The CHAIRMAN. Okay. And I would just like to point out to my colleagues I think this is an appropriate time to do it, that one reason that fence is there is because of the gentleman who is sitting down there to the left, Chief Silve Reyes. He sat in a hearing with administration officials who were adamantly opposed to fencing, as a—under what I thought was enormous pressure but Silve Reyes apparently didn’t think it was any pressure. And when he sat there and when I asked him the question, would fencing work, he said absolutely. And he recommended going ahead. And that is one reason that fencing is up there and has worked so well.

So thank you for that statement. You know there is a lot of people, I have seen so many misguided statements about fencing, where you say, I think the Governor of Arizona said, show me a 20-foot fence, I will show you a 22-foot ladder. We have invited her over to try to get through the double fence in San Diego, and if she makes it we are going to sign her up for the Olympics immediately. But you have had all these misguided, erroneous statements, and the fence does work well.

And in that area of the desert where these people are told by the coyotes that they will be picked up immediately on the other side of the border and they end up wandering for days in that Arizona desert and dying of dehydration, a fence like that has an enormous humanitarian aspect to it because if you had 400 high school kids a year drowning in a canal the first thing you would do is fence it.

And this year, if we don’t act quickly, we are going to have 400 people expiring in the Arizona desert and the New Mexico desert of dehydration and sun stroke because they were smuggled across the border and didn’t understand what a harsh desert that is.

The best thing we can do for those 400 people is to make sure we move quickly on this infrastructure. So I thank you, Chief Aguilar.

Mr. REYES. Could you yield on that point for a minute?

The CHAIRMAN. I yield to the gentleman from El Paso.

Mr. REYES. And I appreciate the credit you have given me here this morning, Mr. Chairman, because enforcement of our Nation’s immigration laws is very serious business, and I compliment the Chief.
But I just wanted to point out a couple of things, that the Chief's statement made mention of strategic fencing and we conducted a study back when I was part of the Border Patrol and the Chief in El Paso, and we estimated that strategic fencing in heavily populated areas—and you have been to El Paso and certainly you understand it and know the San Diego area—strategic areas certainly benefit from fencing or barriers as were identified by some of the contractors.

But where I have concerns like the legislation that had been passed out of the House in December was calling for 700 miles of fencing and the Senate 300 something. Two points are very important. First of all, we ought to let the Border Patrol, the experts, make recommendations where they need strategic fencing. That is number one.

Number two, we have always when we have done these kinds of operations—and I wanted to compliment General Blum because—and I was Chief in McAllen when the first National Guard unit, we pilot tested that concept before JTF–6 was even created. And we used a special operations group in Rio Grande in the Rio Grande City area.

But the important point to make is when we talk about the operations, 2 decades of operations successfully with the Guard, those have always been strategic and those have always been with at least ensuring that Mexico knows what we are doing, how we are doing it, and why it is important that we do it.

The concerns that many of us have, and I appreciate you yielding the time, is that we are doing something here that is giving the impression that we consider Mexico and Latin America our enemies and that we are putting troops on the border. That is why the sensitivity has to kick in and I hope to get an opportunity to address some of those concerns that I have, but I appreciate the opportunity to at least clarify the record on the issue of fencing.

And by the way, Mr. Chairman, that was in 1994 that you asked me that question. And back then, silly me, I thought you better answer it honestly to Congress or there will be some consequences. But the only consequences I faced was they tried to fire me afterwards.

The Chairman. I thank the gentleman. I thank him for his friendship and his expertise on this issue, and I have to leave briefly but I will ask Mr. Weldon to take over. And the gentleman from Missouri, Mr. Skelton, is recognized.

Mr. Skelton. First, let me say I will be joining the chairman at this meeting. I should also tell my colleagues on the committee as well as the witnesses I will be leaving immediately for a funeral back home and consequently let me ask a quick question or two.

Chief Aguilar, forget the National Guard. Forget it. You don't have them, you don't need them. How many border patrolmen are on duty today along the Mexican border?

Mr. Aguilar. Today we have approximately 10,300 along our Mexican border with an additional thousand at the northern border, sir.

Mr. Skelton. To gain complete control of the border with Mexico, how many border patrolmen do you need in addition to what you have today?
Mr. Aguilar. We have looked at what we need along our southern border with Mexico and it is a combination of tactical infrastructure, personnel and technology, all three of which are being worked on. The range that we have looked at in the area specific to personnel, Border Patrol agents has been in the range of between 17,000 and up to 18, 19,000.

A couple of qualifiers on that, Congressman, is that the typing, the sequencing of all of those resources coming together is critical. So it is that right mix of resources applied strategically along our Nation’s borders.

Mr. Skelton. I am speaking strictly about the numbers, minimum a total of 17,000, is that correct?

Mr. Aguilar. Those are the ranges we have put forth, yes, sir.

Mr. Skelton. Have you made a request for that number?

Mr. Aguilar. We are moving forward, sir——

Mr. Skelton. Answer my question. Have you made a request——

Mr. Aguilar. No, sir, I have not made a request for that number. We are moving forward on receiving the numbers that have been resourced.

Mr. Skelton. Let me go back. You have not made a request for 17 to 19,000 Border Patrol, is that correct?

Mr. Aguilar. The Department of Homeland Security, we are working——

Mr. Skelton. I am talking about you.

Mr. Aguilar. No, sir.

Mr. Skelton. Thank you.

Mr. Weldon [presiding]. I thank the gentleman.

Mr. Reyes. Point of clarification, the Chief was answering just for the U.S.-Mexico border 17,000, right?

Mr. Aguilar. That is correct.

Mr. Weldon. I thank the gentleman. We thank you again for testifying and, Secretary McHale, it is always good to have you back as a former member of this committee.

One of my concerns is when you put the military on the border there may be instances where they interface with people with weapons. Will our military personnel be carrying weapons? And are the rules of engagement properly developed? And if so, what are those rules of engagement for our military?

Whoever would like to take a stab at that.

Mr. McHale. Representative Weldon, I will provide a brief introduction and I will turn to General Blum for the specifics.

I was a member of this committee in the mid-1990's when we reviewed the shooting incident that tragically resulted in death along the Texas-Mexico border and we had Marines deployed along that border and under a circumstance where those Marines believed they had come under fire from a young Mexican man, they engaged in what they believed to be return fire and the young man was killed.

We are extremely sensitive to the issue of the rules for the use of force. It is our expectation that, as appropriate, our soldiers will be armed, and there will be uniform rules for the use of force across the southwest border. Those rules for the use of force will be consistent in each of the States participating in this deployment,
and those rules for the use of force will be incorporated into a Memorandum of Understanding that we will be submitting to the Governors under whose command and control these forces will be serving.

Let me turn now to General Blum for any additional comments he might make on the issue.

General BLUM. Secretary McHale has it exactly correct, Mr. Chairman. And beyond that, the only thing I would tell you that the National Guard is authorized to arm. Who is armed will depend on the mission profile, and that will be determined by the local commander on the ground because every soldier has the right of self-protection. And if they are put in a situation where they may have to self protect, we want to make sure they are equipped and trained to do so.

Mr. WELDON. General, I fully agree with you. My concern is that in earlier statements one of you mentioned that these National Guard will be under control of the Governors. Does that mean the Governors can supersede the military rules of engagement and apply their own limitations on, one, the proper equipping of the National Guard, and, two, the rules of engagement in that particular State? Will it, in fact, be uniform regardless of what the Governors want to mandate?

Mr. McHALE. It will be uniform, and this mission requires a partnership between the Federal Government, the national government and the governments of the individual States.

In Title 32, as an example, National Guardsmen can lawfully engage in law enforcement-related activities because they are not covered by posse comitatus. And so in theory, a Governor could use Title 32 forces for law enforcement activities and in fact during Hurricane Katrina we did just that.

It is a policy decision in this case not to use Title 32 forces for law enforcement.

And so the Memorandum of Understanding that I have described will, by agreement of the Governors, limit their discretion, so that in partnership with the Federal Government—and we in DOD will be paying the expenses of this mission—the Governors will accept the constraint—assuming they do—not to use these forces for law enforcement purposes. And so the rules for the use of force will be consistent throughout all the States and in fact they will be consistent in application to Title X forces as well. And by the acceptance, the agreement of the Governors, those carefully drafted rules for the use of force will be consistently applied.

Mr. WELDON. When do we expect the first troops to be put along the border? I know you mentioned we have troops down there. But in this latest thrust when do you expect the first troops?

General BLUM. We expect the first National Guard soldiers to be put on this mission as early as the first of June. We expect in terms of numbers roughly 200 in each, California, Arizona and New Mexico and Texas. Each one would have 200. These people would be planners, liaison personnel for Customs/Border Patrol. They would do the planning for the missions. They would be the people that coordinate, synchronize the reception and onward integration of other forces on the rotational basis. These folks would be—these citizen soldiers and airmen would actually be a duration
force because they would have to have continuity on the projects. They would be the project managers, so to speak, they would be the continuity of leadership that Customs and Border Patrol would go to for the duration of this operation. They would all be volunteers to address Congressman Skelton’s concern. There seems to be no reluctance on the part of California, Arizona, New Mexico or Texas, adjutant generals or Governors, to in fact do this and these people would not be people that would impact on the overseas mission or be needed for either Afghanistan, Iraq or the other 51 countries that the Guard has forces in this morning.

In addition, we would not be drawing down from the Atlantic Coast in the hurricane States in any fashion, so that they are superbly better prepared for this season than they were last season.

Mr. WELDON. You said the first troops will be deployed June first, and you said you were in the process of developing rules of engagement. I assume that they will be completed and signed and agreed to before.

General BLUM. They are largely completed right now.

Mr. WELDON. Can we get a copy of those?

General BLUM. Yes, sir. It will be a memorandum signed on by the border States’ Governors or their Attorneys General, whoever. Proper signatures should be affixed to that. And then as forces come into the areas, for instance, if from your home State we would take an engineer unit and send them down there for 2 or 3 weeks, of course, the Governor that would be sending the forces would also sign this same memorandum so that the Governor that is receiving the forces and the Governor sending the forces all have a common understanding.

Now, what Secretary McHale talked about earlier does not take away the latitude from the Governor for the other part of—I mean, you have 15,000 troops in California in the National Guard today and roughly the same number in Texas today. If Governor Perry or Governor Schwarzenegger or Governor Napolitano or Governor Richardson wants to take a portion of their National Guard and put them in State active duty, that is their prerogative and they have every right and they have all the latitude they ever had. It is only the forces that are being federally funded for this specific mission where we apply these strict rules of engagement and rules of use of force, so there is continuity all across the region, all across the border whether the citizen soldiers come from those resident States or they come from donor States around the country.

Mr. WELDON. But those rules of engagement will be signed off before any of these troops are in fact placed in the Southwest?

