

**A STUDY IN CONTRASTS: HOUSE AND SENATE  
APPROACHES TO BORDER SECURITY**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON BORDER  
AND MARITIME SECURITY**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED THIRTEENTH CONGRESS

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## **A STUDY IN CONTRASTS: HOUSE AND SENATE APPROACHES TO BORDER SECURITY**

**Tuesday, July 23, 2013**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 311, Cannon House Office Building, Hon. Candice S. Miller [Chairwoman of the subcommittee] presiding.

Present: Representatives Miller, Duncan, Marino, Palazzo, Barletta, Stewart, Jackson Lee, Sanchez, and O'Rourke.

Also present: Representative Vela.

Mrs. MILLER. Good morning. The Committee on Homeland Security and Subcommittee on Border and Maritime Security will come to order. In the interest of time we are going to move along, although we are waiting for our second witness here and our Ranking Member, but one of our witnesses, Senator Cornyn, who we are so appreciative of him appearing before the subcommittee today. I know he is on a tight timeline, so we will move right along here. We do have a second panel as well after our first panel is complete with their testimony.

Our Nation is in the middle of a very robust, I suppose is one good way to characterize it, a very robust debate on the best path to reform as we try to reform our broken immigration system.

Certainly an essential part of that debate is how we secure the border so that in 10 years or 15 years we are not going to be having this same debate again and again. We need to reduce the flow of people coming into this country illegally and those include those who sneak across the border, across the desert, and as well those who overstay their visas, something that our colleague, Mr. Barletta has been a champion on certainly.

So this is more than an immigration issue, it is a National security issue, and we need to start by securing the Southern Border but that is not the only border that we have, obviously. All of our borders, our Northern Border, Southern, of course, the maritime environment, these are all dynamic places and once you have secured a section of the border it doesn't mean that it is secured forever, it can change.

Without a Nation-wide plan, the drug cartels and the smugglers will continue to seek out the point of less resistance and then succeed in coming in to our country illegally and crossing our borders.

The American people overwhelmingly agree that we need to secure the border. They have spoken out many, many times about that. It is something, unfortunately, we failed to do in 1986.

Immigration reform in my mind will not happen without the public, the American people having a very high degree of confidence that their Government is committed to enforcing the Nation's immigration laws and following through on our border security promises.

A real border security plan has to be able to answer these simple questions, what does a secure border look like, how do we get there and most importantly, how do we measure the progress of getting there?

Spending billions of dollars on border security without a way to assess progress is really what we have done for the last 20 years without truly understanding how effective the additional resources have been or measuring them. I am certainly disappointed that the Senate continued this flawed approach with their immigration bill—to the tune of \$46 billion.

I think without outcome-based metrics, accountability, or a standard for success with real teeth, the Senate bill is more of the same; it is a Washington solution that will not deliver results.

I do think that additional resources certainly will be needed to achieve situational awareness, operational control of the border, and to enhance security at our ports of entry. But just spending additional resources without a strategy to secure the border or means to hold the Department of Homeland Security accountable for results creates conditions that I think are ripe for waste.

Doubling the Border Patrol and tearing down hundreds of miles of fence just to rebuild it appears tough until you look deeper and ask the tough questions: Did the Chief of the Border Patrol say that that is what they needed to get the job done, or did Senators just come up with those nice round numbers to get some additional votes for the immigration bill?

Here in the House Homeland Security Committee, we have taken a radically different approach that addresses security based on results and certifiable metrics, not on resources alone.

On a bipartisan basis, we passed a bill that will put us on the road to achieving real, tangible, and most importantly, verifiable border security. The Border Security Results Act of 2013 calls on the Department of Homeland Security to finally develop and to implement a serious plan to secure the border, to develop metrics, and to gain the situational awareness needed to understand how the threat at the border evolves.

The strategy and implementation plan required by this legislation will consist of actual analysis to inform how and where we apply resources we send to the border. This strategy, I believe, will eliminate the ad hoc nature of our spending, and in short, it will answer the question: What does a secure border actually look like?

Metrics called for in the bill are long overdue, because the American people as well as the Congress have been frustrated by this administration, past administrations as well, and its inability to come to grips with the need to secure our border and how we do so in a measurable, transparent way.

Through our bill, the National labs and border stakeholders will be able to offer needed expertise so that what the Department of Homeland Security produces actually measures border security.

We cannot continue to rely on faulty measures like how many resources we send to the border or the number of people we apprehend. Instead, border security can only be based on hard and verifiable facts vetted by the independent experts.

Third-party verification by outside experts is an important part of our approach to make sure that Congress and the American people aren't being misled and that promises made are promises kept.

Every section of this bill was designed to give Congress and the American people a high degree of confidence—confidence—that we are on the right path. This bill is about accountability and real results because the Department of Homeland Security's border components must be held to account for success, or failure, progress or not.

This bill is the right way to move forward. We can and we must secure the border. The American people deserve no less.

At this time, the Chairwoman would recognize our Ranking Member, the gentlelady from Texas, Ms. Jackson Lee for her opening statement.

Ms. JACKSON LEE. Thank you, Madam Chairwoman, very much. Obviously I am delighted to see Texas represented in a very large way in this committee and at the panel in welcoming Senator Cornyn, my Senator. Thank you so very much, Senator, for being here and being thoughtful on this very important issue not only to the Nation but certainly to Texas.

Madam Chairwoman, I want to also, because this is a very challenging issue, take an opportunity to personally thank you for the cooperative way in which we have been able to work on this committee and still more work to be done but on this committee as it relates to something that many of our Members have a diverse and different view and are vigorous sometimes in that view.

Again, I want to acknowledge fellow Texan in Mr. McCaul, the Chairperson of the full committee for, again, recognizing that we can do things in a bipartisan manner and really come up with a product that doesn't just serve Texas, Arizona, and places such as those States but serves the Nation.

Working very closely with the Ranking Member, Mr. Thompson who has evidenced an uncanny ability for coming together on very, if I might say controversial issues and have worked so closely in a bipartisan way, we are a committee that I think is a very good example of what is good about the United States Congress.

Madam Chairwoman, let me apologize for being delayed, I was in an immigration meeting and I believe that today's hearing is a crucial piece of this Congress and this House shedding itself from the National perception that there is a stall, that we cannot further provide leadership on the concept of comprehensive immigration reform.

So, I thank you for holding this meeting, and I assume that it will not get heated but I thank you for holding this, and I just want to acknowledge what the meeting was about as I read my statement.

It was about the combined advocacy for comprehensive immigration reform from the National Association of Evangelicals, from the American nursery and landscape, the business community, agricultural community, and certainly from the law enforcement community.

These are crucial elements who are pushing collectively for comprehensive immigration reform. So I am very pleased to have been an original co-sponsor of one of those bills that will contribute to this process. H.R. 1417, the Border Security Results Act of 2013, that has been sponsored by again Chairwoman Miller, myself, the Chairman, Mr. McCaul, and the Ranking Member of the full committee, Mr. Thompson.

It may come as no surprise that my friend and I work on issues even though as we should have disagreement. Texans do, but we come together around very important issues. I was glad to co-sponsor H.R. 1417 in part to help to foster a bipartisan legislative initiative.

But more importantly I was delighted to be able to work across the aisle with staff and Members on this bill that I believe has generated a forward-thinking, strong, positive effort at securing the border, both Northern and Southern, as I have spoken to Chairwoman Miller about the Northern Border, to come forth with a bill that will help us in comprehensive immigration reform.

As reported to the House the bill requires that the Secretary of Homeland Security submit to Congress and the Government Accountability Office a report that assesses and describes a state of situational awareness and the operational control of our borders. It also requires that not later than 180 days after the date of the enactment the Secretary of Homeland Security submit to Congress our comprehensive strategy for gaining and maintaining situational awareness and operational control of high-traffic areas of the border within 2 years and operational control on the entire Southern Border of the United States within 5 years.

Furthermore, the bill requires the Secretary to submit to Congress an implementation plan for each of the DHS border security components to carry out such strategy and for GAO to review those plans and report to Congress on their findings.

The Secretary determines operational control has been achieved in accordance with the Act, the Secretary is to certify that to Congress. It is a roadmap that I think is very positive and takes in all of the stakeholders that have a responsibility for securing the border.

Again, we were delighted to also offer several thoughtful amendments and particularly I was glad that amendments offered by my colleagues from the border region were adopted, dealing with the impact on border communities and the economics, particularly trade.

I appreciate the bipartisan support for my amendment to address the smuggling of people, drugs, and weapons, particularly emphasizing human trafficking, as well as civil liberties and prohibitions against racial profiling.

For example, we must acknowledge that achieving such control will require new border security resources, and I hope Mr. Thompson's amendment will be considered going forward that begins to

fund this challenge. H.R. 1417 addresses just a portion of the challenges facing our Nation with respect to our broken immigration system.

As I said earlier, I am not going to be shy about the need for comprehensive immigration reform. I would hope this House would not spend its time on satellite bills but come together with a comprehensive approach.

I would hope that beyond anything else that we have the opportunity to be able to put forward a comprehensive approach, and I would say to the Chairwoman and I would say to the full Chairman that I hope that this will be part of that bill.

We have an obligation to bring these people out of the shadows, and I commend the Senate for its comprehensive approach but also believe that we can improve on this bill. As I close let me indicate that the Senate bill which we view as a positive step still has an unworkable hurdle, \$46.3 billion for border enforcement with 20,000 Border Patrol agents with no study as to how they will be trained and additional agents may be necessary, but we need to be able to listen to the stakeholders.

The question of militarizing the border may be of concern to many of us but we are ready to go. We are ready to move to help Arizona and California and New Mexico and Texas and we are ready to go to make a great difference in what we are doing.

In short, there are pros and cons to the approach taken by the House and Senate on border security and we can learn from both. But I must say, Madam Chairwoman as we go forward, the one issue that must be on the table is that this House would move forward on comprehensive immigration reform along with the Senate for the President to sign; it is one of the greatest civil rights moments and need of this century and of our time.

I look forward to this House being front and center and the House Homeland Security Committee being part of helping 11 million undocumented persons become citizens. With that, Madam Chairwoman, I thank you and I yield back.

Mrs. MILLER. Thank you, gentlelady and the Chairwoman now recognizes the Chairman of the full committee, the gentleman from Texas, Mr. McCaul.

Mr. McCAUL. I thank the Chairwoman Candice Miller for your hard work and the Ranking Member, fellow Texan, Sheila Jackson Lee. You have worked on this issue prior to this Congress for many years to get to the point where we are here today.

I am also glad that while—when the bill initially passed it got little attention, it is now starting to get the attention I think it deserves. The *LA Times* editorial, says “A shocker, House gets something right on immigration.”

The Border Security Results Act strikes a fair balance between border enforcement and fiscal responsibility. I also want to thank my fellow Texan and mentor, Senator John Cornyn for being here today. I was honored to serve as his deputy attorney general for the State of Texas when he was serving as attorney general. It is great to see my colleague in front here today.

Securing our border is about much more than illegal immigration. It is about safeguarding this country from terrorism, drug car-

tels, weapons, and human smuggling and protecting the free flow of legitimate trade.

According to a *Washington Post/ABC* poll 80 percent of Americans support stricter border control. For years this committee has studied this issue and we recently passed a bill that will revolutionize the way we look at border security operations. Which is in stark contrast to the border security approach seen in the Senate bill.

It is my understanding, Madam Chairwoman, that this hearing today is really designed to contrast and compare what the Senate passed on border security and what this committee passed.

As the Senate continues to throw money at our porous borders we are taking a new fiscally responsible approach. On the surface the Senate's bill appears to increase border security by adding more agents, more fencing and more spending. But it has no real strategy, no metrics and no requirements. It spends \$46 billion on arbitrary resources with no plan, which is exactly what we have done for years without success.

The Border Security Results Act takes a page from the private sector and demands a strategy before we okay a project or its budget, which is a smart, fiscally responsible way to secure the border. It demands a plan and metrics first using technology fencing and manpower and with input from the Coast Guard, Border Patrol, border sheriffs, border governors which is all presented to the Congress. The requirements in this bill are specific, unlike the border security plan which passed out of the Senate. H.R. 1417 requires a 90 percent apprehension rate at a minimum with visibility of the entire border to finally see what we are missing.

These requirements are set to a tight but achievable time line, demanding a plan first followed by detailed implementation structure and finally proven results, all of which will be verified by the Government Accountability Office.

The mandated metrics to show the progress of the plan's implementation will be developed by an independent National lab with expertise in measuring border security and consultation with the border governors and experts on the ground. The deadlines in this bill are also clear. It requires DHS to achieve operational control of the border and high-traffic areas in 2 years and 9 months and the entire Southwest Border within 5 years.

These benchmarks will be checked and validated by the Government Accountability Office so that the results cannot be manipulated by the Department or the administration. Also the major county sheriffs and the Southwest Border sheriffs—who know the border implicitly and frankly know the border better than Members of Congress—support this legislation because they know it will finally tackle border security the right way and get results. The right way to do this is clear because history shows us where we have gone wrong.

For decades we have thrown money at the problem as the Senate did recently without a plan. In the last 10 years we have spent more than \$75 billion on the border and the last time that GAO checked we had operational control of only 44 percent, and that is a bad return on our investment.

The Senate bill continues this misguided approach, continuing to throw money at different sectors and sections of the border that has led to an ad hoc system where holes in the border are temporarily patched up and the problem is shifted instead of solved. This is demonstrated by the recent spike inflow to my home State of Texas in the Rio Grande Valley resulting from increased security measures in other parts of the border. The fact is there is no National strategy and without a National strategy we will never see lasting progress, and for years the administration has bought lumber for the house without a blueprint. This has led to wasting billions of taxpayer dollars.

It is now time for a thoughtful and deliberative approach. I look forward to hearing from the testimony here today, particularly my colleague Senator Cornyn on what the Senate did versus what he sees in comparison to the bill passed out of this committee, and I know that he will offer unique insights into that.

With that, Madam Chairwoman, I yield back.

Mrs. MILLER. I thank the gentleman.

The Chairwoman recognizes the Ranking Member for a UC request?

Ms. JACKSON LEE. Thank you very much, Madam Chairwoman, and I know that you will introduce our witness Mr. Xavier Becerra just quickly as I present this UC to be able to acknowledge his long legacy in human rights and civil rights and his significant contribution to what we all hope will be comprehensive immigration reform.

I am delighted to welcome Chairman Becerra here.

I ask unanimous consent that Mr. Vela be allowed to sit and question the witness at today's hearing and acknowledge my other Members who are present here today. I ask unanimous consent.

Mrs. MILLER. Without objection. Other Members of the committee are reminded that opening statements might be submitted for the record and as we said we have a very distinguished first panel here.

Senator John Cornyn is the Ranking Member on the Subcommittee on Immigration, Refugees, and Border Security under the Senate Judiciary Committee. First elected to the Senate in 2002, he previously served in Texas as a district judge, a member of the Texas Supreme Court and as was mentioned by our Chairman as Texas attorney general very well and very professionally and honorably, and I certainly would like to note as well that Senator Cornyn offered the Senate companion to H.R. 1417.

Mr. Becerra, Representative Becerra, first elected in 1992, represents portions of Los Angeles and currently serves as chairman of the House Democratic caucus. He previously served in the California legislature and as a deputy attorney general as well with the California Department of Justice. The committee's full written statements will appear in the record.

The Chairwoman now recognizes Senator Cornyn for his testimony and again we are so appreciative of your attendance today, sir.

**STATEMENT OF HON. JOHN CORNYN, A UNITED STATES  
SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Madam Chairwoman, thank you and to the Members of the committee and to the Chairman of the full committee, my friend Congressman McCaul for the opportunity to be here today and talk to you about the contrast between the House and the Senate approach to border security.

Since the border is my backyard along with many of the Members of this panel, we believe we understand it and that the complexity of the border, it strikes me that so much of what emanates from Washington tends to treat this in a simplistic fashion which does not recognize the importance of both security and legitimate trade and commerce which benefits both of our countries on both sides of the border.

As you know over the last 30 years the Federal Government has repeatedly promised the American people that our borders would be secured, and every time the Federal Government has failed to keep that promise.

Of course after September 11, 2001, the American people became understandably more conscious of border insecurity and multiple studies have shown that even since that time that our borders have remained porous and were failing to interdict more than half of the illicit cross-border traffic.

Last month much of the Senate debate on immigration reform centered around the issue of border security and for good reason. I simply believe that the American people will not accept the sort of immigration reform that I know the Ranking Member has advocated for or any form of immigration reform unless we regain their confidence and they actually believe we will keep our promises. That is why I believe the House approach to border security is so critically important, because it does guarantee results. It doesn't just throw money at the problem. It doesn't just make promises that will not be kept, and we all know they will not be kept. It guarantees border security results and thereby begins to regain the public's confidence.

While S. 744 throws more than \$46 billion of resources at the border, as you said it contains no mechanism to ensure that these resources will be effectively or properly implemented, no accountability, no guaranteed results, just more hollow promises emanating from Washington.

The vast majority of the \$46 billion would be spent hiring approximately 18,000 new Border Patrol agents, nearly doubling the force at a cost of about \$40 billion. But without a coherent strategy or metrics to measure results adding this many new Border Patrol agents could go down as one of the most massive wastes of money in the history of the Federal Government.

Unfortunately S. 744 the Senate bill does not stop there. The legislation would also require the Department of Homeland Security to purchase billions of dollars of specific equipment designated by the Congress with no approved plan or strategy for deployment.

S. 744 has no accountability mechanism to ensure that the required equipment is actually integrated to achieve results, merely that it is deployed. This is a backwards approach that will virtually ensure that billions of taxpayer dollars and border security re-

sources are wasted. It locks the Border Patrol and the Department into more of the same technologies and tactics of today which simply have not worked. Fortunately Members of this committee and this panel can get it.

We need smart and sustainable border security, not more of the same wasteful and unaccountable border security contained in the Senate bill.

So what would a smart and sustainable border look like? A smart border must start with a comprehensive, flexible, border security strategy. A smart border must ensure accountability for how this strategy would be implemented with objective metrics that tell us exactly how many border crossers there are and how much contraband is successfully entering the country. No more guessing, no more estimating, and no more cooking the books.

A smart border must obtain full situational awareness requiring the Department to deploy cutting-edge surveillance technology capable of monitoring traffic at every segment of the border. This layered and integrated technology would serve as a force multiplier for the Border Patrol ensuring they have the capability to observe all cross-border traffic and are able to efficiently target their enforcement resources.

But a smart border must also be holistic. It therefore must feature fast and dynamic ports of entry that increase legitimate trade and travel while interdicting criminals and contraband.

According to a 2009 study by the University of California at San Diego approximately 28 percent of illegal immigrant traffic enters the United States through our ports of entry. But the reason to focus on our ports do not end there. Legitimate cross-border commercial traffic and international travelers face significant delays due to inadequate infrastructure and personnel at the land ports of our Southern Border.

According to Bloomberg U.S.-Mexico truck trade is constrained by border-crossing delays that cost the U.S. economy \$7.8 billion in 2011 alone. The U.S.-Mexico truck trade could reach \$463 billion by 2020, a 40 percent rise from \$322 billion in 2012. Reaching that level would put the annual delay cost of the U.S. economy at \$14.7 billion.

Robust investment, increased physical infrastructure, tactical resources, personnel, and partnerships at our ports of entry is imperative. These port of entry investments could grow our economy, strengthen our security, and vastly improve public safety. In other words, port of entry improvements are the linchpin to completing a smart border that is holistic and sustainable.

Regrettably the Senate bill ignored the acute need for land-port infrastructure investment, but I hope the House will fix that and will not make a similar mistake. The targeted investments across all sectors of a smart border will deter illegal border traffic and allow our Nation to finally gain complete operational control of our borders. Operational control of each and every sector of the border is the only acceptable outcome and we can only achieve and maintain operational control of our borders if they are smart, sustainable, and accountable.

Fortunately there is a solution. Over the last 6 months I have been proud to work with my friend Chairman McCaul and the

Chairwoman of this subcommittee, Chairwoman Miller, to craft border security legislation which has enjoyed broad bipartisan support from the Homeland Security Committee and hopefully across the House.

The Border Security Results Act of 2013 would require the Department of Homeland Security to implement a comprehensive border security strategy to achieve that situational awareness and operational control and it would guarantee that the Department of Homeland Security actually achieves these results and doesn't fudge on the numbers for the first time ever deploying a set of statistically validated and independently verified border security metrics.

These metrics will objectively measure progress and tell us exactly how much illegal traffic is successfully getting across the border so resources can be deployed efficiently and effectively. No more gains, no more empty promises, but real results instead.

For that reason I was proud to serve as the sponsor of the Senate version of the Border Security Results Act and was proud to push for adding this approach to S. 744, the Senate-passed immigration bill, but unfortunately the Senate didn't see the wisdom of that provision.

As the debate over border security and immigration reform continues, I do believe that the efforts of this committee and the full committee and the House will focus on the wisdom of this approach, and I hope this panel and the full panel will continue fighting for the Border Security Results Act and the Smart Border approach.

The American people demand real border security first and the Border Security Results Act delivers. I stand ready to help you and offer my full support for your efforts.

[The prepared statement of Senator Cornyn follows:]

PREPARED STATEMENT OF SENATOR JOHN CORNYN

JULY 23, 2013

I appreciate the opportunity to testify today about one of the most pressing National security and human rights challenges of our time—security at our porous borders. As a United States Senator and former Attorney General of Texas, which shares a 1,200-mile border with Mexico, I understand the dangerous realities on the ground at the Southern Border and the long-term importance of gaining control of our borders.

Over the past 30 years, the Federal Government has repeatedly promised the American people that they would secure our borders. And every time, they have failed. While security at our Nation's borders has improved since the September 11 attacks, multiple studies have shown that our borders remain porous and that we are failing to interdict more than half of illicit cross-border traffic. Meanwhile, international criminal organizations and drug cartels repeatedly exploit our borders to deliver drugs, contraband, weapons, laundered money, and human trafficking victims. And, as Chairman McCaul demonstrated in a report last December, these criminal organizations are increasingly aligned with international terrorist organizations like Hezbollah. The threat is at our door, and we must neutralize it. In other words, it is time for the empty border security promises to stop, and for the Federal Government to get serious about delivering border security results.

Last month, much of the Senate debate on immigration reform centered around this issue, and for good reason: The American people will simply not accept immigration reform unless it guarantees border security results. Unfortunately, the Senate-passed immigration bill, S. 744, fails this test completely. While S. 744 throws more than \$46 billion of resources at the border, it contains absolutely no mecha-

nism to ensure that these resources will be effective or properly implemented. No accountability, no guaranteed results—just more Washington, D.C. promises.

The vast majority of this \$46 billion dollars would be spent hiring approximately 18,000 new Border Patrol Agents—nearly doubling the force at a cost of about \$40 billion to American taxpayers. But without a coherent strategy or metrics to ensure results, adding this many new Border Patrol Agents could go down as one of the most massive wastes of funds in the history of the Federal Government. But S. 744 unfortunately does not stop there. The legislation would also require DHS to purchase billions of dollars of specific equipment—with no approved plan or strategy for deployment. And S. 744 has no accountability mechanism to ensure that the required equipment is actually integrated to achieve results. This is a backwards approach that would virtually ensure that billions of taxpayer dollars and border security resources are wasted. It locks Border Patrol and DHS into more of the same technologies and tactics of today—which simply have not worked. Fortunately, the members of this panel get it: We need smart and sustainable border security—not more of the same wasteful and unaccountable border security in S. 744.

So what would a smart and sustainable border look like? A smart border must start with a comprehensive, flexible border security strategy. A smart border must ensure accountability for this strategy through objective metrics that tell us exactly how many illegal border crossers and how much contraband is successfully entering our country. No more guessing, no more estimating, no more cooking the books.

A smart border must achieve full situational awareness—requiring the Department of Homeland Security to deploy cutting-edge surveillance technology capable of monitoring traffic at every segment of our borders. This layered and integrated technology would serve as a force multiplier for the Border Patrol, ensuring that they have capability to observe all illicit cross-border traffic and are able to efficiently target their enforcement resources.

But a smart border must also be holistic. It therefore must feature fast and dynamic ports of entry that increase legitimate trade and travel, while interdicting criminals and contraband. According to a 2009 study by the University of California at San Diego, approximately 28 percent of illegal immigrant traffic enters the United States through our front door—at ports of entry. But the reasons to focus on our ports do not end there. Legitimate cross-border commercial traffic and international travelers face significant delays due to inadequate infrastructure and personnel at the land ports on the Southern Border. According to a Bloomberg Government study, U.S.-Mexico truck trade is constrained by border crossing delays that cost the U.S. economy \$7.8 billion in 2011. U.S.-Mexico truck trade could reach \$463 billion by 2020, a 44 percent rise from \$322 billion in 2012. Reaching that level would put the annual delay cost to the U.S. economy at \$14.7 billion. Robust investment to increase physical infrastructure, tactical resources, personnel, and partnerships at our ports of entry is therefore imperative. These port of entry investments would grow our economy, strengthen our security, and vastly improve public safety. In other words, port of entry improvements are the linchpin to completing a smart border that is holistic and sustainable. Regrettably, the Senate bill ignored the acute need for land port infrastructure investment. I hope the House will not make a similar mistake.

With targeted investments across all sectors, a smart border will deter illegal border traffic and allow our Nation to finally gain complete operational control of our borders, which should include an apprehension rate of at least 90% for illegal border crossers. Operational control of each and every sector of our borders is the only acceptable outcome, and we can only achieve and maintain operational control if our borders are smart, sustainable, and accountable.

Fortunately, there is a solution. Over the past 6 months, I have been proud to work with Chairman McCaul and Chairwoman Miller to craft border security legislation that would finally put our Nation on the path to smart and secure borders. The “Border Security Results Act of 2013” would require DHS to implement a comprehensive border security strategy that achieves situational awareness and operational control of our borders. And it would guarantee that DHS actually achieves these results and does not fudge the numbers by, for the first time ever, deploying a set of statistically validated and independently verified border security metrics. These metrics will objectively measure progress and tell us exactly how much illegal traffic is successfully crossing our borders. No more games, no more empty promises, real results.

For that reason, I am proud to serve as the sponsor of the Senate version of the Border Security Results Act, and was proud to push for adding this approach to S. 744, the Senate-passed immigration reform bill. Unfortunately, the Senate rejected this approach. As the debate over border security and immigration reform continues, I hope that members of this panel will continue fighting for the Border Security Re-

sults Act and the “smart border” approach. The American people demand real border security first, and the Border Security Results Act delivers. I stand ready to help you and offer my full support.

Senator CORNYN. Madam Chairwoman and in conclusion I would just ask consent to make part of the record following my remarks a letter from the Border Trade Alliance that supports the efforts of this subcommittee and the full committee and the Border Security Results Act.

Mrs. MILLER. Without objection that will be entered into the record.

