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S. Hrg. 114–516

BORDER SECURITY—2015

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

SECURING THE BORDER: UNDERSTANDING THREATS AND STRATEGIES FOR THE NORTHERN BORDER, APRIL 22, 2015

SECURING THE BORDER: FENCING, INFRASTRUCTURE, AND TECHNOLOGY FORCE MULTIPLIERS, MAY 13, 2015

THE 2014 HUMANITARIAN CRISIS AT OUR BORDER: A REVIEW OF THE GOVERNMENT'S RESPONSE TO UNACCOMPANIED MINORS ONE YEAR LATER, JULY 7, 2015

SECURING THE BORDER: UNDERSTANDING THREATS AND STRATEGIES FOR THE MARITIME BORDER, JULY 15, 2015

ALL HANDS ON DECK: WORKING TOGETHER TO END THE TRAFFICKING AND ABUSE OF PRESCRIPTION OPIOIDS, HEROIN, AND FENTANYL, SEPTEMBER 14, 2015

ONGOING MIGRATION FROM CENTRAL AMERICA: AN EXAMINATION OF FY 2015 APPREHENSIONS, OCTOBER 21, 2015

AMERICA'S HEROIN EPIDEMIC AT THE BORDER: LOCAL, STATE AND FEDERAL LAW ENFORCEMENT EFFORTS TO COMBAT ILLICIT NARCOTIC TRAFFICKING, NOVEMBER 23, 2015

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SECURING THE BORDER: UNDERSTANDING THREATS AND STRATEGIES FOR THE NORTHERN BORDER

WEDNESDAY, APRIL 22, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:33 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, McCain, Portman, Lankford, Ayotte, Ernst, Sasse, Carper, Heitkamp, Booker, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order. Senator Carper is on his way, and his staff informed me that we could get underway here.

I would like to, without objection, enter my opening comments into the record.[1] Hearing no objection, so ordered.

As I was talking to the witnesses before the hearing here, this is our fifth in a series of four hearings on border security, and what we are trying to do is we are trying to lay out the reality. And I think Senator Booker would agree with me it is not a pleasant reality. It is an enormously difficult problem. And, of course, in terms of illegal immigration, in terms of drug trafficking, the biggest problem is, no doubt about it, on the Southern Border.

As my Ranking Member says repeatedly—and I completely agree with this, coming from a manufacturing background—we really need to analyze the root cause of the problem.

We had an extremely good meeting with General Kelly, head of Southern Command, yesterday just discussing the problems in Central America and the problems with border security and the drug trafficking. And looking for that root cause we were discussing that it is really America's demand for drugs, how that demand has created these drug cartels that really has corroded and been so harmful to the societies in Central America. We bear some responsibility for that.

So these are not going to be easy problems to solve, but we have to make incremental improvements. I come from a manufacturing background. Nothing is ever perfect. You always have to continuously improve.

[1] The prepared statement of Senator Johnson appears in the Appendix on page 981.

So, again, the purpose of this hearing and every hearing is to get the people watching, the people on the dais here, admitting we have the problem by trying to lay out that reality properly.

I see that my Ranking Member, our Ranking Member has joined us here, so I would like to turn it over to you if you have some opening comments.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. I would love to. Not too long.

Good morning. Thank you, Mr. Chairman. Thanks for pulling this together. It is an important hearing, and we appreciate those Members, including the Senator from New Jersey, who has been very strong and encouraging to have this kind of hearing. So thank you, Cory.

Over the past couple months, we have spent a fair amount of time on this Committee, as some of you know because you have been here, focusing on trying to better understand the security challenges that we face along our Southern Border with Mexico.

But as large and challenging as our Southern Border is, our shared border with Canada is even larger and comes with its own unique opportunities and risks. Our shared border with Canada is—listen to this—the largest in the world. It spans some 4,000 miles. And when you add in Alaska, Alaska's borders with Canada, that goes up to about 5,500 miles. It is huge.

It is also an economic powerhouse for both of our countries. According to at least one estimate, some 300,000 people and $1.5 billion in trade cross the U.S.-Canada border every day. That is something to celebrate, even as we pay close attention to addressing potential border threats.

Last Congress, I had the pleasure of visiting Michigan with Senator Levin and North Dakota with Senator Heitkamp, and a memorable visit with Carl Levin. A memorable visit. Carl and I went to this Mexican restaurant. We sat in the parking lot and listened to the opening game in Minnesota. The Tigers beat the Twins. I will not forget that. A great day.

The risks along our Northern Border include both northbound and southbound flows of drugs, other transnational criminal activity, and potential exploitation by terrorists.

Since 9/11, we have increased our border staffing and technology footprint along the Northern Border. For instance, I think there are about 2,000 Border Patrol agents stationed on the Northern Border today, and that is compared to, I think, 340 in 2001. That is almost a sevenfold increase. And there are about 3,700 Customs and Border Protection (CBP) officers at the northern ports of entry (POE); that is an increase of about a third over the last 10 years. We now have several CBP drones patrolling high above our Northern Border as well.

Is there more that we can do to better secure our Northern Border? Sure there is; however, we can no more seal this border than we can totally close our Southern Border with Mexico. Having said that, we need to better understand the risks associated with it. Then we need to implement the most cost-effective strategies to buy down those risks. And we need to do this while sustaining the

robust trade and travel relationships that benefit us and our neighbors so greatly.

Not unlike our Southern Border, force-multiplying technology such as aerial surveillance, underground sensors, and cameras on mobile towers can greatly increase our ability to detect and respond to threats along this vast Northern Border.

Good intelligence and strong information-sharing networks can also help make the best use of limited staffing and resources. Fortunately, our relationship with Canada is perhaps the best "force multiplier" we could wish for. Canadian and U.S. agents are working closer and closer together in a number of areas to enhance our shared security and ensure our shared prosperity.

We look forward to hearing more about how this relationship is working under the 2011 "Beyond the Border (BTB)" framework and any other areas where progress is still needed. I also hope the witnesses will address whether there are successful practices at the Northern Border—either for increasing security or expediting trade or both—that we could replicate and use on our Southern Border with Mexico.

Finally, I continue to hope that our focus on border security will become part of a larger conversation on how to fix our broken immigration system and pass comprehensive immigration reform.

With that, we look forward to your testimony. Thank you all for coming and for your service.

Chairman JOHNSON. Thank you, Senator Carper.

This Committee really is pretty well populated with Senators from those Northern Border States. We have got Senator Peters from Michigan. I am from Wisconsin. We have Senator Tester from Montana, Senator Heitkamp from North Dakota, Senator Ayotte from New Hampshire. So this really is a pretty relevant hearing, and——

Senator MCCAIN. Should I leave?

Chairman JOHNSON. No. You are welcome as well. It is all part and parcel of the same problem. [Laughter.]

We are actually glad to see you, Mr. Chairman.

But, again, I do want to welcome the witnesses. Thank you for your very thoughtful testimony, and we are really looking forward to your testimony.

It is the tradition of this Committee to swear in witnesses, so if you would all rise and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. FISHER. I do.

Mr. WAGNER. I do.

Mr. SPERO. I do.

Mr. RODRIGUEZ. I do.

Mr. HARTUNIAN. I do.

Chairman JOHNSON. Thank you.

By the way, we do have votes starting at 10:45, so I would ask the witnesses to keep your opening statements to the 6-minute timeframe so we have time for questions, because we have got good attendance here by our Committee.

Our first witness is Michael J. Fisher. He is the Chief of the U.S. Border Patrol. Chief Fisher joined the U.S. Border Patrol in June

1987 and has served in numerous sectors and positions since then, including Field Operations Supervisor in El Paso, Deputy Chief Patrol Agent of the Detroit Sector, Assistant Chief Patrol Agent in the Tucson Sector, and Chief Patrol Agent of the San Diego Sector. Mr. Fisher.

TESTIMONY OF MICHAEL FISHER,[1] CHIEF, U.S. BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. FISHER. Thank you, Mr. Chairman, Ranking Member Carper, and Members of the Committee. It is indeed a privilege to appear today on behalf of the United States Border Patrol to discuss our strategy to secure the Northern Border between the ports of entry.

Our approach along the Northern Border supports U.S. Customs and Border Protection's overarching strategic themes of collaboration, integration, and innovation. Collaboration at all levels, including information sharing and operational coordination, among U.S. and Canadian law enforcement is critical to the shared security of the border.

Advanced information and intelligence is and will always be the key to minimizing risk along our borders. For instance, the Operational Integration Center (OIC), located at Selfridge Air National Guard Base in Michigan, is a information-sharing demonstration project to enhance the situational awareness of CBP and our mission partners, including U.S. Coast Guard (USCG), Immigration and Customs Enforcement (ICE), State and local law enforcement, as well as the Royal Canadian Mounted Police (RCMP) and the Canadian Border Services Agency.

The OIC consolidates a wide range of information, including radar and camera feeds, blue force tracking, database queries from databases not previously available to CBP, remote sensor inputs, remote video surveillance and mobile surveillance system (MSS) feeds, and video from various ports of entry. Additional information feeds such as local traffic cameras will be added in the near future.

In terms of innovation, our joint efforts to improve existing surveillance technologies that can overcome Northern Border terrain and environmental challenges, the Department of Homeland Security (DHS) Science and Technology Directorate is collaborating with Canada along with us in a Sensor Sharing Pilot to demonstrate the capability and operational utility of a common surveillance picture between CBP and the RCMP, using a combination of U.S. and Canadian sensor information. Our situational awareness on the Northern Border is enhanced by technological capabilities, including thermal camera systems, mobile surveillance systems, and remote video surveillance systems.

CBP's Office of Air and Marine (OAM) has 41 fixed-wing and rotary aircraft equipped with sensors stationed along the Northern Border, including two unmanned aerial systems (UASs), and they operate out of the Grand Forks Air Force Base in North Dakota.

[1] The joint prepared statement of Mr. Fisher and Mr. Wagner appears in the Appendix on page 984.

UAS flights improve our situational awareness and border security in areas that are difficult to reach.

In addition, we are expanding the coherent change detection technology along the Northern Border this year. As this Committee is aware, this is the same methodology that allows us to cover approximately 900 miles along the Southwest Border without having to deploy technology or Border Patrol agents.

Finally, our integration efforts continue as well. For instance, each month CBP produces the State of the Northern Border Briefing, which provides a cross-component, multi-agency intelligence report for identifying, monitoring, and addressing emerging trends and threats along the Northern Border. The report is produced in direct collaboration with our Canadian partners as well as other Federal, State, and local partners. The State of the Northern Border has provided a broader avenue for information sharing and great intelligence insight to activity with a nexus along our Northern Border.

The Border Patrol is also an active participant in several targeted joint operations which are called the "Integrated Border Enforcement Teams," (IBET). They are comprised of U.S. and Canadian law enforcement personnel, encompassing 15 regions along the Northern Border. IBETs operate as intelligence-driven information teams designed to increase information-and intelligence-sharing capabilities among the appropriate U.S. and Canadian authorities. By incorporating integrated mobile response capabilities in the air, land, and the marine environments, the IBETs provide participating law enforcement agencies with a force multiplier that maximizes border enforcement efforts.

Chairman Johnson, Ranking Member Carper, again, thank you for the opportunity to appear today, and I look forward to your questions.

Chairman JOHNSON. Thank you, Chief Fisher.

I do want to note that the Deputy Assistant Commissioner of the Office of Field Operations (OFO), John Wagner, that was also your written statement, but let me just introduce you as well. You have been assigned to the CBP headquarters since 1999. Mr. Wagner began his Federal law enforcement career in 1991 when he joined U.S. Customs Service as a Customs Inspector. Mr. Wagner also has worked at the New York-New Jersey Seaport and the Port of Laredo, Texas. So, again, we appreciate you joining us here and look forward to your answers to questions.

Our next witness will be James Spero. He is a Special Agent in Charge for the Buffalo, New York, area. Mr. Spero also served as the Deputy Assistant Director of the ICE Transnational Crime and Public Safety Division, Unit Chief for the Identify and Benefit Fraud Unit at ICE headquarters, and Acting Assistant Special Agent in Charge for Homeland Security Investigations (HSI) Washington field office. Mr. Spero.

TESTIMONY OF JAMES C. SPERO,[1] SPECIAL AGENT IN CHARGE, HOMELAND SECURITY INVESTIGATIONS BUFFALO, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S., DEPARTMENT OF HOMELAND SECURITY

Mr. SPERO. Chairman Johnson, Ranking Member Carper, and distinguished Members, thank you for the opportunity to appear before you to discuss ICE's efforts to improve security along the Northern Border.

As DHS' principal investigative agency, Homeland Security Investigations is positioned to leverage its broad statutory authority to support border enforcement. HSI works in close coordination with DHS components and U.S. interagency partners, as well as our counterparts in Canadian law enforcement, to target transnational criminal organizations (TCOs) involved in illicit travel, trade, and finance. HSI applies a full range of innovative investigative and enforcement techniques, including leading and participating in joint U.S.-Canadian task forces, undercover operations, controlled deliveries, asset identification and removal, confidential informants, and Title III electronic intercepts to identify and disrupt criminal operations. We have nearly 1,300 special agents and 100 intelligence research specialists operating along the Northern Border.

In fiscal year (FY) 2014, HSI's seven Special Agent in Charge offices covering the Northern Border, often in joint or cooperative investigations with Federal, State, local, tribal, and Canadian law enforcement, seized more than $237 million in cash and monetary instruments, nearly 26,000 pounds of marijuana, 2,000 pounds of cocaine, 146 pounds of ecstasy, 719 pounds of heroin, 949 pounds of methamphetamine, nearly 1,400 weapons and firearms, over 55,000 rounds of ammunition, and about 8,400 weapon components. HSI Special Agents made over 5,700 criminal arrests resulting in nearly 3,800 indictments and approximately 3,500 convictions. These statistics reflect the impact of our coordinated law enforcement investments and investigations along the Northern Border.

Additionally, HSI maintains the largest investigative footprint of any U.S. law enforcement agency in Canada. HSI's four attache offices, located in Ottawa, Vancouver, Toronto, and Montreal, further enhance national security by serving as ICE's liaison to our interagency partners and our counterparts in local government and law enforcement.

Our partnerships are essential to joint operations and information sharing along the Northern Border and beyond. One example is how HSI participates in the Federal Bureau of Investigations (FBI)-led Joint Terrorism Task Force. HSI brings its unique authorities and experience to the task force to help protect the homeland from threats to national security.

HSI's flagship task force program, the Border Enforcement Security Task Force (BEST), was created in 2005 as a mechanism to address the threat of cross-border crime. In 2007, ICE began to deploy BEST units along the Northern Border. BEST provides a proven and flexible platform from which DHS investigates and targets

[1] The prepared statement of Mr. Spero appears in the Appendix on page 992.

transnational criminal organizations that attempt to exploit perceived vulnerabilities at our Nation's borders.

BEST units differ from other task forces due to their proximity to the border and the program's focus on cross-border criminal activity. Currently, there are four BEST units operating along the Northern Border. One significant advantage of the BEST task force model is the participation and integration of foreign law enforcement personnel who have the ability to conduct cross-border investigations with HSI and our Federal, State, local, and tribal partners to address criminal activity on both sides of the border.

One successful collaboration with our international law enforcement partners is Operation Primed, which is an HSI Buffalo investigation that targeted a cocaine-smuggling organization involved in the illicit movement of cocaine and bulk cash within Canada, the United States, and Mexico. Investigators estimated that this organization was responsible for the smuggling of approximately 1,600 kilograms of cocaine into Canada with a street value of over $60 million. Through successful collaboration with Canadian law enforcement, a high-level target was sentenced in May 2014 to 84 months of incarceration. This individual was arrested in September 2010 when attempting to export 97 kilograms of cocaine across the Lewiston Bridge Port of Entry from New York into Canada. The 97 kilograms of cocaine seizure is to this day the largest seizure in the history of the Port of Buffalo.

In conclusion, ICE remains dedicated and committed to this mission, and we look forward to continuing to work with this Committee on these efforts.

Thank you again for the opportunity to testify today, and I would be pleased to answer any questions.

Chairman JOHNSON. Thank you, Mr. Spero.

I have been informed that Mr. Wagner does have an opening statement. Would you like to give that now, or would you like to wait until the very end?

Mr. WAGNER. I thought I was off the hook.

Chairman JOHNSON. Oh, no. Would you like to give it now or would you like to——

Mr. WAGNER. I will give it now if that is OK.

Chairman JOHNSON. OK, sure. Mr. Wagner.

TESTIMONY OF JOHN WAGNER,[1] DEPUTY ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. WAGNER. Thank you. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to appear today on behalf of CBP's Office of Field Operations to discuss our security and facilitation efforts at ports of entry along our Northern Border.

The U.S. international boundary with Canada delineates two friendly nations with a long history of social, cultural, and economic ties that have contributed to a high volume of cross-border

[1] The joint prepared statement of Mr. Fisher and Mr. Wagner appears in the Appendix on page 984.

trade and travel, amounting to $2 billion a day. CBP ensures that our Northern Border operations protect and secure the vital flow of commerce through trade and travel between our two countries.

The United States and Canada are connected by more than 120 land ports of entry, 750 daily flights by commercial aircraft, and numerous commercial and recreational vessels that cross the maritime border, ensuring the security and efficient flow of cross-border activity. CBP has more than 3,600 CBP officers and 190 agriculture specialists stationed on the border, ensuring dangerous goods, contraband, and individuals are intercepted and legitimate travelers and cargo are expedited.

At many Northern Border ports of entry, we continue to invest in and deploy radio frequency identification technology. This technology, along with the 2009 implementation of the Western Hemisphere Travel Initiative (WHTI), which requires a passport or other secure document to enter the United States, allows CBP to query nearly 100 percent of travelers against law enforcement and terrorist screening databases. We also continue to deploy next-generation license plate readers, large-scale and small-scale imaging technology, as well as a variety of portable and handheld technology, including radiation portal monitors.

Additionally, DHS and Canadian agencies are collaborating to develop, advance, operationally test, and use technologies to enhance cross-border operations. As part of this effort, we have also made significant investments in infrastructure. Since February 2009, the U.S. Government has invested over $400 million to rebuild and improve more than 30 ports of entry along the Northern Border.

Our northern ports of entry experience a very high volume of international trade and travel. Each year, approximately 72 million travelers enter the United States through the border with Canada for business, tourism, school, and to visit family and friends. Many of our initiatives to facilitate lawful international travel at the Northern Border simultaneously increase security. Likewise, CBP develops effective and efficient security operations designed to be contributors to travel facilitation, not barriers.

Security measures vitally protect travel and tourism from the damaging effects of terrorists and other security incidents. Identifying and separating low-risk travelers from those who may require additional scrutiny is a key element in our efforts to facilitate and secure international travel.

The volume of trade crossing the Northern Border is equally significant. In 2014, the combined two-way trade and investment between the United States and Canada totaled $759 billion. The United States and Canada are each other's largest export market, with roughly 16 percent of all U.S. exports destined to Canada.

CBP is committed to a coordinated approach working with our Federal, private sector, and Canadian partners to facilitate the secure flow of trade and travel, reduce transaction costs, and promote economic growth along the Northern Border.

In 2011, the United States and Canada signed the Beyond the Border Initiative. CBP is the primary lead on 15 of the Beyond the Border Initiatives and has significant interest and participates in

seven others. I would like to highlight just a few of our accomplishments to date.

We have completed the first two phases of the entry-exit pilot, which involves an exchange of entry records of travelers at ports of entry along the U.S.-Canadian border in such a manner that land entries into one country will serve as the exit record from another.

We have launched a cargo pre-inspection pilot to test the feasibility of conducting primary cargo processing in Canada to reduce wait times and congestion. Phase I of the pilot was completed in Blaine, Washington, and Surrey, British Columbia; Phase II at the Peace Bridge between Buffalo and Fort Erie, Ontario, also recently concluded.

On March 16, DHS concluded negotiations of a new preclearance agreement for land, rail, marine, and air modes of travel. We have also expanded the NEXUS trusted traveler program to over 1.1 million travelers, an increase of approximately 80 percent since 2011.

Canada and the United States are striving to provide a secure and trusted global supply chain that allows for safe, timely, economically prosperous movement of cargo into and between the two countries. A key means of achieving this objective is through the Integrated Cargo Security Strategy, which seeks to address risks at the earliest opportunity. We conducted pilots in Prince Rupert and Montreal, testing the ability to use advance data and adopt common standards for security screening and inspecting inbound marine cargo at the first point of arrival in North America.

Canada and the United States continue to align and harmonize their Tier 1 trusted trader programs—in Canada, the Partners in Protection (PIP) Program, and in the United States, the Customs Trade Partnership Against Terrorism (C–TPAT) program. We are expecting to launch a fully automated harmonization process allowing a joint application for the cross-border highway carriers in the PIP and C–TPAT programs by fall of this year, and this will allow companies interested in joining both programs to submit a single application and to manage only one partnership account instead of two.

We have also engaged with local entities and authorities to increase security through public-private partnerships. For example, CBP and the DHS Domestic Nuclear Detection Office have partnered with Buffalo and the Fort Erie Public Bridge Authority to replace 18 radiation portal monitors at the CBP primary inspection lanes in northern New York. This agreement was reached in November 2014 and was just recently completed. The enhancements will increase security and efficiency by supporting new calibration procedures that will reduce radiation nuisance alarm rates by over 50 percent.

Chairman Johnson, Ranking Member Carper, Members of the Committee, thank you again for the opportunity to testify today, and I am happy to answer any of your questions.

Chairman JOHNSON. Thank you, Deputy Commissioner.

Our next witness is David Rodriguez. Mr. Rodriguez began his career with the U.S. Customs Service in 1970. From 1973 to 1997, Mr. Rodriguez worked at the Drug Enforcement Administration

(DEA). In 1997, he was selected as the Director for the Northwest High Intensity Drug Trafficking Area (NW HIDTA) program in Seattle, Washington. In 2010, the NW HIDTA—you get used to acronyms in this business—received national awards for its interdiction program on the U.S.-Canada border. Mr. Rodriguez.

TESTIMONY OF DAVID RODRIGUEZ,[1] DIRECTOR, NORTHWEST HIGH INTENSITY DRUG TRAFFICKING AREA, OFFICE OF NATIONAL DRUG CONTROL POLICY

Mr. RODRIGUEZ. Chairman Johnson, distinguished Members of the Committee, my name is Dave Rodriguez from Seattle, Washington. We coordinate and do joint operations with more than 115 international, Federal, local, and State agencies throughout the Northwest. We help these agencies to identify drug threats as well as to implement strategies to address them.

The transnational criminal organizations operating on both sides of the U.S.-Canada border continue to move proceeds from illegal drugs sold in the United States and Canada, as well as drugs, weapons, and bulk cash. These organizations include Caucasian groups, ethnic East Indians, Asian Organized Crime groups, and members of the Hells Angels Motorcycle Club. Also of prominence are the Mexican National drug-trafficking organizations, particularly those headed by Consolidated Priority Organization Targets, which have gained a strong foothold in the Pacific Northwest. These include but are not limited to the Sinaloa cartel, the Knights Templar, and the Beltran-Leyva organizations.

Washington's topography and location render it susceptible to drug smuggling and production. The Washington section of the U.S. border is approximately 430 miles long, with 13 official ports of entry. A significant portion of the international border is located in secluded, dense forest. Remote expanses of public lands are susceptible to many types of drug-related criminal activities, and particularly to large-scale cannabis cultivation.

Public lands that are adjacent to the U.S.-Canada border also serve as routes for drug and currency smuggling. Most of the area on both sides of the U.S.-Canada border is sparsely populated and encompassed by densely forested public lands where crossing the border can be accomplished without detection.

Other threats to the U.S. Northern Border include illegal alien entry, human trafficking, money laundering, firearms trafficking, maritime and air smuggling, and threats relating to terrorist activities.

The I–5 corridor is the main transportation route into the Pacific Northwest and into British Columbia, Canada. Multi-agency investigations show that Drug-Trafficking Organization (DTOs) continue to exploit remote areas along the Washington border, often throwing duffel bags or hockey bags containing drugs directly across the border. In some areas, we just have a ditch that separates the United States and the Canadian part of the territories.

DTOs and transnational criminal organizations in the eastern region of the State take advantage of the remote areas of the border, the lack of cross-border detection equipment such as radar, and the

[1] The prepared statement of Mr. Rodriguez appears in the Appendix on page 1002.

lack of critical infrastructure cell towers to increase the use of these rural routes.

Narcotics are often concealed in legitimate cargo onboard commercial trucks, cars, concealed truck compartments, and commercial and private trailers. Helicopters, airplanes, and boats are used to smuggle drug loads into and out of Canada. While cocaine and marijuana seizures along the Northern Border and Idaho declined in 2014 compared to previous years, there was a demonstrated increase in the quantity and frequency of methamphetamine loads being smuggled into British Columbia.

MDMA seizures totaled over 48 kilograms in 2014. MDMA, or Ecstasy, smuggled from British Columbia to Washington State will continue as Canada is a primary source of MDMA in North America. The precursors are smuggled from China into Canada where it is processed. MDMA in tablet form remains a standard; however, recent investigations in the Northwest indicate that MDMA is also being smuggled in powdered form.

Cocaine continues to be smuggled north into Canada, but seizures have been on the decline; 101 kilograms were seized on the Northern Border in the State of Washington, compared to over 800 kilograms that were seized in 2008 and 2009. Shipments are also known to be sent directly to Canada from areas outside the United States via air and maritime conveyances.

Bulk cash seizures in 2013 totaled $3.1 million, and the year before that it was less than half a million. In 2014 it was approximately a million, demonstrating the fluctuation seen in bulk cash seizures year to year.

Our efforts are guided by the 2012 Northern Border Counternarcotics Strategy updated in 2014, which articulates the U.S. framework for the ongoing effort to reduce the threats on both sides of the border. The strategy addresses joint efforts in the areas of intelligence collection, information sharing, interdiction at and between ports of entry, as well as in the air and maritime domains; investigations and prosecutions; disrupting and dismantling drug-trafficking organizations.

Northwest HIDTA participates fully in the Northern Border programs and will continue to foster cooperation among Federal, State, local, tribal, and international law enforcement agencies along the Washington-British Columbia border. We also believe we share in and participate in an important role in intelligence sharing and enforcement initiatives, training, interdiction, and analytical support.

To conclude, I would like to thank you for the opportunity to be able to testify here today.

Chairman JOHNSON. Thank you, Mr. Rodriguez.

Our next witness is Richard Hartunian. Mr. Hartunian is the U.S. Attorney for the Northern District of New York, which covers 300 miles of the U.S.-Canada border. Mr. Hartunian sits on the Attorney General's Advisory Committee where he serves as the Co-Chair of the Border and Immigration Subcommittee in which he leads the Northern Border Working Group. Prior to this, he served as the Assistant U.S. Attorney and as the Northern District's Narcotics Chief and Organized Crime Drug Enforcement Task Force Coordinator. Mr. Hartunian.

TESTIMONY OF THE HONORABLE RICHARD S. HARTUNIAN,[1] UNITED STATES ATTORNEY, NORTHERN DISTRICT OF NEW YORK, U.S. DEPARTMENT OF JUSTICE

Mr. HARTUNIAN. Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to speak with you today about securing our Northern Border.

The U.S. Attorneys for the 16 Federal judicial districts along the Northern Border know well that border security is a critical component of our national security and work with Federal, State, local, and tribal law enforcement agencies and our Canadian counterparts to combat the transnational crime that threatens it.

The four districts with the largest volume of border crossings and significant border-related criminal activity are western Washington, eastern Michigan, western New York, and my district. The Northern District of New York shares a 310-mile international border with Canada and includes 8 of New York's 11 ports of entry. A huge volume of people and goods pass through the Northern District from the major population centers of eastern Canada by road, rail, forest, field, and waterway. The territory of the St. Regis Mohawk Tribe, or Akwesasne, straddles the border, with portions in New York, Ontario, and Quebec. Smugglers exploit the circumstances at Akwesasne, the Seaway, and the large rural areas to cross the border surreptitiously.

All along the line, criminal organizations try to take advantage of the nature of the border, the volume of traffic, the bi-national commitment to accelerate the legitimate flow of trade and travel and jurisdictional divisions.

The prevention of terrorism remains, of course, our No. 1 priority. My family and I have personally felt the impact of terrorism, having lost my 21-year-old sister, Lynne, in the skies over Lockerbie in the December 1988 bombing of PanAm 103. The terrorist threat is current and real, as dramatically illustrated by the Canadian convictions last month of two men for conspiracy to murder for the benefit of a terrorist group. They plotted to derail a passenger train traveling between New York and Toronto, but were thwarted by a joint investigation that included undercover work by an FBI agent.

U.S. Attorneys' Offices work closely with the 12 Joint Terrorism Task Forces operating at and beyond the border and their Canadian counterparts to spot and stop terrorism, understanding that our vigorous enforcement of the Federal criminal code—prosecuting human traffickers, child exploiters, and those who smuggle drugs, guns, illegal immigrants, and cash—reduces the threat of another attack.

Our national effort to combat transnational crime includes initiatives promoting coordination and collaboration, such as the Integrated Border Enforcement Teams, the Border Enforcement Security Task Forces, and Shiprider, all led by DHS, and DEA-led drug task forces. Each of the four busiest districts has a BEST, and Shiprider is expanding eastward after establishing regular operations on the maritime borders in Washington and Michigan.

[1] The prepared statement of Mr. Hartunian appears in the Appendix on page 1019.

Drug organizations use boats, helicopters, snowmobiles, and vehicle compartments to cross the border without detection of their illicit cargo—Ecstasy or high-potency marijuana moving south, and cocaine, firearms, and cash moving north. For example, in northern New York, we recently dismantled a ring that regularly transported hockey bags filled with 100 to 250 pounds of Canadian marijuana across the Seaway through Akwesasne for distribution in the Northeast and seized 16 handguns headed for Canada.

Another group we dismantled obtained Ecstasy in Montreal and regularly delivered 50,000 pills to wholesalers in New York and Boston, returning with cash and several kilos of cocaine.

In the fight against human trafficking, a joint investigation by RCMP and HSI into the smuggling of young Romanian women through the United States to Montreal for prostitution recently resulted in charges in Canada and the United States.

We cooperate to combat child exploitation, like the case where a defendant was charged in Canada when he tried to bring in child pornography but did not show up for trial. So we took the case, and the defendant was convicted and sentenced to imprisonment for 225 months for transporting nearly 4,000 images and over 100 videos of graphic child pornography.

As these cases illustrate, the existing enforcement teams and task forces have had significant successes, but their structure, composition, and mandates have left them short of true integration. The Beyond the Border declaration in 2011 included the commitment "to build on existing bilateral law enforcement programs to develop the next generation of integrated cross-border law enforcement operations." With our Canadian counterparts, we are addressing the issues associated with integrated enforcement. Meanwhile, the vital work of advancing border security goes on, and now includes the Border Operations Leadership Team (BOLT), which brings together operational leaders from law enforcement and prosecution agencies with border missions for their insights and action on measures to enhance our efforts to eradicate cross-border crime.

We are confident that our bilateral commitment to border security, our mutual respect for national sovereignty, and our shared tradition of protecting both public safety and individual rights will strengthen our efforts to achieve more integrated cross-border enforcement. We are committed to continued vigilance, using the full range of investigative tools and laws available to us. With BOLT's operational charge, the Northern Border U.S. Attorneys and Federal law enforcement agencies are poised to capitalize on the historic opportunity to forge bonds with our Canadian counterparts that increase our effectiveness.

Thank you for the opportunity to describe for you the challenges we are facing on the Northern Border. I look forward to answering your questions. Thank you.

Chairman JOHNSON. Thank you, Mr. Hartunian. I thank all the witnesses for your testimony.

Certainly one of the purposes of this hearing is to try and give some sense for where our main problems occur. We have limited resources, but we have the Southern Border, we have the Maritime Borders, we have the Northern Border. So I would like to go to you, Chief Fisher, and first just talk about in general the basic extent

of the problems. The stats I have are that on the southwest border we had 480,000 apprehensions of people crossing into this country illegally; on the Northern Border, a little over 3,000. Obviously even though we have a much larger border, the bigger problem in terms of illegal immigration is coming through the Southern Border.

In testimony, we have had contradictory testimony on this. That apprehension rate, according to the Customs and Border Protection, is about 75 percent, is what we believe we are apprehending. We have had some BP agents say it is somewhere between 30 and 40. Again, I realize it is very difficult to get that number.

Do we have some sense of what the apprehension rate is on the Northern Border?

Mr. FISHER. Mr. Chairman, the effectiveness rate is primarily used on the Southern Border because at that point along the Southern Border, years ago we have defined the threat, among other things, as flow, flows of people. On the Northern Border, that is not necessarily the case. The threat is defined in different ways. So using an effectiveness rate like we do on the Southern Border to the Northern Border really does not make a lot of sense to us.

What we do do when we take a look at our strategy and looking to where should we deploy our finite resources, we looked a few years ago, and if you take a look at approximately 90 percent of the Canadian population lives within 100 air miles of the border, and then you take that 4,000 miles and look where the density of population areas are where transnational criminal organizations and potential people seeking entry between the ports of entry need to operate, it is very concentrated in some of those areas. Our resourcing deployments and redeployments try to match those areas, and it is driven primarily by intelligence.

Chairman JOHNSON. OK, but, again, is your sense that we really do apprehend a higher percentage on the Northern Border versus the Southern Border or less? Again, I would ask anybody else who would want to chime in on that one.

Mr. FISHER. We do not measure that in terms of the effectiveness rate, sir. My sense would be it is at or higher than the Southern Border, primarily because the flow rate is so low.

Chairman JOHNSON. What about in terms of drug trafficking? Do we have any statistics in terms of the total number of tons coming from the Southern Border versus the drugs being trafficked through the Northern Border? Is it 10 percent? Is it 5 percent?

Mr. FISHER. I do not have the percentage off the top of my head, Mr. Chairman, but I will tell you it is considerably less in terms of the smuggling that occurs between the ports of entry on the Northern Border than what we see on the Southern Border.

Chairman JOHNSON. Again, we have had testimony from General McCaffrey, for example, on the Southern Border, estimates somewhere between 5 to 10 percent of all drugs are interdicted, which means, 90 to 95 percent are getting through. Would we have a similar type of interdiction rate on the Northern Border? Anybody want to answer that that might have some sense of that? Or do we simply not know?

Mr. FISHER. Mr. Chairman, I am not familiar with the General's methodology on that. Generally when we look at seizure rates

along the Northern Border versus the Southern Border, we do not measure that in terms of the comparison to differentiate threat.

Chairman JOHNSON. In terms of the drugs that are flowing through, we have had, again, contradictory testimony on the Southern Border. We have had one witness saying that the majority of those drugs flow through the actual ports of entry. Other witnesses say, no, they go around the ports of entry. Do we have any sense on the Northern Border where the primary drug trafficking is occurring? Are they smuggled literally through the ports of entry with lack of detection? Or are they coming through the vast, unmonitored parts of the border? Anybody want to answer that one? Mr. Spero.

Mr. SPERO. Yes, Senator. One of the things that I would say about the flow of drugs on the Northern Border is it is certainly bi-directional. So certain drugs are coming in from Canada, certain types of drugs are still coming in from Canada, and other drugs are being exported from the United States and going from the United States into Canada.

As far as the difference between whether or not we are making investigations at drugs being interdicted either at the port of entry or between the ports, we are seeing both, just in some cases different drugs.

The case that I spoke about during my oral statement was a case where the tractor-trailer that was being used by the drug-smuggling organization to get cocaine from the Ontario-California part—or where the drugs were being stored at the warehouse was actually being transported across the United States and through the port of Buffalo and was supposed to be delivered to Canada. That particular method was in a trap or a concealed compartment. It was actually under the floor boards of the tractor-trailer. Had that particular delivery been successful, that would have been a case of drug smuggling going into Canada through the ports of entry.

But, likewise, we still see smuggling—I believe it was Mr. Hartunian and Mr. Rodriguez who were talking about the hockey bags coming across in between the ports, whether those are hockey bags with marijuana or some other kind of drug. We get referrals from both the Border Patrol who make those interdictions between the ports as well as we do from the Office of Field Operations who are making those interdictions at the ports. So we are seeing a mix from Homeland Security Investigations, sir.

Chairman JOHNSON. One huge difference between the borders, south versus north, is the cooperation of the bordering country. We obviously have far greater cooperation between the United States and Canada than we have with the United States and Mexico, which makes our job a whole lot easier. On March 16, 2015, we entered into or signed an agreement on land, rail, marine, and air transport preclearance, which is going to require legislation on both sides of the border here. But, Chief Fisher, can you just speak to the difference between the cooperation we have with the Mexican Government versus the cooperation we have with the Canadian Government and what an enormous difference that makes?

Mr. FISHER. Well, information for us is the key to be able to reduce any vulnerabilities, regardless of what border we are talking about. And in particular with Canada, what we have found over

the years is the information sharing is really good. It gets better. I had the opportunity to have three Border Patrol agents that are embedded with the RCMP in Canada, with a fourth to come along shortly this year. And having a Border Patrol agent in Canada working with the RCMP only bolsters our ability to understand the evolving threats and helps us secure the border on both sides.

Chairman JOHNSON. So that type of model that we have with Canada, if we could implement something similar in Mexico, it would make a tremendous difference?

Mr. FISHER. Yes, Mr. Chairman, it would.

Chairman JOHNSON. OK. Thank you, Chief Fisher. Senator Carper.

Senator CARPER. I think the question the Chairman raised is a really important one. A really important one. And to the extent that we can grow, strengthen our relationship with Mexico, improve our confidence in the information that they can provide them and that they can provide us, it will only help. I think maybe one of the best force multipliers on the Canadian border is our relationship with Canada.

I want to just dwell on force multipliers for a while. At least one of you, maybe a couple of you, in talking about force multipliers, mentioned the assets that we are able to deploy between the ports of entry. We have drones on the border of Mexico; we have drones, a couple at least, up on our border with Canada. We have fixed-wing aircraft down along our border with Mexico; we have fixed-wing aircraft up along our border with Canada.

We had an Inspector General's report come out a couple of months ago, and it raised some real serious questions about the efficiency, the effectiveness of the drones that we are using on our Southern Border. They already have problems. We know if the wind above a certain velocity, they cannot fly, they cannot operate. And in certain kinds of weather, they cannot operate. They have not always had the Vehicle and Dismount Exploitation Radar (VADER) systems on board which make them far more effective in terms of a sensory platform.

We saw some aircraft used along the Mexican border, fixed-wing aircraft, that we just sent them out with binoculars as opposed to having something like a VADER system on board.

Let us talk just a bit about how effective some of those force multipliers are, not so much along the Southern Border, but let us talk about how effective they are on the Northern Border. And what can we do to make sure that they are even more effective? I do not know that we need to add a whole lot of people. We have added a lot of people on the Northern Border. We certainly added a lot of people on the Southern Border. What we need to do is be able to deploy them more effectively.

Mr. FISHER. Senator, you raise a really interesting point and very important point in terms of our strategy along the Northern Border. You are right, a lot of times people look at the Northern Border deployments with an eye toward the south and say, "How come you are not deploying that way?"

I will tell you, in terms of technology, whether it is handheld sensing equipment, unattended ground sensors, remote video surveillance systems, the type of technology that we deploy along the

Southern Border is the same along the Northern Border. Our enforcement posture in response to some of those tips and cues may be different; however, our ability to increase that situational awareness is the same in terms of our strategy of the implementation.

What is, at least for us, very exciting on the Northern Border, because of the vast terrain, because of the remoteness of some of these locations and our inability to access the immediate border, whether it is because of lack of infrastructure or roads, or because of the impediments which the terrain provides, we have and will start this year the collection effort that we are doing along the Southern Border, which, in fact, we started back in March 2013, and utilizing the unmanned aerial systems, utilizing additional VADER technology and synthetic aperture radar. We have targeted over this past year about 80 percent of the Northern Border from the field chiefs identifying those very remote locations for us to start doing collection against those areas to be able to do a before and after picture.

And so think of it in terms of a 30-mile stretch along the Northern Border, and the unmanned aerial system will go out and deploy, and it will take a series of videos along those remote areas. Twenty-four hours later, that unmanned aerial system, along with the same technology, will do the same flight.

Now, those before and after videos will then be sent into a computer at what we call a processing exploitation and dissemination cell, and there, very smart and very talented analysts will take a look and see if there has been any change, incursions, if you will, across that border from the first picture to the next picture.

That gives us a sense on whether or not, one, we have incursions; two, whether those areas are emerging threats; or, equally important, what we find along the Southern Border, areas where there is no activity for a variety of reasons, which is equally important, where not to deploy technology and Border Patrol agents so that we can focus on those areas that we know, based on intelligence, based on experience, where those crossings are more likely to occur.

Senator CARPER. OK. I was talking earlier in my opening statement, I mentioned that we have a 4,000-mile border with Canada, plus another 1,500 miles with Alaska and Canada—5,500 miles. Any idea how many drones we have up there?

Mr. FISHER. We currently have approximately nine unmanned aerial systems within the CBP inventory. There are currently two that are assigned to North Dakota. That does not necessarily mean we can only fly to there. We do what is called "federated flights," so we can move those unmanned aerial systems from the Northern Border to the Southern Border based on identified threats. And because of the capability to run federated queries, we also have through the Federal Aviation Administration (FAA) the Certificates of Authorization to be able to move across from the Northern to the Southern border based on threats.

Senator CARPER. So at any given day we might have two or three or four drones along our border with Canada? Does that sound about right?

Mr. FISHER. Primarily it would be two. In the event we needed to plus that up for a variety of reasons, we would be able to augment that.

Senator CARPER. And how often do we have them up in the air?

Mr. FISHER. That I do not know, sir. Again, as you indicated, weather permitting, just like any other manned system, whether it is a helicopter or fixed-wing, the weather is going to be a limiting factor and the readiness rate on when those can fly.

Senator CARPER. OK. I am going to ask you to answer that for the record, if you would, please.

Mr. FISHER. I will do that. Yes, Senator.