General BLUM. Absolutely, and every soldier will carry the rules of engagement and rules of use of force on a laminated card in their wallet or on their dog tag.

Mr. WELDON. They will not be limited. They will be provided the opportunity to respond if they are in some type of offensive, hostile—

General BLUM. The rules of engagement clearly states every soldier has the right to self-protection, self-defense and frankly they can even use lethal force. If they see a crime, a murder or a rape or something like that occurring, they can intervene. They have the right of every other citizen to do that.
Mr. Weldon. General, you have already taken a stab at the answer to this question, but I want to reaffirm it because it is a concern of mine, that this deployment which I assume will be heavy with engineering units will not impact what is expected to be a very aggressive hurricane season which just started several days ago.

I know what we committed in all the hurricanes that occurred in the gulf region. Are you absolutely certain that our deployment of engineering units along the southwest border is not going to adversely prohibit us from responding to what is projected to be somewhere between six and eight major hurricanes this year?

General Blum. You are rightfully concerned, and so am I and I am absolutely certain that we will not divert engineers' skills and equipment to this mission at the expense of being able to protect citizens from the hurricanes.

Mr. Weldon. One final question from you, actually two-part. The first is, there were some media reports that members of the Mexican military and/or police units had actually encountered some Mexicans on the American side of the border. Is that correct?

And I would ask that to Mr. Aguilar.

Have we had any evidence of Mexico's law enforcement or military personnel on our side of the border? And what has been the interface with those individuals if that has occurred?

Mr. Aguilar. There have been in the past incursions by Mexican government officials into the United States and certain areas of the border. You may be referring to the incident that happened I believe on January 27th, and I will need to check that date, in Hudspeth County. To date the investigation that is still ongoing has not identified any official Mexican government officials having been involved in that situation, but we have had incursions of that type in the past.

Mr. Weldon. I assume we are taking whatever precautionary measures we need to take to inform our people what the appropriate response would be especially when encounter them on our soil.

Mr. Aguilar. Absolutely. Yes, sir, and we have very quick responses by the government of Mexico when those things do happen or when we even believe those things are happening we take the appropriate actions to mitigate the actual incident and any possible reoccurrence of that type of session.

Congressman, I want to clarify Congressman Skelton's question that he had for me just a minute ago because I think it is absolutely critical.

The question, as I understand it, was have I requested the number of agents. The answer still remains in this budget year we did not request that. But I think it is critical to identify that the President's plan, that by the end of calendar year 2008 we will have over 18,000 Border Patrol agents, is in fact built along our strategical and implementation plan, built by us. That is relative to personnel, Border Patrol agents, technology, and infrastructure. That President's plan is based on our numbers, our strategy and our implementation plan. I just wanted to make that clarification, sir.

Mr. Weldon. One final question, General Blum and perhaps General Aguilar, are we in fact using unmanned aerial vehicles
(UAV) with central sweeps? Can that assist us? And if so, what specific UAVs are we using? There have been problems with the Federal Aviation Administration (FAA) using the UAVs. I saw that problem firsthand when I was down in New Orleans after Hurricane Katrina. We had UAVs there but the FAA wouldn’t let us use them even though there were people we couldn’t get to but we couldn’t identify. What will be the role of the UAVs? Will that be a Guard function? Will that be border security? And what type of UAVs do we expect to be involved?

General BLUM. All aerial observation platforms will use helicopters for this purpose, the OH–58, the small scout helicopter that we have used for about 2 decades now on counternarcotics efforts on the southwest border, they will be employed with their forward looking infrared radar. We will use the RC–26. That is a twin engine fixed wing Air Force aircraft. It has a very sophisticated observation pod attached to the bottom of it. We will use that.

Right now I am not aware of any UAVs operating on the border because the Border Patrol UAV I think recently had a bad landing or it was damaged in landing. So right now I think their one UAV is down if I had that right. It is certainly—we have UAV units in California. We will have a UAV unit in Arizona very soon and ground control stations in Texas. And I think it is reasonable to expect that we will overcome the bureaucratic obstacles and that UAVs will be a source of an observation and information gathering system.

I want it very clear for this committee to know that those military Intelligence, Surveillance, and Reconnaissance (ISR) platforms, intelligence security reconnaissance, will not be used to collect intelligence on the American people. We will be very careful how they are employed. They will not be flown by intelligence personnel in the United States military. They will be operated by the pilots and the operators of the airplane, but they will be working under the strict supervision. The tasking of the places that we are looking at and the purposes and the product that we collect will go to civilian law enforcement. We will not handle that or process that. We are only providing the platform for the collection.

Secretary MCHALE. Representative Weldon, the General’s answer is accurate from a National Guard perspective, but let me add a complement to his statement. We have in the past provided to the Department of Homeland Security access to DOD Predators that had not yet been delivered to the Department of Defense. We are still in possession of the contractor and with our consent and after a thorough review by the Office of General Counsel we have, for instance, along the Texas-Mexico border allowed the Department of Homeland Security to use a Predator B flown by a contractor specifically in support of customs and border protection.

In addition, we train our UAV pilots at Fort Huachuca. They fly the platform. They collect information as part of their training, and we do lawfully share that information with civilian law enforcement authorities. It is not the purpose of that training to collect the information to support law enforcement, but the information when collected during training can be lawfully shared with civilian law enforcement authorities.
And then finally, as the General indicated, the intelligence collection plan that will support this mission will be carefully reviewed by all the appropriate attorneys to ensure that we are in strict compliance with all applicable laws and procedures as they relate to the domestic collection of information by military authorities.

It is our intent, consistent with the law, to share that information with civilian law enforcement authorities, but because this is a mission within the United States we will be extremely careful in reviewing the intelligence plan.

Mr. Weldon. I thank you. I just want to add I think it is far more cost effective to use UAVs than manned helicopters and other aircraft. And you mentioned the Predator, but as you know, Secretary McHale, we have, we are currently producing over 50 different UAVs for all aspects of the services and the Intelligence Community, and most of them are small UAVs that have the kind of sensor sweep you would need.

I would encourage you to use that. It is a great way for us from the Research and Development (R&D) standpoint to test these technologies. We are already paying for it anyway. And so to get this capability so our military is robustly developing, we are spending 2–1/2 billion this year on UAVs and to use it along the border would be a great asset and doesn’t require you to deploy as many individuals to operate those aircraft.

Thank you. Mr. Ortiz is recognized.

Mr. Ortiz. Thank you, Mr. Chairman. Let me say that I am for a strong border security, but we hope to do it the right way; and I think that for the record let me first say welcome to the witnesses but my good friend Paul McHale. Secretary McHale mentioned that the incident back in 1984 was a Mexican male. He was a Mexican male, but he was an American citizen who was killed, and I would like to correct that for the record.

Also, let me see if I can understand correctly. Now General Blum said that while the Guard would be authorized to carry weapons, it would be up to the local Guard commanders to decide who will carry a weapon. And then, Mr. Secretary, Secretary McHale, you say that they all will be authorized to carry a weapon. Did I understand correctly?

Secretary McHale. I would say to my good friend, no, sir, perhaps because I didn’t state it clearly.

When the mission assigned to the soldiers places them in a potential position of danger, they will be armed, and when armed they will be subject to the uniform rules for the use of force that I described earlier.

My expectation is that the majority of missions executed by our National Guardsmen will not place then in any physical danger or jeopardy, and my expectation is that the majority of our soldiers will not likely be armed for that reason. However, there are dangerous violent areas along the border, and when our soldiers execute their missions in areas of potential violence where they are in danger of physical assault, they will be armed. It will be dependent upon the nature of the mission in this area, and when they are armed they will be advised carefully in advance what the rules for the use of force are, the principle element of which will be the right of self-defense.
Mr. Ortiz. One of my concerns is that when we go back and look at what happened, the recent scandal that we had in Iraq, most of the folks who were involved, some of them are serving prison time or reservists. I was active army. I came out, became a member of a reserve unit. When I went to those two weeks of training, I was training to support the mission that I had with my transportation unit. This is totally different. Some of these young men, if I understand correctly, have never served in Iraq or Afghanistan. To go there for two weeks of training without any type of training, how are they going to get trained? If you are just going to deploy them for two weeks and rotate them every two weeks, how are they going to get the training that they need?

You know, like you say, Mr. Secretary, you have got the Maldatacha Tucho gangs. You have got the drug cartel gangs. You have got the coyotes bringing human beings across. This is a very dangerous area, and to put somebody who has just been serving for two weeks without any training, I fear that some of our young soldiers might end up in prison somewhere because they violated the law. This is one of my concerns.

Maybe you can respond to that as to how they are going to get the training to be going to an area that could be very, very dangerous.

General Blum. Thank you. You should be rightfully concerned about all of that, but I am not because 60 percent of the National Guard today are combat veterans of Afghanistan or Iraq. It is the most experienced force the National Guard has ever had in the Nation's history. It is the most professional, competent and capable force that we have ever had as a nation to be blessed with these citizen soldiers. I have no doubt of the competence of the leadership, the training, and the discipline of these soldiers, these citizen soldiers. The fact that they are performing a mission every day or for two weeks during the year doesn't concern me because the people that will be rotated through the rotational missions will be selected for skill sets that are appropriate for a two or three-week rotation. Those that will be there for the duration force, for an extended period of time, will be selected to have the skills and the training necessary to be available for a continuity force or a duration force.

For example, if I am sending a medic to support our soldiers that are deployed to the border, they come with the requisite training. They probably come from Iraq or Afghanistan or one of the other 51 countries that we are deployed in today, and they have practiced their medical skills all too often. Frankly, they are very, very good because of having real world practice. I have no doubt that they can show up and after a briefing on rules of engagement and orientation and a one or two-day what we call right seat ride, left seat ride—in other words, there won't be a gap. There will be an overlap. The medic that was there will be training the medic that is coming in so they know the nuances and the peculiarities of the zone that they are working in or the sector they are working in. But if you are a bulldozer operator or grader operator or a backhoe operator or a demolition specialist, you come with the right skills. You just happen to be working on some of the things you see in
that picture. That is how those pictures were built. We have done that for almost 20 years now.

We have had zero incidents of a National Guardsman on the border in two decades doing exactly what we are describing today. The only difference is we are going to put more of them there and do more of what we have found to be very successful for the last two decades.

I think I will stop there, but I am not too concerned about it and it is not that I don’t care about it. It is just that I am absolutely certain on the training, the discipline, and the leadership that these soldiers will receive when they get there.

Mr. Ortiz. One last statement. I will be very brief.

The training is totally different. I have been in the military, and I have been in law enforcement. The Border Patrol goes for, what, six months training?

Mr. Aguilar. Yes, sir. Sixteen months.