[The information follows:]

LETTER FROM THE BORDER TRADE ALLIANCE

JULY 22, 2013.

Hon. CANDICE MILLER,  
*Chairman, Subcommittee on Border and Maritime Security, 311 Cannon House Office Building, Washington, DC 20515.*

Hon. SHEILA JACKSON LEE,  
*Ranking Member, Subcommittee on Border and Maritime Security, 2160 Rayburn House Office Building, Washington, DC 20515.*

DEAR CHAIRMAN MILLER AND RANKING MEMBER JACKSON LEE: The Border Trade Alliance is pleased that the Subcommittee on Border and Maritime Security is holding a hearing on the contrasting approaches to border security by the House of Representatives and the Senate. The debate over immigration reform offers not only an opportunity to improve greatly our nation’s immigration system, but also to enhance security along our northern and southern borders while strengthening our nation’s economy through greater trade efficiency.

Since our founding in 1986, the Border Trade Alliance has been committed to advancing public policy solutions that enhance the environment for commerce across the U.S.-Canada and U.S.-Mexico borders. As a result of our over 25 years in cross-border affairs, we have observed the impact of our country’s broken immigration system on our northern and southern borders. We share your belief and that of most of your colleagues that border security must be a central component of any immigration reform effort. While the legislation recently produced by the Senate offers a good starting point, we believe that under your leadership the House can pass a bill that both increases border security and improves conditions at our borders, specifically at our ports of entry, for legitimate trade and travel.

The BTA respectfully requests that you consider these guideposts as your chamber commences debate on immigration reform:

*Canada and Mexico are our largest trading partners. Our relationship with them is an economic asset.*—The BTA believes we should use this opportunity to improve smartly border security while looking for ways to increase our economic ties to our neighbors. Recognizing our borders for their economic potential, especially our border with Mexico, can help spur that country’s economic growth and stem the tide of illegal immigration. Close relationships between the U.S. government and the governments of Canada and Mexico can also aid efforts to better understand who and what is coming across our shared borders into the U.S.

*Our lagging border infrastructure hurts our economy and threatens our security.*—Customs and Border Protection estimates that it would cost \$6 billion to bring our land border ports of entry, which average 40 years of age, up to the standards necessary to process today’s flows of trade and travel efficiently and securely. A recent analysis by Bloomberg Government estimates that while recent focus has been placed on securing the vast areas between our ports, delays at the ports cost the U.S. economy \$7.8 billion in 2011. Recalling the maxim that cargo at rest is cargo at risk, these delays come with a security price as well, as loads are exposed to potential theft and sabotage. Any immigration reform bill should also include a plan to modernize our ports, which have come to be unfortunately characterized for their congestion and miles-long traffic backups.

*The private sector and local governments can aid in improving our ports of entry.*—The trade community is well aware that, absent a sudden windfall of financial resources, a major federal investment in our country’s outmoded ports is unlikely. However, there are private sector and local governmental partners who have available resources ready to supplement federal dollars to help improve the efficiency and security of our ports of entry. Unfortunately, these partners have been

stymied over murky regulations governing the General Services Administration's and CBP's ability to accept financing from third parties. A House immigration reform bill should seek innovative ways to improve our nation's land border ports by working with outside partners.

We would urge you to consider S. 178 by Sen. John Cornyn and companion House legislation, H.R. 1108, by Homeland Security Chairman Rep. Michael McCaul and Rep. Henry Cuellar. The Cross Border Trade Enhancement Act of 2013 authorizes the Department of Homeland Security and the GSA to enter into agreements with third parties to finance increased staff levels and the construction or maintenance of infrastructure. We believe this bill provides an excellent starting point for crafting a creative method for increasing the involvement of the private sector and local governments in the future of our land ports.

*Staffing resources are needed, but we must be wise in their deployment.*—The Senate's immigration overhaul seeks to double the size of the Border Patrol to approximately 40,000 agents. While there are some Border Patrol sectors that need additional resources, the Senate's action only highlights the yawning gap between resources granted to securing the borders and those devoted to securing our ports, where the Senate bill allocates CBP a paltry 3,500 new officers. More CBP officers are in near constant need at our ports, where they perform an important dual role of processing legitimate freight and travelers that improve our economy, while also interdicting potential illegal immigrants, smugglers and others who would seek to do our nation harm.

The BTA is encouraged that this very necessary debate over immigration and border security is underway, but we do not want to lose this opportunity to make needed reforms along our borders that would both improve our security and our economy. Please count on the BTA as a resource to your subcommittee as you begin to craft an immigration reform bill.

Sincerely,

JESSE J. HEREFORD,  
*Chairman.*  
NOE GARCIA, III,  
*President.*

Mrs. MILLER. Senator, we appreciate very much your attendance today. We appreciate your thoughtful comments. We appreciate your support of our bill certainly, and I look forward to continuing to work with you toward our goal of border security in achieving that for this Congress and the American people certainly. We understand the time constraints that you are under if you need to excuse yourself please feel free to do so.

You are welcome to stay of course, but we do understand and thanks again.

At this time the Chairwoman recognizes Representative Becerra. Again, we appreciate your time to come to the committee and testify as well on the differences between the House's approach and the Senate approach.

The Chairwoman recognizes Representative Becerra.

**STATEMENT OF XAVIER BECERRA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BECERRA. Thank you, Madam Chairwoman, and to Chairman McCaul as well and to Ranking Member Jackson Lee. I say thank you along with all the Members of the committee, thank you for letting me be here today to testify along with Senator Cornyn.

As Senator Cornyn said there are ways that we can do this to make the system work for everyone, whether it is at the border or at the workplace. We are dealing every day with the lives of American people and those who come to this country to live the American Dream.

As this chamber considers a comprehensive reform to our Nation's immigration laws for the first time in almost 30 years, the

public support for doing so has never been stronger. The American people overwhelmingly support the creation of a functioning immigration system that reflects the values of America, principally, the values of fairness and competition, and the ability to get things done.

It ensures that those that are caught up in a broken system will have the chance to find a path out. Those who have been productive members of the society can come out of the shadows and work towards the full responsibilities of citizenship.

We remember, first of all, that we are a Nation of laws and that we are a Nation of immigrants. Balancing these two important pillars, the U.S. Congress can once again prove that when confronted with challenges, we can be a pragmatic and forward-thinking body that resolves any issue the American people set before us.

The architecture for immigration reform in our system must be comprehensive. It must be responsive to the ever-changing dynamics of the world's economy, to migration patterns, to innovation and technology, to ensure that America's competitiveness and enduring stature in the world, as well as in protecting this Nation against evolving threats continues to be our paramount priority.

Simply fixing one aspect of our immigration system ensures that we fall short of making our country stronger economically and safer from external threats. Therefore, our task here should be to fix the whole immigration system, not merely one or two broken parts.

A true immigration reform solution is about more than piecemeal fixes, and improving border security is more than examining the sum of its parts. Border security is more than enforcement, manpower, assets, infrastructure and technology, or resources at our borders. Border security depends on a number of factors including bi-national relationships, trade agreements, foreign aid, and of course, people.

Achieving border security today requires us to look beyond the obvious, to look beyond fences and boots on the ground, and even our own borders. In the 20th Century and today, border security and immigration to the United States have been inextricably tied, with each impacting the other in various ways over time, but always one with the other.

Border security and immigration reform are not an either/or proposition. As we build a better, smarter, more accountable and efficient border security system and a strategy as well, we cannot ignore its ties to the way in which our immigration laws address permanent and temporary visas, the reunification of families, our Nation's labor market and employment needs and interior enforcement mechanisms. To focus on border security without focusing on immigration reform is akin to fixing the brakes on a car without fixing the engine. You need both to get where you are going.

Although we have not modernized our immigration laws for almost 30 years, in that time, our laws have advanced historic and wide-reaching border and interior enforcement measures. The U.S. Government today spends more on immigration enforcement—some \$18 billion a year—than it does on all other criminal Federal law enforcement combined. That is more than the total spending for the FBI, the DEA, Secret Service, U.S. Marshals, and ATF together.

Today, net unauthorized immigration from the Southern Border is at a 40-year low. We have met or exceeded the border security benchmarks of previous immigration reform proposals so that today we have over 21,000 Border Patrol agents, over 21,000 Customs and Border Protection officers, hundreds of video surveillance systems, at least nine unmanned aerial vehicles and more fencing, barriers, towers, technology and other assets than at any time ever before in our Nation's history.

While security and enforcement between our Southern Borders and their ports of entry has dramatically improved, the security at those ports has faltered. Unauthorized entries are now less likely to occur between our southern land ports of entry and more likely to occur through those very ports of entry, or as a result of legal entries at airports of entry that result in visa overstays.

However, devoting the bulk of resources on apprehending desert crossers has limited much-needed resources to prevent trafficking of humans, narcotics, currency, and counterfeit goods through our ports of entry. The greatest border security threat we face today come from Transnational Criminal Organizations, not economic migrants crossing the desert.

Spending on border enforcement between the ports of entry has created an imbalance in resources at ports of entry to the detriment of our economy. Six million U.S. jobs depend on \$500 billion in yearly cross-border trade with Mexico; 37 of our 50 States rely on Canada as their largest export market.

Insufficient resources at ports mean excessive delays for commuters, tourists, and merchants and \$6 billion in lost economic output. Increased border enforcement has had extraordinary impact on local communities along our borders. Nearly two out of three Americans live within 100 miles of a land or coastal border. That is some 200 million people. More enforcement on its own will not solve our immigration problems. What we need is better, smarter, and more effective border enforcement, combined with broad, broader immigration law reforms.

S. 744 was evidence that reaching a bipartisan solution on comprehensive immigration reform is entirely within our capabilities. I was pleased to see balanced reforms relating to permanent and temporary visa programs, family-based and employment-based immigration, a worker verification system with strong due process provisions, and a workable path to citizenship. However, the border security provisions were put on steroids and are evidence that more is not a substitute for better.

Building a smarter, more accountable and efficient system is imperative. Border security proposals must be agile and adaptable to real-time intelligence and on-the-ground needs, to changing technologies, operational capabilities and resources, to analytical and cognitive criteria, and to stronger transparency and accountability and oversight measures, something that I think the House bill that came through this committee or is working its way through the House to this committee is something that we can take a close look at.

The use of metrics and performance measures in assessing and determining whether or not our borders are secure are important elements of an overall picture of security and effectiveness. Metrics

can and should be instructive; however, it is unclear whether they are dispositive. Reliance on static or fixed metrics alone as absolute evidence of security achieved is illusory.

Data cannot always capture or measure the impact of factors which contribute to a complete picture of border security such as economic fluctuations, quality of life, intelligence gathering, and other cognitive reasoning. Real-time enforcement requires agility, flexibility, and responsiveness to an ever-changing landscape of threats and risk assessments.

We have seen the ways in which inflexibility in lawmaking can lead to perverse incentives and unwanted or hazardous results for security and law enforcement, despite our best intentions and planning.

So, Madam Chairwoman, as we consider in the House what we do on immigration reform, I think we want to make sure that what we are doing is being smart, we are being transparent, and we are using the best evidence from the best minds of those on the ground to help us move forward with a fix of our border security and the entire immigration system.

Because I think most of us understand that if we get this done this year, it won't just be for the good of our National security. It will be for the good of our economy and it will finally set us on a course of being a country that is, as we said before, a Nation of laws but also a Nation of immigrants.

So I thank you very much for giving me an opportunity to come before you today, and I look forward to working with all of my colleagues on trying to get to yes in doing a comprehensive fix on our broken immigration system.

[The prepared statement of Representative Becerra follows:]

PREPARED STATEMENT OF HON. XAVIER BECERRA

JULY 23, 2013

Good morning and thank you, Chairwoman Miller, and Ranking Member Jackson Lee for the opportunity to testify before the subcommittee today on approaches to border security. With the recent passage of a comprehensive and bipartisan immigration reform bill by the U.S. Senate, this hearing is timely.

As this chamber considers a comprehensive reform of our Nation's immigration laws for the first time in almost 30 years, the public support for doing so has never been stronger. The American people overwhelmingly support the creation of a functioning immigration system that reflects our American values of fairness, and ensures that those caught up in a broken system over the last several decades, who have been productive members of our society can come out of the shadows and work towards the full responsibilities of citizenship.

We are a Nation of laws and a Nation of immigrants. Balancing these two important pillars, the U.S. Congress can once again prove that when confronted with challenges, we can be a pragmatic and forward-thinking body that resolves any issue the American people set before us and which reflects our best interests and values as Americans.

As Congress moves forward, the architecture of the immigration system must be one that is comprehensive and built to last. Therefore, it must be responsive to the ever-changing dynamics of the world's economy, migration patterns, innovation, and technology to ensure America's competitiveness and enduring status in the world, as well as protecting this Nation against evolving threats. Simply fixing one aspect of our immigration system ensures that we will fall short of making our country stronger economically and safer from external threats. Therefore, our task should be to fix the whole immigration system, not merely one or two parts.

Just as a true immigration reform solution is comprehensive and about more than piecemeal fixes, improving border security is more than examining the sum of its parts. It is more than enforcement, manpower, assets, infrastructure, and tech-

nology at our borders. Border security depends on a number of factors including binational relationships, trade agreements, foreign aid, commercial goods and, of course, people. Achieving border security today requires us to look beyond the obvious, to look beyond fences, boots on the ground, and even our own borders, in order to accomplish lasting and better border security.

For the better part of the 20th Century and today, border security and immigration to the United States have been inextricably tied, with each impacting the other in various ways over time, but always one with the other. Border security and immigration reform are not an “either/or” proposition.

As we build a better, smarter, more accountable and efficient border security strategy and system, we cannot ignore its ties to the way in which our immigration laws address permanent and temporary visas, the reunification of families, our Nation’s labor market and employment needs and interior enforcement mechanisms. To focus on one without focusing on the other is akin to fixing the brakes on a car without fixing the engine: You need both to get where you’re going.

And although we have not modernized our immigration laws for almost 30 years, in that time, our laws have advanced historic and wide-reaching border and interior enforcement measures. The U.S. Government today spends more on immigration enforcement—\$18 billion a year—than it does on all other criminal Federal law enforcement combined. That is almost a quarter more than total spending for the FBI, DEA, Secret Service, U.S. Marshals, and ATF.

This surge in resources spent at the border continues today with diminishing returns. Lawmakers continue to pour increasing resources to prevent unauthorized immigration even though net unauthorized immigration from the Southern Border is at a 40-year low. We have met or exceeded the border security “benchmarks” of previous immigration reform proposals so that today we have a force of over 21,000 Border Patrol agents, over 21,000 Customs and Border Protection Officers, hundreds of video surveillance systems, at least 9 unmanned aerial vehicles and more fencing, barriers, towers, technology and other assets than at any time ever before in our Nation’s history.

While security and enforcement in the desert between our southern land ports of entry has dramatically improved, the same cannot be said for security at those ports of entry where millions of goods and people cross every day. As border enforcement has increased over the last several decades, unauthorized entries and contraband are now less likely to occur between our Southern Border ports of entry and more likely to occur through our land ports of entry, or as the result of legal entries at air ports of entry that result in visa overstays.

However, focusing the bulk of resources on apprehending unauthorized desert crossers has come at the cost of resources to prevent trafficking of humans, narcotics, currency, and counterfeit goods through our ports of entry. The greatest border security threats we face today come from Transnational Criminal Organizations (TCOs), not economic migrants crossing the desert.

In addition, spending on border enforcement between the ports of entry has created an imbalance in resources at ports of entry to the detriment of our economy. Today, 6 million U.S. jobs depend on the \$500 billion in yearly cross-border trade between the United States and Mexico. Currently, 37 of our 50 States rely on Canada as their largest export market. Insufficient resources at ports of entry result in excessive delays for commuters, tourists, and merchants and approximately \$6 billion in lost economic output.

Finally, I would be remiss if I did not mention the extraordinary impact that increased border enforcement has had on local communities along all our borders. Nearly 2 out of 3 Americans live, and nine of the top ten largest metropolitan areas are located, within 100 miles of a land or coastal border (approximately 197.4 million people).

At the Southern Border, the rapid ramp-up in border enforcement over the last 2 decades has resulted in the division of cross-border communities, in security measures that have ignored the culture, voice, and input of border residents, increased cases of Border Patrol and CBP abuse and corruption, civil rights violations, in more migrant deaths, and a militarized border.

Given the muscular enforcement landscape at the Southern Border, the evolution of modern threats, our current economic and security needs, and the impact of enforcement on border communities, it begs the question of why we are still focused on yester-year responses to the exclusion of modern common-sense security measures. More enforcement on its own will not solve our immigration problems; just as no laws can negate the laws of supply and demand, or the human drive to survive. What we need is better, smarter, and more effective border enforcement combined with broader immigration law reforms that strengthen our economy and Nation.

The Senate's recent passage of S. 744 the "Border Security, Economic Opportunity, and Immigration Modernization Act," was evidence that reaching a bipartisan solution on a comprehensive immigration reform bill is entirely within our capabilities as legislators. I was pleased to see balanced reforms related to permanent and temporary visa programs, improvements to family-based and employment-based immigration, a worker verification system with strong due process provisions and a workable path to citizenship. However, the border security provisions were a tone-deaf response to the realities of our current state of border security and evidence that "more" is not a substitute for "better."

I look forward to hearing testimony from today's witnesses on S. 744, the Senate's comprehensive fix to our broken immigration system and H.R. 1417 the Border Security Results Act of 2013. We need a debate that takes into consideration previous border security efforts, and in the words of Chairwoman Miller "what a secure border looks like, how we get there and how to accurately measure progress and results." I hope that as we seek to define border security that we acknowledge that any legislative measure cannot be a one-size-fits all policy and must reflect the diversity and complexity of our borders.

Building a smarter, more accountable, and efficient way to enforce and better secure our border is imperative. Any border security proposal must be agile and adaptable to: Real-time intelligence, on-the-ground needs, changing technologies, operational capabilities and resources, analytical and cognitive criteria, and strong transparency, accountability, and oversight measures.

The use of metrics and performance measures in assessing and determining whether or not our borders are secure are important elements of an overall picture of security and effectiveness. Metrics can and should be instructive; however, it is unclear whether they are dispositive. Reliance on static or fixed metrics alone as absolute evidence of security achieved is illusory.

It ignores an ever-changing border landscape and does not properly account for its effect on international and domestic economies, quality-of-life in border communities, the true security of communities, the frequency and severity of local criminal activity, changes in international land, air, and sea travel and commercial operation volumes, and other measures, outcomes, and cognitive reasoning that cannot always be truly captured by data.

In addition, real-time law enforcement requires agility, flexibility, and responsiveness to an ever-changing landscape of threats and risk-assessments. To hamstring our law enforcement to an inflexible metric ignores the nature of law enforcement. We have seen the ways in which inflexibility in lawmaking can lead to perverse incentives and unwanted or hazardous results for security and law enforcement, despite our best intentions and planning.

Legislative proposals which seek to tie border enforcement to the fate of those who would come forward and register for any legalization program are of great concern to me. To strive towards achieving the highest level of security and effectiveness at our borders is rational and reflects our mutual desires as Americans to achieve the best when it comes to securing our Nation. But the idea that we would condition the fate of 11 million people—who meet all of the rigorous legalization requirements that we ask of them—on a trigger linked to achieving a fixed border security metric is irrational.

Any legalization program will ask the undocumented to come out of the shadows, undergo background checks, pay taxes, and learn our language. It will require them to demonstrate personal responsibility. To punish them from adjusting their status based on bureaucratic malfunctions or short-comings over which they had no control—even when they have met their personal responsibilities—is not consistent with our values of justice and fair dealing. To return to the car analogy I used earlier, to penalize the safe driver for the manufacturer's defect or failure makes no sense.

We need to fix all the parts of our broken immigration system, but what kind of border security measures do we need? We need measures: (1) That are responsive to a morphing security environment; (2) that promote the robust economic engine of cross-border trade; (3) that restore parity to our commercial and security operations by investing in ports of entry; (4) that add manpower where we need it, such as Customs and Border Protection Officers at land, air, and sea ports or Homeland Security Investigators for worksite and visa overstay enforcement; (5) that address the most urgent security threats such as those posed by transnational organized crime; (6) that consult with border communities in developing local and sector-specific solutions; (7) that are transparent and fiscally accountable; (8) that promote a culture of ethics and integrity; and (9) that protect civil and Constitutional rights.

In conclusion, I thank this subcommittee for its work on the important issues related to the security of all our Nation's borders. Today's hearing is more critical

than ever and as Members of Congress we must rise to meet the challenge and the opportunity that the American people have placed before us. I am optimistic that we can get to a bipartisan solution on a comprehensive fix to our broken immigration system that includes a path to citizenship for the 11 million undocumented individuals within our borders. I look forward to working with this committee as we move forward towards a solution that respects our values and history as a Nation of immigrants and a Nation of laws.

Mrs. MILLER. Thank you very much, Representative. We certainly appreciate your testimony and your thoughtful comments as well. I appreciate your time here and your attendance.

Mr. BECERRA. Thank you.

Mrs. MILLER. At this time, this panel is dismissed, and the clerk will prepare the witness table for our second panel, which we will take a 1-minute recess here.

[Recess.]

Mrs. MILLER. The committee will come back to order. Our second panel, Mr. Jayson Ahern is retired as the acting commissioner of the United States Customs and Border Protection, CBP, after service to the country for 33 years. While acting commissioner, Mr. Ahern was responsible for the daily operations of CBP's 58,000 employee workforce as well as managing an operating budget of over \$11 billion.

Mr. Edward Alden is the Bernard L. Schwartz senior fellow at the Council on Foreign Relations specializing in U.S. economic competitiveness, immigration and visa policy, and on U.S. trade and international economic policy. Mr. Alden, along with two of his colleagues, recently authored a publication titled, "Managing Illegal Immigration to the United States."

Mr. Richard Stana—who has been in front of this committee many times—we welcome him back. He retired in 2011 of December as director of homeland security and justice issues at the U.S. GAO. For the 14 years prior to his retirement, he directed GAO's work relating to immigration and border security issues. An interesting note, he also testified before Congress 65 times. I am not sure what that is indicative of, but we certainly appreciate that. You certainly are a wealth of information; currently, a faculty member at the Graduate School USA.

The witnesses' full written statements will appear in the record. The Chairwoman recognizes Mr. Ahern for his testimony. We certainly thank all the witnesses again for your attendance.

#### **STATEMENT OF JAYSON P. AHERN, PRINCIPAL, CHERTOFF GROUP**

Mr. AHERN. Great. Thank you very much, Madam Chairwoman. I know Chairman McCaul who likely will be back, also Ranking Member Jackson Lee. Thank you very much for the opportunity to testify today, albeit in a different capacity from the many times I was before this committee while serving in many careers in Government.

The efforts of this committee are critically important in advancing the dialogue of how we can improve the level of security at our borders, is just one key component of a critical National strategy, and also one that really does enhance the mission of securing and protecting the homeland. But I think it is important to state for the record that while I am here in my personal capacity today, that I

am a principal of the Chertoff Group, a global risk management and security firm.

Before addressing some of the specific approaches to achieving a higher level of border security, I would like to offer my perspective on this matter. It is from the view that when we need to look at securing our borders, we need to take a look at the air, land, and sea very critically and in a much more comprehensive way.

Too often, the focus has just on the southwest land border and more specifically between authorized ports of entry. There is not always sufficient attention on the ports themselves. This subcommittee is well aware of the current environment and the challenges facing U.S. Customs and Border Protection today, and as you all know, the agency is responsible for patrolling over 7,000 miles of land border and 95,000 miles of coastal border.

At our Nation's ports of entry, CBP interacts with 350 million travelers in an annual basis and also \$2.3 trillion in cargo. But, comingled in with that legitimate travel and trade, there is a significant amount of criminal activity that gets discovered every day and more emerges as we continue to strengthen our posture between ports of entry.

In the last year, CBP Officers arrested 7,700 critically violent individuals for serious criminal activity coming across. Also there was 145,000 individuals who were determined to be inadmissible trying to gain entry through the ports of entry. I think in my view, those numbers need to be included in the overall calculus when you take a look at between the ports of entry during that same period of time, there was 365,000 apprehensions by the Border Patrol.

To achieve the level of control that we have today, our Government has actually deployed historic levels of increased personnel, as well as infrastructure, and some technology. As was stated by the previous panel, 21,000 Border Patrol agents today are accountable for protecting both the Northern and the Southern Borders.

In 2003, there was just over 10,000, and I would certainly posit that the benefit has been realized by the additional personnel. However, as we take a look, we need to take a look at the other two legs of that three-legged stool. Infrastructure, putting the fence, 651 miles of fence on the border has actually diminished the threat and greatly mitigated what was previously a very open and porous border where we had significant amounts of drive-throughs coming across. It actually resulted in serious incursions on the border, that also resulted in death of our personnel that were trying to perform their law enforcement duty. That has been a positive change.

CBPs situational awareness has also been improved due to historic levels of technology that has been deployed. Unmanned Aircraft Systems are now patrolling our borders routinely and are complemented by other ground and truck and other mobile surveillance systems that actually increase the capability of our front-line personnel to detect and identify more threats as they approach the border, but also increase the probability of their apprehension.

While there is certainly more that needs to be done, I think it is important to reflect back on the positive things that have occurred. But we need to also take a look at the ever-changing threat landscape and be prepared not only to where the threat is today

but anticipate where it will shift in the coming months and years to come.

As we craft strategies or legislation, we need to be looking and forecasting where that threat would be in the period of time that is in our future versus reflecting back on what the current threats are today.

As we take a look at the critical points of responses, doubling the size of the Border Patrol that was suggested in one of the versions of the Senate bill, from my experience, I will be happy to talk about more of this during some of the questions. Before we look at just arbitrarily doubling the size of the Border Patrol, I think we need to thoughtfully consider how the current level of personnel is being utilized and deployed correctly against today's threat, and has there been utilization of the resource we have today, versus just asking for more or putting more into legislation.

Again, it is moving those resources against the threat versus, you know, where just domains be it land or sea or air. I think there also needs to be a further analysis done based on some of the very thoughtful resource allocation models that have been put together.

But what are the actual law enforcement positions that are needed? It seems to be oftentimes very fashionable to just say let's just double the size of the Border Patrol. But I can tell you from experience, there was not enough resources put into DHS and CBP specifically for pilots to fly the aircraft or boat commanders to be able to man the boats that actually are out there in the maritime domain, for the threat we are now seeing on the Pacific Coast, particularly as we have seen that ship. So just we need to thoughtfully consider what positions are needed going forward as well as CBP officers at the ports of entry; as we have seen this funneling at the port it is important to consider what actually is needed for addressing the ever-changing threat.

Miles of fence, we can talk about that, how the mile-by-mile analysis was done before we just add more and I certainly would be happy to talk about some of the strategies there about tearing down existing fence and putting new fence in place, but also in metrics.