Senator CARPER. Let me ask each of you, starting with you, Mr. Hartunian, giving us good advice. What should we be doing more of in our roles that would be helpful to you in the work that you do? And I must say I am very impressed by the work that you are all doing. But just give us some—for the legislative body here, we are going to be taking up appropriations very soon.

Mr. HARTUNIAN. Yes.

Senator CARPER. Anything that you would especially bring to our attention that could be helpful.

Mr. HARTUNIAN. Well, Senator, thank you for that question, which is important. The first thing I think you are doing, which is to call attention to the Northern Border, and we are grateful for the Committee's attention on this issue. There are a lot of challenges we face up there, but as you could tell, I think we are doing some good work. We have great geographic challenges, a lot of big space. But, as I think about some of the things that could be helpful to us in our work with the Canadians, we have had great challenges that have come about in recent years as a result of the explosion of requests for information, formerly the MLAT requests. And we are seeing more and more of those. Information in investigations is frequently needed from computer systems and e-mails, and while we are taking great steps to improve our informal information-sharing efforts and protocols, we are still seeing an explosion in MLAT requests. And so support for perhaps our Office of International Affairs in that effort, Congress working with us.

Senator CARPER. Thank you. My time has expired.

Let me just ask the other witnesses to respond to the same question, if you will, for the record.

Chairman JOHNSON. Yes, for the record.

Senator CARPER. For the record, please.

Chairman JOHNSON. We have other Senators.

Senator CARPER. And thank you for that response.

Chairman JOHNSON. Thanks, Senator Carper. Senator Booker.

OPENING STATEMENT OF SENATOR BOOKER

Senator BOOKER. Thank you, Chairman, and I want to thank the Chairman and the Ranking Member for working with my team in hosting this very important hearing. I am grateful for it.

I want to thank the panel for your extraordinary service to our country. Your dedication and your leadership is essential to our safety and security as a Nation.

It is clear, as was stated already by the Chairman and Ranking Member, that the scale differences in the challenges and threats

between the Northern and Southern Border, it is just not the same scale on the Northern Border, and we understand that. This Committee has held numerous hearings that have tended to focus on the Southern Border, and I am happy that we are having one here because there are still, as you all have enumerated in your various written testimonies, there is still tremendous threats along our Northern Border. And the fact that it is so porous—and I asked for that picture to be put up there, this vast, over-5,000-mile border, with incredibly diverse terrain, has areas that are tremendously porous, as this picture right here demonstrates how easy it is to cross undetected, really illustrates the need for—the urgency for the threat.

Now, I for one obviously am not calling for any fence, but also what I am really looking for is a proportionate focus on our Northern Border threats. And, Mr. Hartunian, you illustrated a lot of the terrorist nature of these threats, whether it is the recent train incident—we can go back to numerous ones, In 1997, Gazi Ibrahim Abu Mezer was convicted of conspiring to detonate a bomb in the New York City subway station. In 1999, the Millennial Bomber, Ahmed Ressam, was stopped at Port Angeles, Washington, with components to be used to produce a bomb.

The list, as you all know as well as I do, of terrorist threats and incursions from the Northern Border are real, are substantive, and should be taken seriously. And so we have tremendous cooperation, and I have been grateful for our northern Canadian borders. Our governments really work well together. But I am also concerned that that cooperation is not going as far as it could be. For example, Canada does not share its no-fly list information with us, which to me raises some concerns for people that they have put on their no-fly list.

So I want to maybe ask that question specifically about the no-fly list. What efforts are we taking to obtain that information from Canada and to ensure the safety and protection of Americans from terrorists who may try to enter our country across that Northern Border? And that can be answered by anyone.

Mr. HARTUNIAN. Well, Senator, I cannot speak to that issue directly, but I can tell you, your point is well taken, and that is, public safety and the threat of terrorism, that is our No. 1 priority. We ought to be mindful of that. We are very concerned about it every day. And to address it, I think we have been working closely with the Canadians.

One of the things that we have been doing is to integrate more closely with the Canadian prosecution teams, and we have been talking to them more frequently, meeting with them and sharing information, not just between the agencies, with the agents and with the prosecutors. So it is a very important point that you make.

Senator BOOKER. But would not that list, just knowing who they have put on a list to stop them from flying, it seems like something that would be common sense to share with us, the people that they might have concerns about.

Mr. HARTUNIAN. Senator, I am not really familiar with their position on that, but I will tell you that in the realm of criminal cases

and criminal work, we have had good luck with interaction and sharing.

Senator BOOKER. Mr. Fisher, do you know about that issue, about the sharing of that information?

Mr. FISHER. With respect, Senator, I believe John Wagner is prepared to answer that question.

Senator BOOKER. Thank you, Mr. Wagner.

Mr. WAGNER. Thank you, Senator. The FBI owns the watchlist for the U.S. Government, and as users of that watchlist or any other information they could glean from another country, we certainly as the operator would welcome that information. We do have fairly robust sharing procedures with our counterparts in Canada, the Canada Border Services Agency (CBSA). We have officers embedded in each of our different targeting centers where we go through airline reservation data and airline manifests to identify national security threats. And we have protocols to exchange information in cases when we see that.

Now, most of the watchlisted individuals we see traveling are through commercial aviation still. The preponderance of watchlisted individuals is still coming via commercial aviation, and we have seen the incidents over the past number of years, focused primarily on commercial aviation, between the Underwear Bomber, the Shoe Bomber, et cetera. We do see a couple hundred a year, though, cross through the Northern Border as well.

Senator BOOKER. Are the Canadians forthcoming with their watchlist or are we not getting that information? Because, again, not only do we have a Northern Border issue—and, again, proportionality between the Southern Border—but 40 percent of our so-called undocumented immigrants are coming from airplanes, airports, overstays on visas in general. So I would think that that would be important information to share.

Mr. WAGNER. Yes, so we set protocols to exchange when each of us identify a threat through our commercial aviation targeting. We have the protocols established to exchange that information and request additional information from each other to do that, and that is where we have our liaisons situated and physically present at each of our different targeting centers to be able to facilitate that exchange of that information.

We also do a lot of what we call rules sharing or joint rule creation where, as we sift through the reservation data in the airline information, we create rules on what we are looking for, what we would consider to be activity we would want to look closer at, and we sit down with the Canadian Government and actually come up with joint rules between the two of us so we can really go through a North American approach on how we do that.

Senator BOOKER. Great. Just because I have limited time, I am going to submit questions I have for the CBP regarding racial profiling specifically, excessive force issues, which looks like I will not have time to ask here, but I would like to submit them and get those responses.

But the last question I really want to ask is just again the resources we are applying to the challenges, and you all, again, are exhibiting extraordinary leadership and commitment and our Canadian partners, extraordinary partnership, the Canadians should

be praised. But I just really am concerned about the personnel challenges, including only 2,093 border agents stationed on the Northern Border compared to the 18,000, again, understandably, on the southwest border with the size of that challenge. But that really means that only about 2,000 border agents are responsible for roughly 300,000 people that cross the U.S.-Canadian border each day.

Do you all share my concern that we need more resources targeting the security of the Northern Border given the vastness of the terrain and the large amounts of people that are coming through? Just in general, are we resource-short on our Northern Border?

Mr. WAGNER. Yes, and we have articulated those needs in the administration's 2015 and 2016 budget requests through a workload staffing model that measures the activity, at least at the ports of entry, and the workload and the volume and attributes a staffing number to be able to accomplish that. So we are happy to follow up afterwards on how that methodology works and what those numbers are.

Senator BOOKER. Thank you.

Mr. SPERO. And if I may, Senator, one of the things that Homeland Security Investigations is looking at is that when there are plus-ups along either the Southwest Border or the Northern Border from either our sister agencies and our counterparts in Office of Field Operations at the port or between the ports under Chief Fisher, a plus-up in CBP, Border Patrol, or inspectors is logically going to result in more interdictions, which could also result in more referrals for the need for investigators and more investigative work. So we would ask that the Committee—and it would not just affect us because as we undertake more, invest in border-related or transnational criminal organization-related investigations, then that would affect Mr. Hartunian and the Department of Justice (DOJ) prosecutorial resources as well.

So we would ask the Committee to look at it as integrated agencies, how each one affects the other.

Chairman JOHNSON. Thank you, Senator Booker. Senator Sasse.

OPENING STATEMENT OF SENATOR SASSE

Senator SASSE. Thank you, Chairman Johnson and Senator Carper, for hosting this hearing. Thank you to all of you for making time for us.

Chief Fisher, I would like to talk about the term "operational control." In 2011, the Government Accountability Office (GAO) found that CBP had operational control of 32 miles of the Canadian border. We have since abandoned that definition. I wonder if you can explain what "operational control" meant then, why we abandoned it, and if we had the same metric today, would we be at 32 miles or would we be in a lot healthier place?

Mr. FISHER. Thank you, Senator. That is an excellent question.

First of all, "operational control" was defined back in 2004 in our previous strategy as the extent to which we were able to identify, develop, track, and bring to a law enforcement resolution all entries along the border. The fundamental premise within the 2004

strategy was predicated on deterrence. So you wanted to prevent the entry in the first instance all across the board.

And so we started getting additional technology like border mile fence, which, by the way, we measured in a linear fashion, and we started deploying Border Patrol agents in the same manner and technology in the same manner.

Operational control as a default equaled the amount of technology deployments that we were doing. In other words, if you had 5 more miles of fence and cameras, it was acceptable based on our internal definitions of the levels of control to be able to count that as operational control. The difficulty came in two different areas. First and foremost is we were actually measuring the inputs. We were not necessarily measuring the outcomes as a result of those deployments. And, second, at some point in time, which it did, those resourcing capabilities ran out, and so we could not as an organization then come back to this Committee or others and say, "Well, we cannot gain any more operational control based on our definitions unless you give us more stuff."

And so we abandoned it because it did not measure what we needed it to measure, and we switched to a risk-based approach to then take a look at measuring the probability of individuals coming across the border versus just the mere possibility, which the previous strategy was predicated to be able to secure the border in that fashion.

Senator SASSE. If we had a lot more than 6 minutes, I would want to unpack whether or not the last point you made, which I completely concur with, that we want a risk-based approach, whether or not that is really reconcilable with it sounds like you are saying we have a kind of baseline budgeting approach around here—many of us are new, and so Gary Peters can ask "new guy" questions—whether or not really you think that the threats are driving your budget requests or whether or not year over year what would the Congress tolerate is what drives the request. And I think that Senator Booker asked a lot of great questions about the relative threats between Northern and Southern Border, and I wonder if that is a place to pivot to the radiological concerns.

In 2009, Secretary Napolitano testified that DHS had deployed radiation detection equipment across all northern ports of entry. Yet 2 years later, in 2011, the same GAO report found that it would not be difficult at all to get nuclear material across the northern ports. I wonder if DHS is still using the same equipment. I wonder if that technology should be called a failure from that point because of the experience of 2009 to 2011, and if better technology exists today, is that something you are requesting of us?

Mr. FISHER. Senator, again, I would defer the answer to that question to John Wagner, who is responsible for the port of entry operations.

Mr. WAGNER. Thank you. Yes, that equipment is still in place, and we are working with the Domestic Nuclear Detection Office as part of DHS to look at the recapitalization of that and what is the right equipment to purchase and design and build and deploy to be able to do that. We are looking at the calibration settings of the equipment, reducing what we call the "nuisance alarms," to really

better focus on what the threats are and what our operational protocols in response to them are.

Senator SASSE. And so what would you say to the GAO 2011 report that it would be easy—or "not difficult" I think was their term, to get nuclear material across the Northern Border? And is that the case today as well?

Mr. WAGNER. I do not necessarily agree with that.

Senator SASSE. What would give you comfort——

Mr. WAGNER. The equipment functions as it was designed to do. It looks at detecting what it was designed to do. I am not familiar offhand with the report or how they drew that conclusion; to say it would be easy to do, whether it would be open or concealed or how it would be detected, I would really have to go back and look at that.

Senator SASSE. OK. I think we will follow up with a formal question on that as well.

When you think about the sources of Canadian threat, one way to think about the problem is what can we deter at the border. Another is: Is the nature of potential terrorist threats originating in Canada changing? So you could have illegal immigration into Canada, you could have legal immigration into Canada, and you could have homegrown terrorist threats inside Canada. After the Ottawa attacks, the Canadian Government said that they thought homegrown terrorism in Canada was a real and potentially prevalent problem.

How do we respond strategically after the Ottawa threats and potential threats in the future if there were another instance of domestic terrorism inside Canada? Strategically inside DHS, where would that threat be assessed and how would it change our behavior?

Mr. FISHER. Well, Senator, in my experience as the Department has matured since 2003, what we have heard so far this morning in terms of integrated planning and execution, sharing of intelligence and information, the more as time goes on, the more dependent all of us are fighting the same fight on each other to be able to do this. No component within the Department of Homeland Security owns the corner market on protecting America. We are so dependent, and each and every day it becomes clear when John and I sit up and we get our intelligence briefing every morning about the evolving threat. And that is a really key thing as a takeaway.

This threat changes all the time, and we have to be able to be as responsive and perhaps more predictive as we start seeing those changes, which is the reason why a couple of years ago CBP transitioned into integrated counternetwork operations as a strategic philosophy, which basically means we are not just going to put Border Patrol agents every 25 meters and fence in front of them and then cameras behind them and, again, try to deter somebody from coming across. Pragmatically, again, in my 28 years' experience, that does not work for a couple of reasons.

One, as a strategic objective, if you have deterrence as a goal, one, you are always going to fail because somebody will always come through. And, No. 2, it is very difficult to measure. So if you are trying to figure out if you are deterring more people this year

than last year, it gets very difficult to really understand. At least I get mired up in all the statistics to try to understand whether, in fact, we are winning.

And so when we look at the intent and capability which defines the threat of those adversaries, be they transnational criminal organizations or terrorism or, as the 2011 strategy to combat transnational organized crime introduced, the convergence of TCOs and terrorism, those are the things that our organization within the Department of Homeland Security are trying to get better each and every day.

Senator SASSE. Thank you. We are at my time, but I will follow up with some more strategic questions by letter. Thanks.

Chairman JOHNSON. Thank you, Senator Sasse. Senator Peters.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Thank you, Mr. Chairman, and thank you for hosting this hearing, which is so important for the Northern Border, along with Ranking Member Carper. I think from Michigan we are at the center of an awful lot of trade between Canada and transactions across our borders. In fact, if you look at the volume of trade that goes across ports of entry, of the top five in the country, Detroit is No. 2, and Port Huron is No. 4. So we are definitely the tip of the spear, so to speak, when it comes to border control. So it is a very important issue for my State as well as for the economy, and that is why I certainly want to thank Senator Johnson for his cosponsorship of the amendment that I put forward in the recent budget bill to make sure that we are fully funding our ports of entry to make sure that they have the security that they need and the ability to process trade and travel efficiently. And that is why I am going to make a brief pitch to make sure that we continue to get funding for the international border crossing, particularly with our new bridge that we are constructing between Detroit and Windsor, and Port Huron. Port Huron does a great deal of traffic. They have been promised improvements in that Customs Plaza which have not occurred, and we need to have those. And it is vitally important to our economy.

And I want to thank all of the panelists here. This is an interesting hearing, and you have an extremely difficult job in the fact that you really have dual purposes, particularly when I look at my border crossings in Michigan. We are asking you to keep us safe, and we are also asking you not to delay us while we cross the border so that we can move trucks for just-in-time delivery for our manufacturing facilities which rely on that. We have substantial agricultural interests, crops on those trucks that cannot rot. They have to go across very expeditiously in order to get to the markets. And so that is a conflicting role, one that you do well, but we are asking you to do even more when it comes to moving traffic more efficiently.

So I want to ask Mr. Fisher and Mr. Wagner, you have mentioned in your testimony a number of things that are happening to expedite some of the movement of goods in trade. What is working and what is it that you need for you to do your job of protecting us while also making sure we can make sure trade is moving efficiently?

Mr. WAGNER. Thank you, and it is a couple of programs that we have that we really need to push and further get participation in. In the trade environment, it is our trusted trader programs; it is linking it to the Canadian programs; it is getting more companies and more businesses and more trucking companies enrolled in them. But it is also building the infrastructure then to support the crossings and allowing us to deliver on the promise that we can expedite those low risks or secure supply chains, and it just cannot be over, say, the bridge structure or through the border crossing. You have to have the resulting highways to feed into that, to support that. And it is, getting a higher percentage of transactions into those programs.

On the traveler environment, it is the NEXUS program. It is getting more travelers into those NEXUS lanes, getting preapproved so you can go back and forth much easier. It is less time we spend on these "enrolled populations," as we call them. It allows us to better focus on everyone else. So getting those percentages up, but also having the infrastructure to support, and allowing us to then deliver on the promise that we make them of this facilitated or expedite crossing to do that.

And then it is working closely with the Canadian Government, looking at ways to increase the use of facilitative technology, most notably like the Radio-Frequency Identification (RFID)-enabled traveler documents, looking at can we get a higher saturation of those types of documents, because those save us time at the border. They save us resources because we do not have to physically handle the card and read it through the reader. It reads automatically. We have seen great strides on the U.S.-Mexico border by getting a higher saturation of RFID-enabled lanes. It allows us to then do the watchlist queries automatically as the car pulls up. And then building the infrastructure and segregating the traffic according to risk and/or facilitative technology, you know, just like the toll booths do with E–ZPass, Exact Change, and everyone else. NEXUS is the E–ZPass lane or the SENTRI is the E–ZPass lane. The Exact Change is something we call the "Ready Lane," and that is somebody with an RFID document, but not necessarily vetted and preapproved like the trusted traveler program of NEXUS or SENTRI.

And then everybody else goes over to the side, and there might be a longer wait there because, we know less about them or they have—a travel document does not allow us to facilitate their crossing. So it is really just pushing that and getting more people enrolled, and then the infrastructure to support it.

Senator PETERS. Well, we continue to have delays both in Port Huron and Detroit, and I know you are making great strides to expedite that. And it costs money. It costs a lot of money with the delays based on how the system works now.

Are there additional resources that you need, or is it just a matter of time to implement these systems?

Mr. WAGNER. No, it is additional resources also. Like I mentioned earlier, we have a workload staffing model that takes all of the activity an officer does at a port of entry, takes the average time it takes to do it, takes how many times a day it is typically done, and comes up with the amount of hours to run a port of

entry, and divide that by the available work hours of an officer, and we come up with the staffing number of what we need to run based on the workload for that port of entry.

Now, we can mitigate that need for new staff by some of our business transformation improvements that we make. One of our current efforts is the trucks pull up and are still paying cash, a couple of dollars in change, to pay the user fees to cross the border rather than buying the decal. So we are looking at ways could they pay that in advance online so we are not collecting cash in that primary booth and making change to deliver back to them, and the resulting savings and the workload savings and the time saving, that translates in to staff at some point.

Then the facilities piece, we recognize the facilities are extremely expensive just between the facility itself, the staffing and the equipment needed, and then the highways to connect it. So a lot of coordination needed, we would like to see a lot of regional planning to look at crossings as a system of crossings rather than individual bridges or tunnels or crossings that sometimes compete with each other for traffic and for toll revenue. We would really like to see regional planning efforts that take them as a system of crossings, working with our Canadian counterparts to move that traffic north and south on both borders.

Senator PETERS. Great. I am running out of time, Mr. Chairman, but I do have questions also related to racial profiling and the Justice Department's exemptions of the CBP for racial profiling and with some of the Border Patrol's activities in Michigan as well that a number of my constituents have raised. I will do that in writing, and I look forward to your response to some very serious concerns that have been raised to me, and I would like to hear your response.

Thank you.

Chairman JOHNSON. Thank you, Senator Peters. Senator McCain.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. I thank the witnesses for being here.

Chief Fisher, last month, Congressman Salmon and I introduced legislation that would provide Border Patrol with access to Federal lands to conduct routine patrols and install needed surveillance equipment to detect illegal entries across the border. GAO testified that Border Patrol's access to some Federal lands has been limited because of certain land management laws. For example, the Organ Pipe National Monument, they did not approve—the land manager did not approve of the Border Patrol's request or plan to install detection equipment, in this case a tower. But we see this time after time where the land manager is making the final decision on the installation of this equipment as opposed to the Border Patrol.

Can you explain to me why that should be—one, if it is true and, two, why that should be?

Mr. FISHER. Well, Senator, I do not know for a fact that is true. I am not going to dispute your report and what GAO may have found. I can imagine in some locations along all of public land there are decisions that are made within the Department of the In-

terior, Fish and Wildlife, that perhaps are antithetical to the policies and/or the approach that we would take in terms of the border.

Senator MCCAIN. Well, then it seems to me there should be a clear definition of who the final decisionmaker would be, which it seems to me should be your organization, not the land manager.

During a hearing, Chief Fisher, a month ago, General Kelly, who is the Commander of the U.S. Southern Command, issued a warning about the threat that budget sequestration poses to security along our Southern Border. General Kelly warned that the potential threat of terrorists crossing our Southern Border "is extremely serious" and called the budget cuts under sequestration "a catastrophe which could effectively put me out of business."

Mr. Wagner and Chief Fisher, do you agree with General Kelly's assessment of the effect of sequestration on your ability to control our borders?

Mr. FISHER. Senator, I would agree with the general's assessment in terms of how the assessed threat is really serious in terms of identifying risk along our border. I think that is accurate.

Senator MCCAIN. How about being able to carry out your duties?

Mr. FISHER. There are challenges——

Senator MCCAIN. Under sequestration.

Mr. FISHER. Yes, sir. There are challenges each and every budget cycle with or without sequestration. We have finite resources——

Senator MCCAIN. So it does not matter to you?

Mr. FISHER. No, sir. It does matter to me.

Senator MCCAIN. Then tell me, for the record tell us whether it matters or not.

Mr. FISHER. Senator, it does matter, yes. Thank you.

Senator MCCAIN. And how serious is the impact?

Mr. FISHER. At times it can be very serious.

Senator MCCAIN. Thank you. Mr. Wagner.

Mr. WAGNER. I concur with the Chief. It is something we manage through. It is an additional challenge that can be distracting from the mission. It can have detrimental——

Senator MCCAIN. Or you can just manage through it, right?

Mr. WAGNER. We manage through—well, we have to. We have no other choice.

Senator MCCAIN. Well, again, am I not making myself clear? I want to know the effect of sequestration on your ability to do your job.

Mr. WAGNER. It makes it more difficult.

Senator MCCAIN. How much more difficult?

Mr. WAGNER. The entire process, getting a budget 6 months into a fiscal year, makes it more difficult; looking at cuts arbitrarily across the board makes it more difficult.

Senator MCCAIN. How about your ability to secure our borders?

Mr. WAGNER. We do the best we have with the process that we go through.

Senator MCCAIN. I am asking how it affects your ability to enforce our borders. What is the matter with you today? This is a pretty straightforward question. I want to know what sequestration—how it affects your ability to enforce our borders.

Mr. WAGNER. I said it makes it more difficult and more challenging. I do not have a number that I can put up.

Senator MCCAIN. OK. Chief Fisher, General Kelly also said, and I quote, "Terrorist organizations could seek to leverage those same smuggling routes to move operatives with intent to cause grave harm to our citizens or even bring weapons of mass destruction into the United States." That is General Kelly, the Commander of Southern Command's testimony last month before the Armed Services Committee. Do you share that view?

Mr. FISHER. Yes, Senator, I do.

Senator MCCAIN. Would you elaborate?

Mr. FISHER. Yes, Senator. I had mentioned earlier in terms of the 2011 strategy to combat transnational criminal organizations, and in particular the convergence, wherein that strategy looked at the possibility of organized crime and terrorism basically coming together to be able to exploit vulnerabilities along our border, and other areas as well. And we see that as an emerging threat. Our shift to taking a look at risk and risk mitigation as opposed to just putting Border Patrol agents and fence everywhere, was the reason for that as well.

Senator MCCAIN. Are you seeing apprehending people coming across particularly our Southern Border but also our Northern Border that are not from the traditional countries that we usually see immigrants? I am talking about Mexico, Central America. Are you seeing people coming from many other parts of the world that you are apprehending?

Mr. FISHER. Yes, Senator. On average, over the past 3 years along the Southern Border in particular, just because of the volume, we see individuals that are represented from over 140 different countries.

Senator MCCAIN. 140 different countries?

Mr. FISHER. Yes, Senator.

Senator MCCAIN. And could you give us some examples the kind that would surprise the average citizen?

Mr. FISHER. Although the vast majority is still with the contiguous countries of Mexico, obviously on the Southern Border, Central and South America, I think we saw some of that increased activity predominantly from countries like Guatemala, El Salvador, and Honduras in particular.

Senator MCCAIN. Chinese?

Mr. FISHER. I beg your pardon?

Senator MCCAIN. Have you seen Chinese come across the border?

Mr. FISHER. Yes, sir.

Senator MCCAIN. Africa, Sub-Saharan Africa?

Mr. FISHER. Yes, sir. North Africa. Like I said, I have the list of 144. I do not have them with me right now, sir.

Senator MCCAIN. Would you please submit that to the record and the numbers of those from these—part of this obviously is international human-smuggling operations, but also it could be disturbing to all of us to see how far away many of these illegal immigrants are coming across the border, obviously. Does that concern you as well?

Mr. FISHER. It does, Senator. I would be happy to provide that list to you.

Senator MCCAIN. Thank you.

Finally, Mr. Chairman, are you expecting another large number of children showing up on our border, on our Southern Border, in the next couple of months?

Mr. FISHER. Senator, I am confident at this point that, based on where we are, halfway through this year, that we will not see the level of unaccompanied children and levels of family units that we saw last year.

Senator MCCAIN. But you will see a significant number?

Mr. FISHER. Again, if you are defining "significant" as—if you compare that to 2010 and 2011, it will be up above those levels. But it is going to be down over the preceding 2 years.

Senator MCCAIN. I thank the witnesses.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator McCain. Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman. Gentlemen, I appreciate you being here today, and thanks for your service in protecting our great country.

Today we have heard a lot of testimony about shared efforts between Canada and the United States, and I do believe that they are a strong partner for us. I know Senator Booker had mentioned sharing the no-fly list information. That would be very important. But are there any other specific initiatives that we need to look at as far as joint activities with Canada, anything that in your mind—and maybe, Chief Fisher, if you could address this, or Mr. Wagner, but specific initiatives that we really do need to take a hard look at and implement?

Mr. FISHER. Yes, Senator. I would say I briefly mentioned the IBET teams where we are working very closely, embedded in many cases physically in space where we can share information, and, equally important, not just the sharing of the information, is then being able to figure out what we collectively are going to do about that information on a particular threat. And if you take a look at the two countries and the different jurisdictional authorities and associated authorities that go with that, we are a lot stronger in doing that. And to the extent that we can expand not just the concept but those teams in some of these regional concepts, I think we will be better for doing just that.

Mr. WAGNER. Yes, continuing to work with CBSA and other colleagues in Canada as they develop additional targeting and information-sharing systems. They are working on a system much like our ESTA system for visa waiver travelers, their preapproval of that, and working with Canada to build a similar system really so we have a North American approach and consistent targeting and identification of national security factors; and then sharing and exchanging the ways and the protocols on how we can address those at the earliest possible opportunity.

Senator ERNST. OK. Yes, go ahead, Mr. Spero.

Mr. SPERO. Thank you, Senator. Just to expand on Chief Fisher and Commissioner Wagner's answer, one of the things that I would like to call attention to is, we had talked about—and I believe it was Mr. Hartunian who talked about a lot of the leadership committees and collaboration that is going on, whether it is the Beyond

the Border executive group or the Cross Border Crime Forum (CBCF) or BOLT. Those are, as I said before, are great ways for us to strategize, identify the threats, both interacting with our Canadian partners.

But one of the things I want to expand on what Chief Fisher said was, in addition to the IBETs, our HSI Border Enforcement Security Task Forces are doing—they are making a big difference. They are the operators on the ground who are actually out doing the—conducting the investigations, making the search warrants on both sides of the border, and making the arrests and identifying and disrupting and dismantling the transnational criminal organizations.

It is a great model. It is a model where we are allowed to—or we give our Title 19 cross-designation or essentially deputize Canadian law enforcement, local Canadian law enforcement as customs officers, and that way they can come into the United States and actually conduct a side-by-side with us, joint investigations under our close supervision, but to have that connectivity investigator to investigator, agent to agent, coordination, collaboration, and just working the cases together has proven to be a very successful model.

Senator ERNST. OK. And these are all initiatives that Canada is open to, and they are working well with the United States. Is that a correct assessment?

Mr. SPERO. Yes, Senator, they are.

Senator ERNST. OK. Are there—yes, sir, go ahead, please.

Mr. RODRIGUEZ. I would just like to highlight some of the other work that is going on in the Pacific Northwest, specifically Operation Shiprider. Basically it is an RCMP–U.S. Coast Guard initiative in which different officers are cross-designated to operate in each other's waters.

I also wanted to highlight the fact that the State of Washington and the Province of BC do a yearly meeting with their law enforcement and trade representatives to share issues, problems, and resolutions on our cross-border trafficking. And so I think those are unique to how we operate.

We also engage in mutual discussions with them on a quarterly basis in our joint management team, which has the oversight of the BEST and the IBET programs. And we have a yearly meeting coming up—it is called "Project North Star"-—in Spokane, in which we will, again, sit down with our Canadian colleagues as well as our State and local officials and Federal agencies, again, to strategize and to implement those strategies in the near future.

Senator ERNST. That is great. I appreciate the collaboration that we have with our neighbors to the north. Through this process, have you seen any joint initiatives where the Canadians have actually pushed back or they do not wish to collaborate with U.S. authorities? Are there any of those instances out there? Anybody? None that you have experienced?

Mr. RODRIGUEZ. No. I would say the only reticence sometimes is in the sharing of targeted information. They have certain privacy rules which they have to abide by, and so sometimes that can be a little bit difficult. I think we talked about the MLATs and the information that is provided via that type of format. But I think

those are overcome in the field with operational matters and between the different agencies.

Senator ERNST. OK.

Mr. HARTUNIAN. Senator, from a prosecutor's perspective, we have made great efforts and I think great strides to bring our prosecution teams together to address some of the challenges that we face when we do cross-border operations and investigations. Sometimes there can be challenges sharing information. We have to make sure we are in compliance with the rules of each country. Sometimes we have to make charging decisions. Who are we going to charge and in what jurisdiction are we going to charge them? And there are different considerations that come into play based upon the law of Canada or the law of the United States.

So I think we have come a long way in bringing our prosecution teams together, bringing the Canadian provincial prosecutors and Federal crown prosecutors together with our U.S. Attorneys to work some of those differences out.

Senator ERNST. That is very good. I appreciate it. It is good to know what works and then if there are challenges out there as well. Thank you, gentlemen. My time has expired.

Senator MCCAIN [presiding]. Senator Heitkamp.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Chairman Johnson for the introduction and for the opportunity to talk about a border that we do not talk a lot about in this Committee, which is the Northern Border. And it is interesting Senator McCain is still here because I think one of the challenges we have both on the north and on the south border is, as we have put and deployed more resources at the points of entry, we have opened up rural America, whether it is on the Northern Border or the Southern Border, to mischief. Things that used to happen through the port of entry now could—in fact, are happening on the Southern Border in very remote locations, which creates huge disruption to local communities, to rural America.

I recently hosted Ali Mayorkas, the Deputy Secretary, in North Dakota, and I want to applaud blue and green. We gave them a great look at how cooperation works in North Dakota. And your folks have been just absolutely fabulous on the Northern Border in cooperating with local law enforcement, cooperating with Canadian officials, cooperating with local chiefs and sheriffs. It is seamless. And the applause is all around, but there are challenges.

In Minnesota, the challenges are wooded. In North Dakota it is open prairie, miles and miles. If I took you up there, farmers are farming around the boundary posts. So this is not what you see typically on the Southern Border.

One of the big challenges we have is getting staff in remote locations, and I think you both can say the challenge—I think we are down a number of Customs and Border Protection officers in Pembina, and we continue to struggle to get Border Patrol to stay on the Northern Border.

And so my question to you is: What are you doing within the Department of Homeland Security to secure additional incentives for workforce to stay on the Northern Border?

Mr. WAGNER. Thank you. So we recently commissioned an internal work group to look at exactly that. We have a lot of places that are hard to fill and hard to retain staff at. So we are looking at what are the options at our disposal now as far as relocation incentives, retention bonuses, paid moves, promises of, limited assignments there of a couple of years, and then looking at what is the right options to offer at the different ports of entry.

Senator HEITKAMP. Are you meeting with any resistance internally in making pay adjustments or incentive adjustments to secure staff on the Northern Border?

Mr. WAGNER. No, we have not. It is just a matter of finding the budget funds to do it and figuring out what is the right approach at each one of the locations.

Senator HEITKAMP. So once again we are back to budget constraints giving us a less secure border, I think is the point Senator McCain was trying to get at.

Mr. WAGNER. Well, we have——

Senator HEITKAMP. I know you do not want to say that, but——

Mr. WAGNER. No. I am happy to say that, because, I mean——

Senator HEITKAMP. OK. We would like it if you would say that.

Mr. WAGNER. We have submitted the staffing needs as part of the annual budget for the last couple years. We did receive 2,000 more CBP officers 2 years ago, and we are in the process of hiring them, but the need still remains for 2,624 more, and it is just finding ways to pay for that, and these would be distributed among with the workload staffing model to do that.

Senator HEITKAMP. I think we would be foolish to say that lack of—or that we can manage the borders, either the Northern Borders or the coastal borders, which we have not yet talked about, or the southern land border without additional resources, be it additional aircraft that can monitor the border, basically transport folks—in North Dakota we do not have any capacity for detention, and we have a huge number of what I would tell you are undocumented workers who are working in construction in North Dakota, who are pulled off roofs and pulled off construction projects, only to be on those construction projects the next day.

And so I understand the lack of capacity, but I also think that we have to be realistic about the squeeze that we are putting on rural borders. We are trying to take care of it, whether it is San Diego, McAllen, or El Paso. We see the problems there, and we ignore Cochise County and Pembina and to the west.

And so you guys have to help us work through this because, as we push the envelope and put more and more restraints on those border crossings, we are going to move the bad guys to rural America, whether it is on the Southern Border or the Northern Border.

The other question that I just want to broach quickly, because I think the focus here is all people coming to this country, but we have a fair number of people who are crossing into Canada from this country, and that causes concern for Canadian officials.

Mr. Wagner, I was interested in your exchange with Senator Booker because it seemed like we were maybe two ships passing in the night. Do the Canadian officials not share their watchlist with us?

Mr. WAGNER. I do not believe we get their actual watchlist.

Senator HEITKAMP. Why is that?

Mr. WAGNER. I do not know.

Senator HEITKAMP. OK. Is that because we will not give them ours? Or is it because they have privacy regulations that we cannot work through?

Mr. WAGNER. The FBI manages it for us, and we are users and consumers of it, and we contribute to it. But we are not the owners of that——

Senator HEITKAMP. But what I heard all of you talking about is this extraordinary cooperation you get from the Canadian officials. Sometimes laws do not allow it to be seamless, but I can tell you, as a former Attorney General from my State, when we used to do intel briefings on the Northern Border with local law enforcement, whether it is break-ins, burglaries, drugs, the Royal Canadian Mounted Police were always at those events. And so I can tell you locally it works very well, and it sounds like you believe that it works pretty well kind of country to country.

If you were going to make any changes in that relationship, what would you recommend? Any of you.

Mr. WAGNER. It is really strengthening the information exchange and the access to the information that you have internally within, your organization or your country. We exchange a lot of information with the Canadian Government. At the land border our entry records are serving as their exit records and vice versa, so we can start the exchange and the identification of who is overstaying, and we can also see then who left the country.

In the commercial aviation environment, we are doing joint rules creation and joint targeting efforts to look at threats to North America, not just necessarily the United States or Canada in between. But it is what access do they have to be able to then share with us, which brings up the watchlist.

Senator HEITKAMP. Are we sharing lists of folks who are on the list for deportation with the Canadian officials?

Mr. WAGNER. I am not aware of—I do not know.

Senator HEITKAMP. Mr. Chairman, I will submit some additional questions. But I do want to once again give you a high five for all the great work that is done in North Dakota with constraints on resources and for the extraordinary cross-border cooperation and local government cooperation. You guys are doing a great job up there. Your folks should make you proud.

Chairman JOHNSON [presiding]. Well, thanks, Senator Heitkamp. I wish I would have been here for your questioning, because I know this obviously affects your State quite a bit, what is happening on the border.

Chief Fisher, I do want to go back a little bit to the question from Senator McCain in terms of what is going to happen this year with the unaccompanied children. We should not be minimizing this. Yes, it is down from last year, but last year was a humanitarian crisis. I do not know what you call a 60-percent level or where are we at in terms of the total number that are coming as compared to last year? We are somewhere around 60, 70 percent of last year's problem, correct?

Mr. FISHER. Well, Senator, just so I am clear, it was not my intent to minimize that flow, what happened last year, by any

stretch. And just looking at it—because it is more of a statistical anomaly last year. For us, it is people coming across the border for a variety of reasons. When we see what happened, for instance, last year in South Texas, what the Department of Homeland Security did this year—and, by the way, I should also mention each and every year over the last 3 years we have seen increases from individuals from Central America coming between the ports of entry.

What changed last year was not necessarily the seasonal trends. That continued almost exactly the way it has been over the years. What did change was the volume, and what we tried to do and what we did do with the Secretary's leadership is start looking at after July when the numbers started going down, as really looking back and say, one, how can we be better prepared not just to react to it, but really to better predict it?

At least it was interesting for me to see and how the Secretary approached this is the Department of Homeland Security was one of three departments that had equities and jurisdictional authority to respond to this. When you take a look at Health and Human Services (HHS), that is a very big piece when it comes to unaccompanied children. If you look at the Department of Justice in terms of not just the prosecution but what do we do across the board between the three different departments, that I think was the first time in my experience we started seeing peaks of volumes along the border——

Chairman JOHNSON. I just have to stop you. You used the words that was a "statistical anomaly." No, it was far more than a statistical anomaly. It was a humanitarian crisis——

Mr. FISHER. I do not disagree with that.

Chairman JOHNSON [continuing]. And it was one that was fueled by the actions of this government, this administration. I do not have the chart here. We have used it in other hearings. But we have a chart that shows really the number of unaccompanied children coming from Central America declining at, I guess call it, a manageable level, I think under 10,000. I do not know the exact numbers. I do not have the chart. You had Deferred Action on Childhood Arrivals and that just shot up. It was cause and effect; it was very clear.

And, by the way, in our trip down to McAllen, Texas, I want to commend the Customs and Border Protection and the really tremendous effort that they put forward to address that humanitarian crisis. But it continues at—what?—a 60-or 70-percent level. It is still a problem.

Just having met with General Kelly—and I do not want to put words into his mouth, but I think he is certainly confirming what is my sense, that no matter what Deferred Action for Childhood Arrivals says, no matter what the Deferred Action on Parents, no matter what those memoranda, those Executive Actions say, it is what is the reality. And the reality is if you are a parent or a child in Central America and you send your child or you come up and you get into America, the bottom line is you are staying. That is what the coyotes are telling them; even though we have a countercommunications strategy to say, no, this does not apply to you, the reality is it does apply.

I have to admit, as I have delved into this problem—and I know you are Custom and Border Protection—the conclusion I am really coming to is you could almost be renamed "Custom and Border Processing," because that is certainly what I saw in McAllen, Texas. And as long as we continue to apprehend these individuals, as long as we have these incentives for people to come into this country—because they realize if they get here, they are going to be able to stay. As long as we detect them, apprehend them, and then process them with a notice to appear, and then disperse from around America into the shadows, we are going to continue to have that problem.

So we need to recognize that reality, and we need to start addressing it. I guess this is pretty good staff work here. They have given me my chart, which pretty well shows the reality of the situation. So this is far more than a statistical anomaly. This is something that our immigration laws, Executive actions, actually caused. And until we are actually willing to admit that reality, we are not going to stop it. We are going to continue to have this human crisis occurring—maybe it is only 60-or 70-percent level, but it is still a humanitarian crisis from my standpoint.

Do you want to respond to that at all? Tell me if I am wrong.

Mr. FISHER. Well, Senator, I do want to thank you for complimenting the men and women in Rio Grande Valley and Greater South Texas. I, too, have been down there and am very proud of the work that they do each and every day to protect this country. Thank you, sir.

Chairman JOHNSON. OK. I do want to really get back to the Northern Border and the drug trafficking there because, again, if you really take a look at the root cause of so much of our border insecurity, it is the insatiable demand for drugs in this country and what that has spawned over the last 50, 60 years. Really, our demand has caused so much of this problem, so much of this crisis.

So I want to get some kind of sense of what is happening on the Northern Border, where it is flowing. Listen, I go every year up fishing to Canada. I have gone through those ports of entry. Pretty calm, a bunch of folks with fishing boats. But I also understand how porous that border is as well; just hop in a canoe and all of a sudden you are a camper, and who knows what you are transporting.

So understanding we do not have the statistics—which is part of the problem, by the way, in evaluating how to provide greater security of the border. We do not have the information, and there is a real disparity in information, whether Customs and Border Protection is talking about a 70-, 75-percent apprehension rate versus agents on the ground saying it is only 30 or 40 percent.

I want to get, again, some sense of what is happening on the Northern Border specifically, as best as people can tell. And I realize you do not have exact information, but is the drug smuggling, is the human trafficking—would the potential terrorists that we are concerned about, are they going to come through the ports of entry? Or are they going to be coming through the areas in between the ports of entry? Can anybody address that basic question? Mr. Spero.

Mr. SPERO. Yes, Senator, thank you. From our investigations—and, again, we get a lot of referrals. A lot of our casework does come from referrals from either the ports of entry, the OFO, or between the ports from the Border Patrol. But not all of our investigations are referrals. Some of them are from our own confidential informants or from other Federal, State, and local partners.