Mr. Ortiz. A veteran coming from Iraq, Afghanistan, has faced the enemy. They are trained to kill. This is my concern, and I don’t want to later on say I told you so. We just hope we come up with a plan with rules of engagement where it is legal and I know—

General Blum. We are talking past each other now. I understand what you are asking me and I think what you are saying is that soldiers are not trained to be Border Patrol officers and we understand and recognize that and we are only sending the skill sets down there that augment and compliment and amplify the ability of the Border Patrol to do their job. We are not doing—we are not replacing the Border Patrol and we are not performing the functions of the Border Patrol or the Customs Enforcement Agency, and that was very clear. And maybe it wasn’t clear enough, but it has been very clear in all of my communications to the adjutant generals and the States and the Governors of the States.

Mr. Aguilar. Congressman, if I may, because I think this is a very, very important point. I think you have a very valid concern on this, that it is critical that we point out that National Guard units’ personnel will not, will not be involved in the detention, arrest or interdiction of illegal aliens or any kind of illegal incursion that occurs across our Nation’s borders. The skill sets that we are very specifically asking for are skill sets that will enhance our enforcement capabilities.

One of the ways that I have been putting it forth is that the Guard personnel will actually be our eyes and ears but they will not be our hands. They will not be making the interdictions. They will be supporting us. Let me take your specialty, for example, when you were in the Guard Transport. Those having commercial drivers licenses (CDLs) and transport capabilities will be transporting either Border Patrol agents over ground or in aircraft to very remote and rural areas of the border and then leaving—dropping us off there. We will be asking for transport capabilities, as an example, for people that have already been arrested and detained, not to secure them because we will provide a Border Patrol agent or DHS official to provide that security to transport from point of arrest to point of processing, things of this nature.
So skill sets will be carefully matched to our operational reforms, but they will not be skill sets that will be involved in enforcement, interdiction, arrest or detention.

Secretary McHale. The portions that will be deployed will be in Title 32 and we have a legal obligation in Title 32 to ensure that the training received by these soldiers is directly related to what they would do on active duty if they were brought into Federal service. So as we have been doing in the counternarcotics program since 1989, we will be using engineers for engineering purposes. We will be using pilots to fly aircraft. We will be using intel analysts for intel support. We will keep our soldiers and our airmen within the requirements of their MOS training so that what they do is what they have been trained to do.

What we will not do is ask them under any circumstance to engage in law enforcement related activity, as noted by my good friend Congressman Ortiz. We are not trained for law enforcement in this role along the border and we will not be executing those missions.

Mr. Weldon. The gentleman from New York is recognized.

Mr. McHugh. I want to go back to the response that you gave to Mr. Weldon about Mexican incursions. His questions I thought were pretty specific about military. I thought your response was pretty specific about military and I thought your response was pretty specific and you said Mexican government agents. What does that mean?

Mr. Aguilar. Well, we include Mexican government officials actually whether it is military or police that belong to Mexico. We have had the two types of incursions——

Mr. McHugh. You have had two——

Mr. McHugh. Okay. I just wanted to make that clear. Let me ask you something else. Since September 11th, how many of your agents have been killed along that southern border?

Mr. Aguilar. We have had three deaths and we have had two woundings, very serious woundings in Nogales, Arizona, of our Border Patrol agents.

Mr. McHugh. I ask you that because I think it is important in this forum and hopefully to have it go beyond so that the American people understand this is very serious, very dangerous work we are talking about. And obviously you gentlemen's presence here today and our interest underscores the fact that we have to be very serious about it, and I deeply appreciate your forces' contribution to this very, very important challenge, and I hope you convey this committee's thanks and appreciation to those groups out on the line that work for you in that regard.

Mr. Aguilar. I will be honored to.

Mr. McHugh. Thank you very much.

General Rowe, you used the phrase you are going to liaise closely. I am trying real hard to understand what the Northern Command's operational role in this is under a Title 32 call-up. I don't see any. Do you have an operational role in this?

General Rowe. On the operation and vision here we at this point do not have an operational role, sir.

Mr. McHugh. Thank you.
General Blum, this is a new configuration, I believe. You spoke about the counternarcotics interdiction that has been ongoing indeed for a good number of years now. The chairman had spoke about you validated some of the other construction types efforts. Those programs are under Title X, though, are they not?

General BLUM. No, sir. They are under Title 32.

Mr. MCHUGH. They are all 32.

General BLUM. Yes, sir. As was the TSA mission after 9/11, as were the four national special security events we have conducted in the last 5 years, as were the recent Gulfview operations where we operated on an interagency counternarcotics interdiction effort in Texas, and as we have the ongoing Wake Forest operation in California today. These are all—

Mr. MCHUGH. Help me understand what the Wake Forest—

General BLUM. It is an interagency counternarcotics effort that has some Title X forces in it, but predominantly the Guard is there in Title 32, and so what I am trying to say is we are building on a long history of very successful models that have worked. The fact that many members don’t even recognize some of these names of these operations is not bad. That is good. That means nothing went wrong or you would have known a heck of a lot about it.

Secretary MCHAILE. Mr. McHugh, I think you and the General just spoke past each other for purposes of clarity. In the execution of the counternarcotics mission going back to 1989 we have had a mix of Title 32 and Title X. The Title X forces since the creation of JTF North have been under the command and control of JTF North beneath Northern Command, but the vast majority of forces and probably 80 percent of the funding—that is a rough estimate—that has gone into the counternarcotics program has been dedicated to Title 32. So it is the counternarcotics mission has been a mix, but mostly Title 32.

In the mission we now face, all of the forces identified to date have been Title 32 forces drawn from the National Guard. But we do have the discretion when appropriate to use Title X forces. For instance, there is a 4th Ground Sensor Platoon within the Marine Corps. That has a particular capability that may be useful in the execution in this mission. If we reach that conclusion, that Marine Corps platoon will be chopped to NORTHCOM and would come under JTF North, but this mission will be overwhelmingly titled Title 32.

Mr. MCHUGH. I appreciate that, Mr. Secretary. Thank you.

The reason this is somewhat different and significant, and I am not saying I oppose it, I am trying to understand why it is structured as a Title 32, circumventing Northern Command. It is a significant step. Whether it has a precedent in hurricane operations or in other programs is interesting but it is not directly applicable.

Mr. Ortiz’ concerns about a Title 32 call-up that circumvents a posse comitatus and yet supposedly there is no posse comitatus role here and yet you are executing agreed upon rules of engagement in a very, very dangerous circumstance. And I am just trying to get my hands around what is a challenge for the subcommittee that I have the honor of chairing and we are going to take this issue up as to what General Blum and his successors’ roles ought to be in future call-ups and national type missions of what this is. You are
going to have these forces even though they are technically under
the command of the Governor operating directly under the direc-
tion of a Federal agency.

You can say it is not entirely unique, but in this theater and in
this circumstance it is a bit different, and I just think it is impor-
tant we begin to understand it.

I see—and I appreciate your responses. I can see my time has
expired, so I will yield back.

Mr. WELDON. I thank the gentleman for the question.
The gentleman from Texas is recognized. Mr. Reyes.

Mr. REYES. Thank you for being here and I certainly appreciate
the difficult job that each one of you has been doing and the great
work that you are doing.

I am going to—I am interested in the decision process that took
place in sending the National Guard to the border, as announced
by the President on May the 15th, and the first question I have,
Mr. Secretary, is was the Department of Defense consulted before
the decision was made to send the National Guard to the border?

Secretary MCHALE. Yes, sir, we were.

Mr. REYES. Over what period of time?

Secretary MCHALE. Beginning about a week to perhaps a week
and a half before the public announcement, we received inquiries
from other Federal agencies, including, I believe, DHS, to deter-
mine our ability to support such a mission and to provide examples
of the historic support that our Department has provided prin-
cipally in the counternarcotics program to customs and border pro-
jections. So the simple answer to your question is about a week and
a half before the public announcement serious, focused consultation
began.

Mr. REYES. And your input there was that it was okay to do that.
It was doable and we were——

Secretary MCHALE. Yes, sir. It was a little more complicated
than that. We went through a careful analysis. We had to ascertain
that we had the capabilities and the legal authorities to provide the
assistance, and just for purposes of clarification while that con-
sultation began about a week out or a week and a half out from
the public announcement, we had followed events along the border
very carefully for probably a two-month period of time before that.
We in the Department of Defense were aware of escalating violence
in key locations along the border. And so without provocation by
inquiries from other Federal agencies, we began looking very seri-
ously at the border environment and we began reviewing the au-
thorities of the Department of Defense to provide assistance if re-
quested to do so.

Mr. REYES. Well, and actually—and I ask this question because,
as you know, I have a tremendous amount of respect for you as we
are former colleagues, but as you know, I represent a border dis-
trict and unique in Congress in that I have both immigration and
Border Patrol experience.

Secretary MCHALE. Yes, sir.

Mr. REYES. And I am also a veteran and I am a member of the
subcommittee, but I wanted to go back and I have got a time line
here from the Web page of Governor Napolitano, who on December
30th of 2005 actually requested funding under Title 32 for utiliza-
tion of the National Guard in Arizona. On February the 2nd, she received a letter from DOD in which, Mr. Secretary—who is Peter F. Verga? Is he the—

Secretary McHALE. Mr. Verga is the Deputy in my office, and I personally reviewed the letter that he signed before it went out so I am very familiar with it.

Mr. REYES. So you know that she was denied Federal funding under Title 32 and the reason for that was that the missions constituted what your letter, or Mr. Verga’s letter called border security versus homeland defense activities?

Secretary McHALE. Yes, sir.

Mr. REYES. So there is a distinction there, which is pretty interesting and, Mr. Chairman, I would ask to be able to enter these into the record.

Mr. McHUGH. Without objection.

[The information referred to was not available at the time of printing.]

Mr. REYES. Which from my viewpoint is very interesting because that occurred in the December-February time frame, and there are a number of conversations or letters that have changed between the Governor and your office and the Governor and the Department of Homeland Security, and in essence, just summarizing it, the letter said we can’t support that activity, we can’t fund it because it is under border security versus homeland defense activities. So I am wondering what caused the turnaround in terms of the decision.

Secretary McHALE. I had several conversations with the Governor, and I think there were probably three or four letters that went back and forth during that period of time. The Governor originally requested—and this is a quote, I believe, roving border patrols to be executed by the military along the border, which undoubtedly would have brought us into a law enforcement role. And so we in the Department of Defense indicated to the Governor that we could not perform roving border patrols using military personnel and Title 32—comes back to Mr. Ortiz and his questions—if we had executed that mission, it would have been very problematic.

Also, the Governor requested that we fund this under the Gibbons-LoBiondo amendment passed by this Congress last year as a homeland defense activity and border security is not within the technical definition of the homeland defense activity.