I would be happy to talk about that a little bit further as well to make sure that we really understand what we are asking for here. The metric of looking at, "What is the apprehension rate?"—I have spent across four decades of time beginning in my career in the 1970s and we have looked at this whether it would be for apprehensions or for drug interdiction, what actually have caught against the universe and what actually is coming through.

I think there has been new improved methodology and there have been many individuals inside and outside of Government looking at this. But I think other third-party indicators, other smuggling metrics, things of that nature, as well as economic indicators are a key that need to be looked at going forward.

I think one last thing and I know that I am at my time, as we look at what actually causes the illegal flow of people coming across the border, it is crime 101—opportunity, opportunity to work in the United States for many of the economic migrants is what is that magnet.

I think as we take a look at any comprehensive border strategy, we need to take a look at that and mandating a program like E-Verify that would actually go ahead and require people to go ahead and enroll their eligibility to work in the United States, in my experience, would go ahead and diminish the flow that we actually see at the border so that our front-line personnel can go ahead and focus much more on transnational criminal organizations.

So I will stop at that point and I look forward to taking any questions.

[The prepared statement of Mr. Ahern follows:]

PREPARED STATEMENT OF JAYSON P. AHERN

JULY 23, 2013

I want to thank Chairman McCaul, Ranking Member Thompson, Chairman Miller, Ranking Member Jackson Lee, and other distinguished Members of the committee and subcommittee for inviting me to testify before this committee again, albeit in a different capacity from the many times I came before you while serving in Government. The effort of this committee is critically important in advancing the dialogue on how we can continue to improve the level of security of our borders as just one critical component of a comprehensive strategy and one that enhances the protection of our homeland. I want to state clearly that I am submitting this statement for the record in my personal capacity, although, for the record, I am a principal of The Chertoff Group, a global security and risk management firm that provides strategic advisory services on a wide range of security matters, including border security.

Before addressing some of the specific approaches to achieving a higher level of border security, I would like to offer how I view this matter. It is from the perspective that we need to look at how to secure to our borders more holistically. Too often the focus is just on the Southwest land border and more specifically between authorized Ports of Entry (POE) but there not always is sufficient attention focused on the ports themselves. This subcommittee is well aware of the current environment and challenges facing U.S. Customs and Border Protection. As you know, the agency is responsible daily for patrolling and providing security for over 7,000 miles of land borders and 95,000 miles of coastal shoreline. At our Nation's Ports of Entry, CBP interacts with 350 million travelers entering the United States, along with screening \$2.3 trillion in cargo; but, comingled in with that legitimate travel and trade, there is a significant amount of criminal activity that gets discovered every day and more emerges as we continue to strengthen our posture between POEs. In the last year, CBP Officers arrested 7,700 people wanted for violent crimes along the border and prevented 145,000 inadmissible aliens from entering the United States. Let me just pause on that for a moment, and offer that is a number that we need to monitor more closely as we determine levels of control or security of our borders. Further, in my view it also needs to be included in the calculus as we measure effectiveness and not just focus on apprehensions by CBP between the POEs, which during the same period was just under 365,000.

To achieve the level of control that we have today, and since the creation of the Department of Homeland Security, our Government has deployed historic levels of increased personnel, infrastructure, and technology. Border Patrol personnel are at the highest level in history. Currently, over 21,000 Border Patrol Agents are accountable for protecting both the Northern and Southern Borders. In 2003, there was just over 10,000 agents, and, I would posit, the benefit has been realized by this much-needed increase in personnel. For infrastructure, CBP personnel are supported by 651 miles of fencing that has greatly mitigated the threat of vehicle drive-throughs that once happened with great frequency in very porous parts of the Southwest Border. Tactical roads have been constructed and complemented with high-intensity lighting so that our agents are able to extend patrols to remote areas and do so in a more effective fashion than before and thereby increasing officer safety. CBPs situational awareness has also been greatly improved due to historic levels of technology successfully deployed. Unmanned Aircraft Systems (UASs) now routinely patrol our border and are complemented by a wide range of other ground, truck, or tower-mounted sensors so that CBP personnel are more adept at being to detect and identify more threats as they approach our border and also, increase the probability apprehension of people looking to enter illegally or those smuggling contraband across our borders.

Although the border is more secure than it has ever been in recent history, none of us are satisfied, as we recognize that there is much more that needs to be done in order to achieve a comprehensive border security plan. We need to address the changing threat landscape and be prepared not only for where the threat is today, but anticipate where it will shift in the coming months and years. It goes without saying that our adversaries are constantly adapting and adjusting to our strategies so the U.S. Government needs to be as flexible and convertible in our response to the ever-changing patterns of smuggling. As the House and the Senate consider approaches to border security, I would respectfully advise that this point needs to be carefully considered as we make the wisest investment decisions we possibly can with the shrinking budget dollars available. It is not about mandating response requirements based on today's threat, but more about a risk environment that is always changing.

For example, the most recent Senate bill authorized doubling the current number of Border Patrol Agents. From my experience, a more prudent first step would be to evaluate how the current deployment of personnel is being utilized, and determine, through a review of well-established resource allocation models, how to reassign agents to where the threat has moved versus what appears to be arbitrary increases. Further, while in the end there will likely be the need for some marginal increases in Border Patrol Agents, other critical law enforcement positions need to be thoughtfully considered such as: CBP Officers to address the increased threat at the POEs, pilots to fly planes and personnel to captain the boats to address the shifting threat into the maritime domain. Another reason to study personnel needs very closely is that resources are an expensive and a long-term commitment. Finally, it would be my recommendation that as personnel needs are identified, and as Congress considers resources for border security, the Executive branch of government be given the latitude to make the determination of where personnel are to be stationed and also determine which types of positions are most needed to respond most effectively to a shifting threat environment.

The Senate bill also provides for the construction of additional fencing. As with resources, here too is another area where thoughtful consideration is required to fully determine what is actually needed. In preparation for the "Secure Fencing Act of 2006," a meticulous mile-by-mile survey was conducted to ascertain whether adding fencing would be a useful addition to the security landscape and, an analysis of alternatives (more personnel or technology) included to determine how best to address the threat. Tactical fence effectively deters, stops, or slows the ability of unauthorized entry across the border and the result of the study in 2006 was a subsequent proposal to build 651 miles of fence. Before allowing additional fencing to be built, it makes sense to follow that same mile-by-mile analysis today to ensure that it is the best use of resources or consider more investment in technology that is perhaps more transportable and able to be relocated against our shifting threat.

At this time, legislation has also been proposed that supports the inclusion of a metric to gauge visibility and control of the border by quantifying apprehensions into a percentage demonstrating effectiveness. The proposed formula suggests that border security success can be measured by the number of apprehensions divided by the total number of illegal crossings into the United States. As I can attest, across the 4 decades I spent in Government, there have been numerous studies inside and outside of Government commissioned to try and determine the "flow" or "getaway" rates, all of which have not succeeded. At least to this point in time, there is no proven methodology to definitively know how many illegal migrants successfully entered the United States. Regardless, the aforementioned apprehensions will still be a critical measure but other metrics need to be considered such as: Intelligence indicators, displacing current patterns of smuggling, local border crime rates, and other relevant third-party measures. However, while this is being debated we should stipulate that while more needs to be done to increase security at our borders, it should not be a barrier to producing a comprehensive bill.

Another important aspect of border security may not be as obvious and in this case, it is important to address what motivates illegal immigration. Many illegal migrants come to the United States to find employment and there is currently no system in place to deter their hiring. A successful immigration bill must include a mandatory E-Verify program. Not only would this decrease the flow of people coming to the United States illegally, it would also allow border agents to focus on more serious criminal and smuggling organizations. In addition, it will drive more effective employment eligibility compliance by employers and help ICE concentrate its finite resources on those who deliberately disregard the law. If a mandatory program is implemented, it should be done in a thoughtful manner with an emphasis on accuracy and real-time updating. If implemented correctly, it will help target in-

vestigations, deter illegal employment at the employer and employee level and, I submit, will reduce the illegal flow of economic migrants.

Thank you again for the opportunity to contribute my personal views on such an important topic. I look forward to answering your questions at this time.

Mrs. MILLER. Well, I thank the gentleman for his testimony. We look forward to the question period.

At this time, the Chairwoman recognizes Mr. Alden for his testimony.

**STATEMENT OF EDWARD ALDEN, BERNARD L. SCHWARTZ  
SENIOR FELLOW, COUNCIL ON FOREIGN RELATIONS**

Mr. ALDEN. Thank you very much, Madam Chairwoman and the distinguished Members of the subcommittee for the opportunity to testify.

My testimony today is drawn largely from research that we have done over the past year with two distinguished economists, Bryan Roberts and John Whitley, for the recent Council on Foreign Relations paper you mentioned, "Managing Illegal Immigration: How Effective is Enforcement?"

Dr. Whitley is a senior fellow at the Institute for Defense Analyses and was the former director of the Office of Program Analysis and Evaluation at DHS.

Dr. Roberts, who is with me here today, is senior economist at Econometrica, formerly assistant director of borders and immigration at PA&E.

I am the author of the 2008 book, "The Closing of the American Border," which examined U.S. efforts to strengthen border security in the aftermath of 9/11, and I was also the project director for the 2009 CFR, Independent Task Force on U.S. Immigration Policy.

I have four points.

First, U.S. border enforcement has become increasingly effective, and there is little question that entering the United States illegally across the land borders is far more difficult and dangerous than ever before. The U.S. Government is now 2 decades into an ambitious border build-up that is clearly producing results in terms of deterring illegal entry and apprehending a greater percentage of those who try.

Second, the current challenge is one of improving effectiveness rather than simply increasing resources. For many years the U.S. Border Patrol was badly under-resourced, but that is no longer the case. While additional resources may indeed be needed, the focus should be on producing results rather than simply increasing inputs.

Third, the metrics for assessing progress need to be improved. DHS has made a significant strategic error in failing to develop, share, and publicize better performance measures for border security. Congress has an opportunity to rectify that error.

Finally, the U.S. Government has many tools for discouraging illegal immigration. Better workplace enforcement, tracking of visa overstays, and larger and more flexible legal entry programs for lower skilled immigrants are all likely to do more to reduce future illegal inflows than additional investments in border enforcement.

Illegal entry has fallen sharply over the past decade and the U.S. Border Patrol has become better at apprehending those who try to

enter. Our research used several methodologies for calculating apprehension rates for illegal border crossers between the ports of entry and the number of successfully illegal entries.

Each of these methods showed a significant increase in the probability of apprehension over the past decade and a significant decline in the number of illegal entries. While the trends are positive, it is difficult to assess the precise contribution of border enforcement to reducing illegal inflows.

The deep U.S. recession and the slow recovery would have reduced illegal migration regardless of increased enforcement. The most recent research suggests that the great recession, improvements in the Mexican economy, and border enforcement intensification each accounted for about one-third of the decrease.

How much more can be done through border enforcement?

As I said, the Border Patrol was underfunded for many years and was incapable of responding to the surge in illegal migration that we saw beginning in the mid-1960s. In response to rising complaints from border States, mainly California and Texas, we saw that change in the mid-1990s and there have indeed, as we have discussed, been big increases in the number of agents and appropriations for border enforcement.

S. 744 would authorize another near doubling of Border Patrol agents, hundreds of miles of new pedestrian fencing, and much greater surveillance capabilities at a cost of some \$46 billion.

While additional surveillance would be welcome, this huge addition of resources is not one envisioned by current Border Patrol strategic plans. Inputs are also a poor proxy for effectiveness. More Government spending is not a measure of accomplishment. The Government Performance and Results Act and it is in the Modernization Act of that act in 2010 seeks to make Federal agencies more accountable for results, in part through reporting performance measures.

The failure by DHS to provide those performance measures has made it extremely difficult for Congress to assess progress towards key border security goals and to set realistic performance goals for the future.

Congress needs to work with the Border Patrol, with Customs and Border Protection officials to improve data collection and performance reporting and to strengthen enforcement outcomes. H.R. 1417 has a number of positive measures including requirements that DHS implement a comprehensive set of metrics for measuring security, at and in between ports of entry, including effectiveness rates for illegal migration and drug seizures. The legislation also calls for external evaluation of metrics and progress.

Finally, to conclude, border enforcement—and this reinforces Commissioner Ahern's points—border enforcement cannot be looked at in isolation. The decision to migrate illegally is a result of many factors including the likelihood of finding employment at a higher wage, greater security, reunification with family, and the lack of legal immigration or temporary work alternatives.

Stronger border enforcement is only one of many factors that may deter a migrant from attempting illegal entry and probably not the most significant one. Larger legal programs would likely reduce illegal immigration and so, too, discouraging employers from

hiring unauthorized workers would reduce the incentive to migrate illegally.

Any decision to increase border enforcement should be weighed against other alternatives for reducing illegal immigration. In a major 2009 study, for instance, Stanford's Lawrence Wein and his colleagues suggested that additional workplace enforcement was likely at this point to be about twice as effective as additional border enforcement in deterring future illegal migration.

I thank you and I would be happy to respond to your questions. [The prepared statement of Mr. Alden follows:]

PREPARED STATEMENT OF EDWARD ALDEN

JULY 23, 2013

I want to thank Chairman Miller, Ranking Member Jackson Lee, and the distinguished Members of the subcommittee for the opportunity to testify today on this very important topic.

The testimony that follows is drawn largely from research I have been conducting over the past year with two distinguished economists, Bryan Roberts and John Whitley, for a recent Council on Foreign Relations paper entitled *Managing Illegal Immigration to the United States: How Effective is Enforcement?* Dr. Whitley is a senior fellow at the Institute for Defense Analyses, and the former director of the Office of Program Analysis and Evaluation (PA&E) at the Department of Homeland Security (DHS), where he led the resource allocation process and the measurement, reporting, and improvement of performance. Dr. Roberts is senior economist at Econometrica, the current president of the National Economists Club, and formerly assistant director of Borders and Immigration in PA&E at DHS. I am the author of the 2008 book *The Closing of the American Border*, which examined U.S. efforts to strengthen border security in the aftermath of the 9/11 terrorist attacks, and I was the project director for the 2009 Council on Foreign Relations *Independent Task Force on U.S. Immigration Policy*, which was co-chaired by former White House chief of staff Mack McLarty and former Florida Governor Jeb Bush.

I will make four points in my testimony.

First, U.S. border enforcement has become increasingly effective, and there is little question that entering the United States illegally across the land borders has become far more difficult and dangerous than ever before. The U.S. Government is now 2 decades into an ambitious border build-up that clearly is producing results in terms of deterring illegal entry and apprehending a greater percentage of those who try.

Second, the current challenge is one of improving effectiveness rather than simply increasing resources. For many years the U.S. Border Patrol was badly under-resourced, but that is no longer the case. While additional resources may be needed, the focus should be on producing results rather than simply increasing inputs.

Third, the metrics for assessing progress in border enforcement are under-developed and need to be improved. The Department of Homeland Security made a significant strategic error over the past several years in failing to develop, share, and publicize better performance measures for border security. Congress has an opportunity to rectify that error and put the border control mission on a more solid foundation for the future.

Finally, the U.S. Government has many tools for discouraging illegal immigration, and border enforcement needs to be seen as just one among many. Better workplace enforcement, more effective tracking of visa overstays, as well as larger and more flexible legal entry programs for lower skilled immigrants are all likely to show greater returns in reducing illegal inflows than are large additional investments in border enforcement.

Border security is always going to be a subjective question. There is no such thing as perfect security, and the question for policymakers is always going to be a difficult one of trading off costs and benefits. And in the border environment, there are many different security issues—illegal crossings by economic migrants, drug smuggling, gang violence, the sanctity of property, and the danger of infiltration by terrorists or serious criminals.

Our research has focused on the issue of illegal entry by migrants, and this remains the primary focus of the debate over border security. Many in Congress and among the public are concerned that a comprehensive immigration reform bill will be followed, as it was after the 1986 Immigration Reform and Control Act (IRCA),

by another surge in illegal migration to the United States.<sup>1</sup> As a consequence, Congress is currently searching for ways to ensure continued progress on border security, as reflected in the approaches taken by the Senate in S. 744, the recently passed Border Security, Economic Opportunity, and Immigration Modernization Act, and by this committee in H.R. 1417, the Border Security Results Act.

#### PROGRESS ON BORDER ENFORCEMENT

Illegal entry to the United States has fallen sharply over the past decade, and the U.S. Border Patrol has become more effective in apprehending those who try to enter illegally. Our research used several methodologies for calculating apprehension rates for illegal crossers between the ports of entry and the number of successful illegal entries. Each of the methods shows a significant increase in the probability of apprehension over the past decade, and a significant decline in the number of illegal entries. A recent paper by the Congressional Research Service (CRS), based in part on data shared with CRS by the Department of Homeland Security, showed similar results.<sup>2</sup> The CRS said that “illegal inflows likely were lower in 2007–2012 than at any other point in the last three decades.”

The declining numbers of those attempting illegal entry has allowed the Border Patrol to deal more effectively with those it apprehends. Until quite recently, most Mexican nationals were voluntarily returned to Mexico, and Border Patrol records based on fingerprint identifications showed that many simply tried again to enter. At an apprehension rate of 50 or 60 percent, multiple entry attempts by a single individual would likely prove successful. An individual who faced a one in two chance of arrest, for instance, would have an 88 percent chance of succeeding if he or she made three attempts. The odds of successful entry on multiple attempts only go down sharply when apprehension rates are 70 percent or higher.

In an effort to deter such repeated attempts, the Border Patrol in recent years has greatly expanded its “Consequence Delivery System,” so that most of those apprehended in the vicinity of the border face a penalty more severe than simply voluntary return. These consequences include expedited removal (which imposes a 5-year ban on any legal re-entry to the United States and criminal charges if the individual is caught again entering illegally); criminal charges and jail time, most notably through Operation Streamline; and remote repatriation, in which Mexicans arrested near the border are either flown back to their home towns in Mexico or are returned in distant border regions (i.e., someone arrested in Arizona is returned to Mexico across the border in Texas).

According to data released by DHS to the CRS, voluntary returns have fallen from 77 percent of all enforcement outcomes in fiscal year 2005 (956,470 out of 1,238,554 apprehensions) to just 14 percent in fiscal year 2012 (76,664 out of 529,393).<sup>3</sup> The consequence programs appear to have had a significant impact in reducing multiple entry attempts. In fiscal year 2012, more than 27 percent of those returned voluntarily were arrested a second time; in comparison, re-arrests for those who faced a consequence ranged from just 3.8 percent to 23.8 percent, suggesting that these individuals were deterred from subsequent illegal entry attempts.<sup>4</sup>

While the trends are unquestionably positive, it is difficult to assess the precise contribution of border enforcement to reducing illegal inflows. Researchers have long known that illegal immigration is far more responsive than legal immigration to the state of the economy and to employment opportunities.<sup>5</sup> Legal migrants—who often wait many years for their green cards—are likely to come to the United States

<sup>1</sup> Edward Alden, “Winning the Next Immigration Battle: Amnesty, Patrols, and the Future of U.S. Borders,” *ForeignAffairs.com*, February 11, 2013.

<sup>2</sup> Marc R. Rosenblum, “Border Security: Immigration Enforcement Between Ports of Entry,” Congressional Research Service, May 3, 2013.

<sup>3</sup> *Ibid.* The number of “enforcement outcomes” exceeds the number of annual apprehensions because some aliens face more than one outcome, such as formal removal along with lateral repatriation. In addition, certain aliens apprehended in one fiscal year do not complete their case processing until the following years.

<sup>4</sup> Of the different consequences, formal removal after a notice to appear in court was the most effective in reducing multiple attempts, with just a 3.8% recidivism rate in fiscal year 2012. This may be a reflection of the fact that most of those so removed are from countries other than Mexico, and would face a long return trip to the border to make a subsequent attempt. Criminal charges were also associated with recidivism rates of 10% or less. The least effective consequence was lateral repatriation to another sector of the border, which produced a 23.8% recidivism rate in 2012.

<sup>5</sup> See Gordon H. Hanson, *The Economic Logic of Illegal Immigration*, Council on Foreign Relations Special Report No. 26, March 2007.

whenever the opportunity finally presents itself, regardless of economic conditions. Unauthorized migrants, however, tend to follow job opportunities.

The collapse of the U.S. housing market, the spike in unemployment during the 2008–09 recession and the slow recovery since would all have reduced illegal migration to the United States regardless of U.S. enforcement measures. In addition, somewhat better growth in the Mexican economy, which recovered more strongly from the recession than did the United States, has also increased employment opportunities in Mexico, which remains the largest source of illegal migration to the United States. The population of young men aged 15–24, the cohort that is most likely to migrate illegally, has also leveled off in Mexico and Central America as birthrates have fallen. Disentangling the effects of enforcement from these broader economic forces is challenging.

Recent research, however, indicates that the enforcement build-up has had an impact in deterring illegal migration. A 2012 study by a team of experts assembled by the National Research Council, for example, concluded that “studies of migration tend to find evidence of small but significant deterrent effects of border enforcement.”<sup>6</sup> Empirical analysis of law enforcement specifically for unauthorized migrants is lacking, but empirical studies of law enforcement more broadly show significant deterrent effects on illegal behavior.<sup>7</sup> To determine whether a potential migrant is deterred from illegal entry, data are needed both on potential migrants who decided to migrate and those who decided not to, and on the various factors potentially influencing their decision. Such analysis is challenging to carry out in terms of data availability and technical issues. The most recent research on deterrence has been conducted by Scott Borger, Gordon Hanson, and Bryan Roberts, who use data from the Mexican national household survey for 2002 to 2010.<sup>8</sup> They identified individuals who migrated from Mexico and those who did not, developed measures of economic prospects in the United States and in Mexico, assessed U.S. border enforcement and the ease of migrating legally, and estimated the degree to which these factors affected whether an individual decided to migrate illegally in this period. Preliminary results suggest that the Great Recession, improvements in the Mexican economy, and border enforcement intensification were all significant influences on the downturn in illegal immigration since 2003, and that each of these factors may have accounted for roughly one-third of the decrease. These results suggest that enforcement in recent years has had a more significant effect than previous research had concluded.<sup>9</sup>

#### ARE MORE BORDER ENFORCEMENT RESOURCES NEEDED?

There is no question that the U.S. Border Patrol was underfunded for many decades, and that the lack of resources made it very difficult to take effective actions when illegal migration to the United States began rising sharply in the mid-1960s. Little was done to redress this problem until the mid-1990s, when growing complaints from border States such as California and Texas finally forced Federal action. The response since then, however, has been dramatic. Border Patrol manpower more than doubled in the late 1990s and then again in the late 2000s to the current level of just over 21,000 agents. Fencing grew somewhat in the 1990s and then dramatically starting in 2006. Currently 651 miles of the 1,969-mile Southwest Border are fenced. The Border Patrol also makes use of many types of infrastructure and equipment, including sensors, night vision equipment, camera towers, patrol vehicles, river patrol boats, manned and unmanned aerial vehicles, and horses. After decades of underfunding, the Border Patrol now enjoys access to resources that bet-

<sup>6</sup> Alicia Carriquiry and Malay Majmudar, eds., *Options for Estimating Illegal Entries at the U.S.-Mexico Border*, National Academy of Sciences, 2012.

<sup>7</sup> See Steven Levitt and Thomas Miles, “Empirical Study of Criminal Punishment,” in Mitchell A. Polinsky and Steven Shavell eds., *Handbook of Law and Economics*, Vol. 1, 2007.

<sup>8</sup> See Scott Borger, Gordon Hanson, and Bryan Roberts, “The Decision to Emigrate from Mexico,” presentation at 2012 Society of Government Economists annual conference, Washington, DC, 2012.

<sup>9</sup> The research has not yet been finalized due to the authors losing access to internal DHS apprehension record data in mid-2012. Researchers need data from individual apprehension records maintained by DHS in order to properly analyze illegal immigration into the United States. DHS has publicly disseminated all data needed by researchers from these records except the “fingerprint identification number,” which is the number assigned to records for the same individual as determined from examination of fingerprints. The fingerprint identification number is what permits recidivism analysis to be carried out. As this number is an arbitrary designation and cannot be used to identify an individual, reasons for not disseminating this information to the researcher community are unclear. For additional discussion on the need for DHS to provide more extensive access to administrative record data, see Carriquiry and Majmudar, *Options for Estimating Illegal Entries*.

ter correspond to the demands of its missions. Appropriations for the Border Patrol have increased by roughly 750 percent since 1989, to a current level of \$3.7 billion.

S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, would authorize roughly another doubling of border enforcement resources over the next decade. The bill authorizes the expenditure of an additional \$46.3 billion over the next 10 years, with \$30 billion to be spent on adding an additional 19,200 Border Patrol agents, and the rest spent primarily on additional pedestrian fencing and border surveillance technology. The bill specifies those technology acquisitions on a sector-by-sector basis, though it permits the Secretary of Homeland Security to reallocate personnel, infrastructure, and technology to achieve effective control of the Southern Border, and permits the acquisition of alternative technologies deemed equally effective.

This huge addition of resources is not one envisioned by current Border Patrol strategic plans. While the strategy developed in 2004 was a resource-based one that focused on achieving “operational control” of the border through increases in agents and technology, the most recent May 2012 strategy has switched from resource acquisition and deployment to strategic allocation of resources to allow for rapid responses to emerging threats. Additional surveillance assets are an important part of carrying out this strategy, but big increases in manpower are likely not necessary.<sup>10</sup>

Inputs are also a poor proxy for effectiveness. The primary outcomes for law enforcement activity are the rates at which laws under their jurisdiction are broken—the goal of law enforcement, in other words, is to reduce the crime rate. Additional resources are often needed to achieve that goal, but the addition of resources is not in itself a measure of accomplishment. The use of data to drive law enforcement strategy and execution has become standard in many local police departments. New York City pioneered the effort in 1994 with its crime statistics database, CompStat, which requires precinct commanders to report statistics for all crimes on a weekly basis, with the clear goal of bringing down crime rates.<sup>11</sup> The results are compared with crime statistics over previous periods, and that data is shared in real time with the public. The Department of Homeland Security and other agencies with responsibility for immigration enforcement, such as the Department of Justice and the State Department, need the same kind of data-driven revolution in which the focus shifts from inputs to results.