We understand that one day the vulnerability could be at the port. One of the ways that we look at national security is that it is our job to make sure that we are investigating criminal fraud cases when it comes to people either pretending or appearing, making themselves appear that they are eligible for an entry visa to come into the country, whether that is a student who is coming in under a different name or does not intend to go to school; or whether it is a worker who claims that they are going to be working at a particular job in a particular industry and purchased that visa; or whether it is in the interior where the fraudsters are trying to go to one of our other sister agencies, Citizenship and Immigration Services, to obtain a permanent residence or maybe even eventual U.S. citizenship by any kind of fraud.

So through our Document and Benefit Fraud Task Forces, through our participation on the Joint Terrorism Task Forces, HSI can bring our Title 8 civil immigration authority, our abilities to investigate fraud, or our Title 19 customs fraud. We are looking at all types of vulnerabilities. We are not just focusing on one. So whether that is people who are flying directly into the country, right into the interior, but maybe on a fraudulent visa, or applied for asylum with some sort of fraudulent application, that is a big vulnerability, and that is something that we take seriously.

But also some of our other national security strategies are to make sure that sensitive technologies are not—we use our export enforcement and our counterproliferation program to make sure the sensitive technologies are not getting outside of the country.

Chairman JOHNSON. OK. Again, I think what I am not getting, what I am not hearing is some sense for how much of the problems are coming through our ports of entry and, whether we have to beef up personnel or improve—fund them in a deficit-neutral fashion, or whether they are coming in between the ports of entry. And how do we ever get that information? I realize it is not the volume, so we are not, I guess, calculating percent apprehensions or anything else.

Chief Fisher, would it make sense to utilize what drone flights we have, would it make sense to have what detection capabilities we do have, would it make sense based on the anecdotal arrest and apprehension rate to do some level of statistical sampling, some kind of measurement to get some kind of information so that policymakers, who are going to be tasked with allocating those scarce resources, have some sense of where the problem does lie on the Northern Border? Do you understand the issue, the information I am looking for here in terms of where the problem lies and what we need to do to really assess the extent of it and direct proper solutions?

Mr. FISHER. I believe I do, Senator, and one of the things that—and certainly for the sake of time, I would offer up a briefing to you or your staff. As was mentioned earlier, it is not as simplistic

just to say, well, it is just happening at the ports, or it is just happening at—the metrics that we use in terms of between the ports of entry, there are 12, and we take a look at trends, not just on the Southern Border; we take a look on the Northern Border, and we get, for instance, with John's folks and try to figure out—say, for instance, in a place like Swanton, what is the dynamic there in Swanton? What is the business model of the illicit networks that operate in Canada that are exploited on the U.S. border?

That scenario in terms of that threat is likely to be different than Blaine, Washington, or in Detroit. And so for us to just—at least for me, to simplistically say, well, it is just at the ports of entry or between the ports of entry, it really depends on the area of the border, and we do have methods to be able to inform our judgments on where those redeployments should go. And we would be happy to sit down and explain——

Chairman JOHNSON. First of all, I am not asking for simplicity here, because I realize it does not exist.

Mr. FISHER. Yes, sir.

Chairman JOHNSON. This is incredibly complex, and it is sector by sector, and it is area by area and State by State, and even beyond that. Again, I realize the Montana border is completely different than the boundary water canoe area up in Minnesota and Lake Superior and Detroit. I mean, this is a vast border and all kinds of differences.

So I guess what I will ask you, yes, let us do a briefing. I want to understand the complexity. I want to understand exactly what you do know about anecdotally where have we—I mean, have people loaded up canoes? Are they flying in in small planes? Are they catapulting drugs across the border like they do on the Southern Border, with cannon, I mean, it is just unbelievable, as I have delved into this situation, the number of methods, the ability to avoid detection, the use of the drug cartels, blocking off the bridges to these kids so that they can funnel them and put pressure, overload the system over here so they can divert Customs and Border Patrol so they can smuggle the drugs over someplace else. Trust me, I understand the enormous complexity of the situation. But I do not have the information. OK? I know it is complex, but I really do not know how complex. I am not sure anybody does. But if we are going to start crafting solutions to provide better border security, we need to better understand the complexity of it.

So, again, I would look forward to a briefing.

Mr. FISHER. I agree. Thank you.

Chairman JOHNSON. I was kind of hoping—Senator Ayotte wanted to come here and ask some questions. If she does not get here in time, let me first offer all of you the opportunity to make a final point. This is something Senator Carper has done. I learned from it. Certainly if I was a witness, I would be sitting here going, "I want to make this point." So here is your opportunity to make that final point. If Senator Ayotte gets here, we will let her question. Otherwise, we will close the hearing.

Chief Fisher, we will start with you.

Mr. FISHER. Senator, thank you for the consideration and obviously the opportunity to be here today. It was brought up a couple of times this morning alluding to some of the effectiveness of re-

porting in terms of what my office reports versus what may have been in the recent past articulated specifically by Mr. Cabrera. I know there have been a lot of questions, and for the sake of brevity, let me just say this:

One, I have seen what Mr. Cabrera mentioned in terms of a host of things: the effectiveness rate, what he is hearing, what the policy is based on presumably what I have directed to the workforce in the field, among other things. Let me state for the record that none of that is based on truth. It is true, however, that Mr. Cabrera is entitled to his opinion. He is not, however, entitled to his own set of facts. And I would—not now, but with your staff—be able to clear that and tell you, in fact, what the policy is by my handwriting, what the transition has been over the last couple of years, and what I expect from each and every Border Patrol agent in uniform as it relates to data integrity and reporting, if, in fact, there are any allegations of misconduct. But thank you again for the opportunity, Senator.

Chairman JOHNSON. I appreciate that. Again, I have a keen understanding of how difficult it is to get this information. This is not like a manufacturing setting where you can study it, and it is all right there. This is enormously difficult and enormously complex. So we are just trying to wade through that and trying as best as possible to describe the reality and trying to ascertain the truth here, knowing that you are never going to get the full reality or the full truth.

So, again, we certainly do appreciate your service to the Nation and doing what you can to grapple with a very difficult situation. Deputy Commissioner Wagner.

Mr. WAGNER. Thank you. It is really just a recognition of some of the economic activity that crosses that Northern Border, what it means to the economy of the United States and to Canada, looking at—within the Office of Field Operations, we have a huge workload of not necessarily just enforcement work. There is the regulatory functions. There is the processing, like you mentioned, of the commercial vehicles that cross the border, welcome our citizens home, welcoming visitors, tourists, business travelers into the United States, ensuring their compliance with all the laws and regulations.

But, the majority of the transactions we do conduct, remember, every truck, every piece of cargo, every person, every train, every boat, everything has to be seen by a CBP officer and admitted and released by a CBP officer. The great majority of those transactions are good, law-abiding companies and good, law-abiding citizens and visitors. And it is layering our enforcement processes on top of that without stopping or hindering that movement back and forth and really ferreting out those bad actors and bad things from coming in. And that is where we try to apply a really dedicated and targeted effort based on intelligence, based on our analysis, based on our cooperation with our foreign partners and our partners within the governments at the Federal, State, and local levels to be able to best do that so we do not stop that commerce, because that will be just as devastating as an attack.

Chairman JOHNSON. I agree. Thank you, and thank you for your service. Special Agent Spero.

Mr. SPERO. Thank you, Senator. I guess for my final point I would just like to add that I understand your frustration with our ability to necessarily pin down exactly or identify exactly where the threats are, because from an Immigration and Customs Enforcement or a Homeland Security Investigations point of view, we are aware our focus is to attack transnational criminal organizations, no matter what they are doing, because what we are finding at HSI is these organizations are smuggling guns, drugs, people, weapons. It is the roots that we are trying to identify and attack, and the organizations. That is why we feel like our illicit path attack strategy puts us on the right path.

We are not focusing on the individual committing the crime. When we stop that seize, we make that big seizure, or we get a referral, that is the beginning of the investigation for us. That is not the end. It does not stop there. And what our strategy is is to attempt to identify the whole scope of these global organizations, whether it is terrorist organizations or other criminal organizations. So that is, reaching back and using our international footprint to identify the bad actors or members of the organization in the source countries, in those transit countries, here in the United States if the United States is the ultimate destination country, but also working with our Canadian partners.

So, we are kind of changing the way that we measure success. I understand that the old methods of straight indictments, convictions, and arrests and seizures and comparing them to the previous years or matching up with what the resources are is not necessarily the best way to determine success. So we are moving toward a model, we have implemented a model where we are looking at, what are the cases that we are doing that are having the biggest impact on border security, public safety, and national security.

So I absolutely want to thank you for holding this hearing and bringing attention to the Northern Border and certainly for giving me the opportunity to represent the men and women of Immigration and Customs Enforcement and Homeland Security Investigations. I know that they are out there every day trying to do the best they can to enforce the immigration and customs laws of the United States.

Chairman JOHNSON. We thank them, and we thank you for your service. Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you, Senator. I just wanted to make a couple of notes from an operational perspective. Again, when we talked about additional resources for the Northern Border, I want to make sure we do not overlook our intelligence capabilities and the challenges that we face. And to that aspect, I think our most critical support that we provide our partners is with intel analyst support. And so I know we talked about agents, investigators, but I do not want to leave that component out as far as the need for intelligence analysts. They play a critical role in our investigations.

Second, I just want to point out a few gaps that my partners wanted to make sure I mentioned, and that was radio interoperability along the border. It still continues to be a problem, especially in those remote areas that you are familiar with, as well as our radar coverage, especially over the Cascades where we have

these deep canyons and we cannot get radar to look down in there. And so that also is one of the gaps we still need to address.

And, finally, as far as looking at specifically drug-trafficking organizations, we measure our success with the numbers that we dismantle and disrupt, and, again, a third of our numbers are multinational polydrug organizations that are impacting not only our Southern Border but also the Northern Border, because we are seeing more and more of our Southern Border DTOs coming up and, again, as I mentioned, trafficking more meth and cocaine through the United States into Canada.

Chairman JOHNSON. They are businesses, and they are looking for additional product lines, and they are looking for additional markets, and they are finding them, and they are growing them, and they are metastasizing. It is an enormous problem.

I also want to comment on the radio interoperability, what we hope is complete interoperability. It is consistently mentioned to us as a problem. It is probably not the sexiest technology here, but it is an incredibly important one. So we have definitely heard that message as well. Mr. Hartunian.

Mr. HARTUNIAN. Thank you, Mr. Chairman. I would agree we face all the threats that you have described, and it can be frustrating—threats from potential terrorists, drug smugglers, alien smugglers, human traffickers, you name it, and those are the threats that we face. I think we should think about it in terms of how we address those threats, and we do it in a couple of ways.

First, we have to have really robust prosecution regimes, and I think our U.S. Attorney's Offices along the Northern Border, I know them all, I know their offices. They work hard. They bring good cases. And now that we are staffing back up after some of the lean budget years that we experienced, I think that things are looking up and the future is bright for us. Robust enforcement is certainly very important.

The second thing that we need is close collaboration between our law enforcement agencies and with our Canadian counterparts. And we could use some assistance perhaps with some of our DOJ law enforcement agencies having resources to work within some of these task force formats, ATF and DEA in particular. But we have to work toward integration, I think, with our Canadian counterparts, and we are taking steps to get there.

And then, finally, as you described—and this was a very important point—we have to address some root causes, and I think we have to take a comprehensive approach to the drug problem that we have and to the crime problem that we have. And that means to do other things other than just prosecute and incarcerate people. We cannot just do that. We have to take a more well-rounded approach. We have to spend effort on reentry and on prevention. And I think the Attorney General's Smart on Crime Program is well designed to take a comprehensive approach toward our crime problem.

So thank you for the opportunity to be here today. I appreciate it.

Chairman JOHNSON. Well, thank you. We are actually working on right now a field hearing on high levels of incarceration rates—

we will probably do that in Milwaukee—somewhat talking about the issue you raised there.

I did want to ask you a question because coming as a district attorney in the Northern Border sector, when we were down in McAllen, we just did a Sunday drive, just driving around with people during off-hours, and local law enforcement was telling me that the fight over prosecutorial jurisdiction is not the fight that I would have expected. Normally I am hearing people, they want the collar; they want to be able to prosecute that criminal. That is not the case on the Southern Border because it is so expensive to prosecute and people's budgets are strained. Basically they are fighting over not having to prosecute individuals, and as a result, anecdotally we were told that unless, for example, there is at least 500 pounds of marijuana, they just do not even bother with prosecution. Now, that is on the Southern Border. As long as you are district attorney on the Northern Border, what are the jurisdictional battles? What are the types of prosecution thresholds, the discretion that you use?

Mr. HARTUNIAN. We do have thresholds, and, typically the larger drug quantities are prosecuted in Federal court primarily. We work very closely with our local district attorneys, particularly along the Northern Border, the four-county border area in the Northern District of New York. And when we have a case that perhaps does not rise to the level of a Federal prosecution, we will consult with our State counterparts, and the case may end up being prosecuted in State court.

I think we work collaboratively with them. I would not say that there is a competition or a desire to hand cases off. My experience is that we work very well, that we have particular interests and needs and priorities, and I think we can meld those together quite well.

Chairman JOHNSON. I have got 4 minutes left to vote. You have already voted, so will you close out the hearing? Is that okey-dokey? I am kind of a rookie here. OK.

Let me just say again thank you all for the time you took. I read the testimony. It is all very thoughtful. I know there is a lot of work and detail that goes into it, so thank you for taking that time and taking your time here to come and testify, your very thoughtful answers to our questions, and I want to thank all my colleagues. This was a very well attended hearing which I think indicates really how importantly we view this problem. But it also speaks to the complexity. There is an awful lot of questions that need at least some answers, and I know those answers are very difficult to get to.

So, again, I want to thank you, and I will turn it over to our Ranking Member, Senator Carper. Thank you.

Senator CARPER [presiding]. Thank you. Thank you all for hanging in here with us. At this point in time, the Finance Committee has been in a markup—we call it a "business meeting"—on the trade legislation, Trans-Pacific Partnership, Trade Promotion Authority, so I am trying to be in two places at once and not doing it too well. And we are voting, so it is a full morning.

I want to ask a question that goes back to something that—I do not know, Chief, if you said it or Mr. Wagner said it, but somebody said it, and you mentioned—maybe, Mr. Hartunian, it was you. But

the matter of Native American lands was mentioned that is actually on the border between our country and Canada. And we have a similar situation along the border with Mexico. And at times I have heard from the Mexican border that sometimes drug smugglers, human traffickers—use that land as a conduit to get through and try to get the cooperation of the folks who own that and live on that land.

Whoever raised this, would you and others just chime in about how this is of interest to us on the northern as well as on the Southern Border? Mr. Spero.

Mr. SPERO. Yes, Senator, thank you. That is true; there certainly are some complexities when conducting investigations of crime on the Native American reservations. One of the complexities certainly on the Northern Border in the area of the Akwesasne Mohawk Indian Reservation that Mr. Hartunian and I share jurisdiction with is just plain the geography, sir. It is tough terrain up there, and it is ripe for smugglers to exploit in all seasons. And then certainly you have that added—the winter months——

Senator CARPER. I am sure you said this. Which country is it in?

Mr. SPERO. The Akwesasne Indian Reservation actually has territory both on the Canadian side and on the United States side, and the geography itself poses a lot of challenges toward law enforcement.

On top of the geography, in addition to the geography, there is some political sensitivities with the Native population wanting to maintain as much sovereignty as they can, so sometimes it is difficult for us to conduct—we have to overcome that challenge of gaining their trust. In some cases, it is a very close knit, small population, and that again poses some issues or challenges for us that are somewhat unique.

But, on the other hand, one of the things that is getting better from our standpoint and we are making a lot more progress is our Massena BEST up there.

Senator CARPER. I am sorry?

Mr. SPERO. Our Massena Border Enforcement Security Task Force. We actually have the Akwesasne Mohawk Police Service representatives on that—participate on the task force, as well as the St. Regis police officers on our task force. There are members that have been cross-designated with Title 19 authority, so essentially they are deputized customs agents, and they are working those cases with us to help reduce those vulnerabilities.

In reality, we know all of the challenges I met. The smuggling organizations know what they are, too, and they try and do their best to exploit everything. So we are trying to do a better job with our outreach on the Indian reservation, our close coordination and collaboration with the Native American police force on that reservation, and working together to do everything we can to mitigate that threat, sir.

Senator CARPER. All right. Others on this point, please. Anybody?

[No response.]

Chief, Mr. Wagner, let us go down to the Southern Border with Mexico. Do we have a similar situation in some areas along the Southern Border? And how do we figure out how to work with the Native Americans to be able to secure that portion of the border?

Mr. FISHER. Yes, Senator. As described in the Akwesasne, on the Tohono O'odham Reservation on the southwest border, which the geography takes on the western portion in Arizona, both in Tucson and what we call the "West Desert," that tribe does extend in the United States and into Mexico, and so part of their—when we look at the border in terms of trying to identify likely routes of entry, over the years as we have built both primary pedestrian fence and vehicle barricades, it is always challenging to try to work with the tribe, work with the leadership in the tribe, and letting them know, if they will allow us to put some impediments along the border, or bring infrastructure or technology to help increase our situational awareness, early in those discussions years ago it was very difficult to make the case, until the infrastructure and technology started to manifest around the reservation, which obviously the path of least resistance came through the Tohono O'odham Nation.

As a matter of fact, up until the middle of 2013, the vast majority of trafficking across the Southern Border came through Arizona, and the vast majority of that traffic came through the West Desert through the Nation. They realize the vulnerability, and we are working a lot better with them.

As a matter of fact, we are currently in the process of developing integrated fixed towers. The first phase of that, as you well know, was in Nogales. In late summer, we are in the process going to transition into Phase 2, and we currently have authorization from the tribe to be able to move into deployment of integrated fixed towers to cover a vast region of that reservation. So that will be for us something that has been a long time in coming, sir.

Senator CARPER. All right. Thanks. Thanks very much.

The last question I will present to all of you here today goes back to something I oftentimes say. I like to say: "Find out what works, do more of that. Find out what does not work, and do less of that." And the advice was actually presented to the Finance Committee a couple years ago when I was serving on it at a hearing by Alan Blinder. Alan Blinder, when he was asked what should we do on deficit reduction, what should we do on deficit reduction with respect to health care, reining in health care costs, he said, "I am not an expert on this stuff. I am not a health economist. But here is what I would do: Find out what works, do more of that." And I said, "Do you mean find out what does not work and do less of that?" He said, "Yep."

So with that spirit and with that thought in mind, could you all just take maybe a minute or so apiece and just talk to us again about what is working on the Northern Border, that appears to be working, that is replicable particularly along our Southern Border? Maybe you could each just pick one point, something that is working along the Northern Border that is worth replicating and can be exported to the Southern Border, and maybe some of the best practices from your experience, your observations on the Northern Border that we would be smart to try on the Southern Border.

Mr. Hartunian, do you want to go first?

Mr. HARTUNIAN. Yes, thank you, Senator. Great question. What is working? Robust enforcement. And that is not to say that is not happening on the Southern Border. I think our U.S. Attorney's Offices all along the border are working very hard. Their people, their

AUSAs, are really working hard to get the job done. But it is certainly a critical component.

I think what works on the Northern Border is close collaboration with the Canadians, and while that might be a bit more challenging in Mexico, I think it can be done, and close collaboration between the prosecutors of both nations, and that is something that we are seeing happen more and more. We are working to improve that, make that happen more frequently, and I think that that is certainly an important approach that we can take. So I would highlight those two things.

Senator CARPER. Good. Thank you. Is one of the reasons why maybe we work better with the Canadians in terms of sharing information is we have less concerns about that information finding itself in the wrong hands in Canada?

Mr. HARTUNIAN. Well, I think that there is cooperation with the Mexican authorities. I think in all cases we have to be careful how we share law enforcement information. That is certainly not a barrier that cannot be overcome.

Senator CARPER. OK. Good. Thank you.

Mr. Rodriguez, please.

Mr. RODRIGUEZ. All right. From my——

Senator CARPER. You were in DEA for a while, weren't you, for a number of years?

Mr. RODRIGUEZ. For 27 years, Senator.

Senator CARPER. That is great. Thank you for that as well.

Mr. RODRIGUEZ. From my perspective, it is just not the one meeting, the one event, the one policy discussion. We have a number of conversations both with our Federal partners on the border as well as with Canadians year-round. It could be case specific. It could be program specific. And if we have to, we then follow up on these discussions where we will put a working group together to work on maybe some Shiprider issues or some intel issues that we need to look at specifically MDMA, or Ecstasy.

And so I think those are the best practices that work well for us on the Northern Border and that makes us unique, and that we need to keep going and hopefully we can eventually have those types of processes in place on the Southern Border to help there.

Senator CARPER. All right. Thanks.

Mr. Spero, same question, please.

Mr. SPERO. Senator Carper, I appreciate the question. I actually had a little bit of extra time to formulate my answer, and I guess the best way for me to describe it or the way I look at it is that it is not necessarily how do we take what is working on the Northern Border and bring it down to the Southern Border. But it is an exchange of best practices across both borders as well as the interior of the United States. And I use the Border Enforcement Security Task Forces, as an example. The BEST was originally created in Laredo in 2005 to combat the violence associated with the transnational criminal organizations that were affecting specifically the Southern Border.

That model, the success of that model, with the collaboration and cooperation and working together on the cases was then brought up to the Northern Border, and now we have four Northern Border

BEST task forces. I happen to oversee two in my AOR of Buffalo, the Port of Buffalo BEST as well as the Massena BEST.

But at the same time, it does not just stop there. We do not bring what we have learned from the southwest border and bring it up to the Northern Border. We had a framework, a great framework to start with, but then we take that to the next level, so our abilities to expand those BESTs, we actually have over 40—just about 43 members now of our BEST team in Massena. So our abilities to incorporate our Canadian law enforcement counterparts at all levels, whether it is the RCMP or the CBSA, but the Surete du Quebec or the regional police offices, and having as much—not just information sharing, because, of course, information sharing is extremely important, but we are able to actually take the information in those collaboration sessions and put them to use in our investigations. And that is how we complete that last piece of identifying, disrupting, and dismantling the transnational criminal organizations that are the biggest threats to the homeland.

Senator CARPER. Good. Thank you. Mr. Wagner.

Mr. WAGNER. Senator, at the ports of entry, really we focus on the risk segmentation of the workload and looking at ways to better utilize the physical infrastructure that is there and getting the most efficiencies we can out of it.

Now, how we define something as lower risk or higher risk is all dependent on what access to what systems we have, the analysis and the targeting capabilities. That is also enhanced by what our foreign partners are sharing with us. We have very good data exchange, information exchange with the Canadian Government and the Mexican Government. They have different capacities as to what access they can get, what information they collect, and then within their own privacy constraints what they can share with us. But it is a little different within both countries, but we do a very robust information exchange with the Mexican Government as well as the Canadian Government that helps us make that risk segmentation determination.

Senator CARPER. Good. Chief, my time has expired, and my colleagues are back. Would you answer that question for me for the record, please?

Mr. FISHER. Yes, Senator. You mentioned it briefly. I think it is the institutionalization of what we see on the Northern Border in terms of shared information, integrated percentage and execution, which then you have a degree of sustainability in that effort. We can do a lot better on the Southern Border in that regard.

Thank you, Senator.

Senator CARPER. Thank you very much. Thank you all. Great job.

Chairman JOHNSON [presiding]. Thanks for holding down the fort. I found somebody on the Senate floor there. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. He just runs around the Senate floor picking up Senators.

Thank you all for being here. I appreciate it. And, representing New Hampshire, the Northern Border is pretty important to us. And I am not sure if you have been asked this question yet, the Director of National Intelligence (DNI), James Clapper, has identi-

fied drug trafficking obviously as a major transnational threat. In my State we are seeing a heroin epidemic, and I know a lot of that is coming over the Southern Border.

So what are the biggest issues that we are facing on the Northern Border? And can you help me understand how is the information sharing with Canadian authorities? Because that is where my local law enforcement and my State police and even the Federal officials that work in New Hampshire would be working with on the Canadian side. Whoever is best to take that question.

Mr. SPERO. Thank you, Senator. Well, with specifics to heroin, you are right, we are seeing heroin that is coming up through Mexico, and the intelligence that we are developing from our ongoing criminal investigations and our closed investigations is that, we are seeing either precursor chemicals or heroin coming from China. It is being imported into Mexico under the control of the cartels. The cartels are using the existing smuggling networks to get them into the United States through the southwest border, and whether the smuggling networks are used to smuggle anything, so whether it is people or whether it is drugs, the cartels have control of the networks and the pathways, and they are using that to get heroin into the country for either ultimate consumption here in the United States or in some cases on into Canada as well.

One of the things that we were talking about was our ability and our need to make sure that we do everything that we can across all levels of law enforcement, whether it is Federal, State, or local law enforcement, or in my particular neck of the wood, even travel law enforcement, and international law enforcement as well, particularly with our Canadian counterparts on the Canadian side of the border.

Where we have the biggest issues in my particular AOR, the Massena or Rouses Point area, we use our Border Enforcement Security Task Forces as a mechanism to share information back and forth with our Canadian counterparts.

So we actually have cross-designated—we have given essentially Title 19 or customs authority basically making State and local law enforcement designated customs officials, but also we are able to do that with Canadian local law enforcement officials as well. And then they can come and work the networks on this side of the border.

So the idea here is to open up information sharing, work the cases together, instead of—not only trying to remove the U.S.-Canadian border as a potential barrier to law enforcement, or in some cases we are even actually able to use it to our advantage. So we understand that it is a problem. Heroin seems to be on the rise. But one of the things that we think is the best way to identify, disrupt, or dismantle these transnational criminal organizations, no matter what commodity they smuggle, whether it is heroin, whether it is cocaine, or whether it is marijuana—or firearms, for that matter—is to identify the scope of the organization in the source countries, the transit countries, the destinations countries, and work together with law enforcement at all levels to share the information and work the cases.

Senator AYOTTE. So I get all that, just thinking about how do we drive up the price of heroin? Because one of the problems we have

right now with heroin is it is so cheap. Obviously, the more we can make it tougher for them to transport this stuff over—it is so cheap that some people are addicted to prescription drugs. They go over to heroin, and it is really fueling this huge public health epidemic, not just in New Hampshire. It is across this country. Do we need to give you bigger tools? What do we need to give you to help you to drive up the price to really come down on the people transporting heroin?

Mr. SPERO. One of the things that we look at in any of the drug trade, whether it is heroin, and I should have also mentioned before that, the newer trends that we are seeing with respect to heroin is the heroin laced with fentanyl, which is really the deadliest——

Senator AYOTTE. Yes, and it is like heroin on steroids, basically.

Mr. SPERO. Absolutely, ma'am. As with any business model, I think that, if we can be more effective at reducing the supply, then that would be one way to drive up the price.

Another thing that we are trying to do is with almost every enforcement program that we have at Homeland Security Investigations, there is also a public outreach or a public service announcement message that goes along with it. So if we do have a particularly big search warrant, where there is a big seizure or a big arrest or a big sentence, we try and get out to the public that, hey, if it is the kids that are using the heroin laced with fentanyl, to get out there and say, look, there are some—you do not know what you are using or what the impacts are on you. So not only did we just conduct this investigation and make this arrest, but, parents, kids, this is why it is important that you do not use it because you do not——

Senator AYOTTE. Yes, we have to do a better job overall with that.

I have a question about in terms of Canada, as I understand it right now—and I am not sure, whoever the best person to answer the question, I will just field it. Right now, as I understand it, Canada does not have a system in place to screen inbound airplane passengers against the terrorist watchlist, and so they are moving toward the capability. Is this true? And if so, those on the terrorist watchlist can presumably enter Canada on an airplane? Is that true? Who knows about that, and can you help me understand that? Because I am really worried about, we have these foreign fighters that have gone to obviously Syria, Iraq, Yemen. Some of them are Canadians. We have had some Americans, too. But, Canada is fairly—we have a great relationship with Canada, and so if you can get to Canada, it is really not that hard to get to the United States of America. So what are your thoughts on this problem?

Mr. WAGNER. I do not know if they have direct access to the U.S. Government watchlist and that they screen against that directly. But they have a similar system that we do of screening airline passengers against the airline reservation systems and the airline manifests before that person comes into that country. We work very closely with them, and we identify similar approaches to how we screen that. We call them "rules," and we set rules against how we scrub that data and how we identify national security or any

other types of concerns. We do joint rule creation. We do rules exchanges, and we have certain protocols in place that when certain rules fire, we will exchange information and ask each other country about additional information.

Senator AYOTTE. Do you know if they have the equivalent of our terrorist watchlist? What are they checking their passenger list against? Do you know the answer to that?

Mr. WAGNER. It is against their own systems and their own list, so they do, I believe, have a national security list. They have customs records. They have immigration lookouts. They have access to the Interpol lost and stolen database.

Senator AYOTTE. So can I ask you a question? Just when you are thinking about a friendly neighbor like Canada, why couldn't we join forces on some of that in terms of terrorist watchlist information? I know we do information sharing, but it seems to me that if we cannot trust the Canadians, we are in trouble. Any thoughts on that?

Mr. WAGNER. We do not own that information, so it really would not be ours to exchange with them. But as consumers and users of it, we would certainly welcome access to any additional sources of information.

Senator AYOTTE. Maybe I am asking that of the wrong person, but I am the Chair of the Aviation Committee, and I think this is perhaps a question I should direct to TSA.

Mr. WAGNER. Just one final point. If somebody does fly into Canada and drive across the border, we run the same database checks and the same watchlist checks at the land border as we do in commercial aviation. They are the same systems and the same databases we are checking.

Senator AYOTTE. Good. So you would catch it there.

Mr. WAGNER. Correct.

Senator AYOTTE. Catch an individual there if they presumably were on our list, even if Canada did not catch it.

Mr. WAGNER. Correct.

Senator AYOTTE. OK. Great. Thanks.

Chairman JOHNSON. Thank you, Senator Ayotte. That is a really good point. My understanding is the same as yours, that they are not using our watchlist, and that is something I think we need to press to see what we can do to cooperate between two governments.

Senator AYOTTE. Especially since it is between two governments that have a friendly relationship.

Chairman JOHNSON. Correct. So, again, thank you for coming. Again, thank you all for your time, your efforts, and your testimony.

This hearing record will remain open for 15 days until May 7 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

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

APPENDIX

Opening Statement of Chairman Ron Johnson
"Securing the Border: Understanding Threats and Strategies for the Northern Border"
April 22, 2015

As prepared for delivery:

Good morning and welcome.

Today marks our fifth hearing focused on border security, this time to define the threats we face on the northern border. The threats at our northern border differ from the threats at our southwest border: There are fewer illegal crossings at the northern border and less contraband originating from Canada. We also have stronger information sharing with Canada to help assess significant threats before they reach our border. But the U.S.-Canada border constitutes the longest border in the world, and the remoteness of parts of it ensures that threats continue to exist and must be taken seriously.

The continental border from Washington State to Maine and along Alaska is more than 5,500 miles long, and it includes dense forests, rugged mountains, open plains and vast lakes. Canadian criminal groups exploit this terrain throughout the year. For example, in the Great Lakes region, traffickers use small vessels during the summer and snowmobiles during the winter to smuggle drugs, people and illicit goods. Smugglers' ability to deliver contraband demonstrates that there are security gaps along the northern border that must be addressed.

While the vast majority of illegal drugs entering the U.S. arrive across the southwest border, Canada is the largest provider of MDMA (commonly known as ecstasy) to Milwaukee and other cities in the Great Lakes region. According to the 2014 National Northern Border Counternarcotics Strategy, criminal groups based in British Columbia, Ontario and Quebec smuggle MDMA, methamphetamine and heroin into the U.S. while simultaneously transporting large volumes of cocaine, cigarettes and weapons into Canada.

Additionally, heinous acts inspired by Islamic terror groups less than 100 miles away from our northern border represents a serious threat to U.S. national security. Just last month, the Canada Border Services Agency (CBSA) arrested a man for plotting to bomb the U.S. consulate in Toronto. This and other recent events in Canada remind us of the importance of remaining vigilant against acts of terrorism and lone-wolf fighters. We must understand the nexus between drug cartels and international terrorism and continue working with our Canadian counterparts to prevent terrorist travel in North America.

This hearing will assess U.S. efforts with Canada coordinated through the Beyond the Border initiative to combat cross-border criminal activity, unlawful crossings and terrorist threats before they reach the U.S.-Canada border. Specifically, we will examine the bi-national law enforcement partnerships in place between the U.S. and Canada to leverage resources and to maintain domain awareness of areas that are difficult to patrol.

I thank all the witnesses for testifying today and I look forward to your testimony.

Opening Statement of Ranking Member Thomas R. Carper
"Securing the Border: Understanding Threats and Strategies for the Northern Border"
April 22, 2015

As prepared for delivery:

I would like to thank Chairman Johnson for holding this important hearing on the security challenges we face along our northern border. Over the past several months, this Committee has spent a great deal of time trying to better understand the security challenges we face along our lengthy southern border.

But as large and challenging as our southern border is, our shared border with Canada is even larger and comes with its own unique opportunities and risks. Our shared border with Canada is the largest in the world, spanning 4,000 miles. When you add Alaska, that shared boundary grows to 5,500 miles.

It's also an economic powerhouse for both of our countries. According to one estimate, 300,000 people and $1.5 billion in trade cross the U.S.-Canada border every day. That is something to celebrate, even as we pay close attention to addressing potential border threats.

Last Congress, I had the pleasure of visiting Detroit with Senator Levin and North Dakota with Senator Heitkamp, where I saw first-hand some of these opportunities and challenges.

The risks along the northern border include both northbound and southbound flows of drugs, other transnational criminal activity, and potential exploitation by terrorists.

Since 9/11, we have increased our border staffing and technology footprint along the northern border. For instance, there are roughly 2,000 Border Patrol agents stationed along the northern border now, compared to just 340 in 2001. And, there are 3,700 CBP officers at the northern ports of entry, an increase of about a one third over the last 10 years. We now have several CBP drones patrolling high above our northern border, as well.

Is there more we can do to better secure our northern border? Sure there is; however, we can no more seal this border than we can totally close our southern border. Instead, we need to better understand the risks associated with it. Then, we need to implement the most cost-effective strategies to buy down those risks. And, we need to do this while sustaining the robust trade and travel relationships that benefit us and our neighbors so greatly.

Not unlike our southern border, force-multiplying technology such as aerial surveillance, underground sensors, and cameras on mobile towers can greatly increase our ability to detect and respond to threats along this vast northern border.

Good intelligence and strong information sharing networks can also help make the best use of limited staffing and resources. Fortunately, our relationship with Canada is perhaps the best 'force multiplier' we could wish for. Canadian and United States agents are working closer and

closer together in a number of areas to enhance our shared security and ensure our shared prosperity.

I look forward to hearing more about how this relationship is working under the 2011 'Beyond the Border' framework, and any areas where progress is still needed. I also hope the witnesses will address whether there are successful practices at the northern border – either for increasing security or expediting trade or both – that could be replicated at the southern border if they are not already.

Finally, I continue to hope that our focus on border security will become part of a larger conversation on how to fix our broken immigration system and pass comprehensive immigration reform.

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TESTIMONY OF

MICHAEL FISHER
Chief
U.S. Border Patrol

And

JOHN WAGNER
Deputy Assistant Commissioner
Office of Field Operations

U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

Senate Homeland Security and Governmental Affairs Committee

ON

"Securing the Border: Understanding Threats and Strategies for the Northern Border"

April 22, 2015
Washington, DC

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, it is a privilege and an honor to appear before you today to discuss the work of U.S. Customs and Border Protection (CBP), particularly the tremendous dedication of our men and women in the field, both at and between our ports of entry (POE) along the Northern border of the United States. Integral to these efforts is cooperation with our Canadian partners, state, local and tribal agencies, and other components of the U.S. Department of Homeland Security (DHS).

We would like to begin by expressing our gratitude to Congress for its continued support of the mission and employees of CBP. We greatly appreciate your efforts and assistance, and we look forward to continuing to work with you on these issues in the future.

As America's frontline border agency, CBP is responsible for securing America's borders against threats, while facilitating legitimate travel and trade. To do this, CBP has deployed a multi-layered, risk-based approach to enhance the security of our borders while facilitating the lawful flow of people and goods entering the United States. This layered approach to security reduces our reliance on any single point or program that could be compromised and includes close coordination with DHS partner agencies, with other U.S. interagency partners, and with our Canadian counterparts. Close coordination with our partners ensures our zone of security extends outward and that our physical border is not the first or last line of defense, but one of many.

DHS efforts to enhance Northern border security are guided by the goals, means, and methods outlined in the Department's June 2012 Northern Border Strategy (NBS).[1] The NBS is the first Department-wide strategy to guide DHS policy and operations at the U.S. Northern border. It is consistent with the Quadrennial Homeland Security Review (QHSR), the National Northern Border Counternarcotic Strategy as updated in 2014, the U.S. National Strategy for Global Supply Chain Security, and the goals of the U.S.-Canada Beyond the Border (BTB) declaration.

The NBS enables a more efficient and effective DHS presence at the Northern border by ensuring the Department's resources are fully leveraged and efforts are not duplicated. The NBS emphasizes the use of information-sharing, personnel, technology, infrastructure, and partnerships, if appropriate, as key strategic elements necessary to achieve the three Northern border goals:

- Deter and prevent terrorism and other illegal activity;
- Safeguard and facilitate the secure flow of lawful trade and travel; and
- Ensure community safety and resilience before, during, and after terrorist attacks and natural disasters.

Northern Border Environment and Challenges

The United States and Canada are connected by more than 120 land POEs, 750 daily flights by commercial aircraft, and numerous commercial and recreational vessels that cross the maritime border. Every day, approximately 300,000 people cross the U.S.-Canadian border for business, tourism, school, and visiting family and friends. Since the implementation of the Western

[1] *See* Department of Homeland Security, Northern Border Strategy, 2012, http://www.dhs.gov/dhs-northern-border-strategy.

Hemisphere Travel Initiative (WHTI) in June 2009, WHTI compliance along the Northern border exceeds 98 percent, allowing CBP to facilitate travel and focus on individuals who may pose a threat to national security. CBP makes approximately 6,000 arrests and interdicts approximately 40,000 pounds of illegal drugs at and between the POEs along the Northern border each year.

There are a number of ways in which the Northern border is operationally distinct from other environments. The international boundary with Canada extends over 5,500 miles across both land and water (including the border of Alaska), and it is often described as the longest common non-militarized border between any two countries. It delineates two friendly nations with a long history of social, cultural, and economic ties that have contributed to a high volume of cross-border trade and travel, amounting to more than two billion dollars a day. The border is a diverse region consisting of major metropolitan centers, integrated bi-national communities, numerous transit hubs, and vast regions with little or no population.

The extensive commercial and transportation infrastructure along the border also provides avenues vulnerable to exploitation by traffickers and smugglers, including vehicular transportation, commercial trucking, and commercial and non-commercial air, rail, and maritime modes of transportation. Communication and sensor signals remain difficult to transmit in many of these very remote areas that hinder the Border Patrol's ability to safely patrol and respond to traffic. Harsh winter conditions severely impact patrol capabilities for the majority of the winter and spring seasons.

In the winter, sub-zero temperatures and significant snowfall provide a natural barrier along some portions of the Northern border. While pedestrian and vehicle traffic are reduced during the winter, unlawful entries between the POEs utilizing snowmobiles are not unusual. When frozen, some rivers, lakes, and streams become easier for smugglers and others to utilize for crossing the border on foot, or by snowmobiles or other modes of transport, while other areas become treacherous with ice floes and are less traversable. The spring thaw can cause impassibly deep mud on some logging roads, thereby closing them to commercial truck traffic, and there tends to be an increase in unlawful cross-border activities via all-terrain vehicles.

To address and mitigate the risks presented by weather and terrain, CBP works in close collaboration with our Canadian, federal, state, local, tribal and private industry partners to ensure tailored and effective surveillance technology, law enforcement personnel, and resources are in place and have the capability to adapt and respond to the Northern border operational environment at and between POEs.

CBP Resources on the Northern border

Since the terrorist attacks of September 11, 2001, DHS has dedicated historic levels of personnel, infrastructure, and technology to the Northern border. Border Patrol agent staffing on the Northern border has increased by over 650 percent – from approximately 340 agents in 2001, to approximately 2,200 agents today. At the POEs along the Northern border, CBP's Office of Field Operations (OFO) has deployed more than 3,600 CBP officers and 190 agriculture specialists. CBP's Office of Air and Marine (OAM) has 116 Air and 79 Marine Interdiction agents deployed along the Northern border. In addition to the 120 Northern border land ports of

entry, CBP operates 17 ferry land crossings, eight Border Patrol Sectors, three Air and Marine Branches, seven Air Units, nine Coastal Marine Units and 23 Riverine Marine Units to protect against the illegal flow of people and goods at and between the POEs.

As part of a multi-layered approach to secure America's borders, CBP has also greatly improved our technological capabilities on the Northern border. Between the ports of entry, DHS has deployed fixed and rotary-wing aircraft equipped with sensor arrays; thermal camera systems; mobile surveillance systems (MSS); remote video surveillance systems (RVSS); unmanned aircraft systems (UAS); and an accompanying Operational Integration Center (OIC).

The OIC, located at Selfridge Air National Guard Base in Harrison Township, Michigan, is a demonstration project, involving the application of personnel and technology to enhance border security and situational awareness for CBP and its mission partners in the Detroit region. The OIC allows for a collaborative work area and communications capabilities for CBP, U.S. Coast Guard (USCG), other DHS components, law enforcement agencies (from federal, state and local jurisdictions), the Royal Canadian Mounted Police (RCMP) and Canadian Border Services Agency (CBSA). The OIC brings together information feeds, including radar and camera feeds, blue force tracking, database query from databases not previously available to CBP, remote sensor inputs, RVSS and MSS feeds, and video from various POEs and tunnels. Additional information feeds such as local traffic cameras will be added in the near future. This level of personnel and technology integration demonstrates collaboration and technology deployments along the Northern border.

CBP has stationed 41 fixed-wing and rotary aircraft on the Northern border, including two Unmanned Aircraft Systems (UAS) operating out of the Grand Forks Air Force Base in North Dakota. With the cooperation of the Federal Aviation Administration (FAA), CBP expanded its operational airspace along the Northern border in January of 2013, allowing CBP UAS operations from Lake Huron, Michigan to west of Spokane, Washington, a distance of approximately 1515 nautical miles. UAS flight operations significantly improve situational awareness and border security in areas that are difficult to reach by other operational elements, a critical capability in difficult terrain along the Northern border.