So finally, what I personally said to Governor Napolitano was these missions can be funded in Title 32 but, Governor, what you need to do is you need to contact the Department of Homeland Security Customs and Border Protection so that we receive a request from the responsible agency to provide assistance to civilian law enforcement. In that regard the Governor was prematurely right. The mission that she requested is in fact the mission we are now executing, but the policy decision at that point had not yet been made, and I give credit to the Governor. Although she may not be aware of it, her letter was a catalyst for reconsideration of the policy. And so we told her what could be done to fund it in Title 32, and in fact the President ultimately made the same decision.

Mr. McHUGH [presiding]. The gentleman’s time has expired. The gentleman from Nevada is recognized.
I just learned that it is not acceptable to the House administration that we continue this hearing beyond the start of the joint session. I was inclined to stay, but I have just been informed that we do not have that choice. So unfortunately we will have to end this hearing at approximately 11 or 11:05, and just keep that in mind as you answer the questions.

Mr. GIBBONS. Thank you, Mr. Chairman, and I will attempt to be very brief.

Gentlemen, thank you very much for your presence here today and your testimony, but thank you for your service for your country. We are very proud of all of you.

General Blum, when you look at the National Guard’s role over the course of the 10 years I have been in Congress the number one concern Congress has had has always seemed to be what is the predictability to those civilian sector soldiers that are in our Guard for knowing when they are going to be deployed. Are we taking care to make sure that we give them that predictability as to when they will be deployed? Are these deployments voluntary and are they at the unit level or the individual level?

General BLUM. Sir, the answer is we are very sensitive to the predictability. We are very sensitive to the stress on the force for providing forces overseas and being prepared to provide them here at home. We will try to use units where we can. We will use their scheduled annual training, their required statutory annual training period that they have coordinated with their employers, their families and reasonably expected to attend, and then for the duration force we will rely on volunteers and there seems to be more than adequate volunteers for this.

Mr. GIBBONS. Chief Aguilar, is there any private property that abuts to the international border between the United States and our bordering countries.

Mr. AGUILAR. Yes, sir. There is quite a bit of it and what that requires is when the National Guard or DOD assets deploy is that we secure jointly rights of entry onto that private property.

Mr. GIBBONS. That was going to be my exact question. So thank you for presuming what I would ask and thank you for your answer.

Very briefly, Paul, welcome before our committee. The bridge between technology that is being developed for UAVs in the military and the bridge that is needed to be using this technology with our Border Patrol, is that your office that is responsible for that and engaging in that?

Secretary McHALE. My office has a responsibility to ensure that we transfer from the Department of Defense any emerging technology that has a dual use application, for instance, to civilian law enforcement. So we have a fairly robust program out of our office that looks at the technology we develop within our Department to determine in cooperation and coordination with interagency partners what they might be able to use, and the Predator is a good example of that. We developed UAVs, and clearly UAVs have utility in terms of civilian law enforcement function in an appropriate environment, and the border is an appropriate environment.

Mr. GIBBONS. Well, in our view of all of this, of course, the virtual fence sometimes is less expensive, better adaptable to the ter-
rain, to the region. UAVs are an important part of that. There is a new technology. The high altitude stationary balloon with sensor suites on it that don't interfere with FAA traffic, are outside of commercial airline routes. Are we looking at high altitude balloons, stationary balloons to replace the Predator, to replace the low altitude air breathing type UAVs.

Secretary McHale. The answer is yes, but I turn to the Chief. I am not really competent to talk about the integration of technology that best supports the Border Patrol's mission, and in fact it is my understanding we have used aerostats along the border in a variety of roles, but we in DOD are not in this business of designing the technology necessary to support the border security mission. We make available to DHS a familiarity with the technology that we are developing so that they can pick and choose among those technologies to build their own border security capabilities.

General Blum. And I would just add the aerial platform is in fact one of the resource requirements that has been identified. We are actually working with the Guard Bureau right now to see if they can resource that need in the immediate future. In addition to that, DHS is going through what we are calling SBInet, which basically at the end of this month we will receive the proposals on our request for proposal specific to that mix of technology to build that virtual electronic wall that we speak about. The award will be sometime at the end of September, in that time period, and then we will be moving forward on bringing together and developing an off-the-shelf technology to apply toward the border.

Mr. Gibbons. Gentlemen, again thank you. Mr. Chairman, I will yield.

The Chairman [presiding]. I thank the gentleman and let me just remind members that under the rules of the House we can't be in a formal hearing upon the commencement of a joint session, which will commence at 11. So at that point we will move from a normal hearing to a briefing, and we will continue to listen to our witnesses and continue to ask some questions so anybody who has questions is going to get a chance to continue to ask them.

The gentleman from New Jersey, Mr. Andrews.

Mr. Andrews. Thank you, Mr. Chairman, and I thank the witnesses. It is especially good to see our colleague and friend back, Mr. McHale, And we thank him for his exemplary service.

Let me say from the outset I think we have a very significant problem in closing our border. I am in favor of the intelligent, thoughtful use of the National Guard, and I do not envy the task that you gentlemen have been given to deal with a very unusual, highly sensitized context. I have concerns about the legal predicates under which we are advancing. Am I correct in assuming that we are basing this authority under Title 32?

Secretary McHale. Congressman, that is correct, and that is an important distinction because the historic mission that we have executed of this type in the counternarcotics program had separate statutory authority. In this case, the authorities that we are relying upon and which have been reviewed by, I think, all of the appropriate attorneys are derived from Title 32, Section 502(a) and Title 32, Section 502(f). 502(a) is training. 502(f) is a generic Title 32 category that provides for active duty for longer periods of time.
Mr. ANDREWS. Can I examine each of those? 502(a), which is training.

Secretary McHALE. Yes, sir.

Mr. ANDREWS. It strikes me this might be a stretch of the definition of training. It is true, isn't it, that the support function the Guardsmen are going to play involves intelligence gathering, involves logistical support, managerial support and, if necessary, some armed conflict, if necessary in positions of self-defense and what not. Can you think of any other use of the training statutory authority that includes those kind of functions?

Secretary McHALE. We have used Title 32 historically for training missions that had an operational benefit. As an example, and I would ask General Blum to comment on this, we used Title 32 forces for security purposes in support of the G8 summit in Sea Island, Georgia, and we can get you a list of past precedents but your concern is a good one.

Mr. ANDREWS. I would like to see the list because my concern is that I think this mission contorts the meaning of "training" as we would ordinarily understand it. I have no doubt whatsoever about the good faith of your intentions here, but I worry about creating a precedent or some one whose intentions are less benign could stretch the definition of "training" well beyond what we wanted.

Secretary McHALE. I appreciate that concern and that was part of the legislative history between the Gibbons-LoBiondo amendment passed into law last year where I personally felt uncomfortable using a training status toward fighting missions on U.S. Soil, such as the defense of critical infrastructure. So you passed a law that defined homeland defense activities and specifically authorized the use of Title 32 forces, for instance, to defend a nuclear power plant against al-Qaeda.

Mr. ANDREWS. But we are not relying on that authority here, are we?

Secretary McHALE. We are not and that was my response to Governor Napolitano. The definition of the homeland defense activity pertains to warfighting, security related activities on U.S. Soil and this is clearly not in that category.

Mr. ANDREWS. We are relying on Section 502(f), though, right, which is the other, the so-called other duty?

Secretary McHALE. That is correct. As General Blum indicated, part of the force will be a rotational force in 2 or 3 weeks training increments of the type we have been using for 20 years in the counternarcotics program. Another part of the force will be for extended 502(a). Another part of the force will be the duration force, the continuity of leadership at the headquarters, personnel drawn from the four southwest border States, and for those folks, because they won't be in a training status in 502(a), the broader category of 502(f) is the justification.

Mr. ANDREWS. So my understanding is the people that are on brief rotations are on 502(f) authority?

Secretary McHALE. No, 502(a).

Mr. ANDREWS. And the people that are on longer duration assignment are on 502(f)?

Secretary McHALE. That is correct.
Mr. Andrews. I would like you to supply the committee with a list of other 502(f) deployments and uses that we have had in recent history.

[The information referred to was not available at the time of printing.]

Mr. Andrews. I raise this issue for two reasons: One is that I am deeply concerned about the creation of a precedent that might erode posse comitatus where someone whose intentions are not as benign and honorable would be using these statutes. And the second concern I have is an operational control amount, control command and control concern.

Let's assume this set of facts. Our intelligence operatives gather information that there is a possibility of a dirty bomb being brought across the border in a truck, and they develop some intelligence about the appearance of the truck, what the truck—where it might be coming from, what it might look like, and Guard units on the border are privy to this intelligence and they think they see the truck. They think they see a truck coming to the border. Are they or are they not authorized to intervene and stop the truck and, if they are authorized to stop the truck, under whose orders? Under the Governor of California, under the Secretary of Defense? Who is in charge of that situation?

Secretary McHale. If we had credible intelligence that a dirty bomb was coming across the border, we would not employ National Guard engineers to defeat that threat. If we had a threat of a dirty bomb coming across the border, the initial responsibility for the defense against that attack would be vested in civilian law enforcement, most especially the FBI.

Also, if we had a threat of a dirty bomb coming across the border as opposed to an illegal immigrant, we would immediately deploy to the United States Northern Command robust military capabilities specifically trained to interdict that kind of threat of a dirty bomb. We would not be relying upon the National Guard in Title 32 status. We would not expect the Governor of that State using those forces to defend us against such a terrorist attack. The President of the United States, acting through the Secretary of Defense, would be using highly trained active duty military forces to defeat the threat of that dirty bomb.

Mr. Andrews. One more quick question would be this. Mr. Weldon asked about UAVs and intelligence gathering. Could those intelligence gathering assets be employed to gain the information I just talked about?

Secretary McHale. Absolutely. What we would do is—what would happen is those aviation assets would be transported, we say chopped, to United States Northern Command where Admiral Keating, who is the Combatant Commander, would use those aviation assets to conduct surveillance in a warfighting role to defend us against a terrorist threat. The Secretary of Defense, through his combatant commander, would be in charge and would be accountable to the President of the United States.

Mr. Andrews. My only concern is that that is exactly right analytically but on the ground, in the field, where one moment a person is in a support function to the Border Patrol, the next moment the person is in a warfighting function, I am not sure how that
plays out practically. I don't expect you to know either, but if there is substantial chaos being created, I think we ought to look at it very carefully.

Secretary McHale. We are obviously deploying these National Guard forces to support custom and border protection in their lead role for border security. They are not being deployed in a warfighting role. We are not militarizing the border and if there were to be a military threat along the border, we would not be relying upon Title 32 forces under command of the Governor. The President of the United States, the Secretary of Defense and the combatant commander would be in charge of active military forces trained and equipped to interdict such a terrorist threat.