The focus on inputs rather than outcomes is not a problem unique to immigration enforcement. In K–12 education, for instance, the United States spends as much on education as most other advanced countries and more than many, but its relative performance has been slipping for decades.<sup>12</sup> In education, the measures of success for many years were input-based ones like the student-teacher ratio, rather than performance-based measures like the achievement levels of students. John Bridgeland and Peter Orszag, who held senior regulatory posts in the Bush and Obama administrations respectively, wrote recently that a rough calculation shows that “less than \$1 out of every \$100 of Government spending is backed by even the most basic evidence that the money is being spent wisely.” Far too little research is conducted, they argue, to evaluate the effectiveness of Government programs, and whether expenditures are actually achieving the desired goals. They conclude that “the first (and easiest) step is simply collecting more information on what works and what doesn’t.”<sup>13</sup>

The Government Performance and Results Act (GPRA), and its recent reissue as the GPRA Modernization Act of 2010, seeks to make Federal agencies more accountable for results, in part through reporting performance measures, which are quantified results related to inputs, outputs, and outcomes. Inputs are the resources that agencies expend in their operations and are the easiest to measure. Outputs are immediate results of agency programs and are also frequently relatively easy to measure and report. Outcomes are related to the ultimate goals of what agency programs are trying to achieve. Agencies are required by law to report performance measures to the public and do so in annual performance and accountability reports.

<sup>10</sup> See the description in Rosenblum, Marc R., “Border Security: Immigration Enforcement Between Ports of Entry.”

<sup>11</sup> For a more detailed discussion, see John Whitley, “Five Methods for Measuring Unobserved Events: A Case Study of Federal Law Enforcement,” IBM Center for Business and Government, 2012.

<sup>12</sup> See Rebecca Strauss, *Remedial Education: Federal Education Policy Progress Report and Scorecard*, Council on Foreign Relations, June 2013.

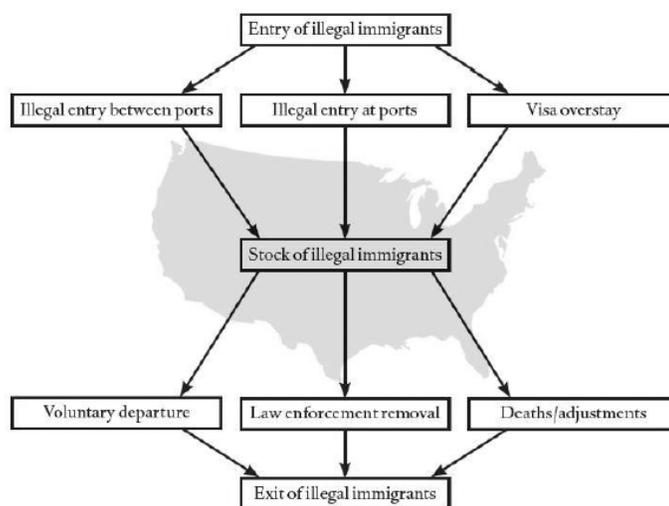
<sup>13</sup> John Bridgeland and Peter Orszag, “Can Government Play Moneyball?” *Atlantic*, July/August 2013.

## PERFORMANCE MEASURES

In order to assess the effectiveness of border enforcement measures, the U.S. Government needs to collect and share better data, with Congress, the public, and the external research community. While illegal immigration is complex and difficult to manage, the basic framework in which illegal immigration occurs can be simply illustrated in the diagram below.

FIGURE 1. ILLEGAL IMMIGRATION FRAMEWORK

FIGURE 1. ILLEGAL IMMIGRATION FRAMEWORK



Source: Authors' schematic based on DHS, CBP, ICE, and USCG data.

Visitors and immigrants are permitted to enter the United States legally at ports of entry, including airports, seaports, and land ports on the borders with Mexico and Canada. What the diagram shows is that unauthorized immigrants can enter in one of three ways: Through the ports of entry, by presenting false documents or evading the screening process (i.e., in the trunk of a car); crossing illegally between the ports of entry; or by arriving on a legal visa and then overstaying that visa or otherwise violating its terms to remain in the United States illegally. Unauthorized immigrants can similarly depart in one of three ways: They can leave voluntarily; they can be arrested and removed; or they can adjust to legal status.<sup>14</sup> If more unauthorized immigrants arrive than depart, then the stock of illegal immigrants grows.

In order to enforce the laws and manage illegal migration successfully, the United States Government needs to know what is going on in each of these boxes. Ideally, the Government should be measuring and reporting numbers for each. The following table, however—in which the items under “Outcome” correspond to each of the nine boxes in the diagram—show what was actually reported by DHS in its most recent Annual Performance Report.

<sup>14</sup> Individuals could also die in the United States while in unauthorized status.

TABLE 1.—PERFORMANCE REPORTING AT DHS

Outcome	Performance Measures	Fiscal Year 2011 Annual Performance Report <sup>1</sup>
Illegal entry between ports .....	number of attempted illegal entries.	none.
	number of apprehensions .....	partial.
	apprehension rate .....	none.
	number of successful entries ...	none.
Illegal entry at ports .....	number of illegal entries .....	none.
	number of apprehensions <sup>2</sup> .....	none.
	apprehension rate .....	none.
	number of successful illegal entries.	none.
Visa overstay .....	number of new visa overstayers.	none.
Illegal immigrants resident in the United States.	number of illegal immigrants resident in the United States.	none.
Voluntary departure .....	number of illegal immigrants leaving of their own accord.	none.
Law enforcement removal .....	number of illegal migrants removed.	partial.
Deaths and adjustments .....	number of illegal immigrants who dies or became legal.	none.
Legal immigration .....	number of new H2A and H2B visas issued <sup>2</sup> .	none.

<sup>1</sup> This column indicates whether the performance measures were reported by DHS in its fiscal year 2011–2013 Annual Performance Report.

<sup>2</sup> Although not reported in the DHS Annual Performance Report, some data on these measures are available from other sources.

Source: Authors' calculations based on DHS's fiscal year 2011–2013 Annual Performance Report.

The failure of the Department to provide the necessary performance measures has made it extremely difficult for Congress to assess progress towards key border security goals, and to set realistic performance benchmarks for the future. To take just two examples, in May 2011 DHS announced that it was developing a “Border Conditions Index” (BCI) that would assess the state of security in different regions of the border using measures such as illegal flows, wait times at ports of entry, and crime and public safety in the border region. But as this subcommittee was recently told by DHS, the Department has still not finalized the index and has offered no timetable for its release. Similarly, Homeland Security Secretary Janet Napolitano has promised Congress since 2011 to produce and publish a country-by-country list of the number of visa overstays, based on US-VISIT entry records and airline passenger departure records. Visa overstays are thought historically to account for as much as 40 percent of the unauthorized population in the United States. Research by demographer Robert Warren suggests that the number of new overstays has dropped sharply over the past decade.<sup>15</sup> But DHS has yet to release any of its own data on this critical issue.

There are some encouraging signs of progress, however. CBP and the Border Patrol have shown a growing commitment to improving data collection and disseminating the results. The Government Accountability Office in December 2012 published a detailed report based on data collected by Border Patrol Agents in the field

<sup>15</sup> Robert Warren and John Robert Warren, “A Review of the Declining Numbers of Visa Overstays in the U.S. from 2000 to 2009,” Center for Migration Studies, 2013.

from 2006 to 2011.<sup>16</sup> These data include apprehensions, estimated “got-aways” (crossers known or suspected to have evaded apprehension and entered the United States), and estimated “turn-backs” (crossers who returned to Mexican territory before being apprehended). Estimates of got-aways and turn-backs are based on direct visual observation by agents in the field, visual observation through cameras, physical evidence of movement (collection of which is known as “sign cutting”), and information from local residents believed to be credible. Methods used to collect known-flow data are not standardized across Border Patrol sectors, and results for sectors cannot be compared, but the Border Patrol has been working to standardize collection methods.

The GAO report based on Border Patrol data shows significant progress on a sector-by-sector basis over the past 5 years. In the San Diego sector, for instance, the number of “got-aways” fell from 52,216 in 2006 to just 4,553 in 2011; in the Tucson sector in Arizona, got-aways fell from more than 207,000 in 2006 to just 25,376 in 2011. In the sectors that see the largest number of crossings, the “effectiveness rate” (the percentage of illegal crossers who are either apprehended or turned back) is quite high—91 percent in the San Diego sector, 87 percent in the Tucson sector, and 84 percent in the Laredo sector. The Rio Grande Valley sector in southern Texas, which has seen an influx of unauthorized migrants from Central America transiting through Mexico, had the lowest effectiveness rate at 71 percent. Border Patrol chief Michael Fisher testified to this subcommittee in February that his goal is to achieve 90 percent effectiveness in all high-traffic corridors along the Southwest Border.

The Border Patrol is also planning to use aerial and ground surveillance technologies to produce random, statistically valid samples of illegal entries along the border, including in remote, lightly-trafficked corridors where Border Patrol agents are less likely to observe unauthorized traffic. These samples should improve significantly the accuracy of estimates of successful illegal entries.

On visa overstays, DHS has made significant progress in matching overseas air arrivals to departures. Airlines are required to share all data on departing U.S. passengers, and DHS on a daily basis matches these departure records with arrival information recorded through the US-VISIT system. If records cannot be matched for an individual whose visa has expired, that individual is designated as an “unvetted potential overstay,” and US-VISIT assigns an adjudicator to check other databases to determine whether the person has departed. Until recently this has been challenging because of name match difficulties arising when an individual uses multiple passports, and because there was no automatic link to U.S. Citizenship and Immigration Services (USCIS) databases to determine if an individual had sought to adjust status and remain lawfully in the United States. DHS is now generating on a daily basis a list of potential overstays, and is vetting all those individuals. Confirmed overstays will face revocation of their visas or prohibitions on non-visa travel, and will be placed on enforcement look-out lists.

Tracking land border exits remains an enormous challenge, but the United States and Canada have been working as part of the Beyond the Border initiative to share information on land border departures, which would allow DHS to identify an individual who, for example, arrived by air in New York but departed over the land border to Canada. The initial phase of testing produced very positive results in terms of matching records.<sup>17</sup>

Congress needs to work with the Border Patrol and CBP to improve data collection and performance reporting, with the goal of continuing to improve enforcement outcomes. H.R. 1417 has a number of positive measures in this regard, including requirements that the Secretary of Homeland Security implement a comprehensive set of metrics for measuring the effectiveness of security at and between ports of entry, including effectiveness rates for illegal migration and drug seizures. The legislation also calls for external evaluation of metrics and progress by the Government Accountability Office, the Comptroller General and outside research organizations. The U.S. Government should measure and report the full range enforcement outcomes in a timely fashion, and share those measures as broadly as possible.

#### A COMPREHENSIVE APPROACH

Border enforcement cannot be looked at in isolation. The decision that an individual makes to migrate illegally is the result of many factors, including the likelihood of finding employment at a higher wage, greater security, reunification with

<sup>16</sup> Government Accountability Office, *Border Patrol: Key Elements of New Strategic Plan Not Yet in Place to Inform Border Security Status and Resource Needs*, GAO-13-25, December 2012.

<sup>17</sup> Department of Homeland Security/Canada Border Services Agency, “Entry/Exit Information System Phase I Joint Canada-United States Report,” May 8, 2013.

family, and existence or lack of legal immigration or temporary work alternatives. Stronger border enforcement—which makes illegal crossings more dangerous and costly—is only one of many factors that may deter a migrant from attempting illegal entry.

Consider the following thought experiment. If the United States were to remove all quotas on legal immigration, the problem of illegal immigration would disappear overnight. By definition, anyone with the wherewithal to board a plane or take a bus and arrive in the United States would be a legal resident. There would be no need for any form of immigration enforcement. Consider the converse. If the United States were to eliminate all legal immigration, the problem of illegal immigration would become orders of magnitude larger. The Government would need a far bigger immigration enforcement effort simply to keep down the number of unauthorized migrants. Neither of these extremes is plausible, of course, but they underscore the interconnected nature of any effort at reforming U.S. immigration laws. Larger legal programs, particularly for unskilled workers who have few legal alternatives for coming to the United States, would likely reduce illegal immigration. So too, more effective means to discourage employers from hiring unauthorized workers would reduce the incentive to migrate illegally. One of the many lessons from the failure of the 1986 IRCA was that the absence of effective worksite enforcement and a legal immigration path for most unskilled Mexicans and Central Americans were probably significant contributors to the surge in unauthorized migration in the 1990s. IRCA was in some ways the least optimal policy conceivable for deterring illegal migration. It coupled weak enforcement at the workplace and at the border with strict quotas on unskilled workers that allowed few legal options for migration.

Thus any decision to increase border enforcement should ideally be weighed against other alternatives for reducing illegal immigration. Unfortunately, good cost-benefit measures are not currently available, which makes it difficult for policymakers to make optimal choices. It is likely, for example, that the payoff from an additional dollar spent on workplace enforcement at this point in time would be larger than the payoff from an additional dollar spent on border enforcement. The Border Patrol is currently apprehending 50 percent or more of would-be illegal crossers, and the number of illegal entry attempts has fallen sharply; in some sectors, the average Border Patrol Agents is making only a handful of arrests per year. In comparison, just 7 percent of U.S. employers are currently enrolled in the E-Verify system to check the legal status of new hires, and only 385 employers were fined in fiscal year 2011 for hiring violations.<sup>18</sup> The deterrence gains from better workplace enforcement are thus likely to be greater than the deterrence gains from still more border enforcement. In a major 2009 study, Stanford's Lawrence Wein and his colleagues suggested that additional workplace enforcement was likely to be about twice as effective as additional border enforcement in deterring future illegal migration.<sup>19</sup>

Larger legal immigration or temporary work programs, especially for lower-skilled workers who currently have fewer legal migration options, are also likely to dissuade illegal migration. In the 1950s, for example, the decision by the Eisenhower administration to double to 400,000 the quota for Mexican workers under the *bracero* temporary worker program appears to have had a significant impact in keeping illegal immigration low for more than a decade. Following the elimination of that program in 1965, illegal immigration immediately began to climb and remained at high levels until the second half of the 2000s.

Making better judgments about the effectiveness of different measures in reducing illegal migration is especially important when budgetary resources are scarce, which is likely to be the situation confronting DHS and other Government agencies for many years. For the first decade of its existence, Congress threw so much money at DHS that it was rarely forced to weigh costs against benefits and make difficult decisions on resource deployment. That is no longer the case.

None of these is, of course, mutually exclusive. Congress may choose an "all of the above" strategy. But it is important to underscore that the impact of border enforcement on illegal migration cannot be considered in isolation, and that border enforcement is only one of many tools available to policymakers to reduce illegal immigration.

Thank you, and I would be happy to respond to your questions.

Mrs. MILLER. I thank the gentleman for his testimony.

<sup>18</sup> See Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, Congressional Research Service, May 10, 2012.

<sup>19</sup> Lawrence M. Wein, Yifan Liu, and Arik Motkin, "Analyzing the Homeland Security of the U.S.-Mexico Border," *Risk Analysis*, vol. 29, no. 5, 2009, pp. 699–713.

At this time, the Chairwoman recognizes and again welcomes back Mr. Stana for his testimony.

**STATEMENT OF RICHARD M. STANA, FORMER DIRECTOR,  
HOMELAND SECURITY AND JUSTICE, GOVERNMENT AC-  
COUNTABILITY OFFICE**

Mr. STANA. Well, thank you, Chairwoman Miller. It is good to be back before the subcommittee today to discuss my views and perspectives on this specific border security area.

As you mentioned, I have retired from GAO and I need to say my views expressed today are my own and I am not here representing the GAO.

Since the mid-1990s, the U.S. Government has poured billions of dollars into various border security measures in an attempt to stem the flow of illegal immigrants and contraband into our country.

On a typical day last year, CBP apprehended over 1,000 illegal immigrants and refused entry to 1,000 other travelers, seized about 12,000 pounds of drugs and seized over \$0.25 million of undeclared or illicit currency. Yet, entries of illegal immigrants are still substantial and in some instances, pose a risk to National security and cross-border trafficking of illegal contraband continues to be problematic.

The lessons learned from previous experience can help inform future legislative and agency actions and I would like to share some observations and perspectives in a few areas.

Let's start with defining goals for border control and establishing performance measures which are keys to ensuring that border security efforts are effectively managed. DHS has yet to establish measurable goals that would help it gauge success and make appropriate operational and investment decisions.

The Border Patrol uses changes in the number of apprehensions and turn backs as an interim measure along with other measures for illegal entrants and contraband, but these serve to measure activity levels rather than success toward a goal.

Some legislative proposals define border security as a 90 percent effectiveness rate defined as the sum of alien apprehensions and turn-backs divided by total illegal entries. The challenge here is how to reliably estimate the total illegal entry of people and contraband when current Government data and methods of measurement for unknowns lack the desired precision and integrity.

Hopefully, data and estimation techniques will improve over time and the total illegal entry figures will become more and more reliable.

Now, let's turn to staffing issues. Several lessons can be learned from past ramp-ups that could be considered in the current debate. First, it is important to have a sound and supportable basis for hiring any new Border Patrol agents because expanding the force is costly and time-consuming. DHS needs to know the extent that deploying large numbers of additional agents would mitigate threats and vulnerabilities versus other options.

Second, an adequate number of experienced supervisors is needed to train large numbers of recruits at the Academy and with on-the-job training in the sectors. In past ramp-ups, an insufficient agent-to-supervisor ratio increased the risk of training shortfalls

and the risk of not detecting potential corruption and unsuitability for the job.

Similar issues would confront the hiring and training of additional CBP officers at the ports of entry. CBP was recently several thousand officers short of the prescribed staffing levels due to recruitment and retention issues, and CBP was not able to ensure that its officers received the required on-the-job training.

With respect to technology, in the last 20 years CBP deployed billions of dollars worth of technology both at and between the Southwest Border ports of entry. In both environments, the results achieved have been mixed due to issues with the capabilities of the technology, how it was selected and deployed, its reliability and how it was used by the officers and agents.

In overseeing technology acquisitions, DHS needs to ensure that the underlying assumptions and requirements for technology are transparent and sound. The metrics for indicating its contribution and success are in place. The intersection of technology and staffing inputs, that is the force multiplier effect we have heard about, is factored in and flexibility in deployment is provided should illegal migration patterns change.

Turning to infrastructure, nearly \$3 billion was spent to construct about 700 miles of pedestrian and/or vehicle fencing along the Southwest Border and millions more are spent annually for maintenance and repair.

Although the fencing appears to have been useful, DHS hasn't evaluated the impact of this investment and whether the cost of additional fencing would yield a suitable return versus other possible investments.

Among the factors that need to be considered are the extent to which additional fencing would mitigate threats and vulnerabilities, the cost-effectiveness of various fencing design, terrain environmental concern, and whether any required land acquisition cost would change the cost-benefit analysis.

In closing, while the subject of today's hearing is on border security, these and other issues need to be assessed in the context of a holistic framework if immigration control and reform efforts are to yield an efficient, effective, economical, and sustainable result.

In this regard, estimates show that roughly 40 percent to 50 percent of the illegal immigrant population is made up of people who entered the United States legally and overstayed their visa. Many illegal immigrants are drawn to the United States for work and eventually find jobs with employers who have come to rely on this labor pool with little likelihood of incurring fines and sanctions.

To what extent might the broader illegal immigration problem be addressed by devoting more resources to interior enforcement and an E-Verify system rather than substantially increasing staffing and other resources at the border.

Achieving an appropriate balance between border and interior enforcement could help create a credible framework for deterring those considering illegal entry and overstay.

I would be happy to answer any questions the Members may have.

Thank you.

[The prepared statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA

JULY 23, 2013

Chairman Miller, Ranking Member Jackson Lee, and Members of the subcommittee: I am pleased to be back before the subcommittee today to discuss my observations and perspectives on selected border security issues. In my previous appearances before the subcommittee I discussed GAO products under my supervision as director for homeland security and justice issues. I retired from GAO about 18 months ago and although some of the information I cite is drawn from GAO products, I am not speaking on behalf of GAO and the observations and perspectives I present are my own.

The immigration system is highly complex, with lots of moving parts that are necessarily connected and interrelated. Today I will focus my remarks on only one facet of this complex system—that of immigration enforcement—and within that facet, only on border security measures.

Since the mid-1990s, the U.S. Government has poured billions of dollars into various border security measures in an attempt to stem the flow of illegal immigration and contraband into our country. These efforts started with initiatives in the El Paso and San Diego sectors where about 60 percent of apprehensions were made, then spread to other sectors to address the shifts in illegal flows. The good news is that as a result of these measures, millions of illegal travelers have been turned away; millions of other travelers were apprehended on a variety of charges, some serious; millions of pounds of illegal drugs were apprehended; and millions of dollars in currency was seized. The bad news is that even though apprehensions today are about one-third of the 950,000 apprehensions made in 2002, illegal entries of immigrants are still substantial and in some instances pose a risk to National security; travelers have shifted to dangerous terrains to attempt a crossing, resulting in injury or death to untold numbers of people; and cross-border trafficking of illegal contraband continues to be problematic.

Various proposals that are now being considered by Congress contain provisions that are aimed at better securing our Nation's borders. The proposals differ in scope, emphasis, and levels of prescriptive actions, which include the creation of goals and performance measures as well as enhancements in enforcement staffing levels, technology, and infrastructure which are expected to be part of the solution. Whether Congress decides to specify certain measures or actions or decides to leave such decisions to DHS, lessons learned from previous experience can help inform legislative and agency actions regarding these issues. I'd like to share some observations and perspectives about these issues.

Let me start with goals and performance measurement. Defining goals for border control and establishing performance measures for assessing related efforts are among the key steps in ensuring that border security efforts are effectively managed. The Secure Fence Act of 2006 defined border security as the "prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband." Every Secretary of Homeland Security has expressed the view that this was an unreachable goal. Before 2011, the Border Patrol used a security performance measure of border miles under operational control to assess security between the ports of entry. This measure was intended to reflect the Border Patrol's ability to deter or detect and apprehend illegal entries at the border or after they occur. Since 2011, the Border Patrol has used changes in the number of apprehensions between the ports of entry on the Southwest Border as an interim measure for border security. It also uses other data to inform this measure, including the percentage of estimated known illegal entrants who are apprehended, the percentage of estimated known illegal entrants who are apprehended more than once (repeat offenders), and the number of seizures of drugs and other contraband. DHS is still considering how best to define and measure border security. Some legislative proposals define border security as a 90 percent "effectiveness rate" defined as the sum of alien apprehensions and turn-backs divided by total illegal entries. This measure recognizes that a zero tolerance rate is unrealistic, but the challenge is how to reliably estimate the total illegal entries when current Government data and methods of measurement for the "unknowns" lack the necessary precision and integrity. Devising a way to validly assess progress toward meeting program goals is necessary if DHS is to make appropriate operational and investment decisions. Such performance measurement would also help the Congress decide whether the outcomes are acceptable and the next steps in the immigration reform arena can be taken. Hopefully, data and estimation techniques will improve over time and the total illegal entries figure will become more reliable.

Now I'd like to discuss three types of resources necessary to enhancing border security—staffing, technology, and infrastructure. Let me start with staffing. Recent immigration reform proposals call for hefty increases in Border Patrol staffing, which continues a trend started about 20 years ago. In fact, the Border Patrol's 21,000-agent force is double the number on board in 2006, and the roughly 3,000 agents now assigned to the Tucson sector alone is about equal to the number that guarded our Southwestern and Northern Borders combined in 1994. Several lessons can be learned from past ramp-ups in staffing that could be considered in the current debate. First, it is important to have a sound and supportable basis for the number of new agents to be hired and deployed to the border because expanding the force is costly and time-consuming. CBP estimated in 2010 that the cost of recruiting, hiring, training, equipping, and deploying one Border Patrol agent was about \$170,000. The time between the first interview and agent deployment can be 6 months or more, and it takes several recruits to eventually fill one agent opening because many candidates are found to be not suitable for the job or drop out before being fully trained and deployed. Ramping up the staff would also require additional facilities at the Academy to train the agents and at the Border Patrol sectors to accommodate their work activities. Further, determining the extent to which deploying additional staff will mitigate threats and vulnerabilities along the border, and the expected benefits to be derived from the added costs of another ramp-up, are important. Second, an adequate number of experienced agents is needed to train large numbers of recruits at the Academy and to continue with on-the-job training and supervision once new agents are assigned to the sectors. In some past ramp-ups, an insufficient agent-to-supervisor ratio increased the risk of on-the-job training shortfalls and the risk that the Border Patrol supervisors would not be in a position to detect potential corruption and the mishandling of illegal aliens by new agents. Similar issues would confront the hiring and training of additional CBP officers at the ports of entry. CBP was recently several thousand officers short of the staffing levels prescribed by its staffing models due to recruitment and retention issues, and CBP was not able to ensure that its officers received required on-the-job training. It is important to maintain an appropriate balance between resources at and between the ports so any shifts in illegal activity could be addressed.

Turning to technology, in the last 20 years CBP introduced technology acquisitions valued in the billions of dollars as part of a stepped-up enforcement strategy. At the ports of entry, X-rays, portal monitors, and backscatter machines, as well as US-VISIT and pass card readers, have enhanced the ability of CBP officers to detect the illegal entry of individuals and contraband and have helped to balance law enforcement and travel facilitation demands. Between the ports, cameras, radar systems, sensors, X-rays, and drones have enhanced the Border Patrol's ability to detect and deter illegal crossings and contraband trafficking. But in both environments, the results achieved by technology deployments have been mixed due to issues with the capabilities of the technology, how it was selected and deployed, its reliability, and how it was used by officers and agents. In the past, DHS's technology acquisition policies have not always been adhered to, the basis for technology selection and deployment has not always been adequately supported, and the limitations of some technology identified in real-world testing called to question its suitability and cost-effectiveness. Consideration should be given to how the requirements for technology are generated, the extent to which new technology will mitigate threats and vulnerabilities, what metrics would indicate their expected contribution toward stemming illegal crossings and trafficking, where technology and staffing inputs intersect and the extent to which technology can be a "force multiplier," and what flexibility in deployment might be provided should illegal migration patterns change.

Next, let's discuss infrastructure. Nearly \$3 billion was spent to construct about 700 miles of fencing along the Southwest Border, most of which was single-layered fencing built between Imperial Beach, CA, and El Paso, TX. In addition to construction costs, the Border Patrol incurs maintenance costs to repair fencing breaches. In 2011 alone there were over 4,000 breaches of the fence that cost about \$7.2 million to fix, or about \$1,800 per breach. CBP built varying types of fencing at various locations to stop pedestrians, vehicles, or both from crossing the border. The extent to which fencing stopped or deterred border crossers is not entirely clear, but it appears to have been useful. Fencing may have slowed down crossers so that Border Patrol had more time for enforcement actions, and it may have helped shift illegal traffic to non-fenced locations, potentially allowing the Border Patrol to target its enforcement actions. However, DHS has yet to evaluate the contribution of border fencing and other infrastructure toward stemming the flow of pedestrians and contraband, as GAO recommended several years ago. Without such an evaluation, DHS is not in a position to address the impact of this investment and whether the cost

of additional fencing would yield a suitable return vis-à-vis other possible investments across the border or at a particular location. Legislative proposals are now under consideration to build more fencing, either in new locations or by adding layers to existing fencing. Among the factors that need to be considered with these proposals are the extent to which additional fencing will mitigate threats and vulnerabilities, the costs and effectiveness of fencing designs in stemming pedestrian and vehicular traffic, the suitability of the terrain for fence construction, environmental concerns, and the extent to which any required land acquisition costs would change a cost/benefit analysis.