The DHS Science and Technology (S&T) Directorate is developing new and improving existing surveillance technologies that will overcome Northern border terrain and environmental challenges in order to improve target detection and classification. S&T is also collaborating with the RCMP on the Canada/U.S. Sensor Sharing Pilot (CUSSP), which is intended to demonstrate capability and operational utility of a common surveillance picture between CBP and RCMP Agents, using a combination of U.S. and Canadian sensor information.

At many Northern border ports of entry, DHS continues to deploy Radio Frequency Identification technology, next-generation license plate readers, large-scale and small-scale imaging technologies as well as a variety of portable and hand-held technologies to include radiation portal monitors to ports of entry based on existing infrastructure and need. CBP deploys approximately 4,565 pieces of non-intrusive inspection and radiation detection equipment to assist officers and agents with identifying threats. Additionally, DHS and Canadian agencies are collaborating to develop, advance, operationally test, and use technologies

to enhance cross border operations. We have also seen significant investments in infrastructure. Since February 2009, the U.S. Government has invested over $400 million to rebuild and improve more than 30 ports of entry on the Northern border.

Northern Border Partnerships

At CBP, we recognize the importance of partnerships, intelligence, and information sharing to the success of our mission, and as such, we are engaged in several national initiatives to increase security and enhance economic prosperity on the Northern border.

Increasing Security

On a monthly basis, CBP, through the Office of Intelligence (OI) produces the State of the Northern Border briefing and hosts a multi-agency, international discussion. The State of the Northern Border provides a cross-component, multi-agency venue for identifying, monitoring and addressing emerging trends and threats along the Northern border. The briefing is produced in direct collaboration with our Canadian and UK partners at the CBSA, the RCMP, and the UK Border Agency (UKBA) as well as other Federal, State, and local partners. The State of the Northern Border has provided a broader avenue for information sharing and greater intelligence insight to activity with a nexus to the Northern border.

CBP's officers and agents also provide support to the Integrated Border Enforcement Teams (IBET), comprised of U.S. and Canadian federal, state/provincial and local law enforcement personnel, and encompassing 15 regions along the Northern border. The IBET concept involves five core agencies: CBP, USCG, U.S. Immigration and Customs Enforcement (ICE), Royal Canadian Mounted Police (RCMP), and the CBSA. IBETs operate as intelligence-driven enforcement teams designed to increase information and intelligence-sharing capabilities among the appropriate U.S. and Canadian authorities. By incorporating integrated mobile response capability (*e.g.*, air, land, and marine), the IBETs provide participating law enforcement agencies with a force multiplier that maximizes border enforcement efforts.

To increase security through public private partnerships, CBP has partnered with Buffalo and Fort Erie Public Bridge Authority (PBA) in Buffalo, New York. CBP, PBA, and the DHS Domestic Nuclear Detection Office have entered into an agreement to replace 18 Radiation Portal Monitors at CBP primary inspection lanes in Northern New York. The agreement was reached in November 2014 and we anticipate completion by September 2015. The enhancements will increase efficiency by supporting new calibration procedures that will reduce radiation nuisance alarm rates by over 50 percent, thus increasing the flow of legitimate trade and travel.

Northern border security efforts are enhanced through special joint operations and task forces. These operations are conducted under the auspices of multi-agency enforcement teams, composed of representatives from Canadian and U.S. federal law enforcement agencies who work together with state, local, and provincial enforcement agencies to target transnational criminal activity, including investigations involving national security and organized crime.

Since 2013, CBP has participated in the Department of Defense's Nuclear Weapons Accident Incident Exercise (NUWAIX) where local Integrated Response Teams exercise a coordinated

response to a Nuclear Weapons Accident/Incident. NUWAIX is an annual, geographically executed event, designed to bring government partners, such as the Department of Defense, Department of Justice, Federal Bureau of Investigation, DHS, and state and local law enforcement, together under an emergency coordinated response to a developing situation DHS, and state and local law enforcement, together under an emergency coordinated response to a developing situation. The exercise allows partner agencies to conduct joint operations in a simulated environment where each partner can learn about the capability and resources available in a whole of government approach to emergency response planning. These exercises create unity of effort and help partners grow relationships that further develop integration and coordination between agencies working to protect America.

On Federal lands, CBP continues to engage in collaborative efforts with the Department of the Interior (DOI) and U.S. Department of Agriculture (USDA) to fulfill its enforcement responsibilities. In March 2006, the Secretaries of DHS, DOI, and USDA signed a Memorandum of Understanding (MOU), which describes cooperative national security and counterterrorism efforts on federal lands along U.S. borders. This MOU provides specific guidance on cooperation related to border security as well as compliance with related environmental laws, regulations, and policies. In addition to the MOU, we have created several innovative solutions to strengthen interagency communication on federal lands. In 2005, the Border Patrol established the Public Lands Liaison Agent (PLLA) Program. Under this program, each sector designates an agent dedicated to interacting with organizations and agencies involved in land management issues. The PLLA's job is to build and maintain solid working relationships with our land management agency counterparts so that we can capitalize on opportunities to collaborate and work through any issues that may arise. Borderland Management Task Forces increase communication and provide a unique opportunity to leverage resources and quickly identify and resolve any potential problems.

In 2010, CBP, in conjunction with CBSA and RCMP, completed a Joint Border Threat and Risk Assessment, which provides U.S. and Canadian policymakers, resource planners, and other law-enforcement officials with a strategic overview of significant threats along the border between the United States and Canada. The threat assessment encompasses a range of national security issues, including cross-border criminal organizations, drug trafficking and illegal immigration, the illicit movement of prohibited or controlled goods, agricultural hazards, and the spread of infectious diseases. The assessment also further highlights the commitment of the two countries to identify and mitigate potential threats along our shared border, where there is a potential for terrorism and transnational organized crime.

CBP also plays a lead role in the implementation of the 2014 *National Northern Border Counternarcotics Strategy*, which builds upon the understanding of shared responsibility articulated in Beyond the Border and emphasizes the importance of federal partnerships with state, local, and tribal agencies to address the threat of drug trafficking across the Northern border. In particular, the *Strategy* includes the adoption of a whole-of-community approach as a core principle supported by two specific action items: 1) adopt a whole-of-community approach to community resilience, including demand reduction efforts; and 2) further integrate community members in border management in and around remote ports of entry. CBP supports these

efforts, in part, through the work of its Border Community Liaison program, which forges lasting and positive relationships with the residents of the communities where CBP serves.

Enhancing Economic Prosperity
The U.S. Bureau of Economic Analysis (BEA) in 2014 reported goods and services imports from Canada as $383 billion. The U.S. BEA further reported the combined two-way goods and services trade between the United States and Canada as $759 billion, or more than two billion dollars a day. The United States and Canada are each other's largest export market, with roughly 16 percent of all U.S. goods exports destined to Canada. CBP is committed to a coordinated approach to facilitate the secure flow of trade and travel, reduce transaction costs, and promote economic growth on the Northern border.

Through a collaborative process, CBP and CBSA are working to implement initiatives focused on increasing information sharing, harmonizing policies and programs, and ensuring the coordination and cooperation of infrastructure planning and improvements. As part of this effort, on January 19, 2011, we established the Small Ports Working Group to develop a long-term strategy to more effectively and efficiently manage small POEs along the Northern border. Based on mutual assessments of each POE, applying agreed-upon criteria, CBP and CBSA will coordinate port operations and identify joint solutions, where possible.

In addition, on February 4, 2011, President Obama and Prime Minister Harper issued "Beyond the Border (BTB): A Shared Vision for Perimeter Seeurity and Economic Competiveness." CBP is the primary lead on 15 of the BTB initiatives and has significant interests and participation in seven other initiatives. Notable achievements to date include:

- Harmonization of low value shipment thresholds to ease the burden on commercial trade
- Launching of a radio interoperability pilot
- Launched cargo pre-inspection Phase I in Blaine, WA and Surrey, BC and Phase II at the Peace Bridge between Buffalo, NY and Fort Erie, Ontario to test the feasibility of conducting primary cargo processing in Canada to reduce wait times and border congestion. The pilots have concluded operations and are currently under evaluation.
- Completion of Phase I and II of the Entry/Exit pilot
- Development and publication of an annual Border Infrastructure Investment Plan
- Expansion of the NEXUS trusted traveler program to over 1.1 million travelers, an increase of approximately 80% since 2011.
- Concluded negotiations of a new Land/Rail/Marine Air Preclearance Agreement, which was signed March 16, 2015.

Each year, approximately 72 million travelers entered the United States through the border with Canada. To facilitate and secure this cross border travel activity, as part of the BTB Action Plan, Canada and the United States agreed to exchange land entry records at ports of entry along the US-Canadian border in such a manner that land entries into one country will serve as exit records from the other. Canada and the United States first launched the Entry/Exit pilot program that exchanged data on third-country nationals at several land ports during a four-month period that ended in January 2013. During the pilot, the United States was able to match 97.4 percent of records received from Canada to existing entry records.

The second phase of the project was deployed on June 30, 2013. During this phase, Canada and the United States exchanged the entry data for third-country nationals, permanent residents of Canada, and U.S. lawful permanent residents in the United States, who enter through all automated common land ports. Over one million records have been received from the Canada Border Services Agency since Phase II was initiated and the match rate of exit records received from Canada against existing U.S. entry records are over 98 percent.

We continue to develop and implement several additional initiatives consistent with the Beyond the Border declaration. This includes the Secure Transit Corridor (STC) technology demonstration being conducted at the Ambassador Bridge by DHS S&T in collaboration with CBP, CBSA, and industry partners. The objective of the project is to increase security while facilitating the flow of commerce between our countries. Industry partners attach devices at the shipment origin that monitor and report the security status of the shipment through its arrival at the destination. CBP uses the data to inform their characterization of the shipment as "high" or "low" risk so resources are focused on high risk shipments while low risk shipments can be expedited; thus facilitating the efficient flow of commerce from trusted agents.

CBP will continue to keep Congress closely apprised as we continue to explore creative approaches to expedite legitimate trade and travel with our U.S. interagency partners and our counterparts in Canada.

Conclusion

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for this opportunity to testify about the work of U.S. Customs and Border Protection and our efforts in securing the Northern border against threats, while facilitating legitimate travel and trade. We look forward to answering your questions.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

JAMES C. SPERO
SPECIAL AGENT IN CHARGE
HOMELAND SECURITY INVESTIGATIONS BUFFALO

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"SECURING THE BORDER: UNDERSTANDING
THREATS AND STRATEGIES FOR THE NORTHERN BORDER"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Wednesday, April 22, 2015 at 9:30 a.m.

342 Dirksen Senate Office Building

Introduction

Chairman Johnson, Ranking Member Carper, and distinguished members:

Thank you for the opportunity to appear before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to improve security along the Northern Border of the United States.

ICE employs a multi-layered law enforcement approach to Northern Border security based on an understanding that our geographic boundary with Canada is only one piece of the criminal continuum – it is neither the starting point nor the final destination of cross-border criminal activity. In fact, this illicit activity is often rooted in interior cities, as well as in smaller communities throughout the United States. It is in these communities where the vast profits are generated that sustain the operations of transnational criminal organizations (TCOs), and where ICE succeeds on a daily basis, together with our interagency partners, in disrupting and dismantling the entire smuggling enterprise.

As the principal investigative agency within the U.S. Department of Homeland Security (DHS), ICE Homeland Security Investigations (HSI) is positioned to leverage its broad statutory authority to support border enforcement by working in close coordination with other DHS components and U.S. interagency partners, as well as our counterparts in Canadian law enforcement, to target TCOs involved in illicit travel, trade and finance. ICE applies a full range of innovative investigative and enforcement techniques, including leading and participating in joint U.S.-Canadian task forces, undercover operations, controlled deliveries, asset identification and removal, confidential informants, and Title III electronic intercepts to identify TCOs and disrupt their operations.

ICE continues to disrupt cross-border criminal activity systematically at all stages and, through effective cooperation and collaboration with our federal, state, local, tribal, and international law enforcement partners, we are making it increasingly difficult for TCOs and other criminals to operate. Our activities along the Northern Border constitute an important part of the National Northern Border Counternarcotics Strategy, and are fully supportive of the National Strategy to Combat Transnational Organized Crime.

ICE Assets along the Northern Border

ICE currently has nearly 1,300 HSI Special Agents and 100 intelligence research specialists operating out of several ICE offices with responsibility for Northern Border states. Many of these agents and analysts are stationed at our various sub-offices located either on or in proximity to the Northern Border. HSI employs nearly 6,000 Special Agents in communities throughout the country who work tirelessly to detect, disrupt, and dismantle TCOs engaged in the smuggling of people, narcotics, bulk cash, weapons, and weapons-related components across our borders.

In fiscal year (FY) 2014, HSI's seven Special Agent in Charge offices covering the Northern Border, often in joint or cooperative investigations with federal, state, local, tribal and Canadian law enforcement, seized a combined total of more than $237 million in cash and monetary instruments, nearly 26,000 pounds of marijuana, 1,995 pounds of cocaine, 146 pounds of ecstasy, 719 pounds of heroin, 949 pounds of methamphetamine, 1,354 weapons and firearms, 55,164 rounds of ammunition, and 8,374 weapon components. HSI Special Agents made approximately 5,729 criminal arrests resulting in 3,752 indictments, and 3,481 convictions.

These statistics reflect the impact of our coordinated law enforcement investments and investigations along the Northern Border.

Additionally, HSI maintains the largest investigative footprint of any U.S. law enforcement agency in Canada. HSI's four attaché and assistant attaché offices, located in Ottawa, Vancouver, Toronto, and Montreal, further enhance national security by serving as the agency's liaison to our interagency partners and counterparts in local government and law enforcement. Like its other international offices, HSI's Canada offices also support the efforts of the HSI Visa Security Program. As part of this program, HSI works cooperatively with the U.S. Department of State and other partners to prevent terrorists, criminals, and other ineligible applicants from receiving visas issued by the United States by providing visa security activities including, examining visa applications for fraud, conducting in-depth interviews of select special interest persons before they enter the United States, and providing law enforcement training and advice to the Department of State consulates.

Northern Border Partnerships

A crucial aspect of our approach to Northern Border security is our partnerships with our colleagues across DHS components, as well as with federal, state, county, local, tribal, and foreign agencies. These partnerships are essential to joint operations and information sharing along the Northern Border and beyond, and are conducted in the spirit of the President and the Prime Minister's "Beyond the Border" initiative, which seeks to promote integrated cross-border law enforcement. Collectively, these agencies possess a unique understanding of the threats, risks, and vulnerabilities along the Northern Border that enhance our ability to deter, disrupt, and investigate illegal cross-border activity.

ICE is also an active participant in the Canada – United States Cross Border Crime Forum (CBCF). The CBCF endeavors to meet annually, with smaller working-level meetings throughout the year, bringing together senior law enforcement officials and prosecutors from Canada and the United States to address cross-border issues, including counterterrorism cooperation, mass-marketing fraud, interoperability of our respective law enforcement agencies along the border, and combating organized crime. The plenary CBCF met on March 31, 2015, in Ottawa, Ontario, and ICE participated in the meeting. Currently, the CBCF takes the lead on integrated cross-border law enforcement and cross-border undercover operations along the Northern Border, and will have a leading role in implementing the Beyond the Border Action Plan. In addition, we have taken a number of steps to better integrate domestic Northern Border enforcement efforts. For instance, ICE and U.S. Customs and Border Protection's (CBP) Border Patrol leadership meet on a regular basis along with leaders of other DHS components to discuss areas of mutual concern.

Border Enforcement Security Task Force

HSI's flagship task force program, the Border Enforcement Security Task Force (BEST), was created in 2005 as a mechanism to address the threat of cross-border crime. BEST provides a proven and flexible platform from which DHS investigates and targets transnational criminal organizations that attempt to exploit perceived vulnerabilities at our nation's borders. BEST units differ from other task forces due to the BEST units' proximity to the borders, and in the program's focus on cross-border criminal activity. In 2007, ICE began to deploy BEST units along the Northern Border. Congress codified the establishment of the program by passing the Jaime Zapata Border Enforcement Security Task Force Act, which was signed into law by

President Obama in December 2012. Currently, there are four BEST units operating along the Northern Border: Blaine, Washington; Detroit, Michigan; Buffalo, New York; and Massena, New York.

One significant advantage of the BEST task force model is the participation and integration of foreign law enforcement personnel to address criminal activity on both sides of the border. On the Northern Border, Canadian law enforcement participation includes representatives from the Royal Canadian Mounted Police, the Canada Border Services Agency, the Ontario Provincial Police, the Niagara Regional Police Service, the Windsor Police Service, the Peel Regional Police Service, the Akwesasne Mohawk Tribal Police, the Toronto Police Service, and the Police Nationale du Québec Sûreté (Quebec Provincial Police).

In addition to our Canadian partners, we receive the support and participation of our partner U.S. law enforcement agencies including: CBP; the U.S. Coast Guard; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; and other federal, state and local law enforcement agencies. These task forces enable U.S. and Canadian law enforcement agencies to identify threats, address vulnerabilities, and identify, investigate, disrupt, and dismantle TCOs in a cohesive and coordinated environment.

Illicit Pathways Attack Strategy

In 2011, ICE developed the Illicit Pathways Attack Strategy (IPAS). IPAS supports the Administration's Strategy to Combat Transnational Organized Crime, an initiative launched in July 2011, which seeks to integrate federal resources in order to combat transnational organized crime and related threats to national security and public safety while urging foreign partners to do the same.

As a key part of this effort, IPAS is working to identify and dismantle high-risk smuggling and trafficking routes, pathways, and integrated networks that support transnational organized crime. IPAS initially focused on combating human smuggling and has now expanded to illicit finance, trafficking in cultural property, artifacts and antiquities. IPAS is a coordinated strategy to identify illicit pathways and attack criminal networks at multiple locations along the illicit travel continuum. The concept involves:

- Attacking criminal networks within and beyond our borders;
- Prioritizing networks and pathways that pose the greatest threats;
- Participating in and facilitating robust interagency engagement; and
- Pursuing a coordinated, regional approach that leverages foreign partners.

In 2011, our IPAS focused on high-risk human smuggling in the Western Hemisphere to identify and target human smuggling organizations and their pathways across the globe. ICE plays a key role in investigating human smuggling and this core mission function has a direct impact on national security, public safety, and human dignity.

In an effort to combat TCOs involved in human smuggling, IPAS works towards prioritizing the networks and pathways utilized by criminal organizations that pose the greatest threat to public safety and national security. This is achieved through robust interagency engagement and coordinating a regional approach that leverages foreign partners. IPAS also leverages subject matter experts and interagency intelligence centers to produce focused intelligence collection and analytic assessments to develop and share timely and actionable intelligence.

In addition, IPAS combines traditional law enforcement investigations and prosecutions with a holistic government effort to overtly disrupt and deter the underlying criminal

activity. Our experience has shown that if we simply try to disrupt criminal activity by focusing law enforcement action in one geographic area, criminal organizations will quickly adapt and shift to an area where detection or interdiction by law enforcement is less likely. ICE seeks not only to stop individual criminals, but to reduce overall criminal activity by disrupting and dismantling the entire criminal enterprise.

Examples of Successful Collaboration

Recognizing that partnerships with our international law enforcement partners is vital to identifying, disrupting, and dismantling TCOs, HSI has worked to coordinate with our Canadian counterparts beyond our shared border. This collaborative relationship can be seen clearly through the following case examples.

Operation Primed is an HSI Buffalo investigation which targeted a cocaine smuggling organization involved in the illicit movement of cocaine and bulk cash within Canada, the U.S., and Mexico. Investigators estimated that this organization was responsible for smuggling approximately 1,600 kilograms of cocaine into Canada with a street value of over $60 million. Through successful collaboration with Canadian law enforcement, in May 2014, a U.S. Department of Justice-designated Regional Priority Organization Target was sentenced in the Western District of New York to 84 months incarceration for violation of 21 U.S.C. § 863, import or export of drug paraphernalia. This individual was arrested in September 2010 when attempting to export 97 kilograms of cocaine across the Lewiston Bridge Port of Entry from New York into Canada. The 97 kilograms represents the single largest cocaine seizure in the Port of Buffalo's history.

An additional investigation involved joint U.S. and Canadian law enforcement efforts to dismantle a British Columbia-based group whose operations stretch across the entire Northern Border and beyond. This violent criminal organization operated from the Lower Mainland of British Columbia, Canada, and was actively involved in large-scale narcotics trafficking and money laundering activities. Its operations stretch into the U.S., Mexico, Venezuela, Colombia, India, Vietnam, Australia, and Great Britain. This group exported large quantities of Canadian-grown marijuana into the United States and used the revenue generated to purchase cocaine from abroad, which was then smuggled into British Columbia and sold throughout Canada. During a recent HSI-led investigation with our Canadian, federal, state and local law enforcement partners, HSI uncovered evidence that the British Columbia-based group imports hundreds of pounds of cocaine into British Columbia every month.

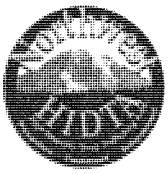
After Canadian marijuana is smuggled into the U.S., group members sell it for U.S. dollars. These proceeds are then smuggled by couriers in the form of bulk currency from cities across the U.S. to California where they are used to purchase cocaine from abroad. This cocaine, in turn, is smuggled into Canada and subsequently sold for Canadian dollars. This method of drug trafficking and money laundering exemplifies the sophistication and reach of the TCOs, and is deemed to be an ongoing drug trafficking trend. Significant enforcement outcomes have been attributed to this investigation, including the seizure of 2,169 pounds of marijuana, 335 kilograms of cocaine, two pounds of crack cocaine, four pounds of methamphetamine, five firearms, $125,000 worth of jewelry and approximately $2 million in currency.

Conclusion

HSI investigative and intelligence personnel are working tirelessly in coordination with DHS and our interagency counterparts, as well as with our Canadian colleagues, to identify, disrupt and dismantle TCOs that subvert the rule of law, violate our immigration and customs laws, destabilize our communities, and threaten national security. ICE commits substantial resources to securing the Northern Border, and our considerable efforts are part of a comprehensive strategy that focuses on securing the border, dismantling the infrastructure that supports cross-border criminal activity, and identifying and seizing the illicit profits from these crimes.

We are dedicated and committed to this mission, and we look forward to continuing to work with this committee on these efforts. Thank you again for the opportunity to testify today.

I would be pleased to answer any questions.



Northwest High Intensity Drug Trafficking Area
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Prepared for the Committee on Homeland Security and Government Affairs
"Securing the Border: Understanding the Threats and Strategies for the Northern Border"

Testimony of Dave Rodriguez
Director, Northwest High Intensity Drug Trafficking Area (HIDTA)

April 22, 2015

Chairman Johnson, distinguished members of this committee, my name is Dave Rodriguez and I have been the director of the Northwest HIDTA since June 1997. I first would like to thank the committee for its attention to exploring the national security threats facing our northern border. Additionally I wish to thank you for this opportunity for input from the Northwest HIDTA Program.

The Northwest High Intensity Drug Trafficking Area (HIDTA) incorporates 14 counties located on both the east and west sides of the Cascade Mountains. The western counties extend from the United States (US)-Canada border south to the Oregon border and include Clark, Cowlitz, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, and Whatcom County. The Eastern Washington counties include Benton, Franklin, Spokane, and Yakima. Within these vastly divergent jurisdictions, the Northwest HIDTA facilitates cooperation and joint efforts among more than 115 international, federal, state, local, and tribal law enforcement agencies. The Northwest HIDTA works with these agencies to identify drug threats and implement the strategies necessary to address them.

Washington's topography and location render it conducive to drug smuggling and production. The Washington section of the US-Canada border is approximately 430 miles in length, with 13 official ports of entry (POE). A significant portion of the international border is located in remote, dense forest. To the east, the state is bordered by Idaho, which includes several waterways. To the west, Washington has 157 miles of coastline on the Pacific Ocean from the southern border with Oregon to the northern international border with Canada. The San Juan archipelago, which includes the Gulf Islands of British Columbia, contains more than 700 islands and reefs.

The Cascade Range, which divides the state geographically north to south, is rugged and remote with limited border controls. The Cascades entail the majority of the forested land, extending from the international border south to the state line with Oregon at the Columbia River Gorge. Many large, secluded tracts of forest are held privately in addition to large public parks and state reserves. East of the Cascades, the topography differs significantly with vast agricultural areas, plains, prairies and sparse forests.

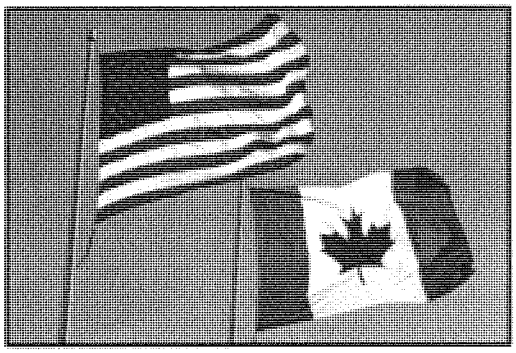
The mission of the HIDTA program is to enhance and coordinate America's drug control efforts among federal, state, local, and tribal law enforcement agencies in order to eliminate or reduce drug trafficking and its harmful consequences in critical regions of the United States. HIDTA regions are comprised of specific, designated counties, based on the drug threats facing the area. Washington is a distribution center for both licit and illicit commodities within the Northwest due largely to its geographic location—bordered by Canada and situated on the Pacific Ocean—and its multifaceted transportation infrastructure. Private vehicles including rental vehicles, boats, and commercial trucks are used frequently to smuggle and transport drugs and illicit funds into and throughout the state. To a lesser extent, traffickers are also using couriers on

commercial and private aircraft and boats, commercial buses, passenger rail cars, couriers on foot and parcel. The occurrence of couriers on foot is most prevalent along the international border.

Public lands that are adjacent to the US-Canada border also serve as routes for drug, precursor chemical, firearms and currency smuggling. Other threats to the United States' northern border include illegal alien entry and threats relating to terrorist activities.

We are also in support of the National Northern Border Counternarcotic Strategy and its strategic goal to substantially reduce the flow of illicit drugs and drug proceeds along the Northern Border and its five strategic objectives.

NORTHWEST HIGH
INTENSITY DRUG
TRAFFICKING AREA



Washington State 2015

Northern Border Report

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Executive Summary

Transnational Criminal Organizations (TCOs) operating on both sides of the United States and Canada border continue to move proceeds from illegal drugs sold in the United States and Canada and to transport drugs, weapons, and bulk cash. These organizations include independent Caucasian groups, ethnic East Indians (Indo-Canadians) some of whom own/operate commercial and cargo trucking companies, Asian Organized Crime (OC) groups, and members of the Hells Angels Motorcycle Club (HAMC). Most notably and prominent are the Mexican National drug trafficking (DTO) organizations, particularly those headed by Consolidated Priority Organization Targets (CPOT) which have gained a foothold in the Pacific Northwest and British Columbia (BC), Canada. U.S. and Canadian law enforcement agencies along the Washington-British Columbia border have strong partnerships and established intelligence-sharing programs, leading to the Pacific Region being considered a best practice model for international cooperation.

The Interstate 5 (I-5) corridor is the main transportation route into the Pacific Northwest (PacNW) region and into BC, Canada. Interceptions of smuggled drugs occur at both the designated highway Ports of Entry (POE) and between the POEs along the more remote areas on the Washington/British Columbia border, including the maritime borders. Multi-agency investigations show that DTOs continue to exploit remote areas along the Washington border, often throwing duffel bags or hockey bags containing drugs directly across the border. DTOs and TCOs in the eastern region of the state take advantage of the remote areas of the border, the lack of cross-border detection equipment such as radars, and the lack of critical infrastructure such as cell towers to increase the use of these rural routes.

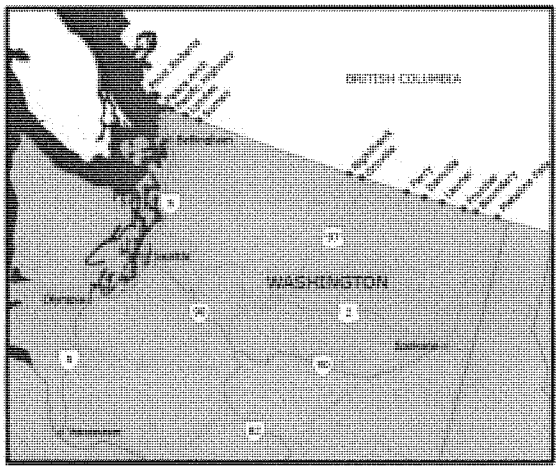
Cocaine and methamphetamine en route to Canada are often concealed in legitimate cargo onboard commercial trucks, in cars and trucks with concealed compartments, and in commercial and private trailers. Helicopters, airplanes, and boats are used to smuggle drug loads into and out of Canada. Drones are a possible emerging threat as is seen in the U.S. Southwest border region, but as of yet have not been confirmed.
While cocaine and marijuana seizures along the northern border in the PacNW States of Washington and Idaho declined in 2014 compared to previous years, as of April 2014 there were four northbound multi-pound methamphetamine seizures, per multi-agency reporting. In 2013, there was only one reported northbound meth seizure and three in 2012. Other drugs seizures at the PacNW border decreased, but there was a demonstrated increase in the quantity and frequency of methamphetamine loads being smuggled into BC, Canada in 2014.

Geography

Washington's topography and location render it susceptible to drug smuggling and production. The Washington section of the U.S.-Canada border is approximately 430 miles in length, with 13

official ports of entry. A significant portion of the international border is located in secluded, dense forest. Remote expanses of public land are susceptible to many types of drug-related criminal activities, particularly to large-scale cannabis cultivation. Public lands that are adjacent to the U.S.-Canada border also serve as routes for drug and currency smuggling. Most of the area on both sides of the U.S.-Canada border is sparsely populated and encompassed by densely forested public lands where crossing the border can be accomplished without detection. Other threats to the United States' northern border include illegal alien entry, human trafficking, money laundering, firearms trafficking, maritime/air smuggling, and threats relating to terrorist activities. The 42-mile stretch of the far western edge of the Washington–Canada border, which encompasses the Blaine Sector, is the primary shipment point. This region contains the main I-5 corridor entry point between Washington and Canada, thus naturally generating the most seizures over other entry points.

Points of Entry Map



Source: Transportation Border Working Group

Threats

Despite steady declines in drug and currency seizures along the Washington-British Columbia border, there remain significant threats, particularly with Mexican National DTOs firmly

entrenched in Washington State and British Columbia. The Sinaloa Cartel, La Familia Michoacana, Knights Templar, and Beltran-Leyva Organization are the most present Mexican DTOs as reported by agencies working the U.S./Canada border. In addition, Outlaw Motorcycle Gangs, independent Caucasian groups, ethnic East Indians (Indo-Canadians), Asian Organized Crime (OC) groups, Chinese DTOs are a serious threat in the region.

Each of these groups specializes in one aspect or another of drug trafficking. Mexican DTOs consist of families and illegal immigrants, some of whom work in agriculture, that also transport large quantities of methamphetamine and cocaine into Canada. Especially seen in the eastern region of the state, they are able to assimilate with Hispanic communities and utilize criminal immigrants, local gangs, and criminal family groups. Asian groups, specifically Vietnamese, tend to control indoor marijuana grow operations; Chinese DTOs based in China and Canada are responsible for precursor chemical smuggling and methamphetamine/MDMA manufacturing. Indo-Canadian DTOs are principally involved in transporting smuggled goods.

The Interstate 5 (I-5) corridor is the main transportation route into the PacNW region and into BC, Canada. Interceptions of smuggled drugs occur at both the designated highway Ports of Entry (POE) and between the POEs along the more remote areas on the Washington/British Columbia border, including the maritime borders. Multi-agency investigations show that DTOs continue to exploit remote areas along the Washington border, often throwing duffel bags or hockey bags containing drugs directly across the border. These DTOs are also known to utilize old logging trails and hiking trails in the Vedder and Sumas Mountain ranges to transport drugs and money. Narcotics en route to Canada are often concealed in legitimate cargo onboard commercial trucks, in cars and trucks with concealed compartments, and in commercial and private trailers. They have also been found in backpacks and baggage of people walking across the border, or travelling by ferry. Helicopters, airplanes, and boats are used to smuggle drug loads into and out of Canada as well. Drones are a possible emerging threat as is seen in the U.S. Southwest border region, but as of now nothing has been documented.

Marijuana seizures have historically made up the majority of illicit narcotics seizures in Washington. During the height of marijuana seizures in 2004 and 2005, there was over 8,000 kilograms of marijuana seized both years. Seizures of marijuana have been on a sharp decline since 2005 with just 51 kilograms seized in 2014. The reasons for the dramatic decline are not completely understood; however, law enforcement agencies assess that the transplanting of indoor grow operations into Washington and other west coast states, and the establishment of medical marijuana cooperatives decreased the need to continue smuggling high levels of marijuana into the Pacific Northwest. Marijuana grown and produced in Canada is still believed to be smuggled into the PacNW, but in decreasing amounts, in a variety of methods as noted above. Intelligence on many of these methods is based on historical seizures and multi-agency joint investigations.

The El Paso Information Center's (EPIC) National Seizure System (NSS) data indicates that transportation groups continue to smuggle MDMA southbound across the British Columbia - Washington border. Seizures of MDMA in the region remained relatively stable until 2012 and 2013, after the peak years of 2008 and 2009. In the first five months of 2013 there were four major seizures of U.S.-bound MDMA totaling over 257 kilograms. Seizures continued into 2014. MDMA smuggling from British Columbia to Washington State will continue to be an ever-present threat, as Canada is the primary source of MDMA in North America. The precursors are smuggled from China into Canada, where it is processed. Trafficking of MDMA in tablet form remains the standard; however, recent investigations in the Northwest indicate that powdered MDMA is also being smuggled.

Cocaine continues to find its way across the U.S/Canada border, with seizures on the decline. There were just 101 kilograms of cocaine seized in 2014, which is a small amount compared to the 800 kilograms seized in 2008 and 880 kilograms in 2009. Cocaine seizures reached a five-year low in 2014. As with other illicit drugs being transported into Canada, reporting agencies do still cite Mexican DTOs as the most prominent importer of cocaine. It should also be noted that multi-hundred kilogram shipments are known to be shipped directly to Canada from areas outside the U.S. via air and maritime conveyances.

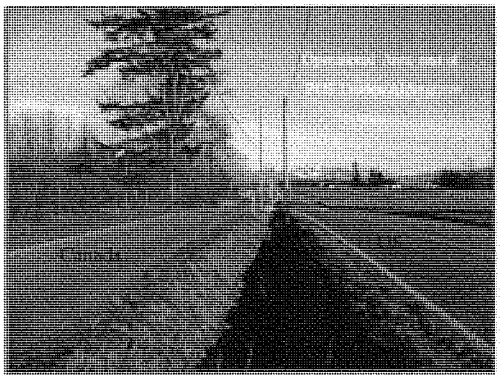
Cross-border Seizures at the U.S. - Canada border for 2014	
Methamphetamine	37.5 kg
MDMA/Ecstasy	18 kg
Marijuana	31 kg
Cocaine	101 kg
Cash	$750,000 US

A consistent trend in currency exchange that has been seen in the last few years involving the Washington-Canada border is a double exchange, which is similar to the Black Market Peso Exchange. The Double Exchange decreases the need to smuggle illicit proceeds across the Canada border. In a Double Exchange, a money broker has contacts with both Canadian cocaine distributors and marijuana producers. The money broker would wire proceeds from the Canadian cocaine sales to Canadian marijuana or MDMA producers who then smuggle their marijuana or MDMA into the United States. Proceeds from the marijuana or MDMA sales in the United States are picked up by couriers across the country and delivered to cocaine sources in California. The cocaine is then smuggled across the US-Canada border to cocaine distributors in Canada, thus balancing the books, and the process is repeated. The Double Exchange essentially eliminates the need to smuggle currency across the US-Canada border. In recent years, according to the DEA Seattle FD, Vietnamese DTOs have been utilizing the double exchange method with MDMA

instead of marijuana. In these cases, MDMA is transported down to California and cocaine is smuggled back into Canada. Bulk cash seizures in 2013 totaled $3.1 million, and the year before that less than half a million. The 2014 total of approximately $750,000 demonstrates the fluctuation seen in bulk cash seizures year to year.

Transportation Methods

Bi-national, multi-agency intelligence believe that TCO/DTOs may still be using small helicopters, fixed wing aircraft, and float planes to traffic narcotics in and out of the U.S. in Eastern Washington, Idaho, and Western Montana. Also, they are utilizing old logging roads and hiking trails in the Vedder and Sumas Mountain ranges to transport drugs and money. Multi-agency investigations show that DTOs continue to exploit remote areas along the Washington border, often throwing duffel bags or hockey bags containing drugs directly across the border.

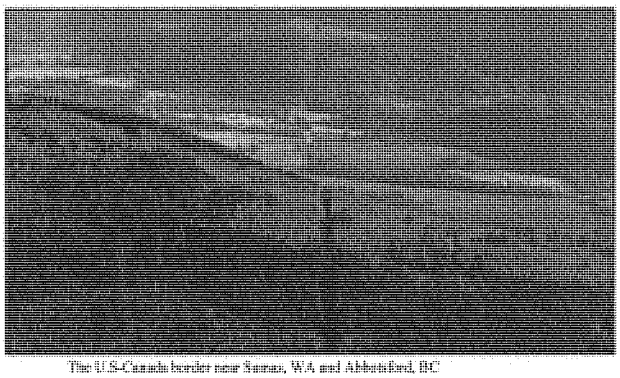


Source: Northwest HIDTA Border Task Force

Law enforcement agencies operating on or near the border have seen a significant decline in reports of suspicious aircraft activity along the U.S./Canada Border particularly in Eastern Washington and Northern Idaho. In an area roughly defined as being between Oroville, Washington and Eureka, Montana, there are substantially less reports of suspect aircraft than anywhere else along the Northern Border. In the past this area is preferred by air smugglers primarily because of terrain features that make electronic detection difficult (i.e., deep canyons in which aircraft can fly) and easy ground ingress/egress routes in this area. Reports of cross-border air/marine traffic in the Pacific Northwest have declined in 2012 according to U.S. Customs and Border Protection (CBP). Bi-national law enforcement agencies believe that air/marine

smuggling goes undetected and TCO/DTOs will likely continue, and potentially expand, their air/marine smuggling operations. Law enforcement officials surmise that many poly-drug DTOs use fishing boats, pleasure boats, ferries, cruise ships, and commercial maritime vessels, including barges, to smuggle drugs among Washington and Alaska maritime and coastal regions, and Idaho lakes and rivers, into Canada. Some Canadian TCO members travel to Mexico and other Latin American countries to arrange drug loads, which then often traverse through United States waters, including the Puget Sound and Strait of Juan de Fuca. The United States-Canada maritime border traverses the middle of the Strait.

There are several sophisticated human and narcotics smuggling organizations operating along the U.S./Canada border in Eastern Washington and Northern Idaho. These organizations utilize cellular/smart phones, two way radios, and night-vision equipment and counter surveillance tactics. The counter-surveillance by the criminal element is well documented. The criminal element entering through the area has the capability of effecting illegal entry without detection due to the vastness of the territory.



The U.S.-Canada border near Sumas, WA and Abbotsford, BC
Source: Ted S. Warren/Associated Press

Smugglers have a thorough knowledge of the area. They have an extensive network of well-established routes through the rugged mountain ranges, some routes are only accessible by foot, horse, or mule. Smugglers use "lay-up" spots and "pick-up" points to wait out law enforcement efforts. Smugglers' tactics include surveillance and counter-surveillance, for the presence of agents patrolling the avenues of ingress/egress from the border. Numerous small private airstrips are located on both sides of the International Border. Smugglers can use these airfields since they are not monitored or patrolled extensively.

US Border Patrol at the Simikameen River
Source: Ted S. Warren/Associated Press

Human Trafficking TCOs continue to operate in the region at elevated levels despite apprehension of key members in these organizations. Canada and the United States remain desirable countries for illegal immigrants. Weapons trafficking seizures also continue to decrease as more law enforcement attention is focused on groups responsible for cross-border smuggling.

As a demonstration of the joint effort along the Northern Border to interrupt and dismantle drug trafficking offenders and organizations, a seizure was reported in January 2014 consisting of the apprehension of two foreign nationals, and seizure of $373,918 in U.S. currency, 37 kilograms of cocaine, and one pair of Night Vision Goggles (Military Type NVG-7). The agencies involved credited the joint relationships along the border with bringing about new ways of looking at tackling aspects of the mission to identify familiarity blindness, spanning a two-year investigation.

Northern Border Counternarcotics Strategy

On January 4, 2011, the President signed H.R. 4748 (P.L. 111-356) amending the National Drug Control Policy Reauthorization Act of 2006 to require a Northern Border Counternarcotics Strategy. The act requires the Office of National Drug Control Policy (ONDCP) to consult with the heads of the relevant National Drug Control Program agencies to develop a Northern Border Counternarcotics Strategy by July 3, 2011. The Strategy sets forth the Administration's plans to substantially reduce the flow of illicit drugs and drug proceeds into and out of Canada, with a focus on small communities along the border and enhanced relationships and cooperation with

tribal governments. The Strategy addresses joint efforts in the following areas: intelligence collection and information sharing; interdiction at and between ports of entry as well as in the air and maritime domains; investigations and prosecutions; disrupting and dismantling drug trafficking organizations, with a focus on MDMA and Canadian-produced marijuana; and enhancing cooperation with Canada.

The key areas of cooperation are: Addressing Threats Early; Trade Facilitation, Economic Growth, and Jobs; Integrated Cross-border Law Enforcement; and Critical Infrastructure and Cybersecurity. Through integrated cross-border law enforcement, the United States and Canada will build upon existing relationships, programs, and policies; seek further opportunities to pursue national security by disrupting transnational criminal organizations; and improve our information sharing, allowing us to use our resources more efficiently and effectively to curb the flow of illegal narcotics and money across the Northern border.