Mr. Andrews. Thank you very much, Mr. Chairman.

The Chairman. The gentleman from Indiana, Mr. Hostetttler.

Mr. Hostettler. Thank you, Mr. Chairman. Thank you all for your appearances here today.

For the purposes of clarification with regard to the question that was asked earlier of Chief Aguilar and his request of Border Patrol agents, actually Congress in the intelligence reform bill that we passed in late 2004 authorized an increase in the personnel levels for Border Patrol agents at the rate of $2,000 a year for fiscal year 2006 through 2010. So Congress has authorized and we are in the process of adding those necessary personnel and we appreciate the Administration's support in that authorization with their annual requests. And if the Administration is going to get to 18,000 by fiscal year 2008 then that would be a fairly sizable request for fiscal year 2008 to get us there.

I think it is important for members of the committee to understand the nature of the war along the border. It is considered a war along the border by those who live there in testimony before my Subcommittee on Immigration and Border Security, and sheriffs from four counties along the border testified and they had interesting things to say about the magnitude of the war that is ongoing on the border. Sheriff Larry Deaver of Cochise County testified, quote, running gun battles with fleeing felons occur much too frequently, placing law enforcement officers and the public alike at great risk, gang activity and its associated violence are on the rise as these groups become more competitive in the lucrative people smuggling trade. Just last week one of my deputies—this was prior to the March 2nd hearing—one of my deputies, the supervisor of the narcotics task force, was the victim of a drive-by shooting at his home. Thankfully no one was injured. End quote.

Sheriff Sigifredo Gonzalez from Zapata County, Texas testified regarding the incident in Hudspeth County, Texas where he said State officers and deputy sheriffs pursued three vehicles laden with marijuana. These vehicles fled back into Mexico by driving across the Rio Grande. One of them got stuck in the mud. When officers reached the levee they encountered what officers described as a Mexican Humvee equipped with a machine gun and what officers believed to be Mexican soldiers fully armed with automatic weapons waiting for these vehicles to cross back into Mexico. These officers on the United States side possess no automatic weapons.

The title of my hearing was "Law Enforcement Along the Border: Outmanned and Outgunned."
Going on, Sheriff Gonzalez said, quote, the cartels operating in Mexico and the United States have demonstrated that the weapons they possess can and will be used in protecting their caches. Once again either drugs or human cargo. One informant familiar with the operations of this cartel mentioned to us that the weapons we use are water guns compared to what we will have to come up against if we ever have to. These cartels are known to frequently cross the United States, possess and use automatic weapons, grenades and grenade launchers. They are also experts in explosives, wiretapping, countersurveillance, lock picking, and GPS technology. They are able to monitor our office, home and cellular phone conversations, end quote.

And so as one that has been concerned about this issue for some time, as many members of this committee, we were very encouraged to hear the President’s initiative to use troops along the border, and enforcement of our immigration laws is in fact a function of domestic law enforcement and we have talked about that. And I applaud the Border Patrol for the service in that first line defense that you continue, Chief, to provide our national security.

However, the use of lethal force on U.S. Citizens by military personnel or foreign citizens should invoke, in my opinion, in some cases where available a military response. This was the case following 9/11.

And so my question is—I have several for Secretary McHale, you, and the generals.

How will the rules for the use of force benefit local law enforcement who continue to be outgunned along the border with arrests or detention that may take place as a result of this improved or, I should say, complementary action on the border, if personnel are determined, that are arrested and detained are military personnel or are official agents such as Madrinas, such as of the Mexican government, either official or unofficial? Will the National Guard be authorized to take them into custody and will they be classified as enemy combatants and, finally, will military forces be allowed to cross the border, the southern border in pursuit of individuals who have used lethal force, attempted to use lethal force on U.S. Citizens?

Secretary McHale. Congressman, I am not sure that I can touch every element of your question but I will do my very best.

As I indicated earlier, the National Guard forces deployed in Title 32 will have no law enforcement responsibilities. They will not interdict, take into custody, interrogate, detain or provide security for illegal aliens brought into custody initially by civilian law enforcement authorities. In short, the police function along the border will remain a responsibility exclusively assigned to civilian law enforcement authorities.

The rules per the use of force will be drafted in a way to support as a core element the self-defense of those soldiers.

Mr. Hostettler. If I can. Self-defense and not in defense of anyone else?

Secretary McHale. General Blum I think is better prepared to answer that.
The core element will be self-defense, but there will be a broader category describing how the use of force, including lethal force, might be employed for the reasonable defense of others.

General Blum. And that is a fair and accurate way to present it. If you want a scenario, if you happen to have two or three National Guard soldiers that are doing this observing or detecting of people that are entering illegal, we have certain entry teams that will be observing and reporting to the Border Patrol. The apprehensions will be the job of the Border Patrol. Now if that member is in duress or under attack it is under the right of self-protection and of every citizen. They can certainly come to the aid of the person and we would expect them to do so, but they are not going to be acting as deputy border patrols people on a routine basis. That would be an extraordinary serious damage to law enforcement officers, and any citizen has that same right, and obviously the soldiers will be better trained and prepared to do that than the average citizen.

Secretary McNally. Finally, Congressman, they will not engage in hot pursuit across the border. The responsibility for law enforcement on the border, as I said, remains a law enforcement function and if we have individuals who cross into the United States engage in criminal activity and then return to Mexico, the responsibility to pursue those individuals under applicable law is entrusted to the FBI and then ultimately the State Department in terms of our discussions with our friend and ally, Mexico. We will not have National Guardsmen in Title 32 crossing the border into Mexico for armed pursuit.

Mr. Hostettler. And finally one other question, if we arrest and detain an individual who is determined to be an agent of the Mexican government, whether a Madrina, an unofficial agent or a military person, will they be transferred from CVP to the military forces and be deemed an enemy combatant or some other classification?

Mr. Aguilar. No, sir. As we have in the past, any kind of encouragement by a representative of the government of Mexico or Madrina, as you referred to, will go through the process that we typically take any kind of illegal person into the United States. We will make sure that we run every database known to us. We will make contact with the JTF, the Joint Terrorism Task Force, the FBI, the U.S. Attorney. Any kind of prosecutorial interest will be identified and then we will move forward with the government of Mexico. In fact, we are going to return that person back to his or her country.

Mr. Hostettler. Okay.

The Chairman. I thank the gentleman.

The Gentlelady from California. Mrs. Davis from California.

Ms. Davis of California. I think this is an important hearing. We must protect our border and we want to do it in the right way and I think that represents the questions that you are receiving today.

If I could just go back General Blum, you mentioned that June 1st is possibly a target date. I wanted to clarify that and whether in fact the Governor of California is prepared for that date. I know that there have been a number of questions that have been asked.
Clearly we have some differences among the States and the way that they want to engage in this, and can I get a clarification in terms of that date?

General Blum. That date doesn't mean that it is universal, and along the entire expanse of the entire border there are certain States that want to jump-start this program early and they will be allowed to do so. I expect you will see 1 June they will be pretty active and there will be others that want to go a little slower and they will be allowed to do that.

Ms. Davis of California. That is great to know there is some discretion there to do that.

Chief Aguilar, thank you very much. I know we had an opportunity to meet with you recently and I wanted to just go back to the question of the border agents and the numbers that have been appropriated because you did mention that you hadn't had a particular request.

I know that my colleagues and I have been encouraging and been seeking greater appropriations for border agents, and if we could just talk for a second about the references, more border agents versus the support from the National Guard here, because I think that we would like to see more border agents trained. I wonder if we can expedite that, but if you could also share with us what are your issues and problems, challenges are around that. Do we have a pool that could in fact be trained quicker? What are the morale issues, I think, of agents? I understand that morale is not good among the border agents and there is some difficulty with continuity among the agents today. How do you think that is going to be improved by the changes that we are talking about and ought we not be more aggressive in prosecuting smugglers on the border because apparently that has a lot to do with the concern and the morale of our border agents.

Mr. Aguilar. I will try and answer all your questions there. First of all, let me begin with the reason we are here today, and this is in fact an interim but accelerated ridge in resourcing effort to the over 18,000 that we would like to be and will be by the end of calendar year 2008. That is a tremendous acceleration of our Border Patrol agents. In fact, it will be doubling the number of Border Patrol agents since 2001 by the end of calendar 2008. And now capacity, we are building toward the training capacity at our academy currently.

Let me give you some quick numbers. We are going to be looking at hiring 3,600 the fiscal year 2007; 4,350, 2008, the first quarter of 2009. Calendar year 2008 will be 850 to net us the 6,000 that we are looking to place in the Border Patrol to relieve the National Guard at that point of those responsibilities that we are asking them to take on right now.

Let me very quickly talk about morale. Morale is very high within the Border Patrol. I spend a lot of time on the ground with our agents because I want to make sure that we have a good morale with what is happening there. One of the reasons that the morale is high is because of the actual resourcing and the increase in resourcing that we have actually gotten over the last several years that we just frankly have not seen in prior years. So the resourcing of personnel, the resourcing of infrastructure, technology, things of
that nature still need a lot more obviously. That is one of the reasons we are here today, but as we see that increase, that is helping morale quite a bit.

The issue of prosecutions. I will tell you that I was immediate past Chief of the Tucson sector of the United States before—the most active sector—before taking this position 2 years ago. Our United States Attorneys are tremendous partners with the Border Patrol along the entire Southwest borer of the United States, but they also suffer from a resourcing capability. They will address all the prosecutions that we present to them. We overwhelm them very quickly because of the numbers that we present to them. So they cannot take all of the prosecutions that we present. Would we like for them to take 100 percent? Absolutely. But resourcing is an issue to our U.S. Attorney partners. So we are working with them very closely.

Ms. Davis of California. I appreciate your responses. I have a few other questions. Thank you, Mr. Secretary. I know we are in a rush. Can I just thank Secretary McHale? Just briefly, I know that the chairman and I appreciate your looking into the assessments of national security vis-a-vis our military institution. Thank you very much. Thank you.

The Chairman. I thank the gentlelady, and pursuant to the House rules, the hearing is adjourned.

[Whereupon, at 11 a.m., the committee was adjourned.]
APPENDIX

MAY 24, 2006
PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MAY 24, 2006
Statement by

Honorable Paul McHale

Assistant Secretary of Defense for Homeland Defense

Before the 109th Congress

Committee on Armed Services

United States House of Representatives

May 24, 2006
INTRODUCTION

Chairman Hunter, Ranking Member Skelton, distinguished members of this Committee: Thank you for inviting me here to address National Guard support to border security.

As noted by the President in his address to the Nation last week: "The United States must secure its borders. This is a basic responsibility of a sovereign nation. It is also an urgent requirement of our national security. Our objective is straightforward: The border should be open to trade and lawful immigration, and shut to illegal immigrants, as well as criminals, drug dealers, and terrorists."