In closing, while the subject of today's hearing is on border security, it is important to look at this facet of immigration enforcement in conjunction with the many other moving parts of the total immigration system. Border security issues need to be assessed in the context of a holistic framework if our efforts to push the immigration reform "reset button" are to yield an efficient, effective, economical, and sustainable result. For example, estimates show that roughly 40–50 percent of the illegal immigrant population is made up of people who entered the United States legally and overstayed their visa. Addressing visa overstays is considered an interior immigration enforcement matter and mostly a responsibility of ICE, not CBP. Yet, owing to higher priorities, ICE devotes relatively few resources to address this issue. To what extent might the broader illegal immigrant problem be addressed by devoting more resources to interior enforcement rather than substantially increasing the size of the Border Patrol? As a second example, illegal immigrants who pass through border defenses are drawn to the United States to find employment. Many eventually find jobs with employers who have come to rely on this labor pool with little likelihood of incurring fines and sanctions provided by law, again owing to ICE resource constraints and priorities. To what extent could additional resources applied to worksite enforcement address illegal immigration as opposed to additional resources applied to the Border Patrol? Achieving an appropriate balance between border and interior enforcement resources could help create a credible framework for deterring those considering illegal entry and overstay.

Chairman Miller, Ranking Member Jackson Lee, and Members of the subcommittee, this concludes my prepared statement. I would be happy to answer any questions you may have.

Mrs. MILLER. Thank you very much. We certainly, again, appreciate all of the testimony, very interesting.

One of the things in my mind that I think about border security and there is a lot of testimony about illegal migration, et cetera, what the dynamics of decision making that all entails and why they try to come across the border illegally.

Of course, we are all very aware of, the numbers vary, but 11 million to 12 million, however many illegals that are in the Nation. But I will tell you, thinking about border security which is really one of the enumerated responsibilities of the United States Congress as well, is bigger in my mind than just stopping illegals from coming here to get a job in the agricultural fields or service industry or whatever.

Really, if you think about drug interdiction alone, that is probably—I mean, I am married to a judge. It is probably in the Detroit area, responsible for the huge majority of crime that is happening in our Nation, as well as destroying lives.

But the cost to society and to lives lost and opportunities lost, et cetera, you can't even put a dollar amount on it I think as well as—also, stopping those who mean us harm, those that want to cross our borders, whether it is the Southern Border or the Northern Border.

I talk about Northern Border security a lot more than some people want to talk about here. I know we are all focused on what is happening at the Southern Border. But if you look at the TIDES list and see, you know, quantify how many hits is happening in the Northern Border, it really is quite eye-opening.

So for all these reasons, I think it is very, very important that border security happen and I understand that the debate about comprehensive immigration reform—I am one that believes in border security first.

I think if the Congress and both the House and the Senate were actually able to pass a border security bill, hopefully this one or something that looks very close to this then I think, you know, you would have room to discuss all the other portions of this.

But I guess I would first start as we are really focusing on the differences between the House Bill and the Senate bill and all of you mentioned this, and Mr. Ahern in particular about the surge. Mr. Alden you mentioned about the surge that the Senate bill calls for. Over 19,000—19,200 new Border Patrol Agents without a lot of thought given to first of all how we are currently utilizing the existing workforce, how they are bring deployed, measuring their effectiveness, cost-effectiveness and effectiveness in securing the border.

Then when you have that kind of a surge, what kind of infrastructure is even in place to go out and recruit and hire? One of the things the Senate bill is calling for is a polygraph test for everybody, I mean, just the mechanics of getting all these folks hired on, suited up and ready to deploy, as well.

I was noticing that in fact, Chairman McCaul was mentioning about this *L.A. Times* Op-Ed today but they were mentioning there a so-called border surge proposal would simply throw a phenomenal amount of money at border enforcement without achieving control of the border. I guess my question is particularly to Mr. Ahern and Mr. Alden, do you agree with this assessment and what is your thought about this huge surge and how it might play out and as well since you invited the question Mr. Ahern, the existing workforce and how that is being deployed as well.

Mr. AHERN. Correct and thank you for that. I think that clearly before just arbitrary numbers get thrown out there needs to be analysis of how the personnel are currently being utilized. I mean, the threat as I stated also is ever-changing, as we have seen more go into the different domains, we need to take a look at the risk assessment and the analysis of that versus how we want to deploy our resources against that threat going forward. That needs to be Step No. 1 in my view.

I think the other thing that we need to take a look at is, is there the current flexibility needed to move the resources today against the threat? I recall very specifically in my past, and I have been gone for 3½ years now that there are mandatory minimums that needed to be maintained on the Southern Border. Not very wise if you take a look at a shift to the maritime domain or to the Northern Border and really did tie the hands of an agency head at that point to really redeploy the resources as threats ever changed. Also when there are mandates in very specific categories and position like Border Patrol Agents.

Again, a head of an organization, if he sees the threat changing into ports of entry, the ability to have those positions being able to reallocate into where there might be the greatest opportunity or need for the enforcement and then the serious criminal activity that is occurring but also at the same time maintaining that bal-

ance of legitimate travel and trade. That flexibility was not provided.

I think going forward those things need to be considered. I would be happy to talk in further detail if you would like also about the triaging process, the hiring process, the recruiting process, the training process that went into and we actually did go through that doubling that occurred during the time when I was still in Government.

Mrs. MILLER. Mr. Alden.

Mr. ALDEN. I would agree with Mr. Ahern. I would just add that I think the Senate bill in many ways sort-of goes about it backwards. I mean, if you think of the sort-of appropriate roles of the Congress and of the agencies that are responsible for carrying out the mandates, what you want is for the Congress to in effect answer your question that you posed in your opening statement, which is: What does a secure border mean? How secure do we want the border to be? Set general goals and benchmarks and you say to the Border Patrol you say to the Customs and Border Protection, this is what we want you to achieve.

Then they are the professionals. They are the ones who have to come back and say, "Well, okay, if that is the level of security you want, this is what we need to get there. This is the technology we need. This is the manpower. This is the support we need." They will likely come back with a number and say, "This is what it is going to cost." Then, again, it is for Congress, for the people's representatives to say, "Well, is that worth it? Is it worth spending that money? Are there better ways to spend that money?"

That should be the dynamic. The Senate bill instead just says, "We are going to give you these resources. We are going to give you this technology and go do something with it." That is not the right order. You really need to be listening to the professionals in terms of what they need to carry out their mission.

Mrs. MILLER. Mr. Stana. Again, we appreciate your coming back. I think you were with GAO. I know you are not now but when there was the report that was issued about the operation, the percentage of operational control on both our borders.

Mr. STANA. Right.

Mrs. MILLER. Southern Border 44 percent, the Northern Border 2 to 4 percent, I forget exactly but essentially very little.

Mr. STANA. Yes. It was very small.

Mrs. MILLER. Way down in the single digit numerals and yet we spent about \$75 billion in the last 10 years on border security. Of course, this is one of the issues that this subcommittee and our full committee has been trying to get out of the Department of Homeland Security and Secretary Napolitano or whoever her successor will be now is even using the term "operational control" has been under a great amount of debate. It has been noted by the Secretary that this was an antiquated term, et cetera. But there has to be some term and some assessment of what operational control, situational awareness, et cetera is happening.

Now, when you say—I guess, I would just ask you from a cost standpoint, what is your thought, your assessment on spending \$75 billion on border security and here is the Senate bill talking about spending another \$46 billion, how does that strike you as far as

cost-effectiveness and actually achieving operational control of a larger percentage of the border?

Mr. STANA. Yes. Well, first with respect to operational control, I know they dropped that metric. I never thought it was that bad of a metric. It suffers from some of the same challenges that current things that they are thinking about. But at least it was a metric and it is something you could manage toward but that left in 2011, I think, and it was never replaced.

With any resource input the question you always have to ask is first, what did you do with what you had? Second, what would you do if I gave you more, simply put. Time and again when we have looked at these vast resource inputs whether it is personnel, fencing, or technology, we are always looking for a business case often didn't find one, always looking for the roadmap in terms of application of certain types of technology vis-à-vis people and so on. It was always in somebody's head. It was never anything that was transparent and reviewable. So those are problems.

With respect to people, Mr. Ahern mentioned the problems with recruiting that number of people. I think it took maybe eight or nine recruits to get one Border Patrol Agent deployed because so many wash out. With the lie detector test alone I think the wash-out rate in some classes was like 60 percent. So, you know, if you are talking about doubling the size of the Border Patrol there ought to be a very good sound rationale for any increase—\$75 billion is a lot of money.

I looked in the bill and the lay-down, for example, of the technology piece where they specified what was going to go to, I didn't see the rationale for why when it was part of the proposal that was being put forth as part of the SBI program. Similarly, the air and marine portion, I never understood the basis for the deployments that were specified.

So, I think a starting point is understanding the business case and then getting into evaluating the cost benefits of the different inputs. I haven't seen it.

Mrs. MILLER. I appreciate that very much.

The Chairwoman now recognizes other Members. In accordance with our committee rules and practice, we will be recognizing Members who were present at the start of the hearing by seniority and on the subcommittee.

The Chairwoman recognizes the gentleman from Texas, Mr. O'Rourke.

Mr. O'ROURKE. Thank you, Madam Chairwoman. Before I begin with my questions, I would ask unanimous consent to submit for the record a statement from the American Civil Liberties Union and additionally 50 State-by-State maps\* that show how interconnected our economy is in the United States with that of Mexico.

Mrs. MILLER. Without objection, and I do have my map that you provided me for Michigan, so I appreciate that.

[The information follows:]

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\*The maps have been retained in committee files.

## STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION

JULY 23, 2013

## I. INTRODUCTION

The American Civil Liberties Union (ACLU) is a Nation-wide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates Nation-wide dedicated to preserving and defending the fundamental rights of individuals under the Constitution and laws of the United States. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to protect immigrants' rights, including supporting a roadmap to citizenship for aspiring Americans. The Immigrants' Rights Project (IRP) of the ACLU engages in a Nation-wide program of litigation, advocacy, and public education to enforce and protect the Constitutional and civil rights of immigrants. The ACLU of New Mexico's Regional Center for Border Rights (RCBR) addresses civil and human rights violations arising from border-related immigration policies. RCBR works in conjunction with ACLU affiliates in California, Arizona, and Texas, as well as immigrants' rights advocates throughout the border region.

The ACLU submits this statement to the Subcommittee on Border and Maritime Security of the U.S. House of Representatives' Committee on Homeland Security for its hearing: "Study in Contrasts: House and Senate Approaches to Border Security." As our prior submission for this subcommittee's February hearing titled "What Does a Secure Border Look Like?" did, this statement aims to provide the subcommittee with an appraisal of the civil liberties implications of border security. For elaboration on how current border enforcement policies affect mixed-status families along the border, we also respectfully refer the subcommittee to the record of the April 10, 2013 Congressional Ad-Hoc Hearing: "Lines That Divide US: Failure to Preserve Family Unity in the Context of Immigration Enforcement at the Border."<sup>1</sup>

Since the subcommittee's February hearing, the Senate's passage of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, has provided a stark template of how not to tackle border security. The Senate chose to dismiss the House's careful approach based on H.R. 1417, the Border Security Results Act of 2013, an approach described by Subcommittee Chairman Candice Miller (R-MI) as requiring "a strategy and an implementation plan to be produced before additional resources are expended."<sup>2</sup> The last-minute addition to S. 744 of an amendment sponsored by Senators Corker (R-Tenn.) and Hoeven (R-ND), known as the border "surge," added an estimated \$38 billion in resource spending on border security to the \$8.3 billion already contained in the bill that went to the Senate floor.<sup>3</sup>

While the ACLU supported S. 744 because of its overall impact on civil liberties, particularly its roadmap to citizenship for what the Congressional Budget Office (CBO) estimates to be 8 million aspiring Americans,<sup>4</sup> we made clear that the "surge" was anathema to sensible border security policy because it would cause massive deterioration in the civil and human rights of migrants and border residents.<sup>5</sup> The ACLU continues to support expansive immigration reform that provides a welcoming pathway of citizenship to the millions of aspiring citizens who contribute daily to their American communities, including for many raising their U.S. citizen children and supporting their U.S. citizen family members. Border security must not stand in the way of these aspirations.

The data-driven, bipartisan approach of H.R. 1417 should not be undermined by transforming its provisions into a "trigger" preventing aspiring citizens from earning legal status, or used as an excuse to avoid commitment to a pathway for citizenship. H.R. 1417 is flawed, however, in assuming a need to achieve a 90 percent "illegal border crossing effectiveness rate" across the Southwest Border. Such benchmarks

<sup>1</sup>See, e.g., Written Statement of Vicki B. Gaubeca, Director, ACLU of New Mexico Regional Center for Border Rights (April 10, 2013), available at [http://www.aclu.org/files/assets/vicki\\_gaubeca\\_written\\_statement-final.pdf](http://www.aclu.org/files/assets/vicki_gaubeca_written_statement-final.pdf).

<sup>2</sup>See statement of July 19, 2013, available at <http://homeland.house.gov/press-release/week-ahead-house-homeland-security-committee-july-22-26-2013>.

<sup>3</sup>Congressional Budget Office, Letter to Senator Patrick J. Leahy (July 3, 2013), 3, available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744aspassed.pdf>.

<sup>4</sup>Congressional Budget Office, Cost Estimate re: S. 744. (June 18, 2013), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744.pdf>.

<sup>5</sup>Laura W. Murphy, "Our Stance on the Immigration Reform Bill: Support for Many Civil Liberties Provisions and Opposition to New Border Measures." (June 24, 2013), available at <http://www.aclu.org/blog/immigrants-rights/our-stance-immigration-reform-bill-support-many-civil-liberties-provisions>.

must only be contemplated upon completion of a thorough study of border needs, including documentation and mitigation of the civil liberties costs associated with pursuing such a goal through expanded resources like drones and other means of surveillance. The extent of Congress' focus on border security is truly misplaced at a time when border enforcement is at an all-time high and continues to have a detrimental impact on border communities. That being said, H.R. 1417 is an improvement over proposals which seek to increase border resources based on no concrete analysis.

Border security resources should be guided by principles of fiscal responsibility, accountability and oversight, and attention to the true needs of border communities currently suffering from a wasteful, militarized enforcement regime. Experts, including those from the Department of Homeland Security, agree that the border is more secure than ever.<sup>6</sup> Border security benchmarks of prior proposed or enacted legislation (in 2006, 2007, and 2010) have already been met or exceeded.<sup>7</sup> Congress should proceed unimpeded by border security obstacles to the vital task of providing a roadmap to citizenship for aspiring Americans in a way that advances our Constitution's principles and American values of family unity and due process.

II. THE SENATE'S BORDER SECURITY APPROACH IN S. 744 IS FUNDAMENTALLY FLAWED. THE HOUSE SHOULD NOT ADOPT THESE EXCESSIVE, WASTEFUL BORDER ENFORCEMENT PROVISIONS.

Quality of life in border communities is guaranteed to suffer should the Corker-Hoeven provisions become law. As amended, S. 744 now requires tens of billions of dollars in personnel and equipment deployment at the border, including drones and other surveillance to monitor not only the Southwest Border itself, but also areas extending 100 miles in, exposing American lands, dwellings, and citizens to unreasonable searches and surveillance without the legal protections enjoyed by the rest of the country. The U.S. Government has expanded the powers of Federal authorities to survey and enter private property, board buses and trains, and maintain vehicle checkpoints far from any land or sea border by creating "Constitution-Light" or "Constitution-Free" zones adjacent to land and sea borders. In these zones, Customs and Border Protection (CBP) personnel claim they have surveillance, stop, and search authority that would be unconstitutional in other parts of the country, despite the fact that two-thirds of the American population resides within 100 miles of these borders.<sup>8</sup>

The border "surge" would increase the number of Southwest Border Patrol Agents by 19,200 to a total exceeding 38,000—or one for every 270 feet of the Southwest Border. As Sen. Tom Coburn (R-Okla.), said on the Senate floor, the Nation does not need another 20,000 Border Patrol Agents: "What we need is a coherent, smart strategy."<sup>9</sup> The border "surge" would also require the completion of 700 miles of border fencing, widely recognized by most lawmakers as a failed and costly enterprise, and spend \$3.2 billion on equipment and technology like that used by U.S. forces in Iraq and Afghanistan, such as advanced surveillance systems, manned and unmanned aerial vehicles, drones, radar, and much more.<sup>10</sup> It would forever change and militarize border communities like El Paso and San Diego, which are among the safest cities in America.<sup>11</sup> Senator John McCain commented: "We'll be the most militarized border since the fall of the Berlin Wall."<sup>12</sup> In fact, this was an under-

<sup>6</sup>Testimony of DHS Secretary Napolitano to the Senate Judiciary Committee (Feb. 13, 2013), available at <http://www.judiciary.senate.gov/pdf/2-13-13NapolitanoTestimony.pdf>.

<sup>7</sup>Chen, Greg and Kim, Su. "Border Security: Moving Beyond Past Benchmarks," American Immigration Lawyers Association, (Jan. 30, 2013). Available at: <http://www.aiala.org/content/default.aspx?bc=2566743061>.

<sup>8</sup>See ACLU Vote Recommendation Supporting Leahy Amendment 1410 to S. 744 (June 20, 2013), available at [http://www.aclu.org/files/assets/aclu\\_vote\\_recommendation\\_re\\_leahy\\_1410\\_to\\_s\\_744\\_final\\_6\\_20\\_13.pdf](http://www.aclu.org/files/assets/aclu_vote_recommendation_re_leahy_1410_to_s_744_final_6_20_13.pdf).

<sup>9</sup>Remarks of Sen. Coburn (June 20, 2013), available at <http://www.youtube.com/watch?v=iz3c2gcAOgQ>.

<sup>10</sup>See *What's Included in "border surge" immigration amendment*, CNN, June 21, 2013, <http://politicalticker.blogs.cnn.com/2013/06/21/whats-included-in-border-surge-immigration-amendment/>; see also [sic].

<sup>11</sup>See Julián Aguilar, *El Paso Again Tops List of Safest U.S. Cities*, The Texas Tribune, Feb. 5, 2013, available at <http://www.texastribune.org/2013/02/05/el-paso-again-ranked-countrys-safest-city/>; see also *2 U.S.-Mexico Border Cities Boast Lowest Crime Rates, New Data Shows*, Huffington Post, Feb. 8, 2013, [http://www.huffingtonpost.com/2013/02/08/2-us-mexico-border-cities\\_n\\_2647897.html](http://www.huffingtonpost.com/2013/02/08/2-us-mexico-border-cities_n_2647897.html).

<sup>12</sup>David Sherfinski, *McCain: We'll have "most militarized border since the fall of the Berlin Wall."* Washington Times, June 25, 2013, available at <http://www.washingtontimes.com/blog/inside-politics/2013/jun/25/mccain-well-have-most-militarized-border-fall-berl/>.

statement: The wall between the United States and Mexico would become seven times longer than the Berlin Wall, with four times as many personnel.<sup>13</sup>

Border spending has already grown exponentially over the last decade, resulting in widespread and abusive militarization of border communities. Last year, House Appropriations Committee Chairman Hal Rogers (R-KY), presciently warned about the irrationality of Southwest Border security spending: “It is a sort of a mini industrial complex syndrome that has set in there. And we’re going to have to guard against it every step of the way.”<sup>14</sup> Border spending has skyrocketed over the last decade, far out of proportion to security demands. Between fiscal year 2004 and fiscal year 2012, the budget for CBP increased by 94 percent to \$11.65 billion, a leap of \$5.65 billion; this followed a 20 percent post-9/11 increase of \$1 billion.<sup>15</sup> By way of comparison, this jump in funding is more than quadruple the growth rate of NASA’s budget and is almost ten times that of the National Institutes of Health. U.S. taxpayers now spend more on border and immigration enforcement agencies (\$18 billion) than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service-combined.<sup>16</sup>

Because of “zero-tolerance” initiatives like Operation Streamline,<sup>17</sup> which is part of CBP’s Consequence Delivery System, the Department of Homeland Security (DHS) now refers more cases for Federal prosecution than the Department of Justice’s (DOJ) law enforcement agencies. Federal prisons are already 39 percent over capacity, due in large part to indiscriminate prosecution of individuals for crossing the border without authorization, often to rejoin their families. The majority of those sentenced to Federal prison last year were Hispanics and Latinos, who constitute only 16 percent of the population, but are now held in large numbers in private prisons.<sup>18</sup> CBP’s spending runs directly counter to data on recent and current migration trends. A weaker U.S. economy, strengthened enforcement, and a growing Mexican economy have led to a dramatic decrease in unauthorized migration from Mexico. In fact, net migration from Mexico is now zero or slightly negative (i.e., more people leaving than coming).<sup>19</sup> Apprehensions by the Border Patrol declined more than 72 percent from 2000 to 2010, and are currently near a 40-year low.<sup>20</sup> Yet, the number of Border Patrol agents has doubled since 2004, from 10,819 to 21,394 in 2012,<sup>21</sup> with about 85 percent of the force deployed at the U.S.-Mexico border.<sup>22</sup>

With so many agents and so few apprehensions, the costs per apprehension are at an all-time high. The Yuma, Arizona sector, for example, has seen a 95 percent decline in apprehensions since 2005 while the number of agents has tripled.<sup>23</sup> Each agent was responsible for interdicting just 8 migrants in 2010, contributing to ballooning per capita costs. While costs vary per sector, each migrant apprehension at

<sup>13</sup>New Border Requirements May Not Save Immigration Bill, CBS Miami, June 25, 2013, available at <http://miami.cbslocal.com/2013/06/25/new-border-requirements-may-not-save-immigration-bill/>.

<sup>14</sup>Ted Robbins, “U.S. Grows an Industrial Complex Along the Border.” NPR (Sept. 12, 2012), available at <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>.

<sup>15</sup>Michele Mittelstadt et al., “Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11.” (Migration Policy Institute, Aug. 2011), 3, available at [http://www.migrationpolicy.org/pubs/FS23\\_Post-9-11policy.pdf](http://www.migrationpolicy.org/pubs/FS23_Post-9-11policy.pdf).

<sup>16</sup>Meissner, Doris, Kerwin, Donald M., Chishti, Muzaffar and Bergeron, Claire. *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013. Available at: <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

<sup>17</sup>See generally ACLU, “Operation Streamline Issue Brief.” (Feb. 25, 2013), available at <http://www.aclu.org/immigrants-rights/operation-streamline-issue-brief>.

<sup>18</sup>U.S. Sentencing Commission, 2011 ANNUAL REPORT, Chapter 5, available at [http://www.ussc.gov/Data\\_and\\_Statistics/Annual\\_Reports\\_and\\_Sourcebooks/2011/2011\\_Annual\\_Report\\_Chap5.pdf](http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/2011_Annual_Report_Chap5.pdf).

<sup>19</sup>Philip E. Wolgin and Ann Garcia, “What Changes in Mexico Mean for U.S. Immigration Policy.” (Center for American Progress, Aug. 8, 2011), available at [http://www.americanprogress.org/issues/2011/08/mexico\\_immigration.html](http://www.americanprogress.org/issues/2011/08/mexico_immigration.html).

<sup>20</sup>Testimony of DHS Secretary Napolitano to the House Judiciary Committee (July 19, 2012); DHS Fact Sheet, “Apprehensions by the U.S. Border Patrol: 2005–2010.” (July 2011), available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf>; see also Jeffrey Passel and D’Vera Cohn, “U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade.” (Pew Hispanic Center, Sept. 1, 2010), available at <http://pewhispanic.org/reports/report.php?ReportID=126>.

<sup>21</sup>United States Border Patrol: Border Patrol Agent Staffing By Fiscal Year (2012), available at [http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/usbp\\_fy12\\_stats/staffing\\_1993\\_2012.ctt/staffing\\_1993\\_2012.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/staffing_1993_2012.ctt/staffing_1993_2012.pdf).

<sup>22</sup>Meissner, Doris, Kerwin, Donald M., Chishti, Muzaffar and Bergeron, Claire. *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013. Available at: <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

<sup>23</sup>Richard Marosi, “Plunge in border crossings leaves agents fighting boredom.” Los Angeles Times (Apr. 21, 2011).

the border now costs five times more on average, rising from \$1,400 in 2005 to over \$7,500 in 2011.<sup>24</sup> In recent years, agents have reported widespread boredom, and some have even been disciplined for falling asleep on the job.<sup>25</sup> Despite Border Patrol's doubling in size since 2004, overtime costs have amounted to \$1.6 billion over the last 6 years,<sup>26</sup> yet in fiscal year 2012, Border Patrol apprehended on average 18 people per agent.<sup>27</sup>

In this context of already-excessive border spending, the Senate's border enforcement build-up would be unacceptably costly in budgetary terms. Moreover, it promises to place enormous burdens on our Southwest Border communities, especially the daily routines of their brown and black residents, who are already being damaged by a Border Patrol that routinely engages in racial profiling and uses excessive, even deadly, force, including against U.S. citizens.

III. H.R. 1417 COMMENDABLY INCLUDES A REQUIREMENT THAT DHS ASSESS ITS EXISTING BORDER SECURITY TECHNOLOGIES AND PRACTICES AND "THEIR EFFECT ON CIVIL RIGHTS, PRIVATE PROPERTY RIGHTS, PRIVACY, AND CIVIL LIBERTIES," AS WELL AS REVIEW TRAINING PROGRAMS AFFECTING THESE RIGHTS. CONGRESS SHOULD PRIORITIZE REQUIRING CBP TO IMPROVE ITS ATROCIOUS RECORD OF OVERSIGHT AND ACCOUNTABILITY.

Unprecedented investment in border enforcement without corresponding oversight mechanisms<sup>28</sup> has led to an increase in human and civil rights violations, traumatic family separations in border communities, and racial profiling and harassment of Native Americans, Latinos, and other people of color—many of them U.S. citizens and some who have lived in the region for generations. Stressed border communities are a vital component of the half-trillion dollars in trade between the United States and Mexico, and the devastating effects of militarization on them must be addressed in immigration reform. The U.S.-Canada border has experienced an increase in border enforcement resources as well, with Northern Border residents often complaining about Border Patrol agents conducting roving patrols near schools and churches and asking passengers for their documents on trains and buses traveling far from border crossings.<sup>29</sup> Border enforcement must prioritize investment in robust and independent external oversight that includes border communities' participation.