This document, the 2012 National Northern Border Counternarcotics Strategy (Strategy), updated in 2014, articulates the U.S. framework for the ongoing efforts to reduce the threats on both sides of the border and is guided by the following strategic goal and five strategic objectives:

Strategic Objectives

1. Enhance intelligence and information sharing capabilities and processes associated with the Northern border;
2. Interdict illicit drugs and illicit drug proceeds at and between the ports of entry along the Northern border;
3. Interdict illicit drugs and illicit drug proceeds in the air and maritime domains along the Northern border;
4. Enhance counterdrug efforts and cooperation with tribal governments along the Northern border;
5. Disrupt and dismantle transnational criminal organizations operating along the Northern border.

Joint Enforcement Coordination

Project North Star

Project North Star was first proposed in the 1989 National Drug Control Strategy. It was formally launched in Buffalo, New York in July 1990. The ninth annual U.S.-Canada Cross-Border Crime Forum (CBCF) took place in Ashville, NC, in the fall of 2006. Both countries signed an agreement at that time that allows for the electronic exchange of ballistics information between the two countries. The participants at previous CBCFs also reiterated the importance of

the role of Project North Star. Since becoming formally aligned with the CBCF in early 2001, the role of Project North Star as a mechanism for joint law enforcement coordination has been significantly enhanced. Project North Star continues to be a multi-agency forum for cooperative coordination of border-related law enforcement efforts along the United States and Canada border. Through this forum, law enforcement agencies are able to identify, discuss, and prioritize joint challenges and obstacles for law enforcement at the border; bring these obstacles to policy makers at the U.S.-Canada CBCF for resolution; and works to increase and establish new, joint representation of the American and Canadian law enforcement community at the bi-national, regional, and local levels.

Northern Border Intelligence Projects (NBIP)

The Northern Border Intelligence Projects (NBIP) Team is a law enforcement agency partnership that serves as a regional cross-border analytical and intelligence group. The mission of the NBIP is to collect, analyze, and disseminate strategic, operational, and tactical intelligence pertaining to cross-border criminal activity between Canada and the United States. NBIP tasking is directed by the Pacific JMT.

At the Pacific NBIP, analysts from a number of Canadian and US agencies were co-located until 2013, when the staffing was reduced due to budgets and agency priorities. The main contributing agencies are currently:
Canada Border Services Agency (CBSA)
Immigration and Customs Enforcement, Homeland Security Investigations (ICE/HSI)
Royal Canadian Mounted Police (RCMP)
U.S. Coast Guard (USCG)
U.S. Customs and Border Protection, Office of Field Operations (CBP/OFO)
U.S. Customs and Border Protection, US Border Patrol (CBP/USBP)

Additional participating agencies include the U.S. Drug Enforcement Administration (DEA) and the Northwest High Intensity Drug Trafficking Area (NW HIDTA). The Northern Border Intelligence Projects (NBIP) teams can be comprised of analysts and investigators from both countries serving in a bilateral partnership to identify, investigate, and provide intelligence to interdict cross-border criminal activity. Exact composition of the NBIP depends upon their current projects.

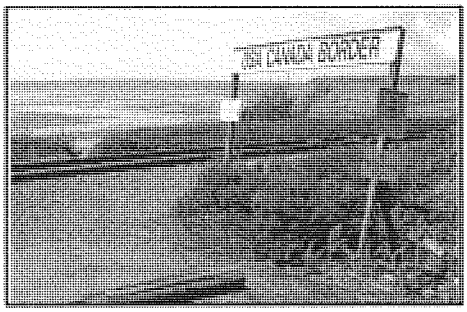
Shiprider Agreement

The Shiprider agreement provides a new tool for law enforcement cooperation by providing trans-border law enforcement authority to Canadian and U.S. maritime law enforcement operating along and across the maritime border. It removes the maritime boundary and allows

seamless enforcement while facilitating cross-border surveillance and interdiction. During the trial operation in 2007, the U.S. Coast Guard and Royal Canadian Mounted Police (RCMP) officers worked together on maritime law enforcement issues in the Strait of Juan de Fuca and other inland marine waters. On June 17, 2013, the RCMP and U.S. Coast Guard formalized their Shiprider procedure, which is now formally known as Integrated Cross-border Maritime Law Enforcement Operations (ICMLEO).

The Straits of Juan de Fuca represent the longest continuous U.S. international maritime border. Many parts of this region are remote, while others have an extremely high density of small vessel traffic. Smuggling of marijuana, MDMA, and cocaine occurs in this region, and guns and money flow across the border in exchange for drugs. Smugglers in the Northwest are highly resourceful and have recently taken to smuggling by helicopter in remote land regions and using sophisticated hidden compartments in land vehicles. As the United States works to mitigate these land-based smuggling routes, maritime smuggling may rise.

Operation Shiprider, an ICMLEO program that teamed U.S. and Canadian law enforcement officers to man law enforcement vessels and enforce each nation's laws, has proven to be a successful method to address threats along the international maritime border. As part of this program, the Coast Guard received a request from the Government of Canada to participate in cross-border cooperative Shiprider operations in support of the 2010 Vancouver Olympics.



U.S.-Canada border at Blaine, - WA beginning of the maritime border
Source: CLUI photo by Steve Rowell

Northwest HIDTA Border Task Force

The Northwest HIDTA Border Task Force (NWHBTF) is an interdiction and investigative initiative with a mission to dismantle and disrupt targeted cross-border drug trafficking

organizations through the seizure of drugs, assets, and prosecutions. The NWHBTF is a joint international, federal, state, and local effort with three distinct components, including joint U.S.-Canada staffed Northern Border Intelligence Projects (NBIP), Border Enforcement Security Taskforce (BEST North and BEST South), and a prosecution unit. BEST North investigates cases that involve smuggling through ports of entry. BEST South investigates cases that involve smuggling in between the ports of entry, including land, air and marine smuggling.

Spokane County HIDTA Task Force

The Spokane County HIDTA Task Force combines DEA Spokane and the Spokane County Regional Drug Task Force and works international and domestic drug investigations. The Task Force works closely with tribal law enforcement, particularly the Confederated Tribes of the Colville Reservation on investigations and during marijuana eradication efforts. The Spokane County HIDTA Task force has responsibility for northern Idaho and works closely with federal, state, local, and tribal law enforcement agencies.

Investigative Support Center

The Northwest HIDTA Investigative Support Center (ISC) provides HIDTA-wide intelligence and information sharing to the Northwest HIDTA initiatives. The primary task of the ISC is to provide analytical support and intelligence information services to the HIDTA task forces and participating agencies in the HIDTA region and the U.S.-Canada border area. The Northwest HIDTA ISC also coordinates activities and shares intelligence with the Pacific NBIP, which is an intelligence unit that is part of the Northwest HIDTA Border Task Force in Blaine, Washington. The Northwest HIDTA ISC funds participation in HIDTA task forces by providing assistance to state and local law enforcement agencies, strengthening international partnerships, and fostering involvement in Organized Crime Drug Enforcement Task Force (OCDETF) and IBET programs. Because these programs deal broadly with enhancing cooperation, information sharing, and coordination, the Northwest HIDTA ISC is pivotal in serving as a platform to maximize efficiencies.

Domestic Highway Enforcement Initiative (DHE)

The Pacific Northwest Domestic Highway Enforcement (DHE) program is an effective tool aimed towards the disruption of drug-transportation and the distribution elements of drug trafficking organizations. This initiative outlines a vast operational area, which will encompass the major highway corridors used for the transportation of drugs not only in Washington State but also in the Pacific Northwest region of the U.S. to include Idaho, Montana, and Oregon. The HIDTA Director, as the Regional Coordinator, established a Regional Coordination Committee (RCC) to oversee the DHE strategy in the area. The DHE program routinely conducts

an I-5 corridor emphasis operation. In addition, the Northwest HIDTA has a dedicated HIDTA analyst that collects all subject, event, and seizure data gleaned from the enforcement efforts of this initiative, the results of which are shared with law enforcement in the region.

Other Programs

In addition to enforcement and intelligence initiatives, the following describe meetings in which NW HIDTA participates on a regular basis that deal with Northern Border issues.
The Washington State Fusion Center (WSFC) plays an important role in disseminating bulletins concerning potential threats to Washington State and Canada. The WSFC, in conjunction with the Department of Homeland Security and the Federal Bureau of Investigation increased threat awareness and information sharing throughout the State in relation to the 2010 Winter Olympic and Paralympic Games (2010 Olympics) held in Vancouver, British Columbia.

Outlook

Northwest HIDTA participates fully in northern border programs and will continue to foster cooperation among federal, state, local, tribal and international law enforcement agencies along the Washington-British Columbia border. The Northwest HIDTA plays an important role in facilitating intelligence-sharing and enforcement cooperation through funding and analytical support.

Department of Justice

STATEMENT FOR THE RECORD

RICHARD S. HARTUNIAN
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

FOR A HEARING ENTITLED

SECURING THE BORDER: UNDERSTANDING THREATS AND STRATEGIES FOR THE NORTHERN BORDER

PRESENTED

APRIL 22, 2015

Statement for the Record
Richard S. Hartunian
United States Attorney, Northern District of New York
Vice-Chair, Attorney General's Advisory Committee (AGAC)
Co-Chair, Border and Immigration Subcommittee of the AGAC
U.S. Department of Justice
Before the
Committee on Homeland Security and Governmental Affairs
United States Senate
April 22, 2015

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee: Thank you for the opportunity to speak with you today about securing our northern border.

The Northern Border

Stretching 5,525 miles from the Atlantic to the Pacific and north to the Beaufort Sea of the Arctic Ocean, the longest international boundary in the world divides 13 states from seven provinces and one territory, through four Great Lakes, the St. Lawrence Seaway, and the lands of the Mohawk people. The United States Attorneys for the 16 federal judicial districts along the northern border know well that border security is a critical component of our national security, and we work with federal, state, local, and tribal law enforcement agencies, as well as our Canadian counterparts, to combat the transnational crime that threatens it. The law enforcement effort to enhance border security is complicated by a reality we embrace: the bi-national commitment to accelerate the legitimate flow of trade and travel that now amounts to about $2 billion per day.

The four districts with the largest volume of border crossings and significant border related criminal activity are Western Washington, which includes Seattle and borders the Vancouver area of British Columbia; Eastern Michigan, which includes Detroit; Western New York, with Buffalo and Niagara Falls, near the Toronto area of Ontario; and my district, Northern New York. Eastern Michigan and Western New York have entirely maritime international borders located in metropolitan areas. Western Washington and Northern New

York have both land and water borders. In the busiest four districts and all along the line, criminal organizations try to take advantage of the length and nature of the border, the volume of traffic, the bi-national commitment to maintain the mobility of people, goods, and information across the border for legitimate purposes, and jurisdictional divisions.

My district, the Northern District of New York, is comprised of 32 of the 62 counties in New York, and is home to about 3.4 million people. The District covers an area of approximately 30,000 square miles – larger than the combined areas of Vermont, Massachusetts, Connecticut, and Rhode Island – and shares a 310 mile international border with Canada. A huge volume of people and goods pass through the District from the major population centers of eastern Canada into the United States, by road, rail, forest, field, and waterway. Eight of the eleven ports of entry in New York are located in our District, and there are a total of 14 official border crossings, many in very remote areas. The territory of the Saint Regis Mohawk Tribe, or Akwesasne, straddles the border and the St. Lawrence Seaway, with portions in New York, Ontario, and Quebec, and some of the Quebec portion lying south of the Seaway. The Mohawk communities on both sides of the border view travel throughout the territory as their tribal prerogative. Smugglers exploit the circumstances at Akwesasne, the Seaway, and the large rural areas between the ports of entry to cross the border surreptitiously.

National Security and the Prevention of Terrorism

The prevention of terrorism remains our number one priority. My family and I have personally felt the impact of terrorism, having lost my 21 year old sister, Lynne, in the skies over Lockerbie in the December, 1988 bombing of Pan Am 103. The terrorist threat is current and real, as dramatically illustrated by the Canadian convictions of Chiheb Esseghaier and Raed Jaser last month for conspiracy to murder for the benefit of a terrorist group. The two men had plotted to kill people by derailing a Via Rail Canada passenger train traveling between New York and Toronto, but they were thwarted by a joint investigation that included undercover work by an FBI agent. In another incident last October, Michael Zehaf-Bibeau shot and killed a Canadian soldier on guard at the National War Memorial in Ottawa, yelling, "for Iraq," and then fired numerous shots in the Canadian Parliament building. Zehaf-Bebeau was killed by law

enforcement at the scene before he could harm anyone else. Days before, Martin Rouleau-Couture, reportedly a supporter of ISIL, stalked and then struck two Canadian soldiers with an automobile in a parking lot in Saint-Jean-sur-Richelieu, Quebec, killing one soldier and wounding the other. Rouleau-Couture was killed by law enforcement following a police chase. Ottawa is only 57 miles from the Northern District of New York's port of entry at Ogdensburg. Saint-Jean-sur-Richelieu is but 25 miles from our border crossing at Rouse's Point.

United States Attorneys' Offices work closely with the twelve Joint Terrorism Task Forces (JTTFs) operating at and beyond the border along with their Canadian law enforcement colleagues, to spot and stop terrorism along with their Canadian law enforcement colleagues, understanding that our vigorous enforcement of the federal criminal code – prosecuting drug smugglers, human traffickers, child exploiters, and gun dealers – reduces the threat of another attack. In addition, the Northern District of New York is a travel corridor between cities in Canada and New York City. Accordingly, we work closely with the Department of Homeland Security (DHS) to maintain robust enforcement of immigration laws.

Criminal Law Enforcement Along the Northern Border –
Narcotics, Firearms, Human Trafficking and Child Exploitation

Our national effort to combat transnational crime includes initiatives promoting communication, coordination, cooperation, collaboration, and integration, such as the Integrated Border Enforcement Teams (IBETs), Border Enforcement Security Task Forces (BESTs), and Shiprider (integrated cross-border maritime law enforcement) led by DHS, the Department of Justice's Organized Crime and Drug Enforcement Task Force Program (OCDETF), and the Drug Enforcement Administration (DEA) led drug task forces. Each of the four busiest districts has a BEST, and Shiprider is expanding eastward after establishing regular operations on the maritime borders in Washington and Michigan.

The United States Attorneys' Offices have had great successes working with the BESTs, High Intensity Drug Trafficking Area Task Forces (HIDTAs), and other interagency groups on a variety of criminal cases. In the Northern District of New York, we opened a branch office in Plattsburgh in 2008 to provide leadership on the ground in cases such as one involving both the

seizure of 350,000 ecstasy pills headed south from Canada and 16 kilograms of cocaine going north, and others arising from the regular interdiction of high potency marijuana grown indoors in Canada and smuggled across the border to cities throughout the eastern United States. Subsequent cases have highlighted the importance of a constant presence. For example, in *United States v. Allan Peters*, a joint federal, state, local, and tribal investigation dismantled a ring that smuggled in over 1000 kilograms of marijuana for distribution in US cities and sent millions of dollars in drug proceeds back to Canada. The group regularly transported hockey bags filled with 100 – 250 pounds of marijuana across the St. Lawrence to a property south of the river in Quebec, where couriers would load the bags into vehicles and continue on accompanied by scout vehicles – vehicles with people looking for police. Border Patrol Agents nonetheless intercepted several load vehicles, and DEA seized 16 handguns the group was picking up in Syracuse for delivery to a location in Canada. Peters was convicted by a trial jury and, in February of this year, sentenced to imprisonment for 168 months.

In *United States v. Daisy Realza*, a joint DEA/DHS investigation dismantled an organization that obtained ecstasy in Montreal, used boatmen to transport it across the border, and then couriers driving vehicles with traps, escorted by "blockers," to deliver the ecstasy to wholesalers in New York City and Boston, where it was exchanged for cocaine and cash to be smuggled back to Canada. These trips took place several times per month, with each load delivering about 50,000 pills and returning several kilograms of cocaine. Over a 12 month period, law enforcement officers made five seizures of hundreds of thousands of the pills, weighing well in excess of 100 pounds. Last fall, Realza pled guilty to engaging in a continuing criminal enterprise and was sentenced to imprisonment for 108 months.

In the west, Project White Rhino was a model of cross-border cooperation crippling a major drug trafficking organization. The expansive District of Montana border with Alberta and Saskatchewan extends 585 miles and presents an inviting target. However, the office of US Attorney Michael Cotter and more than 100 law enforcement officers working in Los Angeles, Las Vegas, and Vancouver, as well Montana, Saskatchewan, and the interior of British Columbia built a case convicting 17 people in Montana and Canada whose ledgers reflected their smuggling of 1,054 kilograms of cocaine from the US into Canada over 22 trips, together with

approximately 1.3 million ecstasy pills and 140 pounds of marijuana from Canada into the US for distribution. Seizures included $380,000 in Canadian currency, 441 kilograms of cocaine, 29 kilograms of ecstasy and 12 vehicles.

The Western District of Washington, now led by Acting US Attorney Annette Hayes, has prosecuted drug organizations related to the Hells Angels, including one that smuggled 1,000 - 2,000 pounds of marijuana into the US each month for distribution in California, Illinois, Missouri, Georgia, and New Jersey, and 100 – 200 kilograms of cocaine into Canada each month for distribution in British Columbia – resulting in the seizure of more than 1,000 kilograms of marijuana, 136 kilograms of cocaine, $2 million, and lengthy prison terms. Another organization recruited a former Royal Canadian Mounted Police (RCMP) member and a corrupt border services employee to help get cocaine from the US through the border into Canada, and "BC Bud" marijuana from Canada into the US – resulting in the seizure of more than 1700 pounds of cocaine and $3.5 million as well as the conviction of 54 participants, with sentences of up to imprisonment for 20 years. In another matter, Western Washington's Operation Frozen Timber resulted in the trial conviction of a pilot who traversed the border flying his helicopter at low levels so he could smuggle dozens of loads of marijuana from Canada into Washington, Idaho, and Montana.

The office of Maine US Attorney Thomas E. Delahanty II has prosecuted cases showing Maine to have been a corridor connecting southwestern drug suppliers to traffickers in New Brunswick. Apolinar Oriz-Islas, of Houston, Texas, was arrested as he attempted to deliver 10 kilograms of cocaine and tried, convicted, and sentenced to imprisonment for 170 months based on evidence showing that he received hundreds of thousands of dollars from drug traffickers in New Brunswick, obtained cocaine from Mexico, and had it transported to Maine and then smuggled into Canada. Robert Rossignol was sentenced to imprisonment for 12 years for repeatedly obtaining currency from a drug dealer in New Brunswick, smuggling the currency across the border, and giving it to a runner who transported the money to Texas for the drug dealer to procure the cocaine. The cocaine was handed to the runner to bring back to Rossignol, who smuggled the cocaine from Maine into Canada and gave it to the drug dealer, who paid him. One smuggling event involved $300,000 which was seized.

The drug threat is pervasive, but just one of the many types of border crimes we confront. Another is firearms trafficking and an example, uncovered in Western Washington, involved a Vancouver man who was convicted of unlawful dealing in firearms and making false statements to cross the border when he travelled to Oregon to pick up boxes of firearms and ammunition and brought his arsenal to a storage facility near the Washington – British Columbia border.

In the fight against human trafficking, a joint investigation by the RCMP and Homeland Security Investigations (HSI) into the smuggling of young Romanian women through the US to Montreal for prostitution recently resulted in charges in Canada and my district. In the Western District of New York, US Attorney William Hochul recently announced the arrest of Edward Eguavoen for attempting to enter the United States through Canada using a Canadian passport under a different name. Subsequent investigation by the Department of Homeland Security revealed that Eguavoen is wanted by Belgian authorities on a 2005 conviction and sentence in absentia to imprisonment for seven years for bringing seven women from Nigeria to Belgium and forcing them to engage in prostitution in brothels controlled by a criminal organization. Eguavoen is being held for extradition from the United States to Belgium.

The horror of child exploitation gives rise to a tragic number of cases, some of which involve the border. When upstate New York resident Joseph Jenkins traveled into Canada, Canadian Border Services Agency (CBSA) discovered child pornography on his laptop and he was charged in Canada. When he did not show up for trial there, we prosecuted. A trial jury convicted Jenkins of possessing and transporting nearly 4000 images and over 100 videos of child pornography, including files depicting sadistic sexual abuse, bondage with chains, and sex with prepubescent children. Jenkins was sentenced to imprisonment for 225 months. In other matters, we have been able to arrest individuals at the border for child pornography and other acts that constitute the sexual exploitation of children. For example, in a case handled by the office of United States Attorney for the Eastern District of Michigan Barbara McQuade, a retired police officer from Cincinnati pled guilty to crossing into the United States from Canada with a video camera in his trunk containing child pornography.

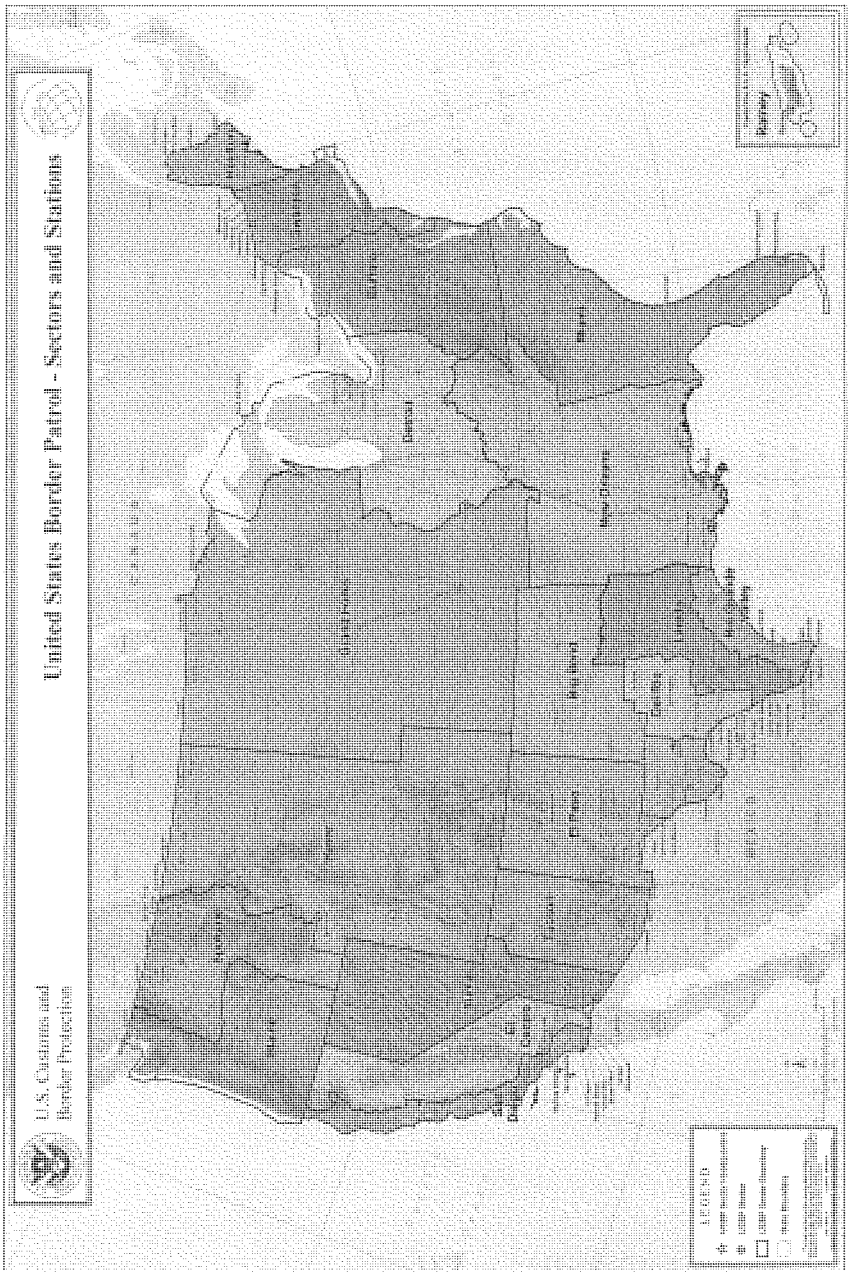
Cooperation and Coordination with Canadian Law Enforcement Authorities

Though the existing enforcement teams and task forces have had significant successes, their structure, composition, and mandates have left them short of true integration. The Beyond the Border declaration in 2011 included the commitment "to build on existing bilateral law enforcement programs to develop the next generation of integrated cross-border law enforcement operations." The implementing Action Plan provided for bi-national teams of cross-designated officers patrolling and conducting investigations. With our Canadian counterparts, we are addressing the issues associated with integrated enforcement. Meanwhile, the vital work of advancing border security goes on, and now includes the Border Operations Leadership Team (BOLT), which brings together the operational leaders from law enforcement and prosecution departments and agencies with border missions for their insights and action on measures to enhance our efforts to eradicate cross-border crime.

We are confident that our bi-lateral commitment to border security, our mutual respect for national sovereignty, and our shared tradition of protecting both public safety and individual rights will strengthen our efforts to achieve more integrated cross border enforcement. We are committed to continued vigilance, using the full range of investigative tools and laws available to us to fight transnational crime and enforce US law. With governmental support and BOLT's operational charge, the northern border United States Attorneys and federal law enforcement agencies are poised to capitalize on the historic opportunity to forge bonds with our Canadian counterparts that increase our effectiveness.

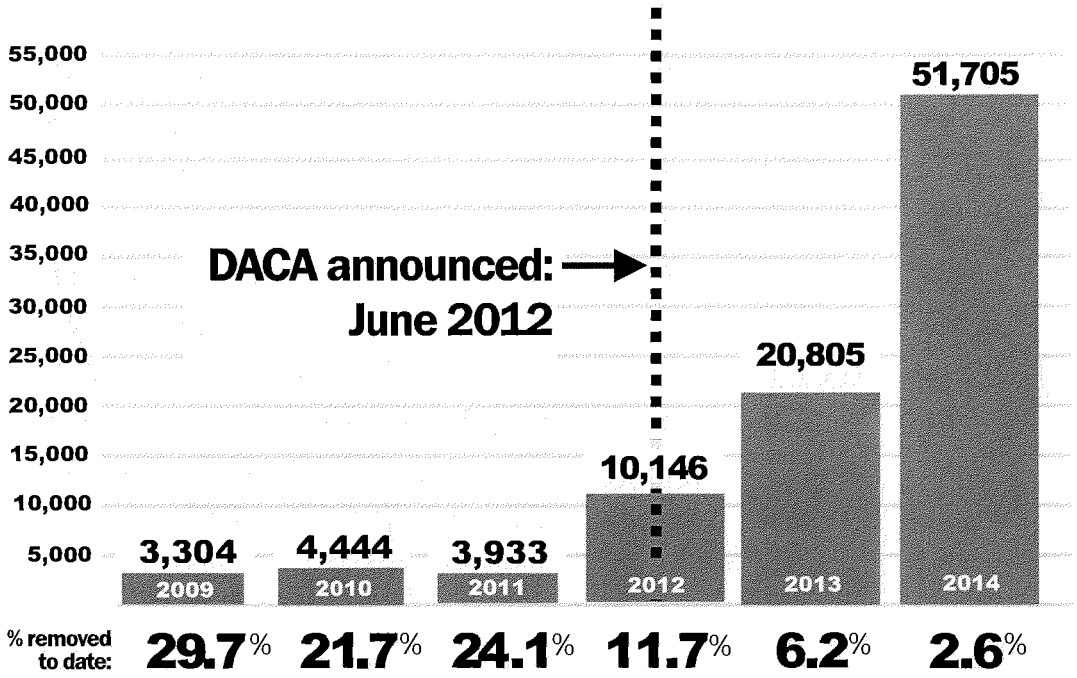
Conclusion

Thank you for the opportunity to discuss with you the dedication and demonstrated diligence of the Department of Justice in partnering with U.S. and Canadian law enforcement and prosecution colleagues to address the many challenges associated with securing our northern border. I look forward to answering any questions you might have.


U.S. Customs and Border Protection
United States Border Patrol - Sectors and Stations
Washington
Spokane
Blaine
Montana
Havre
Grand Forks
Minnesota
Detroit
Buffalo
Canada
Idaho
Boise
Portland
Oregon
Seattle
Wyoming
Casper
Salt Lake City
Utah
Nevada
Las Vegas
California
San Diego
El Centro
Yuma
Tucson
Arizona
Nogales
Douglas
El Paso
New Mexico
Las Cruces
Marfa
Texas
Del Rio
Laredo
Rio Grande Valley
Corpus Christi
Houston
Louisiana
New Orleans
Mexico
Gulf of Mexico
Bahamas
Cuba
Atlantic Ocean
Pacific Ocean
LEGEND
Sector Headquarters
Station
Sector Boundary
Area of Operations
Sector Area of Responsibility
Miles
Kilometers

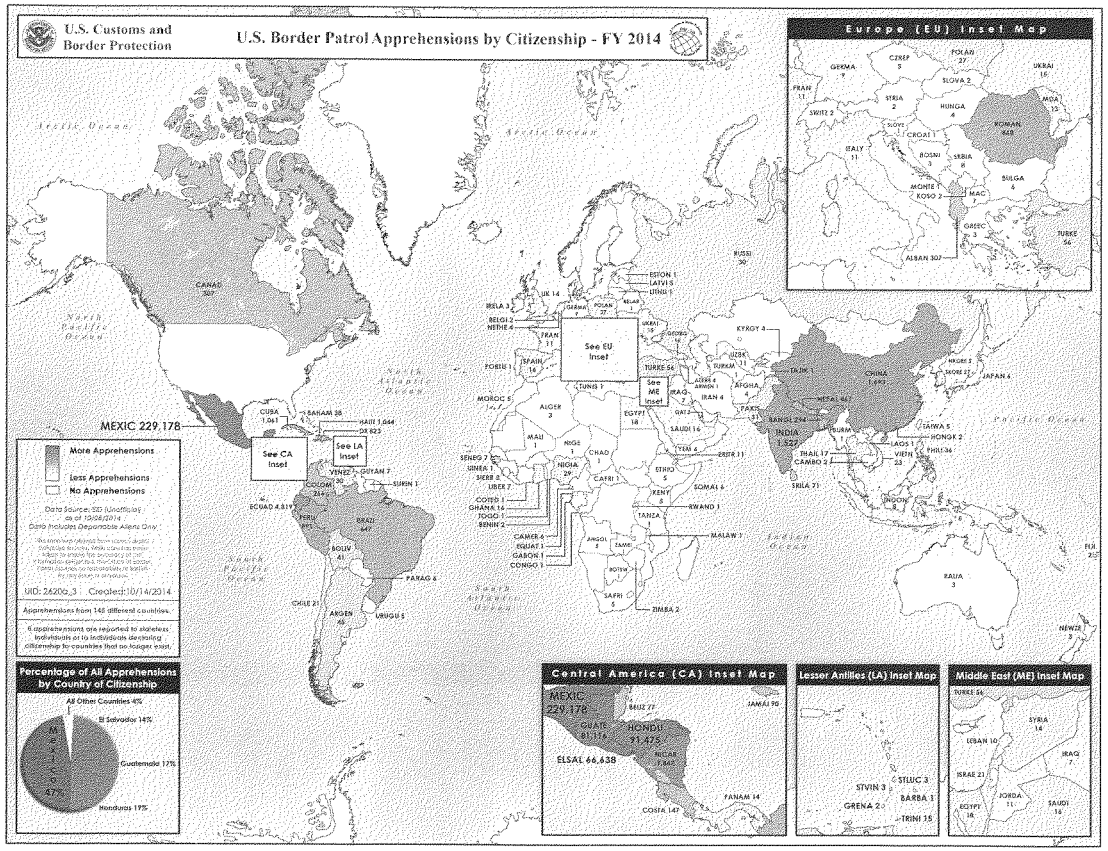
UAC APPREHENSIONS

UNACCOMPANIED CHILDREN: HONDURAS, GUATEMALA, EL SALVADOR



U.S. Border Patrol, U.S. Customs and Border Protection.

RON JOHNSON
U.S. SENATE


U.S. Customs and Border Protection
U.S. Border Patrol Apprehensions by Citizenship - FY 2014
MEXIC 229,178
CANAD 307
See CA Inset
See LA Inset
See EU Inset
See ME Inset
More Apprehensions
Less Apprehensions
No Apprehensions
Data Source: SIS (Unofficial)
as of 10/06/2014
Data Includes Deportable Aliens Only
UID: 26202_3 Created:10/14/2014
Apprehensions from 145 different countries.
6 apprehensions are reported to stateless individuals or to individuals declaring citizenship to countries that no longer exist.
Percentage of All Apprehensions by Country of Citizenship
All Other Countries 4%
El Salvador 14%
Guatemala 17%
Honduras 19%
MEXICO 47%
Europe (EU) Inset Map
Central America (CA) Inset Map
MEXIC 229,178
GUATE 51,116
HONDU 71,475
ELSAL 66,638
JAMAI 90
BELIZ 77
NICAR 7,847
COSTA 147
PANAM 14
Lesser Antilles (LA) Inset Map
STVIN 3
GRENA 2
ST LUC 3
BARBA 1
TRINI 15
Middle East (ME) Inset Map
TURKE 56
SYRIA 14
LEBAN 10
IRAQ 7
ISRAE 21
JORDA 11
EGYPT 18
SAUDI 14
Arctic Ocean
North Pacific Ocean
North Atlantic Ocean
South Pacific Ocean
South Atlantic Ocean
Indian Ocean
Pacific Ocean

To whom it may concern:

As an advocate for and supporter of the migrant farmworkers in my community, I have witnessed both personally and through long discussions with those directly affected by border enforcement the actions of Border Patrol and Immigration and Customs Enforcement agents. Because the abuses of civil rights and law have been so pervasive by so many agents now totaling 288 in the Buffalo Sector, it is my opinion that this is not a case of the rogue officer or even middle management, but rather a rather draconian interpretation of basic principles of ethics and decency and immigration law by upper management within the Department of Homeland Security.

I interpret the actions of immigration agents into the following categories, followed by an explanation and representative events.

1. Civil Rights Abuses.

There has been clear evidence of racial profiling, including Border Patrol performing road stops only on Hispanics, Border Patrol invading events held by and for Hispanics, Border Patrol blocking entrances to businesses used almost exclusively by Hispanics, home invasions of Hispanic families en masse by ICE agents, Border Patrol approaching only Hispanics on church property, Border Patrol detaining and causing the abandonment of Hispanic children, and demeaning behavior towards women and children in detention by Border Patrol agents. Examples of each of these can be found in the below case reports.

2. False enforcement of state laws as a tool for immigration enforcement.

It had been common to witness Border Patrol agents, in their efforts to detain Hispanics, enforce New York State traffic laws as a transparent purpose for stopping and detaining only Hispanics. Allegedly crossing the center line, driving with a broken tail light, or driving too slow have led to countless roadside stops of vehicles with Hispanic drivers and/or occupants. Of course, no traffic tickets were given by Border Patrol agents for any of these events, but many people have been taken into detention as a result of this form of racial profiling.

3. Lack of prosecutorial discretion

Despite memoranda from John Morton, Jeh Johnson, and others clearly delineating discretion throughout the entire chain of command, we have witnessed in this region little evidence of prosecutorial discretion from the time of detention to the time of deportation.

We have personally witnessed Mothers removed from vehicles while transporting their children. 5-year-old Erika was riding with her parents through the village of Sodus, NY enroute to the local grocery store to buy her milk when they were

stopped by Border Patrol. Her Mother was detained and within one month was deported back to Mexico. Her Father was already in deportation proceedings and was also deported near the same time, leaving Erika to live with her 15 year old and 9 year old sister. Erika's parents had no history of criminal convictions.

We have witnessed children being abandoned as a result of their parents not only being removed from vehicles on the side of the road but also in other public places. During a party at the Alton Fire Company, a retired State Police officer who manages the party room observed two Border Patrol agents invade the property and detain multiple people. A Father had to hand his infant son to an unknown person as he was being handcuffed and detained by the agents.

We have not seen evidence of criminal charges or warrants against any of these people captured in this style of dragnet.

Despite our efforts, bonds are routinely set now at $10,000, having been raised from $5,000 with the explanation that this is set at the federal level. It should be noted that in Rivera v. Holder, it was noted that setting a standard minimal level for bonds of even $1,500 was inappropriate.

4. Inhumane treatment

There are instances of children being treated unsafely by Border Patrol agents throughout this region.

Children not being cared for while in detention.

During a sweep of the Sodus Trailer by multiple ICE agents during the time of Operation Community Shield, two mothers with three young children were taken to the Border Patrol station where they were detained for more than 6 hours before the Mothers were allowed to take their children home. During this time, Border Patrol agents denied that these families were in their possession as their pastor attempted to find these children. After 6 hours in detention, a Border Patrol agent brought one instant cup of soup and one cookie for the three children; the youngest child was three years old at the time.

Detainees, most commonly women, are treated in a demeaning manner. They are sneered at, cursed at, and groveled.

Juanita was removed from her vehicle while driving between Sodus, NY and Lyons, NY and placed in the back of a Border Patrol vehicle. She described the Border Patrol agents reaching into the vehicle and rubbing against her breasts.

A US citizen was stopped while driving several Hispanics when she was stopped. The Hispanics were detained for being undocumented. She was removed by force from her vehicle and patted down on the side of the road in clear view of the public.

When she was detained at the Border Patrol station, she was again patted down to the extent that the agent actually put her hands under this woman's underwear.

Families are placed in cold holding cells in isolation. As pointed out above, children are left abandoned by aggressive enforcement. It has been a common occurrence to receive reports of Border Patrol agents laughing at these women and calling them unquotable names.

5. Detention of US citizens

We have witnessed the detention of US citizens as a result of what appears to be acts of retribution.

A US citizen was stopped and detained in Oswego, NY in the presence of his wife and children days after his brother, with whom he does business, had made formal complaints and spoken to the press about Border Patrol agents blocking the entrance to his business.

Another US citizen was handcuffed and pushed down to the street in the village of Sodus, NY while he was translating for the local police when Border Patrol verbally accosted him and demanded to know his citizenship to which he refused to respond.

5. No accountability

There have been multiple events in the village of Sodus, NY and surrounding communities when Border Patrol and ICE agents have entered businesses, homes, and church property in search of Hispanics without displaying valid warrants and without evidence of any criminal activity.

Silvia and Roberto were sitting in their apartment when two Border Patrol agents started pounding on their front door. Without permission to enter, they forced the door open and entered. Without permission they proceeded to search the entire apartment before leaving. No search warrant was presented to the occupants.

A local Hispanic family entered the Sodus CVS store to purchase a prescription when Border Patrol agents entered the store following them. Unable to find them as they were hiding in the storage area of the store, the Border Patrol agents left the store sitting out front in the parking lot. At that time, I took the family in tears to their home.

During home invasions in Sodus, NY, ICE agents have used multiple methods to enter people's homes. Several times agents have knocked on doors with a photo in hand asking if this person was there. When the door is opened, the agents would not only enter the premises but search through the entire home even while the occupants were refusing access. No warrants were presented and the photograph

was of someone well known in the community to have recently been removed from the same area and deported. ICE agents have disguised themselves as EMTs to enter homes. ICE agents have surrounded mobile homes pounding on windows until families are coerced to open doors. ICE agents have followed people home from work and as they enter their homes, the agents have followed them through their doors.

3-year-old Martin was riding with his parents into Sodus, NY on a Saturday afternoon when they were followed onto the Catholic Church property. As the family walked up the steps to enter church, two Border Patrol agents forcibly grabbed his father, handcuffed him and detained him for eventual deportation.

After a formal complaint was made to the Department of Homeland Security about some of these and other cases, the Inspector General refused to investigate but a Border Patrol investigation team found no evidence of wrongdoing. The clear evidence presented to the federal government was dismissed. This complaint included the allegation that Border Patrol agents had blocked the entrance to a business run by US Citizens was also found invalid despite photographs of Border Patrol vehicles blocking not only the entrance to this business but literally parked in front of the door into the store.

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Migrant Support Services
Wayne Action for Racial Equality

Program Manager
Kids for College

WRITTEN STATEMENT OF
NORTHERN BORDERS COALITION

For a Hearing on

Securing the Border: Understanding Threats and Strategies for the Northern Border

Submitted to the U.S. Senate Committee on Homeland Security & Governmental Affairs
Testimony before

April 22, 2015

Northern Borders Coalition
Ryan Bates, Executive Director, Michigan United
Rich Stolz, Executive Director, OneAmerica
Steve Choi, Executive Director, New York Immigration Coalition

I. Introduction

The Northern Borders Coalition (NBC) is the only union of organizations nationally whose sole focus is to advance human rights and civil liberties along the northern border. Composed of anchor organizations OneAmerica, Michigan United, and the New York Immigration Coalition, NBC helps build shared strategies amongst members to address new border challenges, and collaborates with partners in the Southwest and allies nationwide to share best practices.

For years, community organizations operating near the northern border of the United States have observed alarming and dangerous patterns in the interactions between immigration enforcement authorities, and immigrant and refugee community members. In the past decade, funding for U.S. Customs and Border Protection (CBP), the Department of Homeland Security (DHS) agency in charge of securing our nation's borders, has skyrocketed. From FY2004 to FY 2012, the budget for CBP increased by 94 percent to $11.65 billion, a leap of $5.65 billion; this following a 20 percent post-9/11 increase of $1 billion. For FY2016, the Administration's budget request for CBP is about $13.5 billion. U.S. taxpayers now spend more on immigration enforcement agencies ($19 billion) than on the FBI, DEA, ATF, U.S. Marshals and Secret Service—*combined.* As funding for border enforcement has increased, so too has CBP abuses. NBC opposes exorbitant spending on border enforcement which is taking place without thoughtful consideration of current border community and security needs.

We urge Congress to consider measures that ensure border enforcement is carried out in a manner that is humane and in accordance with the United States' obligations under domestic and international laws. Specifically, we hope that the Committee will consider the following issues when determining a northern border enforcement strategy moving forward.