Under Section 202 of Title 6, U.S. Code, the Department of Homeland Security (DHS) is responsible for "[s]ecuring the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States" and "[p]reventing the entry of terrorists and the instruments of terrorism into the United States." The Department of Defense's (DoD's) role in the execution of these responsibilities is to provide support to DHS, when directed by the President or when requested by the Secretary of DHS and approved by the Secretary of Defense.

During his address last week, the President announced several initiatives to increase the security at our border, including an increase in the number of Border Patrol personnel and the application of advanced technologies at the border. These steps are critical—but they will take time to complete. In the interim, the President has asked the nation's governors to deploy their National Guard personnel to serve, on a temporary basis, to fill the gaps until these border control
capabilities can be put in place. This increased support will be an immediate, short-term measure that will allow us to increase our security, while also allowing DHS to build its capabilities and fulfill our nation’s commitment to reducing cross-border violence, preventing entry of possible terrorists, combating trafficking in persons and illegal narcotics, and stemming the flow of illegal immigrants.

The Concept

The initial military commitment to increase border security will be up to 6,000 National Guard personnel, on a rotational basis, for up to 12 months, with the possibility of another 12 months for up to 3,000 National Guard personnel. National Guard forces involved in this effort will be carrying out their annual training obligations. This limited, temporary deployment will not adversely affect operational readiness or DoD’s ability to conduct the Global War on Terrorism, nor hinder the National Guard’s ability or capacity to aid their States in the event of a natural disaster or other emergency. It will, however, provide Guard forces with realistic training opportunities, while also providing support to DHS.

Under this plan, each of the four Southwest Border States (California, Arizona, New Mexico, and Texas) will establish a joint task force that will be responsible, under the authority of the Governor and the Adjutant General of that State, for operational control of all National Guard personnel executing missions in support of border security within that state. Under this arrangement, National Guard personnel who may be armed, as appropriate for self-protection, will follow standardized Rules for the Use of Force (RUF).
Currently, there are no plans to deploy additional active duty personnel to the border. However, as we gain more information related to the mission, there may be some capabilities found in active duty units that can be employed to gain and maintain increased security along the border. If active duty personnel are used, their employment would be on a very limited and reimbursable basis, to provide specific skills and capabilities. These personnel will operate under the command and control authority of the Secretary of Defense, under section 162(b) of Title 10, U.S. Code. In addition, both DoD and DHS plan to use private contractors, where and when appropriate.

The Department of Defense is currently coordinating with DHS, State Governors, and Border State Adjutants General, to determine exactly how many National Guard personnel will be deployed to each State. While coordination is ongoing, we plan to have significant numbers of National Guard personnel on the ground in the Southwest border States before the end of June.

Military forces supporting DHS’s Customs and Border Protection (CBP) will either be part of a “duration force” or a “rotational force.” The “duration force” will provide operational control, conduct support operations that cannot or should not be performed by rotational forces, and coordinate training plans and operations to the Supported and Supporting States. The “rotational force” will serve for a 21-day cycle, with 16 days of “boots on-the-ground.” We will rotate units so that there is a period of overlap, thereby ensuring there are no operational gaps.

National Guard personnel will support CBP, much as they have already done for two decades on a more limited basis, in execution of their statutory
counter-narcotics responsibilities. DHS has identified requirements in the following areas:

- Aerial surveillance and reconnaissance (e.g., use of unmanned aerial vehicles and land-based sensors, tunnel detection, and chemical, biological, radiological, nuclear, and high-yield explosives detection and monitoring);

- Engineering (e.g., construction of fences, roads, barriers, and temporary detention facilities);

- Vehicle dismantlement;

- Training;

- Language, other than Spanish;

- Command, control, and intelligence (e.g., multi-sensor fusion, intelligence analysis, and mapping and imagery support);

- Transportation (e.g., air and land transportation of border security personnel and detained persons); and,

- Logistics (e.g., medical, sanitation, food service, berthing, and seizure facility support).

Law enforcement along the border will remain in the hands of civilian authorities. National Guard personnel will not be directly involved in the apprehension, detention, custodial care, or security of those who are detained by civilian law enforcement authorities.

The missions that will be performed by our National Guard soldiers and airmen will be related directly to the military skills normally associated with their warfighting and disaster response missions. As noted earlier, these missions will
be substantially similar to the annual training missions executed along the Southwest border for the past two decades as part of the counter-drug program. The principal difference is the size of the force and the commitment of resources to conduct border security.

Some have expressed concern that National Guard units who are returning from operations in Iraq and Afghanistan may be redeployed immediately to support border security operations. I note that current DoD policy exempts these units from their annual training requirements for a period of six months. This exemption would also apply to annual training conducted in support of border security operations.

Much as we do for training exercises at the National Training Center, we will establish an “equipment set” that will be available to National Guard personnel as they rotate in to support this mission.

Military forces will be deployed on an interim basis until DHS has been able to recruit, train, and deploy the necessary personnel and capabilities to secure the Southwest border -- not to exceed the two-year limit set by the President.

CONCLUSION

The deployment of National Guard personnel along the Southwest border in support of DHS is an important but temporary measure to enable the Customs and Border Patrol to secure our border. We will draw-down deployed National Guard personnel if necessary to support on-going mission requirements. The men and
women of the military will work diligently and professionally to support DHS, improving our nation’s land border security while receiving excellent training.

Mister Chairman, I commend you and the members of this Committee for your leadership, interest in, and support of, the Department’s homeland defense and civil support missions, with a particular focus today on National Guard support to border security. I look forward to any questions you may have.
RECORD VERSION

STATEMENT BY

LIEUTENANT GENERAL H STEVEN BLUM
CHIEF, NATIONAL GUARD BUREAU

BEFORE THE

COMMITTEE ON HOUSE ARMED SERVICES

SECOND SESSION, 109TH CONGRESS

ON
NATIONAL GUARD AND BORDER SECURITY

MAY 24, 2006

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
COMMITTEE ON HOUSE ARMED SERVICES
Mr. Chairman, members of the Committee, it is my honor to come before you today to discuss the most recent mission for the National Guard – assisting civilian authorities to increase the security along our Nation’s borders.

Since colonial times, the free citizens of this land have trained and prepared themselves as organized militia so that they could work their jobs, care for their families and pursue the American dream yet be ready to muster and respond when threats arose. That tradition continues in the modern National Guard.

Citizen-soldiers and citizen-airmen stand ready to answer this most recent call to duty just as we have in recent years whether threats were terrorists, tyrants or tornadoes.

The President has stated his intention to bolster the security of our Nation’s borders. Under his plan, up to 6,000 Guardsmen will help the Department of Homeland Security to stem illegal immigration.

The National Guard is first and foremost a military reserve component for the Army and the Air Force, yet the Guard is also well-suited to do this mission. We have the experience, the skills, the capabilities, and the available, highly trained people which can help the Department of Homeland Security.

This will be a temporary mission. Border security is and should remain a civilian law enforcement responsibility. The U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement are responsible for securing the U.S borders. The National Guard’s temporary military support will assist the Border Patrol until it is able to increase its ranks.

This is not an entirely new mission for the National Guard. For two decades, the National Guard has assisted state and federal law enforcement agencies through the National Guard Counterdrug program. In the border States, this effort has often focused on drugs coming across the borders. In the aftermath of 9/11, our counter drug assets performed additional border security duty. So, as we head into this newest mission, it will be familiar duty for many of us. Additionally, National Guard engineers have in the past supported border security by provided various forms of support to border security. In the past, this support has included building tactical infrastructure such as bollard fencing, low water crossings in areas that are very inaccessible to the Border Patrol and other forms of engineering support. This provides the accessibility and mobility in rural and remote border areas which the Border Patrol needs to do its work.
Military readiness will not be degraded by this mission. The counterdrug program is structured to function without negatively affecting the National Guard’s ability to provide units ready for mobilization. We will perform this new mission with the same philosophy in mind. There will be no degradation to the National Guard’s capability to meet the requirements of federal military mission. As far as possible, the tasks our Guardsmen perform in this operation will build upon the individual and unit skills used in an overseas deployment.

The support our National Guardsmen will bring to this mission includes: Engineering, Surveillance and Reconnaissance, Training, Linguistics, Command & Control, Transportation, Logistics, Aviation, Medical, and Maintenance.

This mission will be executed as a State-Federal partnership. The mission will be accomplished by having selected National Guard units perform their couple of weeks annual training period and similar short tours of duty along the border. This approach allows us to accomplish the mission without the need for lengthy mobilization. Impact on the lives of Guardsmen will generally be no more that that normally caused by attending annual training. Every National Guardsman knows they have a two or three weeks annual training period that they're going to have to perform during the year. Those that will be on border duty longer than that will be volunteers.

Members of the National Guard participating in this mission will remain under State command and control. The States will receive funding and guidance from the federal government.

To ensure continuity and unity of effort we will have long-term leadership that remains in place in each State which will receive and employ units as they rotate in and out. Our intention will be that the equipment required for the mission will be identified, deployed and then remain in place. Units will rotate in and out to make use of that equipment. This is a model we have employed successfully in the past and will not be entirely new.

I have spoken with the Adjutants General of the border states. They are supportive of this concept. I have asked them to begin preparing their State plans for execution.

The initial commitment will be for up to 6,000 military forces on a rotational basis for a period of up to 12 months. Military support won't exceed 3,000 personnel during a possible second year of deployment. The process is expected to begin in June.
This mission will not impair the National Guard’s capability to respond to natural disasters. Governors will retain sufficient National Guard capability to accomplish state missions to include disaster preparations. If a disaster strikes in any State while we are performing the border mission, there will still be plenty of National Guard forces available to respond. If one state needs more Guard help than it has on its own, States can shift forces and equipment under the Emergency Management Assistance Compact. The men and women of the National Guard did a great job in responding the Hurricane Katrina. This year, we will be even MORE prepared because we have more troops available, more equipment, and more experience than we did last year.

CONCLUSION

Once again, your National Guard has been called on for the security of the Nation. Once again, we will answer that call. This is a mission the National Guard can do …and do well. I look forward to your questions.
STATEMENT OF

MAJOR GENERAL RICHARD J. ROWE, JR, USA
DIRECTOR OF OPERATIONS
BEFORE THE
HOUSE ARMED SERVICES COMMITTEE
ON
USE OF THE NATIONAL GUARD TO SUPPORT BORDER SECURITY
24 MAY 2006
Chairman Hunter, Congressman Skelton and Members of the Committee:

The men and women of U.S. Northern Command (USNORTHCOM) are dedicated to defending our homeland against all threats. We appreciate this opportunity to describe our role in securing the nation's borders.