#### *a. Oversight and Accountability*

While the Federal Government has the authority to control our Nation's borders and regulate immigration, CBP officials must act in compliance with National and international legal norms and standards. As employees of the Nation's largest law enforcement agency, CBP personnel should be trained and held to the highest professional law enforcement standards. Systemic, robust, and permanent oversight and accountability mechanisms for CBP should be integral to border security measures. Indeed, in recent polling, over 90 percent of respondents—regardless of party affiliation—said they support creating "greater oversight and accountability" of CBP.<sup>30</sup>

Despite the overwhelming support for greater oversight and accountability and the documented history of CBP abuse, investments in oversight and accountability mechanisms have not kept pace with the growth of CBP. For example, while the CBP budget increased by 97 percent from fiscal year 2004 to fiscal year 2012, the DHS Office of Inspector General's (OIG) budget has increased by only 70 percent

<sup>24</sup> Immigration Policy Center, Second Annual DHS Progress Report. (Apr. 2011), 26, available at [http://www.immigrationpolicy.org/sites/default/files/docs/2011\\_DHS\\_Report\\_041211.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/2011_DHS_Report_041211.pdf).

<sup>25</sup> Richard Marosi, *Plunge in Border Crossings Leaves Agents Fighting Boredom*, Los Angeles Times, Apr. 21, 2011, available at: <http://articles.latimes.com/2011/apr/21/local/la-me-border-boredom-20110421>.

<sup>26</sup> "Border Patrol overtime, staffing up; arrests down." Associated Press (Feb. 5, 2012).

<sup>27</sup> Chen and Kim, "Border Security," supra.

<sup>28</sup> Tim Steller, "Border Patrol faces little accountability," Arizona Daily Star (Dec. 9, 2012), available at: [http://azstarnet.com/news/local/border/border-patrol-faces-little-accountability/article\\_7899cf6d-3f17-53bd-80a8-ad214b384221.html](http://azstarnet.com/news/local/border/border-patrol-faces-little-accountability/article_7899cf6d-3f17-53bd-80a8-ad214b384221.html).

<sup>29</sup> New York Civil Liberties Union, NYU Law School Immigrant Rights Clinic, and Families for Freedom, "Justice Derailed: What Raids on New York Trains and Buses Reveal About Border Patrol's Interior Enforcement Practices" (Nov. 2011), available at <http://www.nyclu.org/news/report-reveals-troubling-border-patrol-tactics-upstate-new-york>.

<sup>30</sup> Belden Russonello Strategists, "American attitudes on immigration reform, worker protections, due process, and border enforcement," (April 2013), available at: <http://cambio-us.org/wp-content/uploads/2013/04/BRS-Poll-for-CAMBIO-APRIL-16-2013-RELEASE.pdf>.

during this same time period.<sup>31</sup> Similarly, from fiscal year 2004 to fiscal year 2011, the DHS Office for Civil Rights and Civil Liberties (CRCL) budget increased only 56 percent.<sup>32</sup> Overall, the combined budget of the OIG and CRCL accounted for less than .005 percent of the total DHS budget in fiscal year 2011.

The failure to invest in sufficient oversight and accountability contributes to continued misconduct and corruption within CBP. There are numerous examples of CBP officers making improper arrests, detaining people for days incommunicado, subjecting them to coercive interrogation, and pressuring them to sign away their rights. In addition, a 2012 GAO report found that from 2005 to 2012, CBP had 2,170 reported incidents of arrests for acts of misconduct, such as domestic violence or driving under the influence, and a total of 144 current or former CBP employees that were arrested or indicted for corruption-related activities.<sup>33</sup> The same report found that CBP's Office of Internal Affairs had numerous deficiencies impacting its ability to prevent misconduct and appropriately screen new hires. Considering these findings, proposals to exponentially increase CBP will likely result in increased numbers of CBP officers that have been poorly trained or screened, and contribute to overall abuses within the agency.

Similarly, the insufficient funding of oversight and accountability mechanisms has resulted in a complete failure of the agency to appropriately investigate and respond to complaints. DHS has frequently faced a complaint backlog. For example, in March 2012, DHS OIG had 2361 open investigative cases. Between October 2011 and March 2012, DHS OIG closed only 730 cases, or less than a third of their open cases.<sup>34</sup> In order to deal with this backlog, the OIG transferred cases back to CBP and ICE for investigation, which raises serious conflict-of-interest concerns.

In the absence of robust oversight and accountability measures, CBP will continue to operate without adequate checks on abuses such as racial profiling, excessive use of force, and inhumane short-term custody facilities.

#### *b. Racial Profiling*

Racial profiling is rampant as a result of CBP's abuse of its vast authority within 100 miles of any land or sea border. While the Southwest Border and Florida have been the site of systemic racial profiling, this unlawful and ineffective law enforcement practice extends to the Northern Border as well. The ACLU of Washington State has brought a class-action lawsuit to end the Border Patrol's practice of stopping vehicles and interrogating occupants without legal justification. One of the plaintiffs in the case is an African American corrections officer and part-time police officer who was pulled over for no expressed reason and interrogated about his immigration status while wearing his corrections uniform.<sup>35</sup> A local business owner said he's "never seen anything like this. Why don't they do it to the white people, to see if they're from Canada or something?"<sup>36</sup>

CBP also aids and abets State and local police racial profiling practices, ensnaring U.S. citizens. In February 2011, Tiburcio Briceno, a naturalized U.S. citizen, was stopped by a Michigan State Police officer for a traffic violation while driving in a registered company van. Rather than issue him a ticket, the officer interrogated Briceno about his immigration status, apparently based on Briceno's Mexican national origin and limited English. Dissatisfied with Briceno's valid Michigan chauffeur's license, the officer summoned CBP, impounded Briceno's car, and told him he would be deported. Briceno says he reiterated again and again that he was a U.S. citizen, and offered to show his social security card but the officer refused to look.

Briceno was released after CBP officers arrived and confirmed that he was telling the truth. "Becoming a U.S. citizen was a proud moment for me," Briceno has since reflected. "When I took the oath to this country, I felt that I was part of something bigger than myself; I felt that I was a part of a community and that I was finally equal to every other American. Although I still believe in the promise of equality,

<sup>31</sup> DHS Office of the Inspector General, "Fiscal Year 2004 Annual Performance Plan, DHS Office of the Inspector General," pp. 6 [http://www.oig.dhs.gov/assets/OIG\\_APP\\_FY04.pdf](http://www.oig.dhs.gov/assets/OIG_APP_FY04.pdf); DHS, "FY 2014 Budget in Brief," pp. 6 <http://www.dhs.gov/sites/default/files/publications/MGMT/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%20%284%29.pdf>.

<sup>32</sup> DHS Office of Civil Rights and Civil Liberties, "Fiscal Year 2011 and Annual Report to Congress," pp. 6 (June 2012) <http://www.dhs.gov/xlibrary/assets/crcl-annual-report-fy-2011-final.pdf>.

<sup>33</sup> GAO-13-59 "Border Security: Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct," Dec 4, 2012.

<sup>34</sup> Id.

<sup>35</sup> Complaint available at [http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26-Complaint\\_0.pdf](http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26-Complaint_0.pdf).

<sup>36</sup> William Yardley, "In Far Northwest, a New Border Focus on Latinos." *New York Times* (May 29, 2012) (emphasis added), available at <http://www.nytimes.com/2012/05/29/us/hard-by-canada-border-fears-of-crackdown-on-latino-immigration.html?pagewanted=all>.

I know that I have to speak out to make sure it's a reality for me, my family and my community. No American should be made to feel like a criminal simply because of the color of their skin or language abilities."<sup>37</sup> Ending CBP's unchecked practices of racial profiling must be a priority of immigration reform.

*c. Excessive Use of Force*

In addition to racial profiling at and beyond the border, incidents of excessive use of force are on the rise, with at least 19 people killed by CBP officials since January 2010,<sup>38</sup> including five U.S. citizens and six individuals who were standing in Mexico when fatally shot. On April 20, 2012, PBS's *Need to Know*<sup>39</sup> program explored the trend of CBP's excessive use of force, with a focus on Anastasio Hernandez Rojas. New footage depicting a dozen CBP personnel surrounding and repeatedly applying a Taser and other force to Mr. Hernandez—who was shown to be handcuffed and prostrate on the ground contrary to the agency's incident reporting—shocked viewers. The San Diego coroner classified Mr. Hernandez's death as a homicide, noting in addition to a heart attack: "several loose teeth; bruising to his chest, stomach, hips, knees, back, lips, head and eyelids; five broken ribs; and a damaged spine." CBP's version of events described a "combative" person; force was needed to "subdue the individual and maintain officer safety."

Spotlighting another CBP fatality, the *Arizona Republic* reported earlier this year that "[a]n autopsy report raises new questions about the death of a Mexican youth shot by at least one U.S. Border Patrol officer four months ago in Nogales. The Border Patrol has maintained that José Antonio Elena Rodríguez, 16, was throwing rocks over the border fence at agents on the U.S. side when an agent fired across the international border the night of Oct. 10. But entry and exit wounds suggest that all but one of as many as 11 bullets that struck the boy entered from behind, according to the report by two medical examiners working for the Sonora Attorney General's Office."<sup>40</sup>

After a Congressional letter signed by 16 Members was sent to DHS Secretary Janet Napolitano, DHS Acting Inspector General Charles Edwards, and Attorney General Eric Holder,<sup>41</sup> on July 12, 2012, the Associated Press reported that a Federal grand jury was investigating the death of Anastasio Hernandez.<sup>42</sup> Border Patrol's use-of-force incidents have attracted international scrutiny with the govern-

<sup>37</sup> ACLU of Michigan, "ACLU Urges State Police to Investigate Racial Profiling Incident." (Mar. 21, 2012) (emphasis added), available at <http://www.aclumich.org/issues/racial-justice/2012-03/1685>.

<sup>38</sup> Jorge A. Solis, 28, shot and killed, Douglas, AZ (Jan. 4, 2010); Victor Santillan de la Cruz, 36, shot and killed, Laredo, TX (March 31, 2010); Anastasio Hernandez Rojas, 32, tortured to death, San Diego, CA (May 28, 2010); Sergio Adrian H. Huereca, 15, shot and killed, El Paso, TX (June 7, 2010); Juan Mendez, 18, shot and killed, Eagle Pass, TX; Ramses Barron Torres, 17, shot and killed, Nogales, Mexico (Jan. 5, 2011); Roberto Pérez Pérez, beaten while in detention and died due to lack of proper medical care, San Diego, CA (Jan. 13, 2011); Alex Martinez, 30, shot and killed, Whatcom County, WA (Feb. 27, 2011); Carlos Lamadrid, 19, shot and killed, Douglas, AZ (March 21, 2011); Jose Alfredo Yañez Reyes, 40, shot and killed, Tijuana, Mexico (June 21, 2011); Gerardo Rico Lozana, 20, shot and killed near Corpus Christi, TX (Nov. 3, 2011); Byron Sosa Orellana, 28, shot and killed near Sells, AZ (Dec. 6, 2011); Alexander Martin, 24, died in car explosion that may have been caused by Border Patrol tasers (March 15, 2012); Charles Robinson, 75, shot and killed, Jackman, ME (June 23, 2012); Juan Pablo Perez Santillán, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedroza, 36, shot and killed, Nuevo Laredo, Mexico (Sept. 3, 2012); Valerie Tachiquin-Alvarado, 32, shot and killed, Chula Vista, CA (Sept. 28, 2012); José Antonio Elena Rodríguez, 16, shot and killed, Nogales, Sonora (Oct. 11, 2012); and Margarito Lopez Morelos, 19, shot and killed, Baboquivari Mountains, AZ (Dec. 2, 2012). This count does not include Border Patrol agent Nicholas J. Ivie, 30, who was fatally shot by friendly fire near Bisbee, AZ (Oct. 2, 2012).

<sup>39</sup> PBS *Need to Know* special, aired April 20, 2012 and entitled "Crossing the line at the border," available at: <http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/>.

<sup>40</sup> Bob Ortega, "New theory on Border Patrol killing of boy." *Arizona Republic* (Feb. 7, 2013), available at <http://www.azcentral.com/news/articles/20130206border-patrol-killing-boy-new-theory.html>.

<sup>41</sup> Congressional sign-on letter sent May 10, 2012 to Secretary Janet Napolitano available at: <http://serrano.house.gov/sites/serrano.house.gov/files/DHSletter.pdf>; letter sent to DHS Inspector General Charles Edwards available at: <http://serrano.house.gov/sites/serrano.house.gov/files/DHSIGletter.pdf>; letter sent to DOJ Attorney General Eric Holder available at: <http://serrano.house.gov/sites/serrano.house.gov/files/DoJLetter.pdf>.

<sup>42</sup> Grand Jury Probes Anastasio Hernandez Border Death, available <http://www.kpbs.org/news/2012/jul/12/grand-jury-probes-border-death/>.

ment of Mexico,<sup>43</sup> the Inter-American Commission on Human Rights,<sup>44</sup> and the Office of the United Nations High Commissioner for Human Rights<sup>45</sup> weighing in.

It is past time for CBP to reform its use-of-force policy to conform with best law enforcement practices, including the mandatory use of body-worn cameras by officers, which have been shown to reduce both uses-of-force and unfounded complaints against law enforcement officers.<sup>46</sup> CBP must also bring transparency to review of use-of-force incidents for disproportionality and unreasonableness.

#### d. Short-Term Custody

Organizations working with immigrants, asylum-seekers, and U.S. citizens who have been held in CBP short-term custody facilities receive regular reports of civil and human rights violations. These include denial of medical care, confiscated medicine such as insulin, being held in detention without access to a phone to communicate with family members or legal counsel, verbal and physical abuse, coercion into signing forms that have not been explained, failure to provide copies of legal documents signed, overcrowding, and failure to return key belongings and personal identity documents prior to repatriation.

These violations have been recurring for years and have been widely reported.<sup>47</sup> For example, the University of Arizona's recently-released report, based on more than 1,000 interviews conducted in migrant shelters from Tijuana to Nuevo Laredo (and in Mexico City), found that:<sup>48</sup>

- 11 percent reported physical abuse by U.S. authorities.
- 23 percent reported verbal abuse by U.S. authorities.
- 45 percent did not receive sufficient food while in U.S. custody.
- 39 percent had possessions taken and not returned by U.S. authorities.
- 26 percent were carrying Mexican identifying documents and had at least one document taken and not returned.

In addition to extensive documentation, organizations have filed numerous administrative complaints and legal claims based on these abuses.<sup>49</sup> In May 2012, the ACLU submitted an administrative complaint concerning serious abuses against travelers in CBP custody at ports of entry. And in March 2013, Americans for Immigrants Justice filed Federal Tort Claims actions on behalf of four immigrants who were held in CBP custody. Customs and Border Protection should be required to implement and enforce binding short-term custody standards, including minimum conditions for detention, like the provision of adequate nutrition, appropriate climate, and medical care; dissemination of legal rights information in commonly-spoken lan-

<sup>43</sup> See, e.g., Bret Stephens, "The Paradoxes of Felipe Calderón." *Wall Street Journal* (Sept. 28, 2012), available at [http://online.wsj.com/article/SB10000872396390443916104578022440-624610104.html?mod=hp\\_opinion](http://online.wsj.com/article/SB10000872396390443916104578022440-624610104.html?mod=hp_opinion).

<sup>44</sup> See "IACHR condemns the recent death of Mexican national by U.S. Border Patrol Agents." (July 24, 2012), available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/093.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/093.asp).

<sup>45</sup> See U.N. Radio, "United States urged to probe deaths of Mexican migrants at border." (May 29, 2012), available at <http://www.unmultimedia.org/radio/english/2012/05/united-states-urged-to-probe-deaths-of-mexican-migrants-at-border/>.

<sup>46</sup> See Spokane, WA Office of the Police Ombudsman, *Body-Worn Video & Law Enforcement: An Overview of the Common Concerns Associated With Its Use* (Feb. 2012), available at <http://www.spdombudsman.com/wp-content/uploads/2012/02/Attachment-G-Body-Camera-Report-.pdf>; U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *A Primer on Body-Worn Cameras for Law Enforcement* (Sept. 2012), available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>; Koppel, Nathan. "Cameras Keep a Close Watch on the Police." *Wall Street Journal* (Feb. 12, 2013), available at <http://online.wsj.com/article/SB10001424127887323511804578298060326177182.html>; Stross, Randall. "Wearing a Badge, and a Video Camera." *New York Times* (Apr. 6, 2013), available at <http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html>.

<sup>47</sup> See for example, No More Deaths. *Crossing the Line: Human Rights Abuses of Migrants in Short Term Custody on the Arizona Sonora Border* (Sept. 2008), available at: <http://www.nomoredeaths.org/Abuse-Report-Crossing-the-Line/View-category.html>; No More Deaths. *A Culture of Cruelty: Abuse and Impunity In Short-term U.S. Border Patrol Custody* (2011), available at <http://nomoredeaths.org/cultureofcruelty.html>; Kino Border Initiative. *Documented Failures: the Consequences of Immigration Policy at the U.S.-Mexico Border* (Feb. 2013), available at: [http://www.jesuit.org/jesuits/wp-content/uploads/Kino\\_FULL-REPORT\\_web.pdf](http://www.jesuit.org/jesuits/wp-content/uploads/Kino_FULL-REPORT_web.pdf).

<sup>48</sup> University of Arizona. *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security*. (Mar. 15, 2013), 24, available at: [http://las.arizona.edu/sites/las.arizona.edu/files/UA\\_Immigration\\_Report2013web.pdf](http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf).

<sup>49</sup> ACLU *Demands Federal Investigation Into Charges of Abuse by Border Agents: Abuse of U.S. Citizens and Non-Citizens Alike Necessitates Greater Oversight and Accountability* (May 10, 2012), available at <http://www.aclu.org/immigrants-rights/aclu-demands-federal-investigation-charges-abuse-border-agents; AI Justice Takes Action Against Border Patrol for Abusing Immigrant Women> (Mar. 14, 2013), available at <http://aijustice.org/ai-justice-takes-action-against-border-patrol-for-abusing-immigrant-women>.

guages; access to visits by lawyers, consular officials and non-Governmental organizations; and enforceable policies for credible fear procedures relating to asylum-seekers.

#### IV. CONCLUSION

The ACLU urges the House to reject S. 744's wasteful resource splurge on border security as irrational and damaging to border communities. Instead, Congress must prioritize the reduction of abuses in the currently-oppressive immigration and border enforcement system. That profligate enforcement has cost \$219 billion in today's dollars since 1986.<sup>50</sup> By jettisoning proposals for escalated border security that clash with civil liberties and thereby creating space for genuine immigration reform, Congress can ensure that the roadmap to citizenship for aspiring Americans, which is indispensable to true immigration reform, is a generous one free of unjust obstacles.

Mr. O'ROURKE. Wonderful. Thank you. I want to thank you for convening this panel and for your leadership on this issue and asking in a previous hearing what I think is probably the most important fundamental question, which is, what does a secure border look like? Then work back from that and decide how we want to get there, what we are willing to spend, what we are willing to sacrifice in order to achieve that.

I guess my question is along those lines in terms of we talked about a lot of balances that we are trying to strike right now especially at the border. One that I think about a lot is the balance between seeing Mexico and the U.S.-Mexico border as a threat versus an opportunity. That is the reason for providing those maps to all the Members.

I think far too often we exclusively see Mexico as a threat, whether it is drug smuggling, human smuggling, the potential for terrorist activity crossing our borders. So I was hoping to get an answer from the panelists on how you can quantify or prioritize that threat if, as I have heard the Secretary of Homeland Security on down say that the single greatest priority and the reason that we have this committee is to ensure that we prevent terrorist attacks in this country.

Given the fact that those other threats—human smuggling, illegal immigration, drug smuggling are significant but secondary, I guess, I have to ask the question are we already doing too much? Is \$18 billion, which is twice what we were spending in 2005, is 19,000 or 20,000 Border Patrol Agents, which is a doubling over what you had the previous decade at a time when net migration from Mexico is zero, when we have record low north-bound attempts, when we have record high south-bound deportations.

Are we too fixated on this threat to the exclusion of capitalizing on the trade with that country, increasing the economic progress on both sides of the border, which I would argue would also increase security? If that is the case, how do we approach this issue in a more rational, more fiscally responsible, more humane manner?

I guess I will start with Commissioner Ahern.

Mr. AHERN. Thank you very much. I think one of the points to begin with one of your last comments about fiscally responsible and even back to the Chairwoman's question on do we need more and the process we went through when we doubled the size of the Border Patrol and looking at resource deployment today.

<sup>50</sup>Robbins, "U.S. Grows," supra.

I am not sure how widely known it is throughout the Congress, the appropriators probably have a pretty good handle on this but I am not sure how broadly it is known. The positions today are not fully funded. So that might be one of the first steps before we look at increasing. You talked about fiscal responsibility, let's take a look at the current resources we have because as we doubled the size of the Border Patrol, those costs were not annualized in the budget each year.

So, as we had mandatory minimums and things of that nature, and couldn't go below certain levels, the head of the organization had to then take a look at where do you pull resources from elsewhere so out of the trade positions to go from other locations in air and sea ports to go ahead and make sure that we hit those mandatory minimums.

So, I think one of the first steps would be is take a look at the appropriations because I think this year the organization had like a \$200 million to \$300 million salary shortfall that needed to be fixed. Then you talk about delays for technology-deployment or capital infrastructure improvements. You have to pull from those other accounts so you are not anti-deficient and you have to pay your salaries and benefits first. So I think that is a fiscally responsible thing to begin with.

On the relationship with Mexico and I would also suggest that we don't exclude the discussion with Canada as well because, again, looking at the border we are not looking just at the Southwest Border issue in my view. In my experience you take a look at what is occurring both with Canada and Mexico as well as our littoral borders with the maritime domain as well as the air.

But speaking of Mexico, there has been tremendous amount of discussions over the last several years that I was a part of it and I know continued after my departure. I think Secretary Napolitano is down there this week to meet with President Nieto's cabinet level officials and her counterparts on real significant security issues but also equally significant report on cross-border trade issues.

Mexico today is still I think our third-largest trading partner. I think as an opportunity we need to continue to find ways to expedite legitimate trade, also legitimate travel. I think there has been some moves in that regard. But I think, you know, some support in those areas could actually be a downpayment on future fiscal opportunities as we are able to streamline legitimate travel and trade. Does that actually become the seed that would grow more opportunities going forward?

So, I think looking at those things and continuing to build upon that, because the organization that I was a head of for many years does have that responsibility beyond just as far as the homeland security, border security mission. But it is also to promote and expedite legitimate travel and trade as well. That was something that was never excluded in the overall thought process and decision-making.

Mr. O'ROURKE. Madam Chairwoman, I am out of time but I certainly would like to hear the opinions from the other panelists so perhaps we can follow up, either privately or afterwards, but thank you. I yield back.

Mrs. MILLER. I thank the gentleman.

The Chairwoman now recognizes the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN. Thank you, Madam Chairwoman for holding this hearing. I think it is very applicable and apropos to what is going on.

To echo the words of Senator Cardyn just a few minutes ago the international criminal organizations and drug cartels regularly explored our borders not to mention the real possibility of foreign terrorist organizations to deliver drugs, contraband weapons, laundered money, human trafficking, and God only knows what else into this country. Senator Cardyn goes on to say that the threat is at our door.

Madam Chairwoman, I will remind this committee that not every person that transits our porous border are Hispanic and I question what these other-than-Mexican persons—and that is not my term, that is a formal term that is used by CBP and DHS—but what these OTM personnel, keep in mind apprehensions are of Africans, Asians, and those of Middle Eastern descent as well as the Hispanics, what are they coming here for? So I just remind the committee about that.

Congressman Lamar Smith recently sent a Dear Colleague to every Member of Congress I assume, with several articles about the whole immigration issue and border security issues, and I will submit this for the record when I finish my statement.

Mrs. MILLER. Without objection.

[The information follows:]

LETTER FROM LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

IMMIGRATION ISSUES TO CONSIDER

JULY 22, 2013.

DEAR COLLEAGUE: Much is at stake in the immigration debate. America has the most generous immigration system in the world and it should continue. However, our immigration system must put the interests of America first. The enclosed materials highlight solutions and pitfalls to immigration reform, as well as how Americans view this important issue.

For additional information, please contact Curtis Philp in my office.

Sincerely,

LAMAR SMITH,  
*Member of Congress.*

ATTACHMENT 1.—*National Review Online/Sessions: How GOP Can Turn Immigration Debate On Its Head*

*By Jeff Sessions, July 10, 2013 5:29 PM.*

<http://www.nationalreview.com/corner/353129/sessions-how-gop-can-turn-immigration-debate-its-head-jeff-sessions>

The White House and their congressional allies believe that the Senate immigration bill can be used as a political cudgel against House Republicans.

They are wrong. If Republicans do the right thing, they will not only turn the immigration debate on its head but will begin the essential drive to regain the trust of working Americans.

We already know that the public repudiates the Gang of Eight's amnesty-first model by a 4–1 margin. Less discussed is the public's broad opposition to the large increases in low-skill immigration—and its impact on jobs and wages—that lies at the heart of the Senate proposal.

In their zeal to rush this 1,200-page train wreck through the Senate with as many votes as possible, Democrat leadership whipped every single member of their con-

ference. After over four years of the Obama presidency, wages have continued their painful decline. But the same Democrat senators who attacked President Bush for declining wages have suddenly fallen silent.

And so, with unanimous Democrat support, the Senate adopted a bill that adds four times more guest workers than the rejected 2007 plan at a time when 4.3 million more Americans are out of work and 20 million more Americans are on food stamps. The proposal also grants immediate work authorization to those here illegally while dramatically boosting permanent levels of annual legal immigration in the future. Based on Congressional Budget Office data, the bill would grant permanent residency to 46 million mostly lower-skill immigrants by 2033.

The result? CBO says wages would fall for the next dozen years, unemployment would rise, and per-capita GNP would be lower for the next quarter century.

Strikingly, wages are lower today than in 1999. Median household income has declined 8 percent. One in seven recent college graduates is unemployed. One in three Americans without a high-school diploma can't find work. The Senate immigration bill—written by the White House, Democrat leadership and supported by the entire Democrat conference—sacrifices the economic interests of these Americans in deference to the politicians and business interest who want lower-cost labor.

If there is any lesson for the GOP to learn from 2012, it's that we must do a better job fighting for and connecting with working Americans of all backgrounds—immigrant and native-born alike—whose wages have fallen and whose employment opportunities have increasingly diminished.

In pushing for this bill, the Left has abandoned and taken for granted the struggling worker. By doing the right thing on immigration, the GOP can distance our party from the corporate titans who believe the immigration policy for our entire country should be modeled to pad their bottom line.

Consider this story relayed in a recent *New York Times* article:

“Since John Vretis was let go by an electronics company in November, he has made it through the first and second cut of applicants at several companies near his home in Moline, Ill. But Mr. Vretis has yet to receive an offer. He recently interviewed at a metals company that is adding 25 workers a month, but was told it had 4,000 applicants for those positions. ‘I’m 55 and I know that’s an issue,’ said Mr. Vretis, who holds an associate’s degree in accounting.”

With all due respect to Mr. Zuckerberg, Mr. Rove, and the Chamber of Commerce, there is not a shortage of workers in America. There is a shortage of jobs.