II. Racial and Religious Profiling

In northern border communities, racial and religious profiling, harassment, abusive interrogation, searches without probable cause, and use of local police in immigration enforcement are common occurrences. Justification for these abuses are typically linked to protecting national security - in spite of the fact that such actions compromise immigrants' rights and put all residents' safety at risk

In particular, Middle Easterners, Muslims, South Asians and Arab-Americans (MEMSAA) community members encounter confusion, misunderstanding, language barriers and heightened security protocols with limited explanation, without adequate due process, and limited recourse with little communication or interaction. As one data point, the number of Muslim Americans in the United States is expected to more than double by 2030 (2.5 million in 2010, 6.2 million in 2030). The age profile of the Muslim population is younger than that of the total U.S. population, and that trend will continue and expand. These trends are consistent with other minority populations, including south Asian and Arab American groups, i.e., younger than the national profile in total, and also growing in volume. And there are growing numbers of refugees coming from south Asia, African and the Middle East (e.g. Iraq, Syria, Afghanistan, etc.).

Top concerns of MEMSAA communities nationally include surveillance, racial and religious profiling, anti-Muslim and xenophobic sentiment, hate crimes, and other forms of discrimination. This has led to anxieties, lack of trust, and suspicion of law enforcement. For example, in Washington State, members of these communities consistently report repeated lengthy delays at the Border due to secondary inspections – despite having been cleared on multiple occasions. Such events not only inconvenience individuals but also undermine trust in American laws and lead to alienation. These circumstances also suggest that Border Patrol agents are acting in a manner that may be highly inefficient and wasteful of tax payer dollars.

As in the Southwest border, Latino community members near the northern border are often singled out and stopped on suspected immigration violations for no reason other than baseless stereotypes. For example, near Lyons, New York, Border Patrol agents detained 5 Latino laborers who were passengers and a driver in a legally registered, licensed, and inspected vehicle. They did not violate any laws and no traffic citations were given by local police. However, they were transported to the Rochester Station of CBP where they felt threatened and were treated in a demeaning manner as they were laughed at.

In spite of these ongoing concerns, it is worrisome that the Department of Homeland Security, including CBP, were excluded from the newly released federal guidance on racial and religious profiling and further underscores the need for greater attention to the impact of practices that alienate communities and undermine fundamental civil liberties.

NBC Recommends:

- CBP should implement a complete ban on racial and religious profiling.
- CBP must take into consideration not only the impact of current practice in communities of color in the United States, but its future strategy with regard to groups like the MEMSAA community.

III. Lack of Accountability

Unprecedented investment in border enforcement without corresponding oversight mechanisms has led to a sharp increase in human and civil rights violations. The current DHS complaint system is woefully inadequate, inaccessible, and fraught with obstacles that make it extremely difficult for individuals to file complaints effectively, for DHS to manage them – resulting in complainants often waiting years for a response. In fact, the American Immigration Council's study of complaints against CBP found that allegations of physical abuse or use of excessive force are often met with no response whatsoever. The vast majority of such incidents that were formally investigated by CBP ended with a status of "no action taken."

In addition, CBP officers currently can enter private property without a warrant within 25 miles of any border, and claim to have the authority to stop and search without a warrant up to 100 miles from the border. As a result of this policy, CBP routinely conducts enforcement operations in towns and villages up to 100 miles from the border, and on roads with no immediate border access – essentially giving it carte blanche to conduct intrusive and dangerous sweeps far from the actual border. For example, in Sodus, New York, two Border Patrol agents entered the

private residence of a Hispanic woman, having followed her to her apartment. They forced their way into her doorway by blocking the door with their foot without a search warrant despite being told by the woman that they did not have permission to enter her home. After threatening her, they searched her home without explanation.

Northern border residents have reported Border Patrol agents conducting roving patrols near schools and places of worship and asking passengers for their documents on trains and buses that are traveling far from border crossings. This warrantless authority - exercised far from any actual borders - raises serious civil liberties questions.

NBC recommends:

- DHS and CBP should implement an effective, universal complaint system as first steps to addressing problems with CBP abuses.
- CBP limit its operations to within 25 miles from the border, restrict its warrantless incursions onto private property to ten miles from the border – and protect our communities from needless harassment and enforcement far from the border.

IV. Body-Worn Cameras

NBC applauds the feasibility studies currently being conducted in CBP sectors in El Paso, Texas, Seattle and Blaine in Washington, West Palm Beach, Florida, and Detroit. The use of body-worn cameras by police departments nationwide is growing rapidly, and is considered a best practice among law enforcement. The Department of Justice has found that cameras improve the judicial process and increase officer safety.

NBC urges CBP to quickly implement body-worn cameras in all sectors, following the feasibility study and an analysis of its findings. Requiring CBP officers and agents to wear cameras—as CBP has already promised to do following its internal review of the agency's use of force policies—would help CBP to reduce inappropriate use of force while simultaneously protecting personnel from false allegations of misconduct.

NBC recommends:

- CBP should require all Border Patrol Agents to wear body-worn cameras.

V. Conclusion

Congress should transform border enforcement in a manner that is fiscally responsible, respects and listens to border residents before imposing policy, upholds Constitutional rights and American values, and facilitates cross-border economic exchange.

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Written Statement of the New York Civil Liberties Union

For a Hearing Titled

"Securing the Border: Understanding Threats and Strategies for the Northern Border"

Submitted to the U.S. Senate Homeland Security and Governmental Affairs Committee

April 22, 2015

The New York Civil Liberties Union ("NYCLU") respectfully submits the following statement regarding enforcement activities by Customs and Border Protection ("CBP") agents along the Northern Border. With eight offices throughout the state and 55,000 members and supporters, the NYCLU is the foremost defender of civil liberties and civil rights for all New Yorkers, including immigrants.

The NYCLU urges this Committee to consider the civil liberties implications of border security proposals. The NYCLU opposes increased spending on Border Patrol enforcement activities. Instead, Congress should invest in ensuring oversight and accountability mechanisms for CBP operations and do more to take into account the harms caused by overly aggressive enforcement in communities both along the border and in the interior.

CBP is the largest law enforcement agency in the United States, with roughly 60,000 personnel and a budget of over 12 billion dollars.[1] Over the past twenty years, the number of Border Patrol agents employed by CBP has more than quadrupled.[2] This multiple holds true for the Swanton sector (covering northern New York and Vermont) while the Buffalo sector (covering western New York) has seen a more than eightfold increase in the number of agents.[3] This rapid increase in agency staffing has brought with it a predictable increase in interactions between Border Patrol and civilians, as well as a rise in agents abusing their authority.

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[1] Garrett M. Graff, *The Green Monster: How the Border Patrol became America's most out-of-control law enforcement agency* (Politico Magazine Nov./Dec. 2014), *available at* http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html.
[2] United States Border Patrol, *Border Patrol Agent Staffing by Fiscal Year* (Sept. 20, 2014), *available at* http://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf.
[3] *Id.* at 4.

Aggressive and Unconstitutional Interior Enforcement Practices

Despite the agency's mission of policing the border, Border Patrol has increasingly made incursions into the interior. The NYCLU first documented this phenomenon in its report, *Justice Derailed: What Raids on New York's Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices*, which was published in 2011 and was based on interviews with individuals and data obtained through FOIA litigation.[4] The report described Border Patrol agents' aggressive policing tactics aboard domestic common carriers such as Amtrak and Greyhound.[5] It revealed widespread failures by agents to follow agency regulations, racially biased policing, and violations of the Fourth and Fifth Amendment rights of individuals with whom the agents interacted. These findings pointed to a need to refocus the agency's operations away from interior communities, thus lessening the devastating impact these practices often have on New Yorkers' lives, and to improve training for CBP officer to ensure that appropriate laws and procedures, including those related to the exercise of prosecutorial discretion, are being followed. Unfortunately, in the years since the *Justice Derailed* report, the NYCLU and others have continued to identify alarming patterns of constitutional violations involving the use of roving patrols, checkpoints, and collaboration with state and local law enforcement agencies.

Justice Derailed revealed that armed Border Patrol agents board domestic trains and buses to question passengers about their citizenship and arrest and detain people, including individuals lawfully present who are not carrying proof of their lawful status. These operations took place without reasonable suspicion of any unlawful activity having occurred. For example, a CBP station opened in Rochester in 2004,[6] ostensibly to police cross-border entry into the U.S. via a ferry service between Rochester and Toronto, refocused its resources onto interior transportation raids after the ferry service closed in 2006.[7] Rochester residents reported that Border Patrol officers maintained a nearly constant presence in the city's bus and train stations, and the Rochester Station is reported to have had more arrests than any of the other 55 Border Patrol stations along the Northern Border.[8]

CBP justified its use of transportation raids by declaring that they are "performed in direct support of immediate border-enforcement efforts and as a means of preventing smuggling organizations from exploiting existing transportation hubs to travel to the interior of the United States."[9] However, the data revealed that these raids do not further CBP's stated goals. The

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[4] New York Civil Liberties Union, *Justice Derailed: What Raids on New York's Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices*, 2011, *available at* http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf.
[5] *Id.*
[6] Nina Bernstein, *Border Sweeps in North Reach Miles Into U.S.*, N.Y. TIMES, Aug. 29, 2010, *available at* http://www.nytimes.com/2010/08/30/nyregion/30border.html.
[7] Michelle York, *Rochester Finds It Is Losing a Ferry Service*, N.Y. TIMES, Jan. 16, 2006, *available at* http://www.nytimes.com/2006/01/16/nyregion/16ferry.html.
[8] Tim Martinez, Newhouse School of Public Communications, Syracuse University, *Caught in Transit: The Rochester Border Patrol Station*, http://cmr.syr.edu/newshouse/video/article.html.
[9] Colin Wodard, *Far From Border, U.S. Detains Foreign Students*, CHRONICLE OF HIGHER EDUCATION, Jan. 9, 2011, *available at* http://chronicle.com/article/Far-Fom-Canada-Aggressive/125880.

NYCLU's analysis of Rochester Station transportation arrest data revealed that 76 percent of those arrested had been in the country for more than one year.[10] Indeed, less than one percent of those arrested had entered the U.S. within the preceding 72 hours, and only around five percent had entered within 30 days of their arrest.[11]

Additional information analyzed by New York University Law School (NYU) regarding enforcement operations in the Buffalo Sector from 2006-2011 demonstrates the existence of three different bonus programs, through which Border Patrol closely monitored arrest numbers and awarded substantial bonuses to arresting agents.[12] Border Patrol consistently allocated funds to the Buffalo Sector for discretionary awards of cash bonuses up to $2,500, time off awards, and gift cards of up to $100.[13] This funding increased from a few thousand dollars in 2003 to a budget of more than $200,000 for discretionary incentive programs in 2011.[14] The three types of awards were given out without clear criteria or objective standards, thus empowering individual stations to make these determinations with little oversight or supervision.[15]

Although no clear, objective criteria existed for these programs, statements by Border Patrol agents in depositions stated that bonuses were given out based on "quality of work."[16] Officials from Buffalo Sector and Rochester Station confirmed that the only numerical data kept on station performance were daily arrest records, and that they were unaware of any other regular reports reflecting station and sector performance.[17]

Rather than enhancing border security, programs that incentivized Border Patrol agents to increase their arrest numbers increased the intimidation and harassment of New York communities, including U.S citizens and immigrants with lawful status. In the data analyzed by NYU, nearly three hundred lawfully present individuals were wrongfully arrested during Rochester Station transportation raids between 2006 and 2010 because of this aggressive approach to enforcement incentivized by the existence of bonus programs.[18]

CBP's pattern of aggressive and abusive interior enforcement practices in New York State does not remotely suggest a need for yet more border security personnel and equipment. Rather, the pattern illustrates the need for stronger Congressional oversight and accountability.

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[10] *Justice Derailed, supra* note 4 at 8.
[11] *Id.* at 10-11.
[12] New York University School of Law, et al., *Uncovering USBP, Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals* 1, 2013, *available at* http://familiesforfreedom.org/sites/default/files/resources/Uncovering%20USBP-FFF%20Report%202013.pdf.
[13] *Id.* at 5.
[14] *Id.*
[15] *Id.* at 6-7.
[16] *Id.* at 6.
[17] *Id.* at 8.
[18] *Id.* at 10.

Use of State and Local Police to Conduct Immigration Enforcement Activities

Immigration enforcement is the responsibility of federal immigration authorities, not state and local law enforcement, whose job is to protect and serve all residents and visitors, regardless of immigration status. New York has a long and proud tradition of welcoming immigrants. More than twenty percent of New Yorkers were born outside the country and more than one in ten are foreign-born citizens of the United States.[19] When state and local law enforcement officers collaborate with Border Patrol agents in the interior, immigrant communities become fearful that any kind of interaction with the police will put themselves and their family members at risk for detention and deportation.

The NYCLU regularly receives reports of upstate New Yorkers targeted for immigration investigation and enforcement by state or local law enforcement agencies acting on behalf of or in concert with CBP. Often, a stop that otherwise would be brief and routine transforms into a prolonged detention for the purpose of investigating immigration status when a state or local officer, often with little information other than the perceived race and English language ability of the stopped individual(s), calls CBP from the scene of the stop. Sometimes the pretext for the call is a need for translation assistance, itself an inappropriate use of CBP resources, but frequently the officers dispense with this pretense. CBP reinforces this dynamic by remotely interrogating car occupants and instructing the officer on the scene to detain and/or transport the individual(s). This prolongation of traffic stops often violates the rights of New York residents under the Fourth and Fourteenth Amendments to the U.S. Constitution and the analogous provisions of the New York State Constitution.

Another concerning practice of Border Patrol involving coordination with state and local law enforcement that warrants oversight is its abuse of its limited authority to conduct checkpoints. Border Patrol is permitted to briefly stop motorists at checkpoints for a "limited inquiry into residence status" and a "visual inspection" of a vehicle's exterior.[20] Records obtained by the NYCLU through FOIA, however, demonstrate that Border Patrol and state and local law enforcement agencies jointly operate checkpoints in northern New York at which they openly and routinely exceed this limitation by conducting generalized criminal investigations, a practice which the Supreme Court has declared unconstitutional.[21] One need only peruse local newspapers to find accounts of upstate residents aggravated and outraged at frequently having to suffer through intimidating, extended interrogation not related to immigration, unlawful and

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[19] Migration Policy Institute, *State Immigration Data Profiles*, http://www.migrationpolicy.org/data/state-profiles/state/demographics/NY.

[20] *United States v. Martinez-Fuerte*, 428 U.S. 543, 558–60 (1976); *see also id.* at 556–57 ("The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop.").

[21] *See City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000) ("We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime."); *see also, e.g.*, *United States v. Ellis*, 330 F.3d 677, 680 (5th Cir. 2003) (holding that Border Patrol routinely tack on otherwise impermissible drug interdiction questioning was "essentially an attempt to circumvent the [Supreme] Court's holding in *Edmond*") (quotations omitted).

invasive searches, and other abuses while passing through merely to go to work, run errands, or the like.[22]

The NYCLU has documented the adverse impact that state and local law enforcement involvement in immigration enforcement has on the lives of New Yorkers. In one case from 2010, Peter Mares, a U.S. citizen of Mexican descent offered to provide translation services to a local police officer during a traffic stop. The officer called Border Patrol, and when the Border Patrol agents arrived, they began to interrogate Peter and ask for identification. When Peter asked why a U.S. citizen was required to show identification, the Border Patrol agent handcuffed Peter and continued to interrogate him regarding his citizenship for 45 minutes, before releasing him without charges.[23]

In January 2014, a Hispanic U.S. citizen friend was driving M.G.,[24] currently a lawful permanent resident of the United States, from Buffalo, NY to Fulton, NY. At approximately 1:30 PM on County Road 48 in Oswego County, the car slipped into a ditch due to blizzard conditions and was totaled. M.G.'s friend dialed 911, and New York State Troopers arrived on the scene. Aside from assisting with having the car towed, the Troopers focused their attention on the immigration status of M.G. Very soon into the encounter, the officer had a Border Patrol officer interrogate M.G. via cell phone while she sat in the back seat of his patrol car. M.G. explained that she had federal work authorization and showed the Trooper her work authorization photo identification, but he and his Border Patrol counterpart persisted. After hanging up with the Border Patrol officer, the Trooper handcuffed M.G. and drove her to the CBP station in Oswego. There, Border Patrol agents continued to detain M.G. for a total of over three hours until finally confirming that she was a lawful permanent resident.

Individuals such as M.G., a survivor of domestic violence, have become afraid to call 911, perhaps the most fundamental mechanism for community members to alert the police to crime and danger in their homes and communities. By transforming routine encounters with state and local police into prolonged detentions involving extensive questioning about immigration status, Border Patrol creates a deep fear and mistrust of law enforcement in local communities and does immeasurable damage to public safety. Furthermore, a thorough review of practices at Border Patrol checkpoints is needed to identify needed changes to ensure that they comport with constitutional limits.

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[22] *See, e.g.*, Jake DeShane, *Border Patrol Road Blocks Infringe Our Rights*, NORTH COUNTRY NOW, Mar. 9, 2015, available at http://northcountrynow.com/letters/border-patrol-road-blocks-infringe-our-rights-0138136.
[23] *Justice Derailed*, *supra* note 4 at 22.
[24] To provide her privacy, the name of the individual described as "M.G." is withheld.

Racial Profiling

In December 2014, the U.S. Department of Justice issued new guidelines to eliminate bias in federal policing.[25] However, the Department exempted CBP from coverage, stating in a footnote that "this Guidance does not apply to interdiction activities in the vicinity of the border, or to protective, inspection, or screening activities."[26] Historically, CBP has taken the position that its officers are constitutionally permitted to rely on apparent race as a factor justifying suspicion for immigration enforcement-related stops.[27] This stance is antithetical to Equal Protection and is of particular concern for New Yorkers, given the state's diverse population; nearly half of the state's total population is non-white.[28]

The case of Lucia Rogers provides a useful illustration of this concern. Ms. Rogers, a U.S. citizen living in Chateauguay, New York is of Mexican descent and has a dark complexion. She works for a community health organization funded in part by a federal grant, providing transportation and interpretation services to Spanish-speaking farmworkers in upstate New York who require medical treatment or consultation. On December 28, 2011, in the course of her employment, Ms. Rogers was pulled over by Border Patrol agents, who informed her that they were conducting a "citizenship checkup." The agents, who had no reasonable suspicion that Ms. Rogers was engaged in any criminal activity, stopped her without justification and presumably because of her race. They proceeded to handcuff, arrest, invasively search, detain, and interrogate her at the Ogdensburg CBP station. She was released after several traumatic hours of detention.

The need to investigate whether CBP regularly engages in racial profiling is bolstered by the records concerning transportation raids obtained through a FOIA request, discussed above. Passengers of color who asserted their U.S. citizenship when questioned by agents were routinely asked to prove their citizenship and present documentation, despite the fact that U.S. citizens are not required to carry proof of citizenship.[29] An analysis of the records revealed that people of color were the primary focus of enforcement operations in the Rochester Station. Records reflecting arrestees' skin complexion (e.g., "medium," "black", "light," etc.) show that the vast majority of those arrested—84.1 percent—were of a medium or black complexion.[30]

The NYCLU believes the loophole afforded CBP in the December 2014 DOJ guidelines should be closed. A basic requirement of Equal Protection is that an officer—including CBP agents—may not target individuals because of their race, ethnicity, gender, national origin, religion, sexual orientation or gender identity. Moreover, profiling divides communities and

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[25] U.S. Dep't of Justice, Civil Rights Div., *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, Dec. 8, 2014, *available at* http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf.
[26] *Id.* at 2, n.2.
[27] *See United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87 (1975).
[28] U.S. Census Bureau, *State County QuickFacts: New York*, http://quickfacts.census.gov/qfd/states/36000.html.
[29] *Justice Derailed*, *supra* note 4 at 7.
[30] *Id.*

creates a major rift between law enforcement and the communities they are meant to protect. The NYCLU urges the adoption of policies, training, data collection, and disciplinary measures to eliminate racial, religious, and other discriminatory profiling by Border Patrol agents.

Need for Training on Enforcement Priorities

There is a clear and urgent need for more comprehensive training of CBP agents in order to reduce the incidence of unnecessary detention and arrests and the corresponding harms to New York communities by overzealous enforcement. Border Patrol officers' historical approach can fairly be characterized as "arrest first, figure out enforcement priority questions later." This stands in stark contrast to Secretary Johnson's November 20, 2014 directive on new policies for the apprehension, detention, and removal of undocumented immigrants, which emphasized the need to target enforcement activities and engage in the exercise of prosecutorial discretion, including at the earliest investigative stages, when enforcement is not necessary to protect national security, border security, and public safety.[31]. A fundamental culture change is necessary in order to bring the agency into compliance with the Secretary Johnson's November 20, 2014 directive

In many cases, Border Patrol officers have unlawfully arrested persons with valid immigration statuses because the officers incorrectly presumed that the arrestees were not in possession of proper documentation. M.G.'s story, discussed above, is illustrative of this phenomenon, and there are more cases like hers. For example, Border Patrol arrested a VAWA self-petitioner for not carrying a registration documents that she was not required to have, detained and transported a tourist to a port of entry because he was not in possession of an I-94, refused to accept a valid Employment Authorization Document as evidence of lawful status, and demanded to see students' I-20 forms, despite federal regulations that explicitly instruct students to keep their I-20 forms in a safe place and not carry the documents on their persons.[32]

A staggering number of those arrested during the transportation raids discussed above were detained by CBP without being screened for risk of flight, threat to the community, or other considerations. Between 2006 and 2009, 74 percent of individuals arrested were detained.[33] Not only do these overzealous detention practices create a financial burden for taxpayers, but unnecessary detention deprives children of their parents, families of their breadwinners, employers of their employees, and communities of their valued residents.

It is imperative that Border Patrol officers receive ongoing training on enforcement priorities and the exercise of prosecutorial discretion. This is especially true for Border Patrol officers engaged in interior enforcement activity, as they are more likely to encounter individuals

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[31] Jeh Johnson, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants* (Nov. 20, 2014), *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
[32] *Uncovering USBP, supra* note 12 at 23-25.
[33] *Justice Derailed, supra* note 4 at 14.

with deeply rooted ties to families and communities in the United States. Border security and public safety are not served by tearing apart families and communities contrary to established priorities.

Conclusion

Despite the agency's assertion that its operations in New York State enhance border security, CBP's actions have been inconsistent with its stated priorities. CBP's activities, in particular its interior enforcement operations, have led to widespread constitutional violations that continue to sow mistrust between communities and law enforcement officials. Rather than increasing funding for CBP and further militarizing the border, Congress should improve oversight and accountability mechanisms to curb CBP's abusive enforcement practices. To the extent that CBP continues to engage in interior enforcement, it must ensure that it does so only in accordance with existing enforcement priorities and that prosecutorial discretion is exercised to the fullest extent permissible in order to keep families and communities together.

We thank the Committee for the opportunity to offer this statement on CBP's enforcement activities in New York State and look forward to continuing to work with the Senate and with CBP to ensure that all New Yorkers, regardless of their immigration status, are treated with dignity and respect in their interactions with immigration enforcement agents.

Post-Hearing Questions for the Record
Submitted to Michael J. Fisher & John Wagner
From Senator Heidi Heitkamp

"Securing the Border:
Understanding Threats and Strategies for the Northern Border"
April 22, 2015

Question: Throughout my visit to Pembina, I heard from multiple local leaders about challenges in hiring and retaining Border Patrol and Office of Field Operations (OFO) personnel in North Dakota. With only 2,093 border patrol agents and 3,600 OFO agents for the 5,225 mile long border (which includes 120 ports of entry), long-term challenges in filling positions at remote stations represents a national security threat.

What steps is CBP leadership in Washington taking to address hiring challenges at remote stations such as Pembina, ND, and highly-remote locations such as Portal, ND?

Response: The U.S. Customs and Border Protection (CBP) Offices of Field Operations (OFO) and Border Patrol (OBP) work with the CBP Office of Human Resources Management (HRM) to recruit and retain CBP Officers (CBPO) and Border Patrol Agents (BPA) in hard-to-fill duty stations, including those along the Northern border. These efforts include the use of incentives (e.g., recruitment, retention, and relocation) to ensure sufficient staffing to meet mission requirements. HRM is currently working with OFO to identify hard-to-fill locations where recruitment incentives could be used to assist in meeting staffing requirements, and on a justification for the use of a special pay rate table for the Portal, ND Port of Entry (POE). In addition to the use of incentives, CBP maintains a national reassignment process for eligible OFO employees. Lateral reassignment opportunities, used to solicit applications from current CBPOs, are posted to an internal website accessible to all CBP employees. Recent postings (May 2015) include lateral reassignment opportunities for three POEs in North Dakota (Pembina, Portal, and Dunseith).

Question: What steps has CBP taken to use hiring flexibilities such as retention and recruitment bonuses?

Response: As indicated in the response to Question 1a, OFO and OBP work with the HRM on the use of incentives to both fill positions and retain employees in hard-to-fill duty stations.

The use of incentives is contingent upon the availability of funds. On November 1, 2013, the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB) issued a memorandum establishing budgetary limits on awards for Fiscal Year (FY) 2014. The memorandum included guidance that agency spending on recruitment, relocation, and retention incentives should not exceed Calendar Year (CY) 2010 levels; for CBP, this amounts to $618,000. The budgetary limits are to remain in effect until further guidance is issued.

Question#:	1
Topic:	Hiring and Retention
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

When applicable, CBP uses available hiring flexibilities to meet staffing requirements. CBP has submitted a request for a new delegated dual compensation reduction (salary offset) waiver authority, under the criteria in 5 C.F.R. § 553.202, "Request for Delegation of Authority to Approve Reemployment Without Reduction or Termination of Annuity in Emergencies or Other Unusual Circumstances." OFO has a critical and recurring need for reemployed annuitants with specialized skills and expertise in OFO operations to augment its workforce. The request, submitted through DHS CHCO to OPM on May 1, 2015, would allow CBP to reemploy up to 200 annuitants to support the hiring, training, and development of entry-level CBPOs and new Supervisory CBPOs. If granted, CBP will use the authority to hire reemployed annuitants full-time on temporary appointments, in locations throughout the country, for only the time needed to support the CBPO hiring surge.

Question: In your opinion, are Special Pay Rate Requests warranted in this situation given that program focuses on the difference between private-sector and public-sector wages and there really isn't an applicable private-sector position to a border agent?

Response: We are still studying the issue of whether it would be appropriate to request special salary rates. As mentioned above, CBP is currently considering various options—including but not limited to special salary rates—to address recruitment and retention challenges at duty stations where it has proven difficult to fill Border Patrol Agent positions.

We understand that OPM may approve special salary rates even if there is no direct counterpart position in the private sector or State or local government. (With respect to CBP officers and Border Patrol agent positions, OPM could possibly consider salary rates for related—though not directly comparable—law enforcement jobs, such as State/local police officers.) Under OPM's statutory authority in 5 U.S.C. 5305, the key qualifying condition for special salary rates is the existence or likelihood of significant recruitment or retention difficulties. Evidence of a pay disparity with similar non-Federal positions is just one of several factors that could be cited to support a need for special salary rates. Other factors to be considered include existing vacancies; attrition rates; the effect of staffing problems on the agency's mission; and the degree to which the agency has used other available flexibilities and tools, including recruitment and retention incentives.

Question: What can DHS and CBP do to help address the spouse challenge - i.e., some of these remote locations don't offer many opportunities for spouses to find employment?

Question#:	1
Topic:	Hiring and Retention
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Response: OBP has established a Spousal Transfer Program that grants noncompetitive reassignments to relocating spouses who are CBP employees. OFO maintains an informal referral process for spouses who possess unique or exceptional job skills and are relocating with an employee under a directed reassignment. DHS and CBP conduct outreach and provide other forms of relocation assistance. These efforts include working with local Chambers of Commerce to provide information to spouses concerning employment opportunities, educational opportunities, and community activities. DHS and CBP regularly collaborate to leverage best practices for relocating family members and assisting in the transition of employees and their spouse to a new duty location.

Question: Say CBP gets an application from someone who is from North Dakota, what steps does CBP take right now to accelerate that application through the hiring process since they would likely be more open to taking a position in some place such as Portal?

Response: CBP does not accelerate applicants based on home record; however, the Agency has reengineered hiring operations and implemented various process improvements to ensure candidates are placed into pre-employment processes in an expedited manner.

CBP hires candidates to fill both law enforcement officer positions and non-law enforcement positions nationwide. CBP posts Job Opportunity Announcements (JOAs) on USAJOBS, the U.S. Government's official website for listing civil service job opportunities with federal agencies. The site is operated by OPM. Consistent with qualification, application requirements and other considerations identified in each JOA, all individuals interested in the position advertised can apply to the JOA. In some instances, the JOA will limit the area of consideration for applicants to the local commuting area.

Sustaining CBP frontline CBPO and BPA staffing levels requires annually attracting and assessing thousands of applicants to replace employee losses resulting from retirement and other attrition, as well as to fill any new positions funded or authorized by Congress. To meet these staffing requirements, CBP recruits nationwide and opens several JOAs each year. Individuals interested in CBPO and BPA positions will apply for a geographic area or specific location, depending on the particular JOA. To promote a common work experience, all entry-level BPA hires begin their careers at a duty station on the U.S. Southwest border. Similarly, CBP has begun hiring entry-level CBPOs for a limited number of POEs, where they will receive uniform post-Academy training. As part of their career progression, CBPOs and BPAs may pursue promotional and lateral reassignment opportunities to other duty locations, including a prior location of residence.

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CBP non-law enforcement positions JOAs also identify the specific location where the selected individual(s) will perform the position duties detailed in the announcement. Often, these JOAs will limit the area of consideration to candidates within the local commuting area. CBP is assessing the potential for having specific CBPO and/or BPA JOAs for hard-to-fill locations to ensure sufficient numbers of applicants, and to expedite hiring, for the locations.

Question: Does CBP need additional legislation to do such accelerated processing?

Response: CBP is willing to work with Congress in this area.

Question#:	2
Topic:	Technology on the Northern Border 1
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: Another thing I heard from CBP personnel during our tour is the need for technology. With fewer personnel than the southern border, it is critical that modern technology is deployed as a force multiplier on the Northern Border.

What steps does CBP and DHS's technology development effort take to make sure that the technology needs of the Northern border are being met?

Response: Technology development and acquisition is driven by the needs and priorities of the U.S. Customs and Border Protection (CBP) operational offices. The Office of Border Patrol (OBP) has established a Capability Gaps Analysis Process to collect technology needs by station/sector, collate those needs, and analyze which needs are station/sector specific and which ones are common nationwide. Identifying these needs enables CBP to establish priorities and assess the maturity level of a potential technical solution. For solutions with low technical maturity, CBP looks to the Department of Homeland Security (DHS) Science & Technology Directorate and the Domestic Nuclear Detection Office (DNDO) for assistance in developing, adapting and maturing the technology. For higher maturity solutions, CBP will conduct pilots and demonstrations to assess whether the technology meets the need, as well as whether it can survive the harsh physical environments presented by the CBP mission.

CBP is looking to the future by working closely with the DHS Science & Technology Directorate to identify and develop technology to improve our surveillance and detection capabilities along our land and maritime borders, north and south. This includes investments in tunnel detection and tunnel activity monitoring technology; tactical communication upgrades, Small Unmanned Aircraft Systems; low-flying aircraft detection and tracking systems, land and maritime data integration/data fusion capabilities, and border surveillance tools tailored to Southern and Northern borders, including unattended ground sensors/tripwires, upgrades for mobile Surveillance Systems, slash camera poles, and wide-area surveillance.

CBP and DNDO work closely to identify and develop Radiation Detection Equipment (RDE), procure and deploy RDE at the Ports of Entry (POE), and optimize its usage by operators. For example, CBP and DNDO recently collaborated to improve throughput and reduce burdens on CBP officers who operate radiation portal monitors and are pursuing efforts to support remote operations at specific POEs. Furthermore, OBP continues to work with DNDO to deploy human portable RDE to detect whether persons or vehicles encountered between POEs are carrying nuclear or other radioactive material.

Question#:	2
Topic:	Technology on the Northern Border 1
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: Many of the Northern Border ports are very small with limited traffic, how do we make sure that the technology needs of those ports are not lost in the shuffle when so much emphasis is placed on the busier southern border?

Response: The Office of Field Operations (OFO), Cargo and Conveyance Security, Non-Intrusive Inspection Division reaches out through monthly conference calls to CBP's Border Security Coordinators at field locations to ensure their technology requirements are being addressed at ports of entry. In addition to these monthly conference calls, annual surveys are used to ensure requirements are being fulfilled by deployed technology.

In addition, OFO's Planning, Program Analysis and Evaluation and Admissibility and Passenger Programs, through the Land Border Integration Program and the CBP Mobile Program, are enhancing operations through the deployments of software and mobile technology.

- As of September 2013, all major land border ports, representing 99 percent of all inbound vehicle traffic, have been upgraded to include improved license plate readers, Radio Frequency Identification (RFID) readers and improved processing applications to facilitate the inspection of travelers and vehicles using RFID-enabled travel documents.
- The Northern border has 136 total crossings. Of these crossings, 122 have the improved vehicle primary software; 48 have both the vehicle primary software along with RFID and license plate reader technology.
- Over 92 percent of the passenger traffic on the Northern border is processed through a crossing with the improved license plate readers and RFID technology.
- Additionally, CBP is continuing to deploy technology across the Northern border such as mobile, handheld technology. For example, Sault Ste. Marie, Michigan; Pembina, North Dakota; and Calais and Portland, Maine are scheduled for the deployment of mobile, hand-held license plate readers.

Question: North Dakota has a strong connection to the UAS industry with Grand Forks Air Force Base and the FAA UAS Test Site. UAS is a wonderful, flexible technology. What steps is CBP taking to get more out of its UAS assets on the Northern Border?

Response: CBP's Office and Air and Marine's (OAM) National Air Security Operations Center – Grand Forks (NASOC-GF) is designated as the UAS Training Center of Excellence and flies 2 MQ-9 aircraft. Aircraft CBP104 is a legacy plane that is used for launch and recovery training only. This plane is limited from any other operations due to

Question#:	2
Topic:	Technology on the Northern Border 1
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

dated systems needing upgrade. Aircraft CBP216 will soon be fitted with upgraded landing gear and new internal equipment to operate all of OAM's sensor packages. CBP113, in major rework with the manufacturer, will return to the fleet with upgraded landing gear and new internal equipment to operate all of OAM's sensor packages and is slated to be delivered in Fiscal Year 2016. With this addition, NASOC-GF will have the ability to conduct overland coherent change detection (CCD, Lynx SAR Radar), overwater maritime domain operations (SeaVue Radar), and its core mission of training. OAM is also increasing manpower at NASOC-GF providing more flying capacity for greater utilization.

Question: What steps has CBP taken to work with the FAA on making it easier to fly more UAS?

Response: Previously, only a single UAS could operate at any given time within each of OAM's operational Certificates of Authorization (COA). OAM, in partnership with the Federal Aviation Administration, expanded its ability to operate in the National Airspace by agreeing on and implementing procedures that allow for the operation of more than one UAS simultaneously within each of OAM's operational COAs. Recently, OAM participated in the UAS Joint Airspace Integration test, which may potentially lead to an additional airspace available to UAS. Additionally, OAM has coauthored a COA allowing the use of Department of Homeland Security and U.S. Department of Defense UAS simultaneously in the airspace at Grand Forks Air Force Base. This is the first place in the country, outside of restricted airspace, where UAS and traditional aircraft can fly simultaneously.

Question: When it comes to persistent surveillance and related missions - such as examining wide swaths of the border for signs of crossing - how many man hours would it take to accomplish the same effort if DHS didn't use UAS assets?

Response: OAM's UAS employ a myriad of advanced sensors to detect cross border activity. Synthetic Aperture Radar (SAR) and Vehicle and Dismount Exploitation Radar (VaDER) technologies coupled with Electro-Optical/ Infrared (EO/IR) imagery aid in the detection and identification of cross border activity. These UAS technologies in combination with manned airplane and helicopter surveillance provides a layered approach to border security. The UAS is used in conjunction with other technologies implemented by traditional law enforcement and investigative methods employed by Border Patrol Agents. A man hour comparison of the UAS to the other assets would be difficult to make as the UAS has capabilities that are not replicated by other CBP capabilities.

Question#:	3
Topic:	Northern Border Drug Interdiction 1
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: We know that there is fairly steady flow of narcotics across the Northern Border, nothing like the Southwest border, but it is still a major issue and a top concern of mine and our federal, state, local, and tribal law enforcement officers in North Dakota.

What are the major drug issues, and types of drugs that you are seeing cross the Northern Border, in particular from Idaho to Minnesota?

Response: Drugs flow both ways across the U.S.-Canadian border. Most flow north, as drug cartels have created networks to move their drugs across the United States and into Canada. Some drugs flow south, however, primarily from Canadian producers of MDMA (3,4-methylenedioxy-methamphetamine popularly known as ecstasy or Molly), marijuana, and methamphetamine.

- U.S. Customs and Border Protection (CBP) seizures of MDMA across the Northern border dropped sharply since Fiscal Year (FY) 2011, possibly connected with problems in imports of precursor chemicals, which were in short supply a few years ago, according to the United Nations.
- Both methamphetamine and marijuana flow north from the United States into Canada, as well. CBP reporting indicates that the flow of marijuana into Washington State has diminished since marijuana was legalized there in 2012.
- Most of Canada's cocaine and heroin supplies from South America come via the United States, although the State Department notes that statistics suggest that air, sea, and mail means are being used more often, with heroin in particular, coming from Southwest Asia.[1]
- Seizure trends in part reflect the nature of countries to scrutinize inbound traffic more carefully than outbound. For example, the Canadian Border Security Administration's (CBSA) cocaine and heroin seizures are much higher than CBP's along this border, while CBP's seizures of MDMA are considerably higher than CBSA's.
- Seizure trends strongly suggest that drug flows are concentrated on the West and East Coasts, as well as in the Detroit-to-Montreal area. The principal areas of drug-smuggling concern in the Idaho-Minnesota area are: the Bakken oilfield development area, along with several border lands connected with Native American tribes, including: Blackfeet Tribe of Montana, the Grand Portage Band, the Red Lake Band, and the Boise Forte Band of Chippewa (Minnesota), Fort

[1] US Department of State International Narcotics Control Strategy Report, Vol. I. Drug and Chemical Control, March 2013, p. 118, http://www.state.gov/j/inl/rls/nrcrpt/2013/vol1/204048.htm#Canada

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Belknap Indian Community (Montana), Fort Peck Assiniboine & Sioux Tribes (Montana), Kootenai Tribe (Idaho), and the Turtle Mountain Band of Chippewa (North Dakota), according to the Office of National Drug Control Policy's 2012 National Northern Border Counternarcotics Strategy.

Question: Is there a difference from the type and of drugs, quantities and organizations/individuals involved versus the more heavily trafficked crossings in Michigan, Washington state, and New York/New England?

Response: There are few notable differences between the Havre and Grand Forks Sectors and the more heavily trafficked areas mentioned above. The Havre and Grand Forks Sectors experience an overall much lower flow of drugs and smaller seizures. There is a heavier reliance, according to U.S. Border Patrol (USBP) analysis, on use of the Indian reservations, particularly those sharing a border with Canada. Finally, the Bakken oil region, which covers a lot of ground in this area, has an impact on drug activity.

USBP analysis cites drug activity associated with the Bakken oil efforts as a major concern. The fall in oil prices over the past year has reduced activity in the region, but the effect of the lower activity on drug demand is uncertain.

Question: Have you seen any uptick in this region, versus 3-5 years ago? In particular along the Montana/North Dakota border? If so, what are you seeing?

Response: Using drug seizures as an indicator, there have been no drug upticks in this region over the past several years, aside from the sharp drop in MDMA seizures noted above. Seizures in the Montana/North Dakota area continue to be small, although USBP analysis considers the drug problem to be larger than the level of seizures suggests. The uncertain impact of the changing economics of the oil industry will continue to affect the Bakken region, which will be an area of ongoing concern regarding drug issues.

Question: Given the unique challenges of patrolling such a remote border, many states along the Northern Border also have Indian Country very close to, or along that border as well. Addressing this issue in Indian Country and rooting out traffickers who hide in these remote areas is major priority of mine.

What challenges are there specific to Indian Country along the border when it comes to drug trafficking and drug interdiction?

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Response: As you noted, the remoteness and vastness of the Northern border presents its own challenges. Our sectors have reported that the principal challenge related to narcotic interdiction in Native American Territory is the geographic inhibitors presented to law enforcement. Many reservations are in remote areas that are often difficult to patrol and tribal officers often face jurisdictional challenges related to non-Indian offenders and checkerboard land status.

For example, the Akwesasne Mohawk Indian Reservation (Swanton Sector/Buffalo Field Office) encompasses territory in both Canada and the United States, straddling the international border. The Mohawk Council of Akwesasne is the federally recognized tribal government in Canada. The St. Regis Mohawk Tribe is the federally recognized tribal government in the United States. Within the territory of Akwesasne there are several unmanned roads that cross the border between Canada and the United States. These unmanned points of entry present a challenge to the narcotic interdiction efforts of law enforcement. Drug traffickers often travel in and out of Indian Country, making it difficult for local officers to track all the illegal activity and parties involved. These challenges are normally addressed through the development of local task forces and successful corroboration between federal, tribal and state stakeholders.

Another challenge that the Bureau of Indian Affairs (BIA) and tribal law enforcement programs face is the lack of adequate resources to focus on specific areas such as drug trafficking or border interdiction. Many programs struggle to provide the basic police services to their communities and are unable to dedicate full time resources specifically to work drug interdiction and border issues. With an overwhelming number of calls for service and the limited number of officers, it is difficult for these entities to effectively follow up on leads and investigate crimes related to drug trafficking. The Grand Forks Sector has indicated that community policing could be helpful in their area because community members on Indian Reservations within this area have been reluctant to come forward with information that would help law enforcement combat drug trafficking for fear of reprisal from other tribal members. The BIA has had staffing problems on the Turtle Mountain Band of Chippewa Reservation this last year. Due to hilly and wooded terrain, the Bottineau Station is limited to patrolling many of these areas on all-terrain vehicles or snowmobiles.