The Homeland Security Act of 2002 assigns the Secretary of Homeland Security the responsibility for security of our nation's borders. USNORTHCOM’s role in the border security mission is to provide support to civil authorities, principally the Department of Homeland Security, when directed by the President or Secretary of Defense. Under Chapter 18 of Title 10, the Secretary of Defense may provide support for the activities of law enforcement agencies. This support has historically been along our borders in support of the U.S. Border Patrol in counterdrug operations. Whatever the mission, USNORTHCOM's involvement in border security operations is always in support of civilian law enforcement agencies.

On 15 May 06, President Bush announced a plan for governors to deploy up to 6,000 National Guardsmen to support the Department of Homeland Security’s efforts to secure our nation’s southwest border. At this time, we do not anticipate that USNORTHCOM will have a significant role in supporting the Department of Homeland Security as we see few, if any, Title 10 forces that will be necessary to assist the Department of Homeland Security in their efforts to secure the U.S.-Mexico border. Military support for this effort will be provided primarily by National Guard forces operating under the command of the governors. USNORTHCOM and the National Guard Bureau (NGB) will establish a coordinating relationship whereby the NGB and USNORTHCOM will provide each other with situational awareness of ongoing missions.
through designated liaison officers. If directed by the President or the Secretary of Defense, USNORTHCOM will provide Title 10 forces in support of the Department of Homeland Security.

Over its 17-year history, USNORTHCOM’s subordinate organization, Joint Task Force North (JTF-N), has developed a unique relationship with federal, state and local law enforcement agencies, and has operated as a coordinating authority for DoD support to these agencies in numerous operations. JTF-N will continue to support law enforcement agencies in the war against illegal drugs and other transnational threats through the application of DoD capabilities.

Among these capabilities is intelligence support, which includes employing military intelligence analysts to develop operational intelligence products that we can share with our interagency partners for their use in early cueing, warning and interdiction operations. JTF-N also provides operational support which includes detection missions using a variety of sensors that are unique to the DoD in order to improve a supported law enforcement agency’s ability to detect, monitor and interdict transnational threats. These missions have included, and may continue to include, construction of roads, bridges and fences, as well as installing area lighting to improve the ability of law enforcement officers to move, identify and respond to threats crossing the border.

Through JTF-N, USNORTHCOM has employed unmanned aerial systems along the southwest border in support of U.S. Customs and Border Protection. While obtaining unmanned aerial system training, these flights greatly assisted civilian law enforcement agencies to detect and apprehend those engaged in illegal drug trafficking and alien smuggling in New Mexico and Arizona.
Over the past two years, JTF-N has supported U.S. Customs and Border Protection on border security operations in numerous Northern and Southern Border Patrol sectors. In each operation, JTF-North served as a force multiplier to federal law enforcement agencies by enhancing their effectiveness. As directed by the Secretary of Defense, JTF-N has and will continue to coordinate the use of DoD capabilities to include unmanned aerial systems, limited visibility optics, ground-based radars, and tunnel detection technology in support of U.S. Customs and Border Protection. The deployment of these assets provides additional means for detection and surveillance along our borders in order to enhance U.S. Border Patrol’s interdiction capability. JTF-N’s efforts have led to a significant expansion of the partnership among active duty forces, the National Guard and Reserve, the nation’s law enforcement agencies, and partner nations in securing our nation’s borders.

As we act to support civil authorities in responding to natural disasters and securing our borders, we will maintain focus on our primary mission of homeland defense. One fact remains constant—our enemies should make no mistake about our resolve or our capabilities. We thank the Members of the House Armed Services Committee for their unwavering support of America’s military. I look forward to your questions.
STATEMENT OF

David V. Aguilar
Chief
Office of Border Patrol
U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

U.S. House of Representatives
Committee on Armed Services

REGARDING

"Border Security – Mission of the National Guard"

10:00 a.m. WEDNESDAY, MAY 24, 2006
Chairman Hunter, Ranking Member Skelton, Members of the Committee, it is a privilege and an honor to appear before you today to discuss the role the National Guard will play in assisting the Department of Homeland Security, and especially U.S. Customs and Border Protection (CBP), in our mission of securing our Nation's borders.

The DHS and CBP remain steadfast in our commitment to gain control of our borders, and the recent announcements by the President will move us rapidly forward on that commitment. Let me first state that National Guard support of and coordination with DHS and the Border Patrol is nothing new. While this new infusion will be on a larger scale, the Border Patrol has a history of nearly two decades working with National Guard units to utilize their unique expertise, manpower, technology and assets in support of our mission and as a force multiplier. Today there are currently hundreds of National Guard troops assisting DHS, primarily in our counter narcotics mission.

CBP acts as the guardian of our Nation's borders, safeguarding the homeland by protecting the American public against the entry of terrorists and the instruments of terrorism, while enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. Within CBP's larger mission, the Border Patrol's time-honored duty of interdicting illegal aliens and drugs and those who attempt to smuggle them across our borders between the ports of entry remains a priority. The nexus between our post September 11th mission and our traditional role is clear, terrorists and violent criminals may exploit smuggling routes used by migrants to enter the United States illegally and do us harm. Reducing illegal entries across our borders is more than ever a matter of national security.

Since 2001, border security funding has increased by 66%. Today, the Border Patrol has increased to 11,583 agents. Since 2001, the Border Patrol and DHS components have apprehended and sent home more than 6 million people
entering America illegally. In fiscal year 2005 alone, the Border Patrol apprehended nearly 1.2 million undocumented aliens attempting to enter the United States illegally. So far in fiscal year 2006, apprehensions of illegal aliens are up 5 percent and seizures of marijuana are up 26 percent. Despite the progress we have made, we do not yet have control of our border.

To work towards operational control of the border, President Bush has announced a plan to increase the number of Border Patrol Agents by 6,000 by the end of 2008. DoD support will be an immediate, short-term measure that allows the DHS to increase their deterrence and border security capabilities while DHS trains additional Border Patrol Agents and implements the Secure Border Initiative. These units will support DHS where they will be most effective. One of many capabilities the National Guard Bureau will provide is an increased detection capability to allow a quicker response by law enforcement officers.

National Guard units will assist DHS by executing missions such as logistical and administrative support, operating detection systems, providing mobile communications, augmenting DHS’s border-related intelligence analysis efforts, building and installing border security infrastructure, providing transportation and training. However, law enforcement along the border between the ports of entry will remain the responsibility of Border Patrol Agents. The National Guard will play no direct law enforcement role in the apprehension, custodial care or security of those who are detained. With the National Guard providing surveillance and logistical support, DHS law enforcement officials will be free to concentrate on law enforcement functions of border enforcement. The support of tactical infrastructure engineering and technology by the National Guard will be a tremendous force multiplier for DHS; therefore making DHS law enforcement officials, and especially Border Patrol Agents more effective, freeing up additional current Agents who are performing some of these support tasks today.
In addition to providing support to the Border Patrol, the National Guard may be used to provide support to other critical DHS requirements along the border including temporary construction of detention facilities, intelligence support to ICE and CBP, transportation of aliens within the United States, and possibly augmentation of CBP officers at Ports of Entry, if necessary.

As I noted before, the Border Patrol and the National Guard have an established relationship that existed well before the President’s announcement last week. Guard units and personnel have been supporting counter-drug operations, in addition to conducting missions ranging from engineering support to aerial reconnaissance. In San Diego, the National Guard has worked on the San Diego Border Infrastructure System, and in Arizona, the National Guard has constructed roads for use by the Border Patrol. For nearly two decades, these types of missions have been utilized as valuable training for National Guardsmen, and have all been conducted in standard two to three week rotations as part of the Guard’s annual training. The results of these missions have greatly improved the Border Patrol’s ability to access terrain and enforce the law between our Nation’s ports of entry. The President’s plan expands this successful relationship to a larger scale, and although the force will be larger, the mission will remain the same as it has been for nearly two decades.

With the addition of National Guardsmen, over 500 Border Patrol Agents who are currently working in clerical, transportation, and logistics jobs will return to the front lines to assist in the detection and apprehension of illegal aliens. Additionally, under the President’s plan, the Border Patrol will hire and train an additional 6,000 Border Patrol Agents during 2007 and 2008. This will bring the total number of Border Patrol Agents to over 18,000, a 101 percent increase since the President took office in 2001.

We recognize the challenges that lie ahead. Our national strategy gives us the overall framework to achieve our ambitious goal and with the assistance of the
National Guard, our DHS law enforcement officials charged with border control will be able to more effectively and efficiently protect our Nation’s borders between our ports of entry.

The men and women of the Border Patrol face these challenges every day with vigilance, dedication to service, and integrity as we work to strengthen national security and protect America and its citizens. I would like to thank you for the opportunity to present this testimony today. I look forward to responding to any questions that you might have at this time.
QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD

MAY 24, 2006
QUESTIONS SUBMITTED BY MR. ORTIZ

Mr. Ortiz. Based on your testimony, please list all missions that will be performed at the border and which Military Occupational Specialties (MOSs) match those missions.

General Blum. The missions to be performed at the border include the following four categories:

Entry Identification Teams. Soldiers and airmen employ audio and visual technology to detect illegal entries and relay this information to Border Patrol Agents in the field. Combat Arms and Military Police are the optimal forces to perform this function although the required tasks are basic soldier skills that anyone in the military would be qualified to perform.

Engineering. Construction and repair of tactical infrastructure along the border. These are primarily engineer specialties in both the Army and Air National Guard. Soldiers and airmen with civilian acquired skills in this mission set are also being employed.

Command, Control, Communications, Computers, and Intelligence (C4I). This category includes both the forces required to execute command and control of National Guard forces as well as those working to assist US Customs and Border Protection in performing these functions at border patrol offices and facilities. This category involves a large number of specialties across the full scope of combat arms, combat support, and combat service support. This support to civilian law enforcement includes intelligence analysis of information in support of law enforcement; Intelligence Analysts distributed across the Border Patrol Sectors; Intelligence Analysts at the Border Field Intelligence Center (BORFIC); Intelligence, Surveillance & Reconnaissance support to provide situational awareness for federal law enforcement personnel; and linguist translation and interpretation to include document exploitation. Intelligence personnel are being used to perform this mission. Other soldiers and airmen are also being trained to operate specific border patrol equipment and systems without any specific specialty being required.

Aviation Support. The mission to provide rotary and fixed wing aviation to support border patrol operations and flow of forces into the states is being provided by units as well as by individuals, aircrews for the necessary platforms. Maintenance and support personnel are likewise contributing to this mission area. The specific types of aircraft involved, and thus the specialties required are expected to vary throughout the mission.

Mr. Ortiz. Using the list of identified missions and Military Occupational Specialties (MOSs), please provide the number of National Guard soldiers and Air National Guard airmen that have the identified MOSs by state and unit.