The failed 1986 amnesty has been much and rightly discussed throughout the current immigration debate. But there is an even more poignant lesson to be drawn from the Reagan years: One thing that made President Reagan such an exceptional leader was the clarity and courage with which he gave a fresh voice to the economic concerns and needs of his time.

The GOP is presented with such a moment now. The White House has made its central legislative priority a bill that would result in decades of stagnant wages, stubborn unemployment, and increasing poverty. Instead of joining in that destructive effort, the GOP should reject it and demand reforms that encourage self-sufficiency and promote rising wages.

Both as a matter of economic policy and social policy, the best course for America is one that helps more of our residents move off of welfare, off of unemployment, and into good-paying jobs. We can't simply ignore the large number of chronically underemployed Americans. Immigration policy should promote—not inhibit—individual opportunity and community confidence.

The Senate immigration bill is Obamacare's 1,200-page legislative cousin. It is a disaster on every level. Republicans should make no effort to salvage it or to offer even the slightest hope of revival. Instead, we should draw sharp and bold contrasts that earn the loyalty of our faithful supporters and the newfound respect of the millions of working Americans who have turned away.

*Jeff Sessions represents Alabama in the United States Senate.*

ATTACHMENT 2.—LEGAL AND ILLEGAL IMMIGRANTS GAIN AT NATIVE-BORN EXPENSE  
<http://news.investors.com/ibd-editorials/071113-663399-immigrants-gain-jobs-while-native-born-lose.htm>

*Lost Opportunities.*—Immigrants, both legal and illegal, have accounted for all the job gains in the U.S. since 2000. With labor force participation rates at record lows, why do some tout the benefits of importing workers?

According to a White House report released Wednesday, the immigration legislation tinkered together by the Gang of Eight (or Gang of Ocho, as critics sneer) would

increase real GDP by roughly \$700 billion in 2023 and reduce the federal deficit by almost \$850 billion over the next 20 years.

This would happen, we're told, by bringing illegal workers out of the shadow economy into the real economy where they'd pay taxes and contribute to society.

The long-term costs are ignored, though. The Heritage Foundation reckons the short-term tax boost would lead to a long-term drain of up to \$6.3 trillion in benefits that legal taxpayers would have to fund for legalized immigrants over their lifetimes.

Indeed, while the Gang of Eight's bill bars amnestied immigrants from receiving most federal benefits for 10 years, the time-frame supporters tout as providing the boon, the costs will stack up after that.

The Congressional Budget Office analysis of the supposed benefits does not take into account the Medicare and Social Security liabilities that amnestied illegal aliens will begin accruing immediately.

While that debate rages, the Center for Immigration Studies has released a report questioning the need to import workers or amnesty those already here in an economy where the labor force participation rate is at a record low, millions have dropped out of the workforce and too many are underemployed because they can't find full-time employment, a situation ObamaCare already is making worse.

According to the CIS analysis, 22.4 million immigrants of working age held jobs at the beginning of this year, up 5.3 million over the total in 2000. Native-born workers with jobs dropped 1.3 million over that period, from 114.8 million to 113.5 million.

"Given the employment situation in the country, the dramatic increases in legal immigration contemplated by the Gang of Eight immigration bill seem out of touch with the realities of the U.S. labor market," say study authors Steven Camarota and Karen Zeigler.

We agree with that observation.

The total number of working-age (16–65) natives not working—unemployed or out of the labor force entirely—was nearly 59 million in the first quarter of this year, a figure that has changed little in the past three years and is nearly 18 million larger than in 2000.

According to the CIS report, between the first quarter of 2000 and the first quarter of 2013, the native-born population accounted for two-thirds of overall growth in the working-age population, but none of the net growth in employment among the working-age has gone to natives.

The overall size of the working-age native-born population increased by 16.4 million from 2000 to 2013, and those Americans have been hammered by that 1.3 million job drop.

Before we're accused of being nativist, let us state that legal immigrants, particularly those with skills this beleaguered economy needs, have always been welcome. But clearly this economy is suffering from a shortage of jobs, not workers, and when you consider that 40% of illegal aliens are people who came here legally and simply overstayed their visa, the Gang of Eight rationale for de facto amnesty is off target.

We ask Tea Party people what books they read and the content of their prayers, but we can't track those who overstay their visas? Maybe the NSA could help.

We could have solved much of the immigration problem simply by enforcing existing law requiring employers to verify whom they hire and for the government to make sure immigrants leave when they're legally required to.

Now that's a job most Americans are willing to do.

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#### ATTACHMENT 3.—KILL THE BILL

PASSING ANY VERSION OF THE GANG OF EIGHT'S BILL WOULD BE WORSE THAN PASSING NOTHING.

*By William Kristol & Rich Lowry, July 9, 2013 12:00 AM.*

*<http://www.nationalreview.com/article/352919/kill-bill-william-kristol-rich-lowry>*

We are conservatives who have differed in the past on immigration reform, with Kristol favorably disposed toward it and Lowry skeptical. But the Gang of Eight has brought us into full agreement: Their bill, passed out of the Senate, is a comprehensive mistake. House Republicans should kill it without reservation.

There is no case for the bill, and certainly no urgency to pass it. During the debate over immigration in 2006–07, Republican rhetoric at times had a flavor that communicated a hostility to immigrants as such. That was a mistake, and it did po-

litical damage. This time has been different. The case against the bill has been as responsible as it has been damning.

It's become clear that you can be pro-immigrant and pro-immigration, and even favor legalization of the 11 million illegal immigrants who are here and increases in some categories of legal immigration—and vigorously oppose this bill.

The bill's first fatal deficiency is that it doesn't solve the illegal-immigration problem. The enforcement provisions are riddled with exceptions, loopholes, and waivers. Every indication is that they are for show and will be disregarded, just as prior notional requirements to build a fence or an entry/exit visa system have been—and just as President Obama has recently announced he's ignoring aspects of Obamacare that are inconvenient to enforce on schedule. Why won't he waive a requirement for the use of E-Verify just as he's unilaterally delayed the employer mandate? The fact that the legalization of illegal immigrants comes first makes it all the more likely that enforcement provisions will be ignored the same way they were after passage of the 1986 amnesty.

Marco Rubio says he doesn't want to have to come back ten years from now and deal with the same illegal-immigration problem. But that's exactly what the CBO says will happen under his own bill. According to the CBO analysis of the bill, it will reduce illegal immigration by as little as a third or by half at most. By one estimate, this means there will be about 7.5 million illegal immigrants here in ten years. And this is under the implausible assumption that the Obama administration would administer the law as written.

The bill's changes in legal immigration are just as ill considered. Everyone professes to agree that our system should be tilted toward high-skilled immigration, but the Gang of Eight bill unleashes a flood of additional low-skilled immigration. The last thing low-skilled native and immigrant workers already here should have to deal with is wage-depressing competition from newly arriving workers. Nor is the new immigration under the bill a panacea for the long-term fiscal ills of entitlements, as often argued, because those programs are redistributive and most of the immigrants will be low-income workers.

Finally, there is the sheer size of the bill and the hasty manner in which it was amended and passed. Conservatives have eloquently and convincingly made the case against bills like this during the Obama years. Such bills reflect a mistaken belief in central planning and in practice become a stew of deals, payoffs, waivers, and special-interest breaks. Why would House Republicans now sign off on this kind of lawmaking? If you think Obamacare and Dodd-Frank are going swimmingly, you'll love the Gang of Eight bill. It's the opposite of conservative reform, which simplifies and limits government, strengthens the rule of law, and empowers citizens.

There's no rush to act on immigration. The Democrats didn't do anything when they controlled all of the elected branches in 2009 and 2010. The Gang of Eight tells us constantly that we have a de facto amnesty for illegal immigrants now. Fine. What's the urgent need to act immediately, then?

The Republicans eager to back the bill are doing so out of political panic. "I think Republicans realize the implications for the future of the Republican party in America if we don't get this issue behind us," John McCain says. This is silly. Are we supposed to believe that Republican Senate candidates running in states such as Arkansas, North Carolina, Iowa, Virginia, and Montana will be hurt if the party doesn't embrace Chuck Schumer's immigration bill?

If Republicans take the Senate and hold the House in 2014, they will be in a much better position to pass a sensible immigration bill. At the presidential level in 2016, it would be better if Republicans won more Hispanic voters than they have in the past—but it's most important that the party perform better among working-class and younger voters concerned about economic opportunity and upward mobility. Passing this unworkable, ramshackle bill is counterproductive or irrelevant to that task.

House Republicans may wish to pass incremental changes to the system to show that they have their own solutions, even though such legislation is very unlikely to be taken up by the Senate. Or they might not even bother, since Senate Democrats say such legislation would be dead on arrival. In any case, House Republicans should make sure not to allow a conference with the Senate bill. House Republicans can't find any true common ground with that legislation. Passing any version of the Gang of Eight's bill would be worse public policy than passing nothing. House Republicans can do the country a service by putting a stake through its heart.

*William Kristol is editor of The Weekly Standard. Rich Lowry is editor of National Review.*

Mr. DUNCAN. Thank you.

He states in the letter that our immigration system must put the interest of Americans first. The first thing that comes to mind is the need for a secure border primarily in the southwest region as that is where the majority of illegal immigration takes place, a secure border with metrics and benchmarks which are verifiable.

At last glance, we are still a sovereign Nation and America should be able to secure our Nation and secure our borders. But I will echo the words of the gentleman from Texas, that does come with some sort of legitimate trade issues as well. I recognize that, and he and I have had good conversations about that and so it has got to facilitate that as well.

We as Americans need to determine who comes in our country, how many come in to the United States annually and what they come for and how long they stay. We are a Nation of laws and the enforcement of laws—excuse me, the enforcement laws are already on the books without the need to create more laws in the scope of the Senate bill that has passed.

Let's enforce the laws that we have. This includes enforcement of those who overstay their permission slip or their visa that they obtained to come into America for a myriad of reasons.

So instead of having certain aspects of our Government inquire about the reading habits and prayer content of Tea Party groups, why not focus our attention on the 41 percent to 49 percent of our illegal alien population that are currently here, those that have overstayed their visa. Almost half of the illegals in this country, America, are folks that we gave a permission slip for them to come to this country and they just decided to stay.

They are visa overstays. They have broken the law. We must come up with a workable entry-exit system for those we give permission to come to our country. So let me be clear, there is a difference between legal immigration and illegal immigration. Legal immigrants have always been welcome in this country and always will be.

But the way to address illegal immigration is not to take the door off the hinges at our Nation's borders. I posed a question back home when I speak that mirrors something, I think like Mr. Ahern just said, "What does a secure border look like?"

I think that is a question we all have to ask ourselves, "What does a secure border truly look like? Is it a West Germany, East Germany border-tight, concrete-steel, concertina-wire effort?" If it is, we need to get that in our mind. But if it is not, it does have to take into consideration of trade and other things and legal immigration issues as well. We have to ask ourselves that question as Americans.

I believe that Chairman McCaul's legislation is a step in the right direction. We are talking about the outcome-based metrics here, so in my limited time, I ask Mr. Stana: In your previous work at GAO, after Secretary Napolitano stopped reporting miles under operational control, you warned that the absence of measures for border security may reduce oversight and DHS accountability, which has proven correct.

So I ask you: Do you still think that the lack of outcome-based performance measures have left Congress and the public effectively in the dark when it comes to the current state of border security?

Mr. STANA. You certainly need goals and performance measures to gauge any program and to understand exactly where the next dollar ought to be spent and how successful the last dollars were spent. Those goals and measures aren't there now.

Mr. DUNCAN. Okay. Are meaningful metrics necessary to gaining the trust and support of the American people?

Mr. STANA. I would assume so. I think they are just good management tenets.

Mr. DUNCAN. Yes. Absolutely. So those metrics, I think are part of this, trying to have two or three different organizations all sign off on the fact whether you have a secure border or not. I try to take the politicization of it out to some degree. Those are aspects of this bill that I like.

But I do know this, Madam Chairwoman, that I have been to the border. I have seen the fencing. I do know there are areas, especially in Arizona and Tucson sector that are very mountainous. That are like the Rocky Mountains in their height and the scope and the depth of their canyons and it is very difficult to put fencing there.

But that one thing that I do know is that fencing will create—if you can get up right up to the borders, it will create these corridors that then we can focus our personnel in. The personnel can be used effectively, not just at the ports of entry but also in those canyons, in those mountains, making sure that those drug traffickers and other bad guys that are bringing folks into this country can be thwarted.

So we can focus our efforts. I think fencing makes a lot of sense in that issue. I think that is one thing the Chairman's bill does. So, I appreciate it. I look forward to maybe a second round of questioning here, and with that I yield back.

Mrs. MILLER. Thank you, gentleman.

The Chairwoman now recognizes our Ranking Member, the gentlelady from Texas, Ms. Jackson Lee, who is busy running in between a couple of meetings this morning.

Ms. JACKSON LEE. I know.

Madam Chairwoman, let me thank you for your indulgence and thank you for placing that on the record that I am in between several meetings. But this is a very important hearing. Let me thank all of the witnesses for being here.

Mr. Ahern, please tell Secretary Chertoff that I said hello. I have been here long enough to have served when he was Secretary of Homeland Security. Let me start with Mr. Stana, you have found yourself in this room a number of times. We thank you.

So let me pointedly ask the question, with other elements that trace or frame themselves around immigration reforms, the number of components to E-Verify: Do we really need border security to move forward on immigration? What I am saying is do we need a—as you well know, this bill focuses on metrics in a study in a thoughtful approach. Do you see the need for a trigger when you connect border security and then immigration reform? We have to keep waiting and waiting and waiting. Do you see other elements that allow us to go forward and do it simultaneously or know that it is going to come in order?

Mr. STANA. Looking back to how the 1986 act was implemented I think would be helpful here and maybe Jay remembers that, too. But what happened with the 1986 act is a set time positive, a date where you had to enter the country by, in order to receive temporary permission to stay in a path to LPR which, legal permanent residency, which was 5 years.

So they took the illegal immigrant in the country issue off the table relatively quickly. Another thing that they did which proved—

Ms. JACKSON LEE [continuing]. They move ahead to get that framework going, so you at least know who is supposed to be here and who is not supposed to be here.

Mr. STANA. Yes. They kind of tried to take people out of immigration limbo, if you will. But then there were only 3 million and half of those were ag workers, so it was a different situation than today.

Another thing they did is they publicized the I-9 process and the danger of interior enforcement and had education programs with employers. The word got out, at least initially that the Government was serious about this. In fact, there wasn't a whole lot of pressure on the border for the first 2 or 3 years that the act was enforced until it became apparent that the I-9 process could be defeated by false documents and there really wasn't much of an enforcement mechanism internally.

That is when—at least I would connect those dots, the pressure came to the border. So I think it is important to understand that border security issues are important but you can't isolate them from all the other moving parts in the immigration reform and immigration control system.

It is only one of many. Necessarily immigration security and immigration control measures at the border aren't the only thing that could be successful in controlling and managing immigration flows.

Ms. JACKSON LEE. That is a very important point, because I think H.R. 1417 speaks directly to that by calling upon a roadmap and metrics. I heard the comments about that that is not the only thing. I agree with that. Our bill does not suggest that metrics technologies are the only thing. We are the border security component, and I think we complement very well what you have just said other aspects to get regular order.

The Senate bill's regular order deals with how you address the now 11 million, which a large part are agriculture and a large part are overstays. Clearly, I think those should be addressed as well.

The question of resources: One bill has \$46 billion and throws money on top of the already enormous amount of money which I supported in years past, ramping up Border Patrol Agents, because in the 1990s, we weren't there. In the 2000s we weren't there, but we did ramp it up.

Mr. STANA. You know, an interesting statistic along that for the last—

Ms. JACKSON LEE. Do you think that, you know, that you can do it by just saying let's add another 50,000 Border Patrol Agents?

Mr. STANA. Well, I think we ought to understand what works. If it makes sense to add more of a certain component that is fine, but if you look at the apprehensions in the Tucson sector, despite billions of dollars more in fencing and cameras and sensors and ra-

dars that was deployed to Tucson, their success rate, that is the number of apprehensions per number of known entrants, is about the same as it was in the mid-2000s.

So how does that happen if we had all these other inputs? Something is working but something is not working to expectation.

Ms. JACKSON LEE. I think that is a good point. Mr. Ahern, if I may follow up with you. This whole idea of fencing and staffing, we have ports of entry where Americans go through, where business people go through, where trucks with goods go through. Don't we have to find that balance if we are going to make the system actually work?

I want everybody to also know when we say border security and that we have a Northern Border.

Mr. AHERN. That is right.

Ms. JACKSON LEE. We must never leave that out and I know Chairwoman Miller continuously reminds us. Mr. Ahern.

Mr. AHERN. Yes. Thank you. I will just go ahead and restate some of the things that are also in the written testimony and also just got briefly, earlier. You do need to take a look at all aspects of the border air, land, and sea. I think oftentimes there is too much time spent focused on, you know, what is occurring on our land border with Mexico, you know?

Certainly, there is 1,900 miles on that Southern Border. But when you take a look at the entire universe to include 95,000 miles of maritime borders, it is a pretty broad spectrum we need to be taking a look at versus isolating on particularized threats.

I think that clearly, when you take a look at moving legitimate travel and trade, 350 million people coming across our borders and also \$2.3 trillion of trade, we need to make sure that we make the capital investments for our ports of entry.

Frankly, it is the same elements of the strategy that we use to secure the border to where it is between the ports of entry today. It is infrastructure. We need to have better facilities that are actually able to be contemporary with the type of volume and the level of goods that comes through there today.

We need to make sure as far as we have the appropriate levels of personnel that we did when we took a look at the strategy between the ports of entry. It also introduced new technology, ways to go ahead and biometrically verify people coming into the country. There are some examples that certainly in the air environment. They are doing some of that coming into the country on the southern borders, some pilot tests going on today, the introduction of higher non-intrusive in technology to be able to look at things in an expedited fashion.

So it is the same three basic principles—infrastructure, technology, and personnel, but I do think, as we did the much-needed ramping-up of the border between ports of entry that was done to the detriment of what was occurring in the ports of entry. By example I started in the Government for what was the former customs service in the 1970s.

Just only within the last 2 years has the world's largest land border port of entry is going through a modernization effort. That is a pretty strong statement. I mean, I know that there are examples of that across both borders and it is something that we do need to

take a look at and turn our attention to because I would submit that the investments we make in personnel, in the technology and in the infrastructure would increase travel and trade and therefore have a positive economic impact.

At the same time, those resources are also focused on the security threat and the criminal threat of the 7,700 people that have been apprehended at the ports for serious criminal activity and 145,000 people are actually denied admission compared to the universe of 365 between the ports of entry.

Ms. JACKSON LEE. Yes. Just this last quick quote, Madam Chairwoman. I just want to finish on this. I also, it looks like Mr. Alden wants to answer, but let me just say this. I think you are speaking to the approach that H.R. 1417 is taking. I assume you looked at that bill. Would you say that?

Mr. ALDEN. Yes.

Ms. JACKSON LEE. Yes. I just want to ask this final point. In the deliberation that we made in drafting this bill along with very important amendments from all of our Members, we also thought it was important because we know that our citizens travel and business persons travel that we actually sited issues dealing with civil liberties as you come across the border, the idea of racial profiling as you come across the border and the idea of human trafficking, which I think is very unique for a border security bill.

I just want to get a yes or no, whether you think that is positive.

Mr. AHERN. Yes.

Ms. JACKSON LEE. Mr. Alden.

Mr. ALDEN. I just wanted to add one quick thing on the Tucson sector. If you look at the GAO report from December 2012, which is tremendously important, this was the first time the Border Patrol had shared all of the data that it had been gathering for a decade now on people that it apprehends in the border region, it does in fact, shows significant increases and effectiveness in the Tucson sector over the last 5 or 6 years.

Now, you can question how much of that is a result from enforcement. How much of that is the job became easier because with the economic downturn, fewer people were coming. But I think it is quite clear looking at the experience of Tucson that enforcement can play a significant role in discouraging illegal immigration. I think the GAO study from December shows that quite clearly.

Ms. JACKSON LEE. Well, I will just say that our bill does not run away from enforcement. We are just suggesting that, at least I am, that it is comprehensive. Did you want to give a yes or no on those issues that I have just said?

Mr. ALDEN. I would agree. I think that was an important addition to the bill.

Mr. STANA. Yes. I do agree. I just do want to say that although I am not speaking for GAO, you've got to read those statistics carefully. They have been misquoted in the *Washington Post* and elsewhere. I know when I read it, I couldn't believe that the *Washington Post* quoted it in the way they did. Read them carefully.

Ms. JACKSON LEE. Thank you.

Thank you, Madam Chairwoman.

Mrs. MILLER. Thank you, gentlelady.

The Chairwoman now recognizes the gentleman from Mississippi, Mr. Palazzo.

Mr. PALAZZO. Thank you, Madam Chairwoman. I want to thank our witnesses for being here today. I have enjoyed our Members' questions, statements, as well as your testimony.

I have the great privilege of serving on two, actually, three great committees in the House. One, of course, is this committee which is tasked with Homeland Security and the other is House Armed Services Committee, which is tasked with the defense of our Nation both at home and abroad.

So sometimes I think of things in different ways, not just from my past experiences but also from my committee experience. I keep hearing that personnel is a serious issue that Customs and Border Protection are, you know, recruiting and retaining and training Border Patrol agents.

So then when you look at the Senate bill, it throws a lot of resources at the bill for probably political purposes, probably trying to get people to embrace it and then there are other obvious schemes built-in for, you know, for other Members.

But if we are going to throw 20,000 more Border Patrol agents at the border, billions of dollars in more resources, and I know we are actually deploying resources that are coming back surplus, assets from Iraq and Afghanistan, which is great. We shouldn't have to be going out buying more equipment.

I want to ask you, and I don't know if you have given this great thought, there is also another resource that is coming back from Iraq and Afghanistan and that is our men and women in uniform, specifically, our members of the National Guard.

They are highly trained, very dedicated, very loyal citizen soldiers who aren't afraid to sacrifice their life for this country abroad. I think it could be a huge honor for them to actually take a historic role in securing our borders in partners with other agencies.

I know there have already been reports of them being engaged, working along the border in several areas. One of my amendments to this bill is to find—you know, to look at that even more and see what the lessons learned were and perhaps how they could be greater utilized, especially when you look at the fact that unemployment for our men and women in uniform, our veterans is around 21 percent. It is a lot greater than the National average.

I think we can—it would be wrong for us not to see if there is a way to utilize them. I would just open it up. I would love to hear—I mean, we are still exploring the stages. As being a member of the National Guard myself, I know I would love the opportunity to go down there and work the border, the terrain in many areas is very geographically similar to where they have been training. I know they can do the job. I know they could get operational control. They probably won't require a permanent presence or increase in basically the Border Patrol by 100 percent.

So, Mr. Ahern.

Mr. AHERN. Yes. Thank you very much. I think, going back in history, I think back into the 1980s, there was a program called Operation Guardian where we have used the National Guard to support the mission of the border both at the ports of entry as well

as between. Right up until I departed we were using the National Guard resources.

We always viewed the National Guard as kind of a temporary augmentation of your staffing, to fill gaps in these, particularly as we were looking to surge and double the size of the Border Patrol in the period of time in the mid-2005, 2006, 2007 time frame.

That is an important distinction, I think, that we need to talk about, that having them as a temporary measure. I mean, they had different authorities, as you well know, and not being able to fully deploy and fully to engage in the border mission was certainly an issue.

I think that we clearly could use them for—it was talked about previously—about some of the canyon areas where you could have entry identification teams, EITs, being able to observe pathways of individuals coming across the border and be able to then report it to the Border Patrols so they can then respond to those individuals coming between the ports of entry.

But I think, you know, as we look forward, we should be looking at finding ways to bring more of them into the full-time ranks of Customs and Border Protection as many of them are. I know that, many times, I was bringing back many of our pilots, the maritime commanders, as well as Border Patrol agents who had been activated and sent over into Iraq or Afghanistan. We think that is a very important thing to continue to find ways to bring them into our full-time employ.

The last thing I would just comment is there has been different references in different bills about having DOD engaged and actually deploy the mission that they are familiar with from working in theater overseas to secure our border. I can't state strongly enough how I think that would be unwise to do because you would have two competing entities that are out there in uncoordinated fashion that could lead to very significant security issues and coordination issues as a result of not having a single operation commander in charge of those resources.

I think, you know, temporary uses of resources is important, find ways to bring them into the organization on a full-time basis, but not having dual-levels of reporting out into the field.

Mr. PALAZZO. Mr. Ahern, I think you brought up some good points. I would love to hear from the others, but my time—I am out of time. The surge concept was exactly what we were thinking. It was successful in Iraq, Afghanistan. Apparently, it has been successful in the border, not a permanent presence. But, again, these are citizen soldiers and they want to have a role in protecting our borders at home.

So I hope and I strongly encourage not just the Members of this committee, but those that are going to be involved in drafting true border security legislation going forward, that they just consider the use of the National Guard and how it is going to save billions of dollars to the taxpayer and, also, hire a veteran, who, at these times in our economy, who really need the work; and, maybe, they can even be rolled into the full-time Border Patrol force.

Thank you.

Mrs. MILLER. I thank the gentleman. The Chairwoman now recognizes the gentlelady from California.

Ms. Sanchez.

Ms. SANCHEZ. Thank you, Madam Chairwoman. I want to thank both you and the Ranking Member for working so hard on these issues. I had the opportunity to, as you know, chair this subcommittee before, so I have worked with these gentlemen quite a bit on this. There is a lot of experience in this committee. I hope that people will take their lead from this subcommittee in particular because we have gone through so much.

I really want to echo the issue of there is not just the Southern Border. As we all know, there is the Northern Border, which the Chairwoman has been very diligent about trying to get attention on that, as well, as all of our seaports—Puerto Rico, Hawaii, I mean Guam—I mean, you name it, we have got it—Maine, who has got, I don't know, a thousand islands out there or something—I am told they—that is the only State I haven't visited in our union—but lots and lots of coasts including California, which has a long coast, as well as our airports.

I have been probably the largest voice here talking about US-VISIT exit and getting that under control. So I think there is a lot of places where we can put technology to work, not in the way we saw so dismally in SBInet. We have the scars to show for that also, but I think, with respect to US-VISIT, for example, it would be incredibly important.

I would like to see the Senate bill really be more flexible, Madam Chairwoman, to put some of this money towards our land ports, towards E-Verify, towards US-VISIT to really get those things under control. So I really thank you for bringing your knowledge, and I wish, somehow, Madam Chairwoman, we could disseminate this to the rest of our House of Representative Members because they really need—they really should be sitting here to understand it is a lot more than just putting boots on the ground at the border.

We also went through the pains with Chief Aguilar in going from a little bit over 4,000 in the Customs and Border Patrol to 23,000 in the Customs and Border Patrol and, you know, the whole supervisory and what do they really do.