The Seattle Field Office has designated tribal liaisons responsible for liaison activities with border tribal communities in their area of responsibility. The National Border Community Liaison Program was established as a means of supporting CBP's ability to engage and interact with external community groups and stakeholders that have a vested interest and, in some instances, direct influence on operations and capabilities. The

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Seattle Field Office continues to engage with the tribal communities under the Border Community Liaison Program.

The Havre Sector reports that the five reservations within the Havre Sector are established points of distribution and points of facilitation for methamphetamine. The trafficking of methamphetamine is from west to east across the sector, and not specifically border related. The greatest challenge is obtaining relevant, current, trafficking information from Tribal Police Organizations.

Question: How is the working relationship with BIA and tribal police officers?

Response: Swanton (includes the state of Vermont, and the counties of New York and New Hampshire), Buffalo, and Grand Forks Sectors all have strong professional relationships with both BIA and tribal agencies. Agents interact with tribal officers every day, share intelligence, ride together, make joint apprehensions, and participate in joint operations. The Buffalo Field Office noted that, while there is no BIA Police Force within the Massena area of responsibility, the Massena Port of Entry maintains an excellent collaborative relationship with both the Akwesasne Mohawk Police Service, the tribal police service with jurisdiction in the Canadian portion of Akwesasne, and St. Regis Mohawk Tribal Police, the tribal police service with jurisdiction in the United States portion of Akwesasne. In addition, CBP Massena and both tribal police services have representation on the Border Enforcement Security Task Force (BEST) which further enhances this collaborative relationship.

The Havre Sector expressed more challenges. Havre Sector has only one BIA relationship. The remainder of the relationships are with Tribal Police Organizations. Relationships are personally respectful and cordial but require more communication and collaboration to be professionally productive. There are noted instances of non-cooperation in ongoing cases as well as day to day activities.

Question: What can be done to further enhance drug interdiction efforts in Indian Country?

Response: All Border Patrol Sectors have indicated that enhanced communication and collaboration to facilitate information sharing is key to success in this area. Continued collaboration with task forces like BEST, Mobile Enforcement Team deployments and sharing of intelligence between tribal police and CBP components, as well as continuing to cultivate relationships with tribal law enforcement agencies, the tribal communities, and tribal councils should be a priority. Providing additional drug interdiction training and drug related equipment for BIA and tribal field officers/agents would also enhance

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their ability to effectively combat drug trafficking organizations targeting Indian Country. Finally, more federal prosecutions for drug violations would make an impact on drug violations in Indian Country. Federal prosecutorial guidelines often allow the smaller dealers to escape federal prosecution due to the amount of drugs not meeting the thresholds set by the US Attorney's Office. A small amount of illegal narcotics can make a devastating impact on a small community compared to large metropolitan areas. Prosecuting the local dealers will take the source out of the community and could lead to a cooperating source that could lead agents to the larger source of supply. BIA will continue to work with tribal partners and other federal and state agencies to maximize resources to address the drug activity negatively affecting Indian Country communities.

Question: Is this part of the larger planning at your agencies when you look at how to police and monitor the Northern Border?

Response: These challenges are taken into account when law enforcement works to develop strategies centric to the Northern border. In some areas, the Border Patrol is currently embedded with federal, state, local and tribal offices in the area and is always looking to leverage law enforcement partners to increase capabilities. Interagency and intergovernmental relationships and cooperation are essential to effectively secure the border on or near Indian Reservations.

Question: When it comes to cross-border collaboration and operations, what is the relationship like with RCMP and other Canadian law enforcement and border officers?

Response: The United States and Canada have always enjoyed a close relationship as allies at all facets of government-to-government cooperation including law enforcement collaboration that facilitates shared border management. U.S. and Canadian law enforcement agencies have established a Cross Border Law Enforcement Advisory Committee that is designed to promote coordination and best practices among the existing Integrated Border Enforcement Teams (IBET), BEST, Shiprider, and other such programs, enabling officials to use the best model for each location.

Information sharing with Royal Canadian Mounted Police (RCMP) changes from location to location along the border. Both RCMP and CBP have the legal ability to share information in certain circumstances. However, while there are certain mechanisms in accordance with legal agreements to share information between the United States and Canada, these do not directly address the type of information sharing that occurs between the law enforcement agencies along the border. It should be noted, however, that other agencies outside of CBP – DEA, for example - have relationships

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with RCMP, which directly address the issue of counternarcotics information and operations coordination and cooperation.

The Office of Field operations participates in the IBET and this forum has forged an excellent working relationship with our Canadian partners. This team is a multi-faceted law enforcement initiative comprised of both Canadian and American partners. The IBET is considered a best practice by both the Canadian and United States governments and is a model for bi-national collaborative efforts in securing our shared border. The IBET core agencies include CBP, the U.S. Coast Guard, Immigration and Customs Enforcement, CBSA, and RCMP. In addition, this well-established, mutually beneficial relationship has garnered almost daily communication with our counter parts on issues and or events of significance at ports on both sides of the line in some locations.

Question: What challenges are there when it comes to conducting joint cross-border operations?

Response: Historically, the United States has been a popular destination for migrants seeking better lives and jobs. Canadian and U.S. border officers are seeing an ongoing trend for foreign nationals to use the United States as a stepping stone to enter Canada illegally. The U.S.-Canadian border presents unique security challenges due to a combination of geography, weather, and volume of trade and travel. The Northern border spans diverse terrain and climates, metropolitan areas, and open spaces. The Office of Air and Marine (OAM) strategically aligns its resources in the areas of the greatest threat with hundreds of miles between locations. With approximately 260 agents across 4,000 miles of the continental U.S.-Canadian border, technology is required to act as a force-multiplier, maximizing available resources, enhancing connectivity of information and communication systems, and augmenting the work of our personnel. Strategically deployed technology establishes and enhances a law enforcement presence where personnel is limited or otherwise not available. Information sharing is invaluable to the development of intelligence and targeting of criminal organizations exploiting our shared border area. Partnerships with Canada are essential for enhancing Northern border security, and the Department of Homeland Security (DHS) Northern Border Strategy enables DHS to better partner with Canadian colleagues, as well as with our U.S. federal partners. Continuing to enhance the current cross-border intelligence sharing and the integrated cross border law enforcement activities will also provide for a more secure Northern border.

CBP is willing to meet with your staff to further discuss the specific challenges and how they are being addressed.

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Question: Are there things that we can look at here in Congress that would help you do your job better and would allow you and your Canadian counterparts to operate even more efficiently and effectively?

Response: CBP welcomes the opportunity to work with Congress on initiatives to operate more efficiently and effectively.

Question: When it comes to technology, what forms of technology have been the most beneficial in your drug interdiction efforts?

Response: Current detection and surveillance system aboard OAM air and marine assets act as a force multiplier in drug interdiction efforts. However, persistent detection in the air and maritime domains is a capability gap along the Northern Border. OAM is pursuing several initiatives to enhance domain awareness in the air and maritime environments on the Northern border through increasing the number of radar sites along the Great Lakes and Pacific Northwest coast. In addition, the emergence of domain awareness technologies such as VADER and SeaVue radars have a direct impact on extended border/ border security threats. Through CBP's layered border security approach, emerging technologies prove to be a force multiplier, providing more accurate threat/risk assessments that allow DHS to more effectively employ other technologies and personnel in response to threats and threat vectors.

Large and Small-Scale Non-Intrusive Inspection Technology play a significant role in CBP's layered enforcement strategy at northern land border ports. As a general observation, smaller, faster, less complex technology usually works best for CBP Officers in the field. Well established technology such as the Mobile VACIS and Z Backscatter technology have played significant roles in drug interdiction efforts for over a decade. Smaller technology like the ubiquitous Buster are still in use and still contribute to interdiction efforts. Also, while technically not a "technology" per se, the CBP Canine Program is still a useful tool that has proven effective at finding contraband.

Other forms of technology that contribute to drug interdiction efforts are forklifts (for devanning tractor trailers and containers), and baggage x-ray machines (for use in the bus passenger processing environment).

Question: What additional technological resources deployed along the Northern Border do you think would further assist in these efforts?

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Response: Increasing domain awareness through surveillance technologies will allow a more complete picture of airborne and maritime traffic along the Northern border. Utilization of detection technology including wide area surveillance-deployed on fixed and mobile platforms, combined with a response capabilities and an intelligence network will provide for a robust approach to interdiction. Examples include:

1. Land surveillance data: OAM's success with VADER in Arizona has called for further deployment on the border, to include the Northern border. North Dakota's Unmanned Aircraft Systems is slated to receive a VADER sensor.
2. Maritime surveillance data: Additional domain awareness would be gained by the ingest of existing U.S. maritime detection sensors data into OAM's Air and Marine Operations Center and the expansion of ongoing data sharing efforts with our Canadian partners, to include all existing Canadian Maritime radar sites along the shared border. The DHS Science and Technology Directorate (S&T) has several technology development efforts ongoing to enhance maritime domain awareness along the Northern Border:
    a. S&T is currently piloting a sensor sharing project which provides a correlated surveillance picture using complementary U.S. and Canadian sensors to provide a joint surveillance picture (eliminating blind spots) simultaneously to both CBP and the Royal Canadian Mounted Police (RCMP).
    b. S&T is developing the Coastal Surveillance System (CSS) to enhance maritime domain awareness and increase the availability of actionable law enforcement information to CBP, US Coast Guard, and other federal, state, local, tribal, international, and private partner law enforcement agencies. CSS is currently piloted at CBP's Air and Marine Operations Center (AMOC) and includes Canadian partner participation.
3. Maritime detection surveillance capabilities, across the Northern border would dramatically support the increase of domain awareness, and improve detection and interdiction of illicit maritime border activity."
4. Air Surveillance data: Additional gap-fill radar sites along the Northern border in areas where terrain masking prohibits effective surveillance would increase detection capability against low and slow flying aircraft."

Additional technological resources that would assist CBP's drug interdiction efforts in the Northern border include having effective explosive detection technology, next generation VACIS machines (with no radioactive source), and smaller less complex x-ray

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vans for outbound operations. Additional handheld devices with better connectivity to process passengers and being able to receive advanced passenger information would also be very helpful. Integrated active x-ray imaging and passive radiological/nuclear detection rail technology would assist in the detection of radioactive sources.

Through the Beyond the Border Domain Awareness initiative, CBP is working with the RCMP to conduct a capabilities gap analysis to assist in the future procurement of border surveillance technologies.

Post-Hearing Questions for the Record
Submitted to Michael J. Fisher & John Wagner
From Senator Claire McCaskill

"Securing the Border:
Understanding the Threats and Strategies for the Northern Border"
April 22, 2015

Question: Since the 2001, DHS has increased personnel on the Northern Border by 650 percent to a little over 2,000 Border Patrol officers. DHS is also increasing spending on technology on the Northern Border. How does DHS weigh the use of technology versus the deployment of Border Patrol officers to this area?

Response: Currently, the Border Patrol is staffed at a higher level than at any time in its 91-year history. The number of Border Patrol agents has doubled, from approximately 10,000 in 2004 to over 21,000 agents today. Along the Northern border, the force of 500 agents that we sustained 12 years ago has grown to over 2,200. In prior years, Border Patrol sectors and stations submitted separate technology and staffing requests to the Office of Border Patrol for a decision. Currently, the Border Patrol is maturing a mission analysis process called the Capability Gap Analysis Process which will provide better awareness into operational gaps. This insight will then be used to provide decision makers information when planning operations and making resource decisions. The process enables both resource and operational planning by ensuring identified capability gaps are planned against for near term and long term. This process is not intended to replace the Risk Based Approach or internal planning processes, rather support them with operationally grounded mission analysis.

Question: Is there a cost-benefit analysis conducted when deciding on the mix of officers and technology? Is so, please provide that analysis.

Response: At this time, the Border Patrol does not conduct a cost-benefit analysis. However, utilizing the Border Patrol Planning Process, planners do conduct course of action analysis and comparison during planning events. The USBP is examining potential tool sets, such as an Alternatives Analysis, to support resource decision making at the course of action selection phase.

Question#:	5
Topic:	Contractors on the Northern Border
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: On the Southern Border, we are using contractors to operate some of the deployed technology. To what extent is DHS employing contractors to operate technology on the Northern Border.

Response: Five General Atomics (GA) contractors provide support to the Office of Air and Marine's (OAM) Unmanned Aircraft Systems (UAS) in-house instructor cadre on the Northern border. This includes two pilots, two sensor operators, and one radar operator. These individuals primarily serve as instructors to new OAM UAS crew members.

Question: What are the scope and yearly costs of these contracts?

Response: The GA operations and maintenance contract provides program management, engineering, repair, and logistics services supporting four stateside UAS operating sites and also deployment support. Yearly costs vary, but Fiscal Year 2015 costs are projected to be approximately $27 million.

Post-Hearing Questions for the Record
Submitted to Michael J. Fisher & John Wagner
From Senator Rob Portman

"Securing the Border:
Understanding the Threats and Strategies for the Northern Border"
April 22, 2015

Question: How has the U.S. worked with Canada as it continues to build a more robust information collection and sharing system, including the tracking of potentially radicalized citizens and foreign visitors? What steps is the Department of Homeland Security (DHS) taking to support these efforts?

Does Canada currently have no fly and watch lists? If so, does Canada share these lists with the U.S.?

Responses: The U.S.-Canada Beyond the Border (BTB) Action Plan, issued in December 2011, contains a number of initiatives underway or already completed that advance information sharing and development of harmonized programs to vet visa and immigration benefit applicants, screen international travelers, support criminal and national security investigations, and cooperate on countering violent extremism. Senior and working-level officials in both governments are in regular contact to maintain progress on BTB projects as well as to sustain and grow a myriad of long-standing bilateral cooperative relationships related to border and perimeter security. The third joint BTB Implementation Report was released on May 19, 2015 and is publically available.

Canada does not have a consolidated national watch list of known and suspected terrorists equivalent to the U.S. Terrorist Screening Data Base (TSDB), which is maintained by the Terrorist Screening Center under the U.S. Department of Justice. However, under the 1997 TUSCAN (Tipoff US-Canada) framework, Canada receives an extract of the TSDB for use in its systems to vet visa and immigration benefit applicants and to screen persons for travel, admissibility to Canada, and other public safety purposes. The arrangements used for the two-way exchange of derogatory information related to watch list records can be discussed in a classified setting.

In addition, as a result of the Beyond the Border initiative, Canada now vets all visa applicants through the State Department's CLASS system (biographic data) and is in the process of rolling out biometric vetting against DHS's IDENT database. Moreover, the United States and Canada exchange entry/exit information on all third country nationals crossing at Northern border land ports of entry.

Canada has the equivalent of a no fly list under its Passenger Protect Program called the Specified Persons List (SPL). The SPL is narrowly constrained to provide an option for the Minister of Public Safety or the Minister of Transport to refuse boarding to a person who poses an imminent threat to aviation. Under current Canadian law, the SPL may not

Question#:	6
Topic:	Tracking Potentially Radicalized Citizens
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

be shared with foreign partners and its contents can only be disclosed within Canada to government and airline security officials who have direct aviation security responsibilities. The Canadian Parliament is considering legislation to change the SPL to permit sharing of its contents with foreign partners and expand its applicability to refuse boarding of a person traveling for a terrorism-related purpose such as a prospective foreign fighter.

Question#:	7
Topic:	Canadian Overstays
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: How many Canadian citizens have overstayed their visas in the United States since 2012?

Response: In June 2013, through the Beyond the Border initiative, Canada and the United States began exchanging biographic entry data for third-country nationals, permanent residents of Canada, and lawful permanent residents of the United States, who enter through automated common land points of entry along the shared border, where the entry in one country records the exit from the other. As a result of this initiative, the United States now has a working land border exit system on its Northern border for non-U.S. and non-Canadian citizens.

The last phase of the Beyond the Border entry/exit initiative with Canada will extend this exchange to include Canadian and U.S. citizen data and was originally intended to be deployed on July 1, 2014, per the terms of the Beyond the Border Action Plan agreed to by both countries. Currently, DHS/CBP is ready to deploy the system. However, the project is currently pending on legislative action by the Canadian Parliament, which we anticipate occurring sometime in 2016. This full exchange of Canadian information will be necessary before DHS can calculate the number of Canadians who overstay their periods of admission in the United States.

Question#:	8
Topic:	Northern Border Staffing Levels
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you believe that current U.S. Customs and Border Protection (CBP) staffing levels are sufficient to address security threats at our northern border? If not, is the border not presently secure?

Response: Currently, the Border Patrol is staffed at a higher level than at any time in its 91-year history. The number of Border Patrol agents has doubled, from approximately 10,000 in 2004 to over 21,000 agents today. Along the Northern border, the force of 500 agents that we sustained 12 years ago has grown to over 2,200.

The Border Patrol is developing a Manpower Requirements Determination process that is a verifiable, repeatable, and defendable program that collects and analyzes the human capital needed to perform United States Border Patrol missions. This process will provide the necessary methodology to accurately determine the human capital requirements for changing mission requirements, and it will provide useful information to aid decision makers in making determination on the human capital requirements. As a result, decision makers throughout the Border Patrol will be able to evaluate personnel requirements based on a common set of standards. The goal of Manpower Requirements Determination process is initially to standardize operational forces within the U.S. Border Patrol, and provide senior managers the information required to make informed human capital requirement decisions. The Manpower Requirements Determination process will provide critical data that supports the quantity of personnel required to accomplish the mission.

However, staffing levels alone cannot be used to determine the Border Patrol's ability to mitigate the threat the adversary poses at the borders. Over the last two decades, the Border Patrol has also deployed vast amounts of resources, infrastructure, and technology to enhance its operational capabilities. This, along with a more centralized and Headquarters driven organization, was a core part of the 2004 U.S. Border Patrol National Strategy to secure the Nation's borders. The 2012-2016 U.S. Border Patrol Strategic Plan calls for a shift in the U.S. Border Patrol approach to securing our borders. The change to the operating environment through the increase of tactical infrastructure, and the change in Border Patrol capabilities through our increased resources and technology combined with the convergence of threats to national security by terrorists and transnational criminal organizations required a shift from a resource based strategy to a risk based approach to mitigate risk along our Nations' borders. The principal theme of this risk-based approach focuses on utilizing our enhanced capabilities against the highest threats and rapidly responding along the border. It involves a set of objectives, strategies,

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and programs that use *Information, Integration and Rapid Response* to develop and deploy new and better tactics, techniques as the core of the Strategic Plan.

The genesis of the risk based approach over a resource based approach came from the realization that the "state of the border" is a "fluctuating" condition (dynamic). The resource-based approach was not conducive to the flexibility needed, and is not practical or affordable. The condition of the border is fluid and constantly changing, which means that no single objective mitigation measure can be appropriately applied.

The Office of Air and Marine (OAM) addresses Department of Homeland Security and U.S. Customs and Border Protections (CBP) priorities on a national-level and attempts to maintain operationally viable staffing levels at all locations based on historic enforcement activity and results. OAM prioritizes and aligns available resources to meet mission needs.

Continued growth in international trade and travel, expanding mission requirements, and new facility demands continue to strain CBP resources and efforts to secure and facilitate the flow of people and goods through the Nation's ports of entry (POE).

The Workload Staffing Model (WSM) and the Agriculture Resource Allocation Model capture, process, and analyze the various work activities performed by CBP Officers (CBPO) and Agriculture Specialists (CBPAS) stationed at the CBP POEs including those along the Northern border. The projections are then utilized by CBP management in determining how to allocate staffing resources and maximizing cost efficiencies in conjunction with ensuring resources are aligned within the existing threat environments.

In Fiscal Year (FY) 2014, Congress appropriated funding for 2,000 additional CBPOs through FY 2015. The 2,000 CBPO represent recognition of CBP's role in securing the Nation and progress towards addressing the current challenges and supporting additional requests for service. Since 2014, international passenger and cargo arrivals have continued to grow, reaching record levels in some environments. This growth is projected to continue. While business process improvements and increased CBPO resources have largely succeeded in meeting the workload presented by these increased volumes, the updated WSM results continue to show a need for additional capability in order to fully meet the standards set by statute, regulation, CBP policies, and stakeholder expectations. Assuming maintenance of current processes, procedures, technology, and facilities, the most recent results – factoring in the additional 2,000 CBPOs from the FY 2014 appropriations – show a need for 2,624 additional CBPOs through FY 2016. CBP continues to allocate resources efficiently and effectively, recognizing that there are resources needs in all environments – air, land and sea.

Question#:	9
Topic:	Human Trafficking 1
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What is preventing DHS from further diminishing human trafficking and drug smuggling across the Northern border?

Response: The Northern border is generally very challenging due to the rugged terrain and limited resources, with miles of open land and coastal shores to monitor/secure. Because of the terrain along the Northern border, particularly in the northwest detecting/tracking air conveyances is extremely difficult as the mountainous terrain reduces the effectiveness of ground-based radars for detecting/tracking these threats.

Question: Are there specific resources that could significantly improve these efforts?

Response: Efforts to counter illicit cross border activity could be significantly improved by increasing equipment and/or systems designed to increase the overall Domain Awareness in the air, land and maritime environments. This includes increased data sharing with Canadian partners' existing systems, and an increase on joint projects with air, land, and maritime detection capabilities across the Northern border.

Currently the Department of Homeland Security is taking numerous steps to deter and disrupt human trafficking, some of which include: identifying possible victims of human trafficking at they enter the United States, raising public awareness, providing legal protection and assistance, and partnering with other law enforcement agencies. Some of the joint operations with other law enforcement agencies include Blue Lightning, which trains airline personnel to identify potential traffickers and their victims and to report their suspicions to federal law enforcement; and the Blue Campaign, which leverages partnerships with law enforcement, government, non-governmental and private organizations to educate the public to recognize human trafficking and to bring suspected traffickers to justice. In addition to these efforts, in March 2012 a "Memorandum of Understanding between the United States Human Smuggling and Trafficking Center and the Royal Canadian Mounted Police on the Dissemination and Exchange of Information" was signed to further support information sharing between the United States and Canada.

To increase situational awareness, U.S. Customs and Border Protection (CBP) leads efforts to collaborate and coordinate with domestic law enforcement, intelligence, local community, and foreign law enforcement partners. This includes assisting international partners in expanding their resources and capacities through coordinated training and exercises. CBP uses various tactics to gather information and intelligence including periodic reconnaissance patrols, sign-cutting and tracking, UAS patrols, and routine interaction with security partners within local communities. CBP leverages advanced

Question#:	9
Topic:	Human Trafficking 1
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

technologies such as biometrics, mobile surveillance systems, radiation detectors, ground sensors, and imaging systems to better detect, identify, monitor, and appropriately respond to threats across U.S. border regions.

The Northern border spans thousands of miles where Federal law enforcement personnel assets are limited. The President's Fiscal Year (FY) 2016 Budget Request supports CBP's continued investment in intelligence, technology, and other resources essential to addressing threats and reducing vulnerabilities along the Northern border.

Non-intrusive inspection (NII) technology, which includes large- and small-scale x-ray and gamma ray imaging equipment, is a critical Northern border technology asset and part of our multi-layered security strategy. Large scale systems are capable of imaging both laden cargo conveyances and passenger vehicles for the presence of contraband. Small scale systems are used to perform non-intrusive inspections on passenger baggage and cargo, view inside of fuel tanks and small compartments, identify densities anomalies in the shells of vehicles, behind walls of conveyances, and propane tanks and identify false walls in containers. Funding requested for FY 2016 will be used to sustain, refurbish, and/or replace a mix of large and small scale NII systems.

The FY 2016 Request includes funding for Northern Border Remote Video Surveillance Systems (NB-RVSS). The NB-RVSS consist of day night cameras attached to fixed towers, which allows the Border Patrol to monitor border activity through video transmissions to a control room. This program will enhance the capability of providing situational awareness of border activity through persistent surveillance and detection to facilitate proper law enforcement resolution. The NB RVSS towers have expanded the coverage at the Northern border where highly trafficked and illegal activities exist.

The Budget Request provides for the continued operation of the Aircraft Video Download Link project, which enhances and expands information sharing among CBP's operational components by providing CBP's Office of Air and Marine with the ability to transmit and receive real-time, full-motion video to ground stations. The Low-Flying Aircraft Detection project with its short-range radar systems and other sensors will provide area surveillance to detect and interdict low-flying aircraft in rural and semi-urban areas. The President's Budget also supports efforts to increase intelligence capabilities by providing funding to expand the National Border Geospatial Intelligence Strategy to the Northern border.

Question#:	10
Topic:	OIG Report
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS's Office of Inspector General (OIG) released a report in March 2015 titled "U.S. Customs and Border Protection Did Not Effectively Target and Examine Rail Shipments from Canada and Mexico." Is it true that CBP may have failed to target or properly examine rail shipments that were at an increased risk to contain contraband or dangerous materials, and that CBP has no assurance that decisions to release these high-risk shipments into U.S. commerce were appropriate?

Response: U.S. Customs and Border Protection (CBP) employs a layered enforcement strategy for conducting border searches of people, merchandise, and conveyances. In the commercial rail environment, this strategy includes the use of both non-intrusive inspection (NII) technology and radiation detection equipment on 100 percent of all high-risk cargo containers entering the United States. All high-risk cargo containers require a physical examination at locations where NII technology is not deployed along with a Radiation Isotope Identification Devices (RIID) to satisfy the radiation scanning requirement. The OIG faulted CBP due to the lack of documentation. As a result CBP has taken corrective action to ensure that CBP Officers are consistently documenting examinations and findings in CBP database systems.

Question: I am aware that DHS is taking corrective actions to resolve the OIG's recommendations. What is the status of implementing these recommendations?

Response: CBP has taken the following corrective actions in response to the Office of Inspector General's (OIG) recommendations:

- On December 23, 2014, a memorandum and muster on RIID policy for high-risk shipments was distributed to the field. The memorandum required confirmation to CBP Headquarters that the muster was distributed to all Office of Field Operations (OFO) personnel no later than February 15, 2015.
- On January 9, 2015, a memorandum and muster on Rail Scanning Policy for NII was distributed to the field. The memorandum required confirmation to CBP Headquarters that the muster was distributed to all OFO personnel no later than January 23, 2015.
- On January 15, 2015, in response to recommendations 1, 2, 4, and 5 of OIG's report, CBP distributed a memorandum to the field, entitled "All Modes Targeting and Examination" which outlined the current mandatory national security and narcotics weight sets pertaining to each mode of transportation – including rail. Memorandum also included a link to existing training material.

Question#:	10
Topic:	OIG Report
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

- On January 15, 2015, in response to recommendations 1, 2, 4, and 5, CBP distributed a memorandum to the field, entitled "All Modes Targeting and Examination" which outlined the requirement for supervisory CBP Officers to ensure CBP Officers are documenting examination results and findings accurately in CERTS. The memorandum further directed supervisory CBP Officers to perform periodic monitoring reviews to ensure compliance with CBP policy for examination findings.
- On January 20, 2015, 100 percent of field offices were properly equipped with a RIID as a result of a comprehensive review of field offices without a RIID.
- On February 23, 2015, CBP distributed a memorandum to all Directors, Field Operations, entitled "Unified Cargo Hot List Requirements in All Modes – Air, Land, and Sea" which mandated the use of the Unified Hot List to identify high-risk shipments in all modes of transportation.
- On April 15, 2015, the OIG notified CBP that it was closing recommendation 3 as fully implemented as a result of actions taken by CBP to meet the intent of the recommendation. Specifically, CBP conducted a comprehensive review of field offices without a RIID, equipped 100 percent of field offices with a RIID, and disseminated guidance and reminders to field personnel emphasizing the appropriate use of RIID's by CBP officers during examinations of high-risk rail shipments.
- CBP will generate a bi-weekly report on high-risk shipments that do not have a corresponding CERTS record. Discrepant records will be forwarded to the responsible Field Office for review and corrective action.
- CBP is developing system enhancements which will generate reports to identify high risk shipments not in compliance with policy. The Automated Targeting System generates a list of high risk shipments which requires CBP Officers to perform a radiation screening, X-ray imaging, and container seal check. A CBP process is in place to address high risk shipments.
- CBP has drafted an updated, comprehensive National Security Cargo Targeting Policy which includes: mandatory criteria for rail targeting, requirement to record examination results into CERTS, and reiterates supervisor responsibilities. Updated policy is currently in circulation for internal stakeholder review and concurrence.

Question#:	10
Topic:	OIG Report
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
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Question: What can DHS learn from the report's findings in relation to other programs, and is DHS conducting any internal reviews based upon these insights?

Response: CBP's internal finding was that CBP lacked a single source policy to guide high-risk targeting. As noted previously, we have now drafted and intend to issue a comprehensive, all environments directive for high-risk cargo targeting. This will relieve field personnel assigned to these important duties and functions from having to search through disparate sources of information.

Post-Hearing Questions for the Record
Submitted to Michael J. Fisher & John Wagner
From Senator Gary Peters

"Securing the Border:
Understanding the Threats and Strategies for the Northern Border"
April 22, 2015

Question: Last year I hosted CBP Commissioner Kerlikowske in Detroit to meet with my constituents and discuss some concerns they have experienced with CBP. This included a discussion of CBP's enforcement efforts as far as 100 miles from land or coastal borders, which would encompass essentially the entire state of Michigan, and concerns about racial profiling.

Can you please clarify CBP's authority when not directly at a port of entry, in the area up to 100 miles from the border?

Response: Racial profiling is not an enforcement mechanism utilized by the U.S. Border Patrol.

Border Patrol Agents have statutory authority to enforce the immigration laws of the United States. Under 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1) and (b)(1), Border Patrol Agents have the authority "to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." This authority is not limited by distance from the border. Under subsection 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.5(c), they may arrest aliens in their presence or view who are entering or attempting to enter the United States contrary to law or regulation. Pursuant to 8 C.F.R. § 287.1(a)(2) and 8 U.S.C. § 1357(a)(3), Border Patrol Agents may board and search for aliens any vessel, railway car, aircraft, conveyance or vehicle within 100 miles of the external boundaries of the United States, and within 25 miles of the border, to enter onto private lands, but not dwellings or their surrounding curtilage, for the purpose of patrolling the border. See *United States v. Romero-Bustamonte*, 337 F.3d 1104, 1109-10 (9th Cir. 2003) (extending statute's exclusion of dwellings to encompass residential curtilage, finding that to hold otherwise would permit warrantless searches of every backyard in metropolitan San Diego, Detroit, Buffalo, and El Paso, all of which are within 25 miles of the border.) The phrase "external boundary" means the land boundaries and territorial seas of the United States. 8 C.F.R. § 287.1(a)(1). The phrase "patrolling the border" means "conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States." 8 C.F.R. § 287.1(c). We of course acknowledge and recognize that the Agency's exercise of these authorities are circumscribed by the requirements of the Fourth Amendment of the United States Constitution and U.S. Customs and Border Protection policies designed to safeguard civil liberties.

Question: Does this authority include stopping individuals who have not recently crossed the border?

Question#:	11
Topic:	CBP Area of Authority
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Response: Under 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1) and (b)(1), Border Patrol Agents have the authority "to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." This authority is not limited by distance from the border. We of course acknowledge and recognize that the Agency's exercise of these authorities are circumscribed by the requirements of the Fourth Amendment of the United States Constitution and U.S. Customs and Border Protection policies designed to safeguard civil liberties.

Question#:	12
Topic:	Civil Liberties Protection
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: What protections for civil liberties does CBP have in place? What training do employees receive? What recourse is provided to citizens who believe their civil liberties have been violated?

Response: U.S. Customs and Border Protection (CBP) is committed to upholding the highest standards of conduct throughout the agency. Existing CBP policy – updated as recently as February 6, 2014 – prohibits the consideration of race or ethnicity in our law enforcement, investigation, and screening activities in all but the most exceptional instances. This policy is reaffirmed in manuals, policies, directives, and guidelines. In addition, as highlighted in CBP's Standards of Conduct, CBP employees will not act or fail to act on an official matter in a manner which improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, or disability, union membership, or union activities. CBP continues to build on its existing policies to execute its mission in a manner that preserves and protects civil rights and civil liberties, while ensuring that officers and agents have the tools they need to protect and secure the Homeland. CBP is reviewing and updating its guidance regarding nondiscrimination in law enforcement activities, and has received feedback from non-governmental organizations and DHS Office for Civil Rights and Civil Liberties

Question: What training do employees receive?

Response: CBP offers the following training to its employees.

- **New Employee Awareness – Diversity and Civil Rights** – This course covers the fundamental mission of the Privacy and Diversity Office to promote and ensure compliance with Federal civil rights and civil liberties laws, regulations, and Executive Orders by providing a policy framework for diversity, inclusion and furthering employee engagement initiatives, civil liberties compliance and complaints management for U.S. Customs and Border Protection.
- **CBP New Employee Orientation Program** – This 3-day program covers fundamental information about CBP, what it means to be a federal civil service employee, CBP's mission, history, program, resources, and initiatives that are available to them and how they can access these programs.
- **The American Disabilities Act** – This 1-day course covers frequently asked questions on employment issues, reasonable accommodations, qualifications, interview process, who is protected by Title 1, etc.
- **Basic Admissibility Secondary Processing, also known as Advanced Admissibility Secondary Processing** – This course provides guidance to CBP

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Officers performing duties in secondary determine which authority they should use when making admissibility decisions, how to handle situations that may challenge their integrity, morals, and ethics, use nationality charts to identify possible claims to U.S. citizenship, and identify effective techniques for taking a sworn statement.

The following web based courses are also available to CBP employees through CBP's online training system:

- **Privacy at DHS: Protecting Personal Information** – In our mission to secure the homeland, we need to collect personal information from citizens, legal residents and visitors, and we are obligated by law and Department of Homeland Security policy to protect this information to prevent identity theft or other adverse consequences of a privacy incident or misuse of data. This brief 1-hour course is designed to raise awareness of the importance of maintaining privacy in the workplace, and convey methods of safeguarding personal information.
- **Privacy and Information Security** - This course is aimed at helping individuals who work with private information understand the ways that this information can be disclosed inadvertently. It will ensure that private information doesn't fall into the wrong hands.
- **Diversity and Inclusion Awareness** - This 2-hour course provides employees with valuable information on diversity and inclusion and how everyone in CBP can benefit from these principles. The information presented in this course will aid in the understanding and promotion of diversity and inclusion management principles. CBP strives to value, understand, and incorporate the differences each employee brings to the workplace to better fulfill our homeland security mission.
- **Diversity on the Job: Diversity and You** – This course identifies strategies to help individuals become aware of their attitudes toward diversity; increase their acceptance of diverse cultures, people, and ideas; and become an advocate for diversity within the workplace.
- **Field Interviewing** - This 90-minute course is provided to Border Patrol Agents as part of Border Patrol Post Academy Training. It describes how to assess the situation with regard to the initial encounter, considering an Agent's actions prior to custody and criminal situations and is designed to provide Border Patrol Agents with the appropriate skills and knowledge for conducting effective interviews.
- **Basic EEO Awareness Training** – This 1-hour course provides an introduction to Equal Employment Opportunity (EEO), how it applies to everyone, and the types of discrimination.

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- **Equal Employment Opportunity Awareness Training for Supervisors** – The purpose of this 90-minute training is to provide an overview of Federal sector anti-discrimination, anti-harassment, and reasonable accommodation requirements and the supervisor's role in responding to allegations of discrimination and requests for reasonable accommodation based on a disability or a religious belief or practice.
- **EEO Awareness for Supervisors and Managers 1: Supporting EEO** - This is a 1-hour module introduces employees to their role and responsibilities with regard to CBP's EEO Program as related to affirmative employment and discrimination.
- **EEO Awareness for Supervisors and Managers 2: Preventing Discrimination** - This 1-hour course introduces employees to two areas in which they can take proactive measures: harassment prevention and reasonable accommodation.
- **EEO Awareness for Supervisors and Managers 3: Responding to EEO Complaints** -This course, also 1-hour in length, includes three lessons, which clarifies the responsibility of supervisors or managers as it relates to: 1) Retaliation, 2) EEO Complaint Process, and 3) Mediation.
- **Introduction to Section 508** – Created by the Office of Accessible Systems & Technology, this is an introductory course approximately 2 hours in length on Section 508 of the Rehabilitation Act of 1973, as amended, and provides an overview of the purpose and importance of Section 508 law.
- **Section 508 Awareness** - This 1-hour course provides individuals with a high-level overview about Section 508 of the Rehabilitation Act and the ways in which it impacts them.
- **Employment of People with Disabilities** - This 1-hour course is designed to provide Department of Homeland Security (DHS) managers and supervisors with resources, strategies, and tips for successfully hiring and managing civilian and veteran employees with disabilities, as well as meet our important organizational goals.
- **Legal Updates for Civil Rights Violations** – This 1-hour course provides guidance to help identify civil rights violations, take correction measures in the prevention of civil rights violations, respond to, report, and follow up on civil rights reports/complaints.

In addition to the above listed courses, the following areas are addressed as part of the required Basic Training Curriculum CBP officers and agents must successfully complete:

Field Operations Academy:

- Law with the Office of Chief Counsel
- EEO/Diversity and Civil Rights

Question#:	12
Topic:	Civil Liberties Protection
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Gary Peters
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- Anticorruption
- Cultural Diversity and Law Enforcement
- Law Enforcement Authority

Border Patrol Academy:

- Fair Treatment of Aliens
- DHS Policy Concerning Use of Race or Ethnicity in Law Enforcement Activities
- Conducting seizures and searches in accordance with the 4th Amendment.
- Complying with the 5th Amendment's prohibition against compelled self-incrimination during interviews.
- Conducting law enforcement operations in compliance with the "Department of Homeland Security's Commitment to Race Neutrality in Law Enforcement Activities" policy (June 1, 2004), and the "Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities" memorandum (April 26, 2013).
- The adverse consequences associated with a CBP law enforcement officer exceeding the scope of his/her lawful authority in the execution of duties

Question: What recourse is provided to citizens who believe their civil liberties have been violated?

Response: CBP policy regarding the roles and responsibilities of U.S. Customs and Border Protection Component Offices and Employees regarding civil rights and civil liberties matters is contained in CBP Directive 2130-021.

> "CBP shall treat all individuals in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulation, Executive Order, or policy, with **full** respect for individual rights including equality under the law, due process, freedom of expression and religion, and freedom from excessive force, unreasonable searches and seizures, and unlawful intrusions into personal privacy. To exemplify these commitments, CBP will maintain an efficient and effective external civil rights and civil liberties complaint-processing program focused on gathering all the relevant facts and evidence necessary to resolve complaints. CBP shall adhere to the core premise that civil rights and civil liberties protection is not only an ethical and legal imperative but also a practical necessity to maintaining and enhancing the public's level of trust in federal law enforcement."

Question#:	12
Topic:	Civil Liberties Protection
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

The CBP Office of Internal Affairs, Joint Intake Center receives, documents, and if appropriate, refers for investigation, allegations concerning CBP employee misconduct, including alleged violations of civil rights and civil liberties.
The CBP Office of Public Affairs, CBP Information Center, receives, documents, and refers to the Office of Internal Affairs, allegations the center receives regarding abuses of civil rights and civil liberties received from the public through a toll-free line, email, mail or the Internet via CBP.gov.

CBP's Office of Diversity and Civil Rights, the CBP Information Center, and all CBP offices, will in a reasonable timeframe, refer allegations of civil rights and civil liberties violations, by Department of Homeland Security (DHS) employees and officials to CBP's Office of Internal Affairs

The DHS Office for Civil Rights and Civil Liberties (CRCL) reviews and assesses information on abuses of civil rights and civil liberties by employees and officials of DHS. Community members who believe they have been subjected to any form of discrimination may file a complaint with CRCL by:

- Sending an e-mail message to CRCLCompliance@hq.dhs.gov;
- Faxing to (202) 401-4708; or
- Writing to U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Compliance Branch, 245 Murray Lane, SW, Building 410, Mail Stop #0190, Washington, DC 20528.

Please note that CRCL conducts quarterly community engagement meetings with diverse community groups in sixteen cities across the country, including in the Seattle area, where issues and concerns pertaining to the northern border are often discussed. CRCL's long-standing, and statutorily mandated, engagement program responds to community concerns and provides information on DHS programs and policies, including those related to CBP. The priorities of these efforts include addressing grievances, protecting civil rights, building trust with law enforcement agencies, and promoting integration and community resilience

Question#:	13
Topic:	Body Camera Test Program
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: CBP is the largest uniformed, federal law enforcement agency in the country, and I understand the agency is expanding a pilot program to test body cameras on officers. Can you provide an update on that pilot?

Response: In July 2014, Commissioner Kerlikowske established the U.S. Customs and Border Protection (CBP) body-worn camera (BWC) working group and tasked it with determining the feasibility of using BWC technology within the CBP operational environments. The working group is comprised of representatives from 15 CBP components, as well as the Department of Homeland Security's Office of Civil Rights and Civil Liberties and the Office of Privacy.

The working group decided on a three-phase approach for the feasibility study. The first phase consisted of controlled environment evaluation at the CBP Academies. The 90-day evaluation was conducted from October 1, 2014, through December 31, 2014, using a representative sample of available technology during scenario-based training.

Phase two began in January 2015 and is on-going. It consists of limited field evaluation and is expected to conclude on May 31, 2015. A representative sample of available technology is being used in several CBP locations along the Northern, Southern, and Coastal borders. The evaluation is being conducted by the CBP Office of Technology Innovation and Acquisition.

Phase three consists of policy research, formulation and the drafting of a report to the Commissioner, evaluating the feasibility study and making recommendations. The report is expected to be completed and submitted to the Commissioner and CBP Leadership by the end of August, 2015. The final report will not make any technology recommendations as this was outside the scope of the feasibility study. The final recommendation document will address the question of whether BWC technology is a viable tool for CBP.