General Blum. The specific force and specialty mix and allocation will change on a daily basis based on availability of personnel, missions being conducted on a given date or location, force rotations, and other factors.

As a general rule, the following criteria provide an approximate estimate of the force mix: Entry Identification Teams: 50% (3,000 personnel); Engineering: 25% (1,500 personnel); Command, Control, Communications, Computers, and Intelligence (C4I): 15% (900 personnel); and Aviation: 10% (600 personnel).

The specific units for the breadth of the mission cannot be identified at this point. The states where the force will perform the mission is expected to be generally expected to be as follows: California, 20%; New Mexico, 20%; Arizona, 40%; and Texas, 20%.

As a general statement about the value of this mission, it should be noted that the Global War on Terrorism has proven to demand a broad range of skills not easily captured in a list of MOS or historical unit training missions. The individual members and even units deployed to the Southwest Border are engaged in a broad range of tasks and missions supporting detection and interdiction of border crossers. This form of experience is highly analogous to that needed in the operations environments our Guardsmen are called to overseas and thus provides real and applicable training value at both the individual and unit level.
Mr. Ortiz. Using the data compiled in questions 2 and 3; please identify which units are scheduled to be deployed in response to the Global War on Terrorism in the next two years.

General Blum. Operation Jump Start is being executed largely in a task organized manner employing tailored forces as appropriate. This includes many individual volunteers as well as units or task forces performing annual training. Deployments in support of the Global War on Terrorism, in contrast, are most frequently performed by units involuntarily mobilized under the appropriate authorities. It is not possible at this point to determine the degree to which personnel volunteering for duty along the southwest border may also be in units selected for such mobilization. Compiled lists of those units which have been alerted or sourced for mobilization for the War on Terrorism are sensitive and protected for operational security reasons.

Our direction from the President and Secretary of Defense is to execute Operation Jump Start without affecting our ability to support the requirements of the war on terror and we are accomplishing this. This is possible because of the sourcing strategy which largely task organizes from across the force structure rather than using large intact units preparing for deployment. Units preparing for overseas rotations will execute their training strategy as planned and will not be impacted in any way by Operation Jump Start.

Mr. Ortiz. What specific locations will the National Guard be deployed along the border?

General Blum. Our soldiers and airmen will assist the CBP in all four of the Southwest Border States—New Mexico, Arizona, California and Texas. Now, within those four states are nine Customs and Border Patrol sectors that they will be working in, and they include the following: San Diego, El Centro, Yuma, Tucson, El Paso, Marfa, Del Rio, Laredo and Rio Grande Valley. The Joint Forces Headquarters (JFHQs), through their Joint Task Force, of each state will determine specific locations within each state where troops should be deployed depending on the need of the CBP. Specific locations along the border change based on operational requirements and available forces and cannot be disclosed for operational security reasons.

Mr. Ortiz. What kind of construction activities will be performed? Will this include the construction of detention facilities? Will this include building fencing as part of a border wall?

General Blum. Engineering support includes but is not limited to repair and maintenance of current border fencing and construction of new fencing as needed, road maintenance and brush removal.

The National Guard will not be engaged in construction of detention facilities.

The National Guard will construct fences at locations along the border in locations designated by the Department of Homeland Security.

QUESTIONS SUBMITTED BY MR. SPRATT

Mr. Spratt. You have stated that there is a model that has been in use for 20 years, and that this use of the National Guard is merely an expansion of that model. What is that model?

General Blum. The National Guard is superbly suited for the mission—we have the skills, capabilities, and highly-trained people. The National Guard's unique status and capabilities allow the States to perform Department of Defense-approved missions in support of the DHS border security efforts in an integrated civilian-military effort. For two decades the National Guard has been a partner in the Southwest border; and enjoys longstanding beneficial relationships with both Mexican civic leaders and governors. The Guard will leverage all of its unique capabilities as well as its long standing relationships to further CBP's border security efforts.

The Innovative Readiness Training (IRT) program can be used as a model for support. The program was built upon the long-standing tradition of the Armed Forces of the United States, acting as good neighbors at the local level, in applying military personnel to assist worthy civic and community needs and still accomplish military readiness training. Typical training may include support to local engineering projects, medical support to under-served populations and transportation support to major events.

The Counter-drug mission model permits the use of the National Guard of the state to support federal, state, and local law enforcement agencies. While it is true that the Posse Comitatus Act does not apply to the National Guard when in a State Active Duty or Title 32 status, as a matter of policy National Guard members in Title 32 status will not, except for exigent circumstances, (situations in which immediate action is necessary to protect police officers, National Guard personnel, or
other persons from death or injury; to prevent loss or destruction of evidence; or to prevent the escape of a suspect already in custody), directly participate in law enforcement activities.

States that conduct Counter-drug support missions within the borders of other states will, to the extent required by and in accordance with the laws of the involved states, establish written MOUs/MOAs between the involved states. At a minimum, Adjutants General, through the Counter-drug Coordinators will coordinate notice of the intent to conduct interstate support operations prior to commencing such operations. This Counter-drug operations provision also applies to Operation Jump Start.

Mr. Spratt. The Counter-drug mission permits use of National Guard of a state to enforce the drug laws of that state; it does not permit use of a National Guard of a state to enforce the drug laws of another state. Given that there is not a state law border patrol statute, how is this similar to the border patrol support?

General Blum. The tasks to be performed by Operation Jump Start (OJS) personnel can be similar to those performed in a counterdrug mission. However, because counterdrug missions are funded by a separate appropriation, the two programs are separate and distinct. Personnel on OJS orders will be performing OJS missions, not Counter-drug missions. This principle has been reiterated in guidance memos and instructions published by the National Guard Bureau (NGB).

Mr. Spratt. The Counter-drug mission permits members of the National Guard to engage in law enforcement functions without the risk of violating the Posse Comitatus Act. You will be asking troops to do this mission and you are telling us that it will be just like the Drug Interdiction mission. Given that troops are permitted and used to performing law enforcement duties while on the Counter-drug missions, don't we run a serious risk that a troop or commander is going to say, like you, "it's just like the Counter-drug mission" and thereafter perform the mission just like they usually do when they do Counter-drug work? And by virtue of that action, do we not run the risk of violating the Posse Comitatus Act, or being deemed so by a court? And would that not expose these troops to criminal liability?

General Blum. Counterdrug and Operation Jump Start (OJS) are two separate and distinct programs. Because the Posse Comitatus Act does not apply to the National Guard in Title 32 status, National Guard personnel supporting OJS may legally perform law enforcement missions. However, a policy decision was made to specifically exclude law enforcement missions from OJS mission set. Therefore, the Posse Comitatus Act would not be violated if a National Guard soldier on OJS orders were to mistakenly undertake a law enforcement task.

Mr. Spratt. Title 32 permits the use of the National Guard to be used in support of Federal missions, but only in limited exceptions. The purpose is to ensure that the National Guard is trained and prepared for the purpose they are held in reserve, warfighting. Accordingly, these statutes require that those missions be performed in addition to, and not in lieu of, annual training requirements. Yet I understand this activity will take place as part of their annual training. Is that the case?

General Blum. The soldiers and airmen performing annual training in support of Operation Jump Start (OJS) will be training to perform their federal warfighting mission. For example, an engineer unit whose wartime job is to construct roads may do this in a location along the border just as well as off in a training area. This conserves federal funds because the government will not have to pay the engineer unit to build a road in a training area and then pay again to have a road built on the border.

Mr. Spratt. Title 32 states, QUOTE: "means full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty." 32 USC 101(12). How can that not mean federal active duty?

General Blum. The term "active duty" as defined in 10 USC 101(d)(1) and 32 USC 101(12) does include annual training, but only annual training performed by the reserve components (i.e., Army Reserve, Air Force Reserve, Navy Reserve, and Marine Corps Reserve) and not annual training performed by the National Guard. The National Guard performs annual training under the authority of 32 USC 502. The definition of "full-time National Guard duty" in 10 USC 101(d)(5) and 32 USC 101(19) is clear that training performed under 32 USC 502 is full-time National Guard duty—not "active duty.

Mr. Spratt. Title 10 limits the Federal operations and missions that can be performed, and the numbers of troops that can perform them, as defined by the Secretary of Defense. I have a memo form Dr. Chu which defines those missions, and
supposed to be incorporated in the next update to DoD Instruction 1215.19. It limits these missions to the following:

- All active duty for special work (ADSW)
- Active duty and active duty training performed as a result of reimbursable funding
- Funeral honors duty performed not in an inactive duty status
- Voluntary active duty performed by recall of reserve retirees not receiving regular retired pay
- Active duty training performed as a result of a request of an operational commander to provide support

I don’t see border patrol as one of those missions. It appears to me that 502(f) is not a valid authority for this border patrol mission. Has this memo been superseded? If so by what?

General Blum. The Department of Defense (DoD), acting upon a request by the National Guard, has specifically authorized duty under 32 U.S.C. 502(f). Secretary England signed a memo dated 10 July 2006 which states: “I approve Federal funding for use of the National Guard’s Duration Force to perform additional training and other duty under sec. 502(f)(2) of title 32, U.S. Code, to support Operation Jump Start, retroactive to May 31, 2006.”

Mr. Spratt. If annual training is active duty, and full-time National Guard is limited to the federal mission of Funeral Honors, and this mission is in support of a federal agency doing a purely federal mission, shouldn’t the members of the National Guard be in Federal active duty status, under Title 10, under the control of the President of the United States, and not the Governors?

General Blum. As a policy matter, DoD decided to keep the National Guard in Title 32 status.

Mr. Spratt. Are National Guard Mutual Assistance Compacts being invoked here? If so, how? Are the Emergency Management Assistance Compacts being invoked here? If so, how?

General Blum. No, neither National Guard Mutual Assistance Compacts nor the Emergency Management Assistance Compact (EMAC) are being invoked. The Memorandum of Agreement between the States and DoD incorporates some, but not all, of EMAC’s provisions. This does not mean that EMAC as a whole is being invoked; rather, parts of the EMAC response structure has been adopted by the OJS participants.

QUESTIONS SUBMITTED BY MR. ANDREWS

Mr. Andrews. I would like you to supply the committee with a list of other 502(f) deployments and uses that we have had in recent history.

Secretary McHale. [The information referred to was not available at the time of printing.]

QUESTIONS SUBMITTED BY MR. REYES

Mr. Reyes. So you know that she was denied Federal funding under Title 32 and the reason for that was that the missions constituted what your letter, or Mr. Verga’s letter called border security versus homeland defense activities?

So there is a distinction there, which is pretty interesting and, Mr. Chairman, I would ask to be able to enter these into the record.

Secretary McHale. [The information referred to was not available at the time of printing.]