One of the things they also found was that these veterans who were coming back weren't necessarily the ones who honestly were—could pass the test to be brought into the Customs and Border Patrol because Customs and Border is different than fighting in Iraq. I sit on both of those committees, so we have seen that. I guess, you know, I really hope that we get some input, Madam Chairwoman, this subcommittee and this committee get some input in trying to do this.

My question to you all is really—and I really want to start with our former GAO who spends so much of his time on this. Thank you. Thank you from our country's perspective. Who should be on the task force or the committee to figure out what are the metrics we are going to measure this by? Who do you think would be the best people to put in a room and come up with the metrics that we really need in order to know that we are not getting an SBInet again, that we are not increasing, doubling the size of CBP and don't have any way to sustain those salaries over the years?

Who do we need on that committee to do metrics ?

Mr. STANA. If you are talking about a committee that is apart from the Congressional Committees, which I think you are, I think I would look for people with a good dose of professional skepticism. That could be part of the DHS OIG or GAO. It might be people in the private sector who work for different organizations who study these things.

I think the problems occur when we don't follow the rules for acquisitions or we don't follow a prescribed way of thinking about how to deploy these assets and we don't bring people in with the expertise to ask the tough questions. These things just seem to have a life of their own all too often. Unfortunately, sometimes, the person with the loudest voice in the room prevails.

Mr. ALDEN. Could I just add that if you look, there is potentially a very strong external research community that could be a real asset to the Department of Homeland Security. If you look at the relationships that the Department of Defense has built up over the years with external research, some of them in the universities, some in Pentagon-funded organizations of various sorts, the Rand Corporation and others, these have been tremendously valuable.

DHS needs to do the same thing. I would urge you to look, for instance, at the National Academy of Sciences study that tried to look at this question. It assembled a very fine team of researchers on that. DHS has some internal capacity in the Homeland Security Institute and the Border Center in Arizona.

So this really needs to be part of this process going forward of bringing together people with real expertise on issues of measurement, as well as issues of border security, and having these people work closely with folks in DHS, have access to the data they need to make these judgments.

I think this will be part of the sort of maturation process for DHS to start to develop the same kind of community that DOD has to help it do its work more effectively.

Ms. SANCHEZ. If the Chairwoman would give me just a few extra seconds to ask our commissioner?

Mr. AHERN. Thank you. I think that, obviously, I began some of this view back in the 1970s. When I left Government in 2010, I looked at it both inside and outside of Government. So I think I need to punt that to someone else at this point.

But I think one of the things that I think that is very important is to find the right group that has the right level of knowledge and the right level of objectivity and one that will not be biased or directed to come to a specific conclusion. I know that is not a real good answer, but I think those should be some of the characteristics of a committee.

But I think one of the things that we need to be careful of going forward, and I have observed this again over the years, is that I think just coming up with a border metric, whether it is operational control, situational awareness, apprehension rate, measuring the flow, all these things that are very difficult to go ahead and actually make a determination because you don't know what the overall getaway rate is, is not to use that for a reason to not move forward.

Ms. SANCHEZ. So no trigger kind of point per se. But what we are talking about is—I mean, I am excited that there is so much

money that the Senators want to put into this. I don't think it should just be on boots on the ground. I think there is land ports. There is E-Verify. There is so much we can use this money for. But I really don't want to be wasting it the way we did on SBI.net.

So who do we put in a grouping that can help us understand; let's get it right?

Mr. AHERN. I think, again, it has to be an external group, some Government as well as, perhaps, some representative from the Hill as well to make sure that their interests are, you know, covered in the discussion, but I think, again, to the point of making sure it is not a trigger. I think that we need to make sure and stipulate that there is a level of control today that we did not have before.

Whether it is better, you know, or whether it is at the highest levels, these are some of the catchphrases that people often use, let's stipulate to the fact that there is better security today than we have had before. Let's make sure that we focus on what other elements are critically important for an overall National strategy, to make sure that we look at things such as I spoke about earlier in my opening statement is looking at what goes on with verification of employment of people that want to come into the United States.

It is a fundamental element of understanding what the problems are. The problem is people want to come here to work out of some of the population of the people coming across that border; others are just part of transnational criminal organizations. I will go to that in a second. But if we can actually make it more difficult for people to be employed in the United States, illegally, through an E-Verify program and making sure it is robust and one that actually has good, timely response and accurate data that employers will have confidence in, that will actually diminish the flow coming across the border, I would submit.

That way, you can then take the resources you currently have and not need to require more to focus on those transnational criminal organizations that are smuggling drugs, smuggling weapons, smuggling money in and out of this country.

Mrs. MILLER. Thank the gentlelady. The Chairwoman now recognizes the gentleman from Utah, Mr. Stewart.

Mr. STEWART. Thank you, Madam Chairwoman. Thank you again to the witnesses. It has been a good discussion. I wish we had had a little more time to contrast the House's approach to border security with the Senate's. I wish Senator Cornyn had been able to stay; there were some questions I would like to ask him, I mean, heavens, their approach of let's take an additional \$20 billion and throw it at the problem and hope something good happens.

I think that encapsulates pretty well their approach, and I wish we had a little more time to discuss that but perhaps another time. Let me talk about something that is quite important to many of us out in the West, I represent Utah.

About 65 percent of my State is controlled by the Federal Government, they are Federal lands, about the same of amount of Arizona, for example, and if you look at the entire border about 40 percent of our Southern Border are designated Federal lands of one type or another, much of that is designated as wilderness area,

particularly in Arizona with all of the restrictions that come with the Federal designation like that as wilderness.

It is not just wilderness, there are, in some cases ESA restrictions that make it very, very difficult and in some cases impossible for CBP to do what we task them to do. How do you patrol an area that you can't have access to other than on foot in some cases and even in some cases that may be restricted?

The House—we have made some effort to address that concern. I am curious, can you tell me whether the Senate bill does at all and then would you just comment on whether you think it is a good idea or how we could more effectively eliminate some of these concerns of taking huge swaths of the border and telling people you can't control it because it is either wilderness or there are ESA concerns.

Comments from any of you on that?

Mr. AHERN. Let me offer a quick one on that. I think when we went through particularly we were looking at building the fence going back in the 2006 to 2007 time frame as well as the tactical roads for patrolling in those areas. There were some significant challenges and environmental issues and also dealing with Federal lands, Indian reservations, the Tohona nation for one in Arizona certainly is a challenge.

But I would submit that we were able to work through a lot of those particular issues and I am not aware of particular parts of that border today with the exception of perhaps the Tohono Indian nation in Arizona where there is not the ability to actually have patrol through those areas.

I know that there was some legislation suggested that some of that authority should be taken from the Department of the Interior and put within the Department of Homeland Security. I am not sure if that is the wisest move, I think it would be more important to study the entire impact of that and what might be going on with other Federal land issues but—

Mr. STEWART. What concerns do you have with that suggestion of taking those areas and putting them or giving DHS more responsibility for that?

Mr. AHERN. I guess, it may not be the best response but it is one, I think, that is looking at tradition. Then making sure that the Cabinet-level department and the agency that was set up to deal with those Federal lands was put up for a very good reason.

To extract some of that authority and responsibility to place it in another organization for a mission-related function, while it be important, I am not sure it is the trump that is necessary.

I think coordination and I believe there has been a higher level of coordination between the Cabinet-level secretaries of each department. I know as a former agency head we worked through many of those issues where it did not become an impediment force in the last couple of years before I departed.

Mr. STEWART. Okay. I appreciate that. I have to respectfully disagree with some of your comments but we could—and understanding that there are differences of opinions on this. Others who would be willing to comment?

Mr. STANA. Yes. I would basically agree with what Jay said. I think when there were problems, oftentimes, it was at the local

level where they were resolved whether the person in charge of the law enforcement component of the Bureau of Indian Affairs unit or Foreign Service unit. When they could get along with the sector chief and come to an agreement on how to operate things worked well. If there were personality problems it became a real nightmare. The other thing that was mentioned I think is a very important point is these law enforcement officials that work for the Department of Interior or Agriculture or whatever other agency has oversight over the Federal land.

They have other duties in addition to immigration-related duties or border security duties that should really not be overlooked when you are thinking about where to put that—

Mr. STEWART. Well, they not only have other duties, they have other priorities and border security is in some cases not their priority.

Mr. STANA. You know, I talked with a lot of them at the local level dozens of times down there and their problems have normally been the lack of communication and a lack of coordination. Once it is communicated and coordinated what the priorities are, they will let the Border Patrol go onto their land and as long as they don't, you know, take advantage of that in a bad way. But those things get worked out.

Mr. STEWART. Would you say then—your opinion that this is just essentially not a concern, it doesn't concern you at all?

Mr. STANA. It is my opinion that it is something you always have to watch for and you have to assure that the mechanisms for coordination are there and they are working. It is not to say that the problem is always going to be solved.

Mr. STEWART. Yes, it is a concern to you then.

Mr. STANA. Well, I think it is something that bears watching, yes.

Mr. STEWART. Mr. Alden, do you have any comments on that?

Mr. ALDEN. I would have nothing additional to add. I would agree.

Mr. STEWART. Okay. All right. Thank you. Madam Chairwoman, I yield back.

Mrs. MILLER. I thank the gentleman for his questions and I thank the gentleman for sort of refocusing us again on really the purpose of this hearing which is the study and contrast between the House and the Senate versions for border security. Just my final question before we adjourn here, I would just ask each one of you yes or no. You think the House version is the proper path forward as opposed to the Senate?

Mr. AHERN. I think there are many more elements that I think that would add to a better plan for border security as part of our overall National security plan than I am seeing in the Senate version.

Mrs. MILLER. Mr. Ahern—or excuse me, Alden.

Mr. ALDEN. On border security in and of itself, I prefer the House approach. The challenge is going to be to see how it is integrated into some larger piece of legislation if that is the way it goes and that will obviously raise many difficult issues.

Mrs. MILLER. Mr. Stana.

Mr. STANA. I don't think it is fair to say that 1417 is the only House approach. I think within its limitations I think it is a useful document, but I think, again, this is a many moving parts and a more holistic approach than just is articulated here is something that needs to be considered. There are problems with the Senate bill on how some of these resource inputs are fashioned.

Mrs. MILLER. I want to thank all of the witnesses, and certainly your testimony has been tremendous and we may have some additional questions from Members of the committee and we would ask you to respond to those in writing. Therefore, pursuant to Committee Rule 7(c), the hearing record would be held open for 10 days. I would yield at this time to my Ranking Member for a UC request.

Ms. JACKSON LEE. Madam Chairwoman, thank you. I might add that this has been a very positive hearing and I might add to Mr. Stana, I personally as the Ranking Member offer this as a component and agree with you that we could have a comprehensive approach, but I think this is the strongest component of border security which is H.R. 1417.

I hope you will consider—continue to study this because I think you will find that it has a very strong response to what we are concerned about. With that, I ask unanimous consent to have the statement of the American Immigration Lawyers Association and the statement for—excuse me, I am sorry, and the National Immigration Forum statements for the record, ask unanimous consent that they would be allowed and submitted into the record.

Mrs. MILLER. Without objection.

[The information follows:]

STATEMENT OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

JULY 23, 2013

The American Immigration Lawyers Association (AILA) submits this statement to the Subcommittee on Border and Maritime Security. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 13,000 attorney and law professor members.

In recent years, a resource-heavy approach has resulted in a dramatic, unprecedented build-up of border security enforcement and a massive expenditure of resources. Nonetheless, lawmakers continue to call for additional investment of resources on the border. For example, the "border surge" amendment adopted by Senate bill S. 744 would allocate billions of dollars to double an already excessive number of Border Patrol Agents and increase technology and infrastructure on the Southern Border. Such an approach is a gross expenditure of taxpayer funds that is unjustified and may be completely unnecessary. Little to no evidence was presented during consideration of S. 744 showing that the commitment of resources specified by the bill would be cost-effective or would significantly improve border safety or National security.

AILA has consistently called for smart border strategies that establish clear and reasoned goals for resource allocation and enforcement actions at the border. Until a border plan is developed and successfully tested to ensure it will actually improve the safety of border communities and National security, Congress should refrain from prescribing or authorizing specific expenditures for personnel, fencing, or other infrastructure on the border.

In the past, Congress has revisited highly prescriptive border enforcement laws. After passing the Secure Fence Act of 2006, Congress began questioning the wisdom of the mandatory double-layered fencing required under the law and amended it to give DRS more discretion as to where and what kind of fencing was appropriate.

Overly prescriptive legislation would also make it harder for DRS to respond quickly and efficiently to changing needs on the borders. In testimony before Con-

gress, Michael Fisher, Chief of the U.S. Border Patrol, questioned the wisdom of a mandatory 90 percent operational control standard saying that it “wouldn’t make sense” for all sectors.

Any border security plan should be based on performance metrics and measurable standards of border safety that are achievable and fiscally responsible. House bill H.R. 1417, Border Security Results Act of 2013, rightly shifts the focus to an outcome-based measure rather than one based on the resources committed to border security. H.R. 1417 requires DHS to develop and implement a plan over 2 to 5 years to achieve specific border security goals, including reaching a 90 percent operational control level in the high-traffic border regions and along the Southwest Border.

#### BORDER SECURITY AND IMMIGRATION REFORM

One problem with H.R. 1417 is its failure to address how border security will fit in with reforms to the legal immigration system or a legalization plan for the undocumented. Without these key components of reform that go hand-in-hand with border security, a massive commitment of resources is unlikely to improve border security or reduce illegal border crossings. Effective border security cannot be achieved in a vacuum—it requires all the moving parts to be improved in order to produce a workable result.

Finally, AILA urges Congress to avoid setting the border security requirements in H.R. 1417 as trigger conditions that must be met before legalization may move forward. There is widespread consensus that the immigration system requires broad reform and that reform should proceed as expeditiously as possible. America’s economic and National interests depend on it. There is no rational policy justification for holding certain elements of reform “hostage” until others are achieved. More specifically, if border security triggers are not well-defined and attainable in a reasonable time frame, the legalization of millions will be held in an indefinite status and discouraged from coming out of the shadows, thus compromising the goals of meaningful and comprehensive immigration reform and National security.

#### STATEMENT OF THE NATIONAL IMMIGRATION FORUM

JULY 23, 2013

The National Immigration Forum works to uphold America’s tradition as a Nation of immigrants. The Forum advocates for the value of immigrants and immigration to the Nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The National Immigration Forum applauds the subcommittee for holding this hearing on the matter of American border security and urges the committee to look at border security as part of broad immigration reform that includes an earned path to citizenship.

We believe the current conversation around border security and immigration reform is different. In the past 2 years, an alliance of conservative faith, law enforcement, and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community; the development of State compacts; and regional summits in the Mountain West, Midwest, and Southeast.

In early December 2012, over 250 faith, law enforcement, and business leaders from across the country came to Washington, DC, for a National Strategy Session and Advocacy Day. They told policymakers and the press about the new consensus on immigrants and America. In February, to support these efforts, the National Immigration Forum launched the Bibles, Badges, and Business for Immigration Reform Network to achieve the goal of broad immigration reform. Last month, to help achieve that goal, this network held a Policy Breakfast and Advocacy Day where participants organized 83 Hill meetings (55 with Republicans). This was just one event of over 40 that were held all over the country in support of immigration reform.

Last month by a bipartisan vote of 68–32 the United States Senate passed S. 744, the “Border Security, Economic Opportunity, and Immigration Modernization Act” (herein after referred to as S. 744), a comprehensive immigration reform that attempts to strike the right balance between increased immigration enforcement and border security, earned legalization and an opportunity for citizenship, reforms to our current family-based and employer-sponsored immigration system, and efforts to deal with the current immigration backlog. One of the key lessons learned from

1986, besides the need for additional future legal avenues in our immigration system, is that all parts of our complex immigration system are interrelated, and must be dealt with in a cohesive manner, or we will see the results of unintended consequences.

That is why as the subcommittee discusses border security, it is important that the discussion not become singularly focused on immigration enforcement. A singular focus on immigration enforcement will not result in workable solutions and gives an appearance of an attempt to prey upon both our legitimate concerns and prejudices in order to score political points. Certainly, we must do what we can to ensure that real threats, including terrorists, transnational criminal organizations and human traffickers cannot exploit our borders to do harm. But at this time of fiscal discipline, continuing to throw unlimited sums of money and resources at the border to chase an impossible goal is not an effective use of resources. Further, heads of border agencies under both Republican and Democratic administrations have stated that the best way to improve border security is to fix the immigration system by providing legal avenues for workers to enter the United States when needed and allow families to reunify. This will allow law enforcement and border officials to put fewer resources toward economic migrants and more resources toward the true criminal and terrorist threats.

During the debate on the Senate immigration reform legislation, specific border security measures were included. The Senate bill, S. 744, requires that before individuals in Registered Provisional Immigrant status can obtain a green card a minimum of 38,405 Border Patrol Agents are deployed, stationed, and maintained on the Southern Border, 700 miles of pedestrian fencing have been built (including a double layer of pedestrian fencing where needed), an electronic work verification system has been implemented and an electronic exit system is in use at all air and sea ports of entry where U.S. Customs and Border Protection (CBP) officers are currently deployed. S. 744 also authorizes the deployment of more drones, increases flight hours and authorizes hundreds of additional sensors, cameras and Integrated Fixed Towers to be stationed along the border.

The Forum has written extensively on the need for smart enforcement at our Nation's borders. To see a more detailed analysis on smart enforcement at our borders please see the Forum's papers: "What Does Smart and Effective Enforcement Look Like?", "The 'Border Bubble': A Look at Spending On U.S. Borders" and "Cut Here: Reduce Wasteful Spending on Immigration Enforcement." The Senate bill does not necessarily fit our idea of smart border enforcement. However, as part of a comprehensive set of initiatives that include significant reforms to the legal immigration system and legalization for a large portion of the undocumented immigrants in the country, we support the Senate bill. This is the nature of compromise, tough decisions were made in the U.S. Senate to garner support to pass legislation and we applaud the Senate for passing an immigration reform package with a path to citizenship.

However, as the House takes up the issue of border security, we would encourage the House to look closely at the effectiveness, and "return on investment" of the spending on personnel and technology for border security.

#### ENFORCEMENT TODAY

In recent years, there has been an incredible amount of progress improving the level of enforcement at our borders. Accordingly, any additional increases in border security should be done in a smart and conscientious manner. Millions of dollars have been spent in the last decade as more money has been poured into border technology without metrics to show how effective these investments have been. In spite of this, the measurements we do have show that our border is more secure than ever.

Currently, the entire Southwest Border is either "controlled," "managed," or "monitored" to some degree. A record 21,370 Border Patrol Agents continue to be stationed at the border, a number that does not include the thousands of agents from other Federal agencies, including the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Federal Bureau of Investigations (FBI), and other agencies, supplemented by National Guard troops.

As of February 2012, 651 miles of border fencing have been built out of the 652 miles that the Border Patrol feels is operationally necessary. The fence now covers almost the entire length of the border from California to Texas. There is double fencing in many areas. CBP relies heavily on technology in order to secure the United States' borders and ports of entry.

CBP now has more than 250 Remote Video Surveillance Systems with day and night cameras deployed on the Southwest Border. In addition, the agency relies on

39 Mobile Surveillance Systems, which are truck-mounted infrared cameras and radar. CBP has also sent Mobile Surveillance Systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, and license plate readers to the Southwest Border. CBP also currently operates three Predator B unmanned aerial drones from an Arizona base and two more from a Texas base, providing surveillance coverage of the Southwest Border across Arizona, New Mexico, and Texas.

Prior to August 2006, many persons who were apprehended at the border were released pending their immigration hearing. That practice was ended in August 2006, and now nearly all persons crossing the border illegally are detained. Immigration and Customs Enforcement (ICE) is now funded to hold 33,400 individuals in detention at any given time. Over the course of the Government's fiscal year 2011, ICE reported that it detained more than 429,000 individuals, an all-time high and 118,000 more than the 311,000 individuals who were detained in 2007. For fiscal year 2012, ICE reported that it had removed nearly 410,000 persons, also a record. That number is approximately 91,000 more than were removed in 2007. To read more on how the 2007 benchmarks have been met, please read the Forum's paper "Immigration Enforcement Today: 2007 Reform Goals Largely Accomplished."

#### AGENT TRAINING AND OVERSIGHT

All of the efforts described above have demonstrated that the Government can, and is capable, of enforcing our immigration laws. Yet, there are still smart, practical enforcement measures that can be adopted to further strengthen border security, including providing adequate border agent training, providing adequate resources and infrastructure at U.S. land ports of entry, establishing sufficient oversight mechanisms and procedures to hold agents accountable for misconduct, and effective use of border technology.

The Border Patrol is currently mandated to maintain a minimum of 21,370 agents at any given time, up from 14,923 in fiscal year 2007. But, while the size of the Border Patrol has expanded, so has the number of complaints against Border Patrol agents. In 2009, complaints increased 50 percent from the previous year, while the size of the DHS Office of Inspector General (OIG) grew by only 6 percent that same year. Oversight of any agency is crucial to its success, and thus far the OIG has been hampered by a lack of resources needed to investigate and resolve the growing number of complaints, and has been without permanent Inspector General for over 2 years.

Since 2010, at least a dozen individual media reports have recorded Customs and Border Protection employing excessive use of force. In addition, CBP has seen as many as 232 criminal indictments of its staff for drug-related offenses, fraud, misuse of Government resources and theft—all between October 2007 and April 2012. In a December 2012 report titled "Border Security: Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct," the Government Accountability Office found that CBP does not have an integrity strategy, as called for in its Fiscal Year 2009–2014 Strategic Plan. It also found significant cultural resistance among some CBP components in acknowledging the agency's Internal Affairs authority for overseeing all integrity-related activities. CBP must develop an effective integrity strategy in light of this institutional resistance and its rapid growth and ever-growing number of complaints.

#### LAND PORTS OF ENTRY NEED EQUAL CONSIDERATION IN BORDER SECURITY

Unfortunately, most of the conversations about border security focus between the ports of entry, but the ports are an important part of our border and National security, as well as our economic security, facilitating billions of dollars in international trade each day. As enforcement along the border between the ports has increased, illegal entry at the ports has increased. A 2012 Texas Border Coalition report found that, because enforcement resources have been so focused between ports of entry, individuals illegally entering the United States through a land port have a 28 percent chance of being apprehended whereas someone attempting to do so between the land ports has a 90 percent probability of being apprehended. This also leaves land ports more susceptible to transnational drug and weapons smuggling, as increased seizures over the last years has demonstrated. This startling report, coupled with long wait times at ports of entry that hinder the flow of commerce and trade from Mexico, makes clear the need for improvements at our ports of entry, including infrastructure, personnel, and technology.

*Conclusion*

Continued advancements in enforcement will depend on broader reforms to our broken immigration laws so that enforcement resources can target real threats. The American people want better immigration policy. Multiple National polls over the last month show solid support for solutions that include, in addition to reasonable enforcement, creating improved and new legal channels for future immigrants and establishing tough but fair rules to allow undocumented immigrants to stay and continue to work in the United States and eventually earn U.S. citizenship. We cannot simply spend or enforce our way to a solution on illegal immigration. Border security, while important, is only part of the picture. Immigration reforms that promote legal immigration and smartly enforce immigration laws can improve the security at the border, drying up the customers for criminal enterprises that prey on migrants, and letting our border agencies focus on more dangerous threats such as terrorists, drugs, weapons, and money.

Our immigration problem is a National problem deserving of a National, comprehensive solution. A piecemeal approach is not the answer. The Senate's comprehensive reform legislation includes increased interior enforcement and border security, earned legalization and a path to citizenship, needed reforms to our current family-centered and employer-centered immigration system and efforts to deal with the current immigration backlog while also setting realistic levels for both skilled and necessary lesser-skilled workers. The House will likewise need to deal with all of these portions of current immigration law and policy. The Forum looks forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law. The time is now for immigration reform.

Ms. JACKSON LEE. I ask for an article entitled, "Why Adding 21,000 Border Patrol is a Dysfunctional Plan that Will Waste Billions." It is an article from June, I think, 2013 from Forbes and a statement here in this article from Gary Jacob, a businessman from Laredo, ask unanimous consent to introduce this article into the record.

Mrs. MILLER. Without objection.  
[The information follows:]

ARTICLE SUBMITTED FOR THE RECORD BY SHEILA JACKSON LEE

WHY ADDING 21,000 BORDER PATROL IS A DYSFUNCTIONAL PLAN THAT WILL WASTE BILLIONS—FORBES

<http://www.forbes.com/sites/richardfinger/2013/07/21/why-adding-21000-border-patrol-is-a-dysfunctional-plan-that-will-waste-billions/>  
[ . . . ]

JACOBS: I have seen no evidence of terrorists crossing through Mexico. It was Canada not Laredo where some of the 9/11 suicide bombers crossed. On the other hand, there is big money in contraband of all types including trafficking in human beings. There is ample evidence that when a poorly educated opportunistic Congress crams unrealistic goals down the throats of honest and well intentioned managers of border patrol law enforcement, that they overstress the system.

Because of the increase in overall border malfeasance, Congress passed the Anti-Corruption Act of 2010 which among other things requires polygraph tests for all new hires. That was another piece of legislation pointed in the wrong direction. Local managers, not out of touch with border issues civil servants in Washington, need to be designing and implementing recruiting regimens. Our local managers could easily have identified who had the appropriate background to serve and quickly weed out the mistakes . . . but they can't because of Congress.

To put some numbers to it, in 2010 in a mad rush to hire new Customs and Border Protection agents only 1 in 10 were given lie-detector tests and of those 60 percent failed . . . mind boggling! Statistically, right there it says your odds of misbehavior by agents increased exponentially. Procedures are now in place and all new applicants are taking the (polygraph) test and, get this, almost 70 percent are failing! The GOA recommends expanding lie-detector tests to current employees but at \$800 per copy, there are no funds in the budget to handle the expense.

To me, with the statistics just mentioned and with no changes to the system, why should we begin an ad hoc program to arbitrarily throw 20,000 more bodies at this problem. One can almost guarantee that without a rational detailed map justifying doubling the size of our forces, we will be creating more problems than we are solv-

ing. I would rather delegate to local CBP leadership how they want to recruit, where they want to recruit and how they choose to screen entrants. If they can only find 200 per year or 2,000 per year who meet the high standards set for the generation of the now senior folks, then that will dictate the size of the force . . . When I moved to Laredo and up until the reactionary creation of the monster agency Homeland Security, corruption cases along the border were few and far between.  
[ . . . ]

Ms. JACKSON LEE. I thank the Chairwoman.

Mrs. MILLER. I thank our Ranking Member. I thank all the witnesses again and certainly the committee also. Without objection, the committee stands adjourned.

[Whereupon, at 12:01 p.m., the subcommittee was adjourned.]