Post-Hearing Questions for the Record
Submitted to Jim Spero
From Senator Rob Portman

"Securing the Border:
Understanding the Threats and Strategies for the Northern Border"
April 22, 2015

Question: According to the National Northern Border Counternarcotics Strategy, published by the Office of the National Drug Control Policy, Transnational Criminal Organizations exploit border security gaps on the northern border to transport drugs and other illicit goods, such as ecstasy and high potency marijuana into the U.S. from Canada and transport cocaine from South America through the U.S. to Canada.

Is it true that the majority of ecstasy supplied in the Great Lakes Region originates or moves through Canada?

Response: At a national drug use level, Canada is believed to represent the second largest source of ecstasy used within the United States. However, at a more regional Great Lakes level we cannot confirm if the majority of ecstasy supplied in that region originates or moves through Canada.

For purposes of answering this specific question we defined the "Great Lakes" as those regions served by our Special Agent in Charge offices (and their surrounding sub-offices) in Buffalo, New York; Chicago, Illinois; Detroit, Michigan; and Saint Paul, Minnesota. The areas served by these offices include all states that touch a Great Lake and, in most cases, surrounding states as well.

In fiscal year (FY) 2014, U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) seized 33.24 pounds of ecstasy in that Great Lakes region, of which 0.01 pounds were known to have originated or moved through Canada (this represents 0.03 percent of those seizures). This low statistic does not exclude the possibility that a much greater portion of this seized ecstasy did in fact originate or move through Canada but rather indicates the amount that can be positively identified from criminal investigatory records.

Question: What percentage of Canada's illicit drug market, such as cocaine, originated from South America and Mexico and was trafficked through the U.S. into Canada?

Response: The Department of Homeland Security (DHS) defers to the Government of Canada to speak to the percentages of their illicit drug consumption that originate from outside of Canada. However, ICE HSI seized 1,202,017 pounds of illegal narcotics domestically within the United States in FY 2014, of which 2,417 pounds were known to have been bound for Canada (this represents 0.02 percent of these domestic U.S. seizures).

Question#:	14
Topic:	Norther Border Drug Interdiction 2
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What percentage of the drug market originated from the U.S.?

Response: DHS defers to the Government of Canada to speak to what percentage of their illicit drug consumption originates from the United States. However, we can say that ICE HSI seized 209 pounds of illegal narcotics domestically within the United States in FY 2014 that met two criteria: (1) the narcotics were created within the United States; and (2) the narcotics were bound for Canada when seized.

Question#:	15
Topic:	Human Trafficking 2
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the National Northern Border Counternarcotics Strategy, published by the Office of the National Drug Control Policy, Transnational Criminal Organizations exploit border security gaps on the northern border to transport drugs and other illicit goods, such as ecstasy and high potency marijuana into the U.S. from Canada and transport cocaine from South America through the U.S. to Canada.

How does the U.S. and Canada work together to counter human trafficking by transnational criminal organizations? What metrics are used to assess the success of these efforts?

Response: U.S. Customs and Border Protection's Office of Investigation (OI) regularly engages with our Canadian partners to share information that assists with combating transnational organized crime. On a monthly basis, OI holds a multi-agency conference call to brief the State of the U.S.-Canada border in which our Canada Border Services Agency partners participate.

We collaborate with international partners, teams and task forces to actively identify and report on the illicit movement of people into the United States and other Nation States. We have established a Human Smuggling Cell to combat persons being trafficked and identify criminal organization, means, methods, and routes used to facilitate illegal entry into the United States and Canada to include fraudulent and illegally obtained travel documents.

Illicit cross border activity detection methods and metrics are the same for the entire border (north/south), to include Human Trafficking activity. Currently the Office of Air and Marine's (OAM) Air and Marine Operations Center (AMOC) receives 22 Canadian radar feeds from Canada which are integrated into the Air and Marine Operations Surveillance System, AMOC's C2 system. These radars are located throughout the U.S.-Canadian border and provide increased Domain Awareness. AMOC maintains active partnerships with NAVCAN, which manages Canada's civil air navigation system and the Royal Canadian Mounted Police. These partnerships facilitate streamlined coordination efforts on aircraft crossing into the United States. OAM has participated in a number of cross border exercises involving OAM assets to ensure awareness in preparation for real world events involving cross border activity. OAM/AMOC participates in the Beyond the Border Domain Awareness Initiative, which was established to do the following: (1) Create an inventory of U.S. and Canadian domain awareness capabilities at the border, and identify gaps and vulnerabilities in capabilities; (2) Prioritize coverage of gaps to create a vision for jointly deploying new technology to

Question#:	15
Topic:	Human Trafficking 2
Hearing:	Securing the Border: Understanding Threats and Strategies for the Northern Border.
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

address identified gaps; and (3) Establish a process to coordinate the joint procurement and deployment of technology along the border.

There are some areas along the Northern border where cross border intelligence information is being shared and used in focusing interdiction operations at the local level (task force models).

OAM provides resources to combat human trafficking by transnational criminal organizations indirectly through joint operations with other operational components of CBP and external law enforcement agencies. However, OAM agents do not often directly encounter human trafficking. Entities such as the Integrated Border Enforcement Teams and Joint Management Teams aid in facilitating these efforts. Information sharing is invaluable to the development of intelligence and targeting of criminal organizations exploiting our shared border area. Partnerships with Canada are essential for enhancing Northern border security, and the Department of Homeland Security (DHS) Northern Border Strategy enables DHS to better partner with Canadian colleagues. OAM's enforcement activities related to human trafficking are typically initiated by partnering investigative agencies.

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May 22, 2015

The Honorable Ron Johnson
United States Senate
Committee on Homeland Security and Governmental Affairs
Washington, DC 20510-6250

Dear Senator Johnson:

In reference to your letter of May 11, 2015, below are my responses to the Post Hearing questions for the record from Senator Rob Portman. It was an honor to testify at the Committee hearing "Securing the border; Understanding Threats and Strategies for the Northern Border".

According to the National Northern Border Counternarcotics Strategy, published by the Office of the National Drug Control Policy, Transnational Criminal Organizations exploit border security gaps on the northern border to transport drugs and other illicit goods, such as ecstasy and high potency marijuana into the U.S. from Canada and transport cocaine from South America through the U.S. to Canada.

1. Is it true that the majority of ecstasy supplied in the Great Lakes Region originates or moves through Canada? **With respect to the West Coast and Canada that is correct and has been substantiated in our Threat Assessment and in the 2015 Washington State Northern Border Report that I provided to the Committee. As to whether that is the case in the Great Lakes Region I would have to defer to the Drug Enforcement Administration and the Department of Homeland Security Investigations.**

2. What percentage of Canada's illicit drug market, such as cocaine, originated from South America and Mexico and was trafficked through the U.S. into Canada? What percentage of the drug market originated from the U.S.? **The Drug Enforcement Administration is responsible for the National Drug Threat Assessment and I would defer to them to respond to this question.**

3. How does the U.S. and Canada work together to counter human trafficking by transnational criminal organizations? What metrics are used to assess the success of these efforts? **The Department for Homeland Security is responsible for enforcing these laws and tracking their outcomes. I would defer to them to respond to this question.**

Sincerely,

Dave Rodriguez
Director, Northwest High Intensity Drug Trafficking Area

SECURING THE BORDER: FENCING INFRASTRUCTURE, AND TECHNOLOGY FORCE MULTIPLIERS

WEDNESDAY, MAY 13, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:22 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Sasse, Carper, Tester, Booker, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. This hearing will come to order. Our Ranking Member is still a few minutes out, so we will get underway here. When he gets here, I will express again the fact that we are very glad that Senator Carper's stop was in Wilmington. He was actually on the train that derailed, and, of course, our thoughts and prayers are with the families and victims of that tragedy. And our thoughts and prayers are also with all of our law enforcement officials that step out on their doorstep every day and risk their lives for our public safety. And rather than me say it, I cannot say it better than what Secretary Jeh Johnson said in a letter, and I would just like to read this.

"Dear Colleagues: This is National Police Week. This week, we honor the sacrifice and commitment of men and women in our law enforcement. We pay special tribute to those in law enforcement who have given their lives in the line of duty, and we offer our support to their families."

"Last year, our Department lost two Border Patrol agents in the line of duty: Alexander Giannini and Tyler Robledo. This week, Agents Giannini and Robledo's names will be added to the National Law Enforcement Officers (NLEO) Memorial in Washington, DC."

"I am also mindful of Border Patrol Agent Javier Vega, Jr., who last August was killed during a robbery while fishing with his family in Texas."

"Wherever you are this week, I encourage you to honor those who have chosen the law enforcement profession."

I guess I would just ask everybody here in the hearing room, in light of and in honor of those individuals that Secretary Johnson was commending, as well as all of our law enforcement officials

that have given their last full measure, just if we recognize a moment of silence.

[Moment of silence.]

Thank you. I can actually ask consent to have my opening statement read into the record.[1]

I guess what I would like to do is get right down to testimony. It is the tradition of this Committee that we swear in witnesses, so if everybody would rise and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ALLES. I do.

Mr. BORKOWSKI. I do.

Mr. VITIELLO. I do.

Ms. DUONG. I do.

Ms. GAMBLER. I do.

Mr. GARCIA. I do.

Chairman JOHNSON. Thank you. Please be seated.

Our first witness is Assistant Commissioner Randolph Alles. Randolph Alles is the Assistant Commissioner for the Office of Air and Marine (OAM) with the U.S. Customs and Border Protection (CBP) of the Department of Homeland Security (DHS). OAM is the world's largest aviation and maritime law enforcement organization. Before joining OAM, Mr. Alles served in the U.S. Marine Corps for 35 years, retiring in 2011 as a Major General. Assistant Commissioner Alles.

TESTIMONY OF RANDOLPH D. ALLES,[2] ASSISTANT COMMISSIONER, OFFICE OF AIR AND MARINE, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. ALLES. Thank you, sir, and good afternoon. It is good to see you again. You may recall we last visited our P–3 and the unmanned aircraft systems (UAS) site in Corpus Christi in January, so thank you for coming down to see that. And I would always just encourage any Members of the Committee to come visit our sites. I think that is very beneficial in understanding what we do better.

As you noted, CBP's Office of Air and Marine is a critical component of our layered border strategy. OAM's 1,272 law enforcement personnel operate 257 aircraft, 283 vessels, and a sophisticated domain awareness network across the United States, Puerto Rico, and the Virgin Islands. OAM's critical aerial and maritime missions fall into four core competencies: domain awareness, investigation, interdiction, and contingency operations/national taskings.

We not only contribute to the security of our land border but facilitate efforts, along with the U.S. Coast Guard (USCG), to secure the Nation's 95,000 miles of coastal shoreline through the coordinated use of integrated air and marine forces.

Since the consolidation of air and marine assets within OAM 11 years ago, we have transformed a border air wing composed primarily of light observation aircraft into a modern air and maritime

[1] The prepared statement of Chairman Johnson appears in the Appendix on page 1129.

[2] The joint prepared statement of Mr. Alles appears in the Appendix on page 1131.

fleet with sophisticated surveillance sensors and communications systems.

We are working to increase the connectivity and networking among all our air and marine assets. We are also continuing the effort to reduce the number of our aircraft types and position our assets for highest utilization, which will increase both the efficiency and effectiveness of our operations.

I would like to take this opportunity to highlight a few of our key assets and describe how technology is a viable force multiplier that furthers CBP's efforts to identify, monitor, and appropriately respond to threats to our Nation's borders.

First is our MQ9 Predator UAS. It continues to play a critical role in advancing CBP's comprehensive border strategy and management by increasing situational awareness of the air, land, and maritime environments. It just returned from a deployment in El Salvador where it contributed to seizures of $362 million of contraband, so a very effective deployment force.

Second is our Multi-Role Enforcement Aircraft, which is a highly capable aircraft with sophisticated technology systems that enable it to be effective over both land and water. These are replacing several of our older aircraft, single-mission aircraft inside CBP, so it will be a very beneficial force.

Beyond that, we use our CBP—beyond our borders, we use our P–3 Long-Range Tracking and Airborne Early Warning Aircraft, which have been central in countering narcotic operations in the transit zone and also against transnational criminal organizations that are moving drugs out of the source zone through the transit zone and in toward the United States.

We work in conjunction with aviation assets, interceptor vessels to operate in coastal waters to combat smuggling, and protect U.S. ports from acts of terrorism. And then, finally, we have our Air and Marine Operations Center (AMOC), which is a national task force that focuses on criminal use of non-commercial air and maritime conveyances approaching, crossing, or operating inside the borders of the United States and Puerto Rico.

So, Chairman Johnson and the Ranking Member when he comes and distinguished Members of the Committee, thank you for the opportunity to discuss OAM's capabilities and our efforts in securing our borders. I look forward to taking your questions and, of course, look forward if you can come out to our sites. Thank you.

Chairman JOHNSON. Thank you.

Our next witness is Assistant Commissioner Mark Borkowski. He is the Assistant Commissioner for the Office of Technology Innovation and Acquisition (OTIA) with the U.S. Customs and Border Protection of the Department of Homeland Security. He is responsible for ensuring technology efforts are properly focused on mission and well integrated across CBP. Mr. Borkowski also serves as CBP's Component Acquisition Executive. Prior to his appointment, Mr. Borkowski served as Executive Director of the Secure Border Initiative Program Executive Office. Mr. Borkowski.

TESTIMONY OF MARK BORKOWSKI,[1] ASSISTANT COMMISSIONER, OFFICE OF TECHNOLOGY INNOVATION AND ACQUISITION, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BORKOWSKI. Thank you, Chairman Johnson and Senator Booker. I very much appreciate the opportunity to be here today.

I represent the acquisition community, and our responsibility is to deliver the stuff that the operators need. We buy it. I know there is some question about the distinction between us and, for example, DHS Science and Technology (S&T), so let me highlight that a little bit to start.

DHS S&T makes sure there is stuff there, because it is not always ready. We do not always have systems, technologies, software that we need. So it first has to be there. Once it is there, we have to figure out how best to get it, and that means we have to know what the options are. We have to do the business case analysis. We have to figure out how many to buy. And we have to understand why we are buying it. And for that, of course, we ask the people in uniform, the green, or the tan, or the blue uniforms, the folks sitting to either side. They are the ones who describe what we need. It is our job then in Acquisition to somehow put that in practice and actually deliver capability that those operators can use to produce mission outcomes.

Our focus, the thing we have gotten the most attention on recently, has been the technology for surveillance between the ports of entry. As you know, there is a past program called the Secure Border Initiative-network (SBInet), which was a very challenging program, and although it eventually delivered very effective capability, we concluded it was not the right system to go across the entire border, and it was much too expensive.

So we scaled down our ambitions somewhat and selected a much more modest portfolio of systems that the Border Patrol selected and tailored to each area of the border. We focused that on Arizona because that is where the action was at the time. We are in the throes of completing that plan, which we call the "Arizona Technology Plan," and it consists of everything from small—you can imagine handheld, long-range, binocular-like sensors, to more complex systems on high towers with radars and cameras that are connected in a command and control center. And the purpose of those systems is to give the Border Patrol better information about what is on the ground, what the threat of that activity is, whether it is a migrant or it is somebody carrying a weapon, and more options for how to respond.

Outside of Arizona, obviously, the Border Patrol has indicated to us that there is activity, that there is migration. As we have done things in Arizona, traffic has migrated or for a variety of other reasons. South Texas, as you know, is an area.

What we have done is because we were successful in the Arizona Technology Plan, at least in saving money, we have been able to divert resources to South Texas, and largely that has been based on the Department of Defense (DOD) reuse. Congress has been a strong advocate of us partnering with the Department of Defense

[1] The joint prepared statement of Mr. Borkowski appears in the Appendix on page 1131.

to use what was already taxpayer investments, to leverage those for our capacity, and we have been very successful with that in South Texas. For example, we are flying aerostats now, and we now have surveillance that we probably would not have had until 2018 or 2019 with budget realities.

So that is a quick summary of our progress and what Acquisition does, and I very much look forward to answering your questions as we go forward.

Chairman JOHNSON. Thank you.

Our next witness is Deputy Chief Ronald Vitiello. He is the Deputy Chief of the Border Patrol. Deputy Vitiello has served as an agent and in supervisory roles at the Laredo Sector, Tucson Sector, and as Chief Patrol Agent of the Rio Grande Valley Sector. Deputy Chief Vitiello.

TESTIMONY OF RONALD VITIELLO,[1] DEPUTY CHIEF, OFFICE OF BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. VITIELLO. Thank you, Chairman Johnson, Senator Booker. It is a pleasure for me to be here to appear before you to discuss how technology and tactical infrastructure act as force multipliers toward the U.S. Border Patrol's border security enforcement efforts between the ports of entry (POE). I am pleased to represent for Border Patrol agents the crucial contribution they make to CBP and the Homeland Security Enterprise (HSE) in DHS.

This is a special week in Washington, culminating in the National Police Officers Memorial on Friday on the South Capitol Lawn.

Earlier today, we observed Chief Fisher, the Commissioner, the Deputy Commissioner, the Deputy Secretary, and the Secretary commemorate the valor of CBP's fallen, specifically in the unveiling of two new names on the CBP Valor Memorial, Border Patrol Agents Giannini and Robledo. We honor them and the 115 other guardians of the Nation's lost in 2014.

While the basic Border Patrol mission to secure the Nation's borders from illegal entry of persons and goods has not changed in the past 90 years, the operational environment in which we work and the threats we face have changed dramatically.

Today our mission includes deterring acts of terrorism, detecting and intercepting human and drug and weapons smuggling and trafficking, and preventing and responding to other criminal activity. The effective deployment of fixed and mobile technology and tactical infrastructure is critical to Border Patrol operations. With these resources, our front line is more informed, more effective, and safer.

The Border Patrol works closely with our operational intelligence, technology development, and acquisitions colleagues within CBP and DHS to develop requirements to test, evaluate, and ultimately deploy technology and infrastructure.

The deployment of tactical infrastructure, including fencing, roads, and lighting, is a critical component of our security efforts. It denies, deters, and slows down illegal entrants, providing more

[1] The joint prepared statement of Mr. Vitiello appears in the Appendix on page 1131.

time for agents to respond. Detection technology supplements physical barriers by extending the visual range and awareness of agents. Ground sensors alert agents to movements and activity while mounted cameras and sensors on aircraft, fixed towers, and on Border Patrol vehicles can be controlled remotely to verify targets.

All of this technology and infrastructure works together and ultimately enables the Border Patrol to gain situational awareness, direct a response team to the interdiction location, and forewarn of any danger otherwise unknown along the way.

The Border Patrol continually evaluates our situational awareness posture and adjusts our capabilities to secure our borders. We work closely with OTIA and CBP and DHS' Science and Technology Directorate to identify and develop technology such as tunnel detection and monitoring technologies, small unmanned aircraft systems, tactical communication upgrades, and border surveillance tools tailored for the southwest and northern borders.

There is no doubt that technology is a critical factor in the Border Patrol's Strategic Plan, which implements a security approach based on risk. The strategy going forward will emphasize joint planning and execution, advancing counternetwork approach, and a DHS-wide unity of effort.

Thanks again for the opportunity to testify how technology and tactical infrastructure help us secure the border.

Chairman JOHNSON. Thank you.

Our next witness is Director Anh Duong. Director Duong is the Director of Borders and Maritime Security Division in the Science and Technology Directorate of the Department of Homeland Security, where she focuses on developing technologies to put into operational use along our sea, land, and air borders and ports of entry. Ms. Duong came to the United States as a refugee of war from Vietnam and spent 25 years working in Naval Science and Technology, directing all of U.S. Navy explosives research and development. Ms. Duong.

TESTIMONY OF ANH DUONG,[1] DIRECTOR, BORDERS AND MARITIME SECURITY DIVISION, DIRECTORATE OF SCIENCE AND TECHNOLOGY, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. DUONG. Good afternoon, Chairman Johnson and Senator Booker. Thank you for this opportunity to testify along with my colleagues from Customs and Border Protection with whom we work closely.

The Science & Technology Directorate's, mission is to deliver effective and innovative insight, methods, and solutions for the critical needs of the Homeland Security Enterprise.

Under the leadership of Under Secretary Brothers, S&T has refined our strategic direction and defined our visionary goals which are driven by the 2014 Quadrennial Homeland Security Review (QHSR), White House policy, congressional guidance, and Secretary Johnson's Unity of Effort Initiative. These goals are:

Screening at Speed: Security that Matches the Pace of Life;

[1] The prepared statement of Ms. Duong appears in the Appendix on page 1147.

A Trusted Cyber Future: Protecting Privacy, Commerce, and Community;

Enable the Decision Maker: Actionable Information at the Speed of Thought;

Responder of the Future: Protected, Connected, and Fully Aware;

And Resilient Communities: Disaster-Proofing Society.

Three of these goals are directly relevant to border security: Screening at Speed, Enable the Decision Maker, and Responder of the Future. All three require a common enabler—namely, situational awareness—in order to screen people and goods with minimum disruption to the pace of life, enable decisionmakers at various levels, and arm responders with information to keep them safe and fully aware.

From an operational standpoint, given our broad border against a multitude of ever changing threats, the need for total situational awareness is paramount. S&T employs technology as a powerful force multiplier to improve situational awareness, which in turn enables risk-based security, a key DHS strategy.

Considering both S&T visionary goals and today's operational needs, we are pursuing an enterprise capability to provide improved situational awareness across the Homeland Security Enterprise called the "Border and Coastal Information System," (BACIS). This work includes integrating and federating existing stand-alone data sources, developing new sensor systems to create new data, developing and integrating decision support tools and analytics to translate data into actionable information, and sharing information with partners.

Development for the BACIS is ongoing for the maritime environment. Work for our land borders started in fiscal year (FY) 2015, and work for our ports of entry is planned for fiscal year 2017. Toward blocking gaps in border situational awareness and providing new data sources, numerous S&T-developed systems are undergoing operational assessment while providing interim capability. Examples include a buried tripwire system in Arizona to detect illegal border crossers, a tunnel activity monitoring system in Texas, a Canada-U.S. sensor sharing pilot, and a prototype system for detecting and tracking small dark aircraft in Washington. In operational use in Texas is a scanner that scans small aircraft for contraband.

Technology is an essential ingredient of effective border security. S&T will continue to collaborate with our components and partners to bring technology to operational use and help enhance border security.

I thank the Committee for giving me the opportunity to testify on this very important subject.

Chairman JOHNSON. Thank you.

Our next witness is Rebecca Gambler. Ms. Gambler is the Director of the U.S. Government Accountability Office's (GAO) Homeland Security and Justice Team where she leads GAO's work on border security, immigration, and DHS management. Prior to joining GAO, Ms. Gambler worked at the National Endowment for Democracy's International Forum for Democratic Studies. Director Gambler.

TESTIMONY OF REBECCA GAMBLER,[1] DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. GAMBLER. Good afternoon, Chairman Johnson and Members of the Committee I appreciate the opportunity to testify at today's hearing to discuss GAO's work reviewing DHS efforts to acquire and deploy various technologies and other assets along U.S. borders.

DHS has employed a variety of assets in its efforts to secure the southwest border, including various land-based surveillance technologies, tactical infrastructure, which includes fencing, roads, and lighting, and air and marine craft. GAO has reported on DHS' management and oversight of these assets and programs, including numerous reports on surveillance technologies under the former Secure Border Initiative and the current Arizona Border Surveillance Technology Plan. GAO has also reported on fencing and other tactical infrastructure with about 652 miles of pedestrian vehicle fencing currently in place along the southwest border.

My remarks today will reflect our findings in three areas related to DHS' efforts to secure the border: one, DHS' efforts to implement the Arizona Border Surveillance Technology Plan; two, CBP and the U.S. Immigration and Customs Enforcement (ICE) efforts to modernize radio systems; and, three, CBP Office of Air and Marine's mix and placement of assets.

First, CBP has made progress toward deploying programs under the Arizona Border Surveillance Technology Plan, including fixed and mobile surveillance systems, agent portable devices, and ground sensors, and these technologies have aided CBP's border security efforts. However, we have also reported that CBP could do more to strengthen its management of the plan and technology programs and better assess the contributions of surveillance technologies to apprehensions and seizures along the southwest border.

For example, CBP has experienced delays in some of its surveillance technology programs, and CBP's planned dates for initial and full operational capabilities for the integrated fixed towers, for instance, have slipped by several years.

We have also previously reviewed CBP's schedules and life-cycle cost estimates for its highest-cost programs under the plan and compared them against best practices. Overall, the schedules and estimates for the plan's programs reflected some but not all best practices, and we found that CBP could take further action to better ensure the reliability of its schedules and cost estimates by more fully applying best practices.

Further, CBP has identified the mission benefits of its surveillance technologies such as improved situational awareness and agent safety. CBP has also begun requiring Border Patrol to record data within its database on whether or not an asset such as a camera assisted in an apprehension or seizure. These are positive steps; however, CBP needs to develop and implement performance measures and analyze data it is now collecting to be able to fully assess the contributions of its technologies to border security.

[1] The prepared statement of Ms. Gambler appears in the Appendix on page 1153.

Second, with regard to radio systems, earlier this year we reported that CBP and ICE had taken action to upgrade their tactical communications infrastructure. For example, CBP and ICE completed various modernization programs for their tactical communications such as upgrading outdated equipment and expanding coverage in some areas. However, agents and officers who use the radio systems reported experiencing challenges such as coverage gaps and interoperability issues which affected their operations. We also found that CBP and ICE could take further steps to strengthen and record training on upgraded radio systems provided to officers and agents.

Third, with regard to air and marine assets, in 2012 we reported that the Office of Air and Marine could better ensure that its mix and placement of assets were effective and efficient by, for example, more clearly linking deployment decisions to mission needs and threats, documenting analyses used to support decisions on the mix and placement of assets, and considering how deployments of border technology affect requirements for air and marine assets. We found that these steps were needed to help CBP better determine the extent to which its allocation decisions were effective in addressing customer needs and threats.

In closing, we have made recommendations to DHS in all of these areas and others to help the Department in its efforts to manage and implement technologies, infrastructure, and other assets to secure the border. DHS has agreed with some of these recommendations and has actions planned or underway to address some of them. We will continue to monitor DHS' efforts in response to our recommendations.

Thank you again for inviting me to testify, and I would be pleased to answer any questions at the appropriate time.

Chairman JOHNSON. Thank you.

Our next witness is Michael Garcia. He is a Legislative Attorney for the Congressional Research Service (CRS) where he has worked since 2003. In this capacity, Mr. Garcia has focused on issues related to immigration, border security, international law, and national security. Mr. Garcia.

TESTIMONY OF MICHAEL JOHN GARCIA,[1] LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS

Mr. GARCIA. Thank you, Chairman Johnson, Ranking Member Carper, and Members of the Committee. I am honored to be testifying before you today regarding the legal authorities and requirements related to the deployment of fencing and other barriers along the U.S. borders.

The primary statute governing barrier deployment is Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which I will refer to as "the 1996 act." Section 102 was amended in 2005, 2006, and 2007. These revisions, coupled with increasing funding for border projects, resulted in hundreds of miles of fencing being deployed along the southwest

[1] The prepared statement of Mr. Garcia appears in the Appendix on page 1175.

border. However, it appears additional fence deployment largely halted after 2011.

Section 102 has three key features: Section 102(a) expressly authorizes DHS to deploy barriers and roads along the borders to deter illegal crossings. Section 102(b) provides that fencing shall be installed along not less than 700 miles of the southwest border, but fencing is not required at any particular location when DHS determines that other means are better suited to obtain control. And Section 102(c) allows the DHS Secretary to waive any legal requirement that impedes the expeditious construction of border barriers and roads.

In recent years, attention has primarily focused on Section 102(b) and 102(c), so I will focus my comments on those provisions.

Prior to the most recent amendments to the 1996 act, Section 102(b) required DHS to construct double-layered fencing along five specific stretches of the southwest border. The current version of Section 102(b) no longer requires fencing to be double-layered and provides DHS with discretion regarding where fencing should be installed.

Although Section 102(b) is sometimes characterized as requiring 700 miles of fencing, the provision actually states that fencing shall be deployed "along not less than 700 miles of the southwest border." In other words, the requirement prioritizes the amount of the border covered by fencing as opposed to the amount of fencing used by DHS. Last year, DHS stated that fencing had been deployed along roughly 652 miles of the southwest border.

There may be questions regarding the firmness of the 700-mile language. Section 102(b) states that, notwithstanding its requirements, DHS is not required to construct fencing at any particular location where it deems fencing inappropriate. This clause could be interpreted to mean that while DHS must deploy fencing along 700 miles of the border, it is not required to deploy fencing at any discrete point.

A broader reading of this clause might permit DHS to construct fencing along less than 700 miles of the southwest border if the agency believes fencing is only appropriate along a lesser mileage. However, there are a number of challenges to such a reading. As an initial matter, the notwithstanding clause does not say that DHS may construct fencing along a lesser mileage of the border. It says that fencing is not required at any particular location. If DHS may construct only the amount of fencing it deems appropriate, it is unclear why Section 102(b) would state that fencing shall be deployed along not less than 700 miles of the southwest border.

The legislative history of Section 102(b) along with several courts' description of the provision also seem to give greater support for understanding the 700-mile requirement as a firm one. DHS officials have seemingly taken differing interpretations of Section 102(b) over the years. A court's consideration of this issue may depend upon whether the meaning of Section 102(b) is seen as ambiguous and DHS' construction is deemed reasonable.

In any event, there is no statutory deadline for when the required fencing must be completed, and it is also unclear who would

have standing to bring a legal challenge against DHS' fencing strategy.

Turning to Section 102(c), this provision grants the DHS Secretary the power to waive legal requirements that may impede the construction of border roads and barriers. Waiver authority has been used to facilitate both the construction and the upkeep of border projects. But this authority could not be used to waive constitutional requirements. Thus, for example, just compensation needs to be given to private property owners whose land is condemned for purposes of barrier installation.

This concludes my prepared statement. I will be happy to answer any questions you have.

Chairman JOHNSON. Thank you, Mr. Garcia.

I am kind of interpreting your testimony that Congress might have passed a law that was not crystal clear? I guess I would be shocked.

OPENING STATEMENT OF SENATOR BOOKER

Senator Booker, I guess you are going to have to leave here, so I am happy to turn it over to you for the time being.

Senator BOOKER. Thank you very much, Mr. Chairman, for giving me this opportunity. I really just want to direct one question. I just want to say I will be leaving here and then preparing some remarks for the floor in regards to the train accident we had. I know Senator Carper was on that train and got off early, and I am very happy to see that he is here and well, and I just want to express my sympathies for the loss of life and the more than 100 people who are in the hospital right now recovering from their injuries.

I just want to ask just one question before I have to run. Ms. Gambler, from the notes that I have, Customs and Border Protection spent about $2.4 billion to complete roughly 670 miles of border fence. The vast majority of it was a single layer of fence, one line of fence designed to keep pedestrians, vehicles, and such from crossing.

If Congress were to implement the double layer of fence, that would require more land acquisition, more supplies, more labor to build, and manned by Border Patrol. I am trying to understand the payoff and the cost-benefit analysis in your estimation.

According to the GAO, undocumented entries into the United States during this time of erecting this fence actually fell 69 percent between 2006 and 2011, which is pretty impressive. But the drug and contraband seizures nearly doubled.

So you are an expert looking at costs and benefits and challenges associated with border fencing and technology. If Congress eventually approves another 700 miles of double-layered barrier fence as a part of the border bill, do you share my concern in sort of understanding the cost-benefit analysis and what, in your opinion, would it be as that 700 miles is put into place?

Ms. GAMBLER. So I think that is a very important question, Senator, and it goes to something that GAO has reported on both as it relates to fencing but also as it relates to other assets as well to include technology, which you mentioned, which is really being able to assess what we are getting out of different investments that

we are putting in place along the border, whether it is fencing or technology. And what we have found and reported on is that DHS could do a better job of collecting data and developing measures and metrics to assess what contributions they are getting out of different investments, whether that is fencing or whether that is technology or other assets.

And so what we have recommended is that DHS take steps to better collect the data, and better develop performance measures and metrics, so that we can be able to answer the question you just asked, which is: What are the contributions that we are getting out of the different infrastructure and technologies that we are putting in place?

Senator BOOKER. So it is a radical proposition. In other words, before we throw a whole bunch of money at the problem, try to figure out what is going to get us the best results for the money that we spend, given the ultimate array of decisions we have between assets like technology, drones, or fencing.

Ms. GAMBLER. And DHS certainly has some data now that would allow them to assess, particularly on the technologies front, what contributions they are getting out of the technologies they have deployed to seizures and apprehensions, for example, for the towers that have already been deployed, they are starting to collect that data now, and what they need to do is start using that to actually analyze and assess the performance and progress they are making.

Senator BOOKER. And so before politicians make decisions, you really think that this should be a data-driven decision through thorough analysis. Is that what you are saying?

Ms. GAMBLER. We certainly think it is important for them to assess the performance of the systems and how that is contributing to their efforts to secure the border, both as it relates to fencing technology and other assets they might put in place.

Senator BOOKER. Ms. Gambler, thank you very much.

Mr. Chairman, thank you for your time.

Chairman JOHNSON. Thank you, Senator Booker.

We would like to turn it over to our Ranking Member. Again, we are all very pleased on the Committee that you got off in time. So if you would like to say a few words and give us your opening statement?

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you, and I want to thank the folks on our Committee and, frankly, a lot of my colleagues and people around the country who have expressed just personal feelings about what those of us who were riding that train last night from Washington up to New York are feeling and thinking. I ride the train a lot, and I get to know the people, like the crew on the trains, and, frankly, I ride with a lot of the same people and never imagined when I got off the train last night that six people from that train would be dead this morning. We pray for all of them, and particularly for the—and also just a real prayer of thanksgiving for the first responders who turned out late at night in difficult circumstances. A lot of folks were heroes and heroines last night. They were not just the first responders or just the crew or just the Amtrak employees, but a lot of passengers who just did ex-

traordinarily heroic things with their lives. So let us keep them in our thoughts and in our prayers.

I used to be an Amtrak board member. When I was Governor of Delaware, I was an Amtrak board member, so I have been involved in train accidents as a board member, and sometimes with loss of life and sometimes just a lot of damage. And it is never easy, and this one is especially hard, as you know, but I appreciate all the feelings that people have expressed very much.

I want to also express to all of you our heartfelt thanks to you for being here and for what you do with your lives and trying to make our lives in many instances a lot safer and a better quality of life. So we are grateful for that.

I want to express my thanks to the Chairman for holding this hearing and letting us participate in its preparation and putting together, I think, just a really good panel of witnesses.

The Chairman and I and Senator Ben Sasse went down to the border not too many months ago, Chris will recall, and we had the opportunity to meet with people from all walks of life in South Texas. And one of the questions we asked them is: What do we need to do more of or less off in order to better secure our borders? And we heard a lot of things, but one of the phrases we heard over and over again is, "Technology is the key to securing the border." We heard that a lot. "Technology is the key to securing the border."

I could not agree more. And I look forward to hearing more from our panel today about the technologies and other tools that can serve as what I call "force multipliers" for our agents on the ground. I am sure my colleagues and our witnesses would agree that we need smart, targeted border security investments, and to me, this means placing a priority on acquiring advanced cameras, sensors, and radars so our agents have real-time situational awareness along our borders. For example, I have been very impressed with the Vehicle and Dismount Exploitation Radar (VADER) technology on our drones and the mobile surveillance towers that I have seen along our borders.

It also means working with the Department of Defense to reuse equipment that is no longer needed in theater in places like Afghanistan, such as the aerostats, tethered aerostats, that now we use along the Rio Grande Valley. Finally, it means making sure the assets we do have are being used effectively. If we have an airplane, a helicopter, or a drone in the sky, we need to equip those assets with the right kinds of cameras and surveillance equipment to ensure that we are not just flying blind. I am an old P–3 guy, old Navy guy for many years, a retired Navy captain, and I remember many a day we used to chase Soviet nuclear submarines when we were not in Southeast Asia all over the world. And the idea of fighting nuclear submarines using binoculars, not so effective. Frankly, the idea of looking for people in a search-and-rescue mission using binoculars from a P–3 aircraft, not so effective. And when we send aircraft along the borders without the right kind of surveillance technology, we are wasting a lot of fuel and, frankly, I think the time of a lot of people if we are not careful.

One of the things I would like to really hear from our panel today is about what technology is working along the border, what is working, so we can deploy more of that. Find out what works,

do more of that; find out what does not work and do less of that. I would also welcome hearing from each of you today what is not working so that we can reduce our expenditure on those activities. I know DHS has struggled in the past with some technology deployments, so we hope to talk about some of those lessons learned.

From what I understand, DHS—with the help from our friends at GAO—has already made many improvements to its acquisition policies, and we look forward to hearing more about that today as well. We applaud that. One lesson that I have learned over the years is that you cannot manage what you cannot measure. We talked a little bit about this here a minute ago. That is why it is vital that DHS continues to develop better metrics to measure its progress in securing our borders.

Another lesson from the trips I have taken to the Mexican border is that things do change. Things do change, and we have seen that as they move away from California, away to some extent from Arizona, all the way down to the South Texas area over the last couple of years, and this last 2 years with a whole lot more young people coming up looking for a place to just find refuge.

That may explain why, I think, our agencies have to be nimble. I am not a real big one for us being prescriptive, and I do not know that we have all the answers up here, but maybe together, working together, we can figure that out and be good listeners.

We also need to listen to the many experts who have told us that border security cannot be won only at the border, and I do not think it can be won only at the border. We have to take some other steps to address some of the factors that bring so many people to our borders. To me, that means passing comprehensive immigration reform. It also means trying to make sure that we identify what are the factors that are causing tens of thousands of people every year to try to get out of Honduras, Guatemala, and El Salvador. What are they fleeing? I have said many times we are contributing to their misery by our addiction to methamphetamine and heroin and crack cocaine and so forth. So we have an obligation to help address their lack of hope, lack of economic opportunity. The President has proposed, I think, a good plan there, and the Vice President is sort of honchoing that, and it deserves our support.

The other thing is I think we need comprehensive immigration reform. We made a good stab at that a couple of years ago. I hope we will come back and finish the job before long.

So that would pretty much sum up what I want to say, Mr. Chairman. I will close with this: I think almost everybody on this Committee would probably be described as a fiscal conservative. And if you look at the size of our budget deficit, go back about 6 years, the budget deficit peaked out at $1.4 trillion, and it has been coming down, and it is down by about two-thirds. But we still have a big deficit by historical standards, and we need to continue to work on that.

There are three things I think we need to do:

We need tax reform that lowers the rates, broadens the base, and helps raise a little bit of money for deficit reduction.

We need entitlement reform that serves old people, poor people, does not savage old people or poor people, but, frankly, saves these programs for our kids, find ways to save money in those entitle-

ment programs so they will be around for our children and our grandchildren.

The last thing we need to do is look at everything we do, and just ask this question: How do we get a better result for less money? Everything we do, including how do we secure our border in a cost-effective way.

So this is going to be a good hearing. I am delighted that you are here. Thanks very much.

Chairman JOHNSON. Thank you, Senator Carper. You will enjoy our hearing next week talking about the 30-year deficit and those projections, and we will certainly address those issues you were just raising.

As I was speaking to the witnesses—and, again, thank you for coming here, and I appreciate your thoughtful testimony and all the time you have put into it. If you are going to solve any problem, you really do need the information. That is really the basis of all these hearings, is to just lay out that record, lay out the reality. A number of times in testimony we have already talked about having the data. We have had a number of Office of Inspector General (OIG) reports. We had one on OAM, and we will get into that a little bit later. We just had one issued today on the lack of data driving decisions based on prosecutorial discretion and Deferred Action on Childhood Arrivals (DACA).

Those are serious issues in terms of not having the information. I would say one of the things that is frustrating to me as this Committee has really delved into the whole issue of immigration reform and border security is just, especially as an accountant, as a guy from a manufacturing background, just not having good, solid information and data—recognizing, though, it is pretty difficult to obtain that. But we try and do it through testimony, from getting good opinions.

Chief Vitiello, I do have to start out with a little housekeeping because we were made aware I think earlier today that one of our witnesses, Border Agent Chris Cabrera, received a notice to appear before CBP Internal Affairs for this Thursday. They want to talk to him about his congressional testimony. Now, my Lutheran catechism tells me to put the best construction on it, so I am hoping the reason Internal Affairs wants to talk to Agent Cabrera is that they are a little concerned about some of his testimony that might vary with some of the information we get from DHS in general, potentially talking about the fact that, he testified to us on the "gotaways," that there is a certain level of, I guess, informal, potential intimidation if they report more than 20 people coming through and they only apprehend 10 and all of a sudden a supervisor is there and providing a lot of scrutiny.

So, again, I am highly concerned about that. We bring people before this Committee. We swear them in. We swear them in to tell the truth, and I do hope that this is an effort to understand what his testimony was and try and determine whether there are some real distortions in terms of the information and the data that we are going to need to solve this problem. So I hope I have your commitment and the commitment of Customs and Border Protection's management that this is not any kind of intimidation or retribution.

Mr. VITIELLO. Thank you, Mr. Chairman, for that observation. The question, it is, in fact—your impression is correct. We were very concerned about Chris' testimony. We are very concerned about the numbers. We want you, we need ourselves to have the data to be as accurate as possible. And Chris, we work with him very well. We work with the National Border Patrol Council to the extent that we need to and have to. They are good partners. They have been for us, and we want their testimony to reflect accurately what happens in the field. And he left the suggestion and impression that there was intimidation or misconduct going on in regards to how the data is collected. That is not my impression. I am quite sure that the agents and their supervisors and the management of the area where Chris was discussing in McAllen are focused on doing the right thing for the right reasons. And so we did, in fact, refer the remarks to the Office of Internal Affairs for getting to the bottom of whether or not there was misconduct in that area.

Again, it is my impression that that is not what our leadership and our managers do down there, but it helps for us to verify.

Chairman JOHNSON. Good. That is very good news, and we will be watching that.

We were talking about all the technologies as a force multiplier. When we were down on the border in McAllen, certainly we heard the stats of Aerostats. They are only up 60 percent of the time, which means they are down 40 percent of the time. The same with the UAS. I will certainly give you a chance to respond to the Office of Inspector General report, but do we have any information in terms of what percent of individuals we are actually detecting? Or let me state it another way: What percent situational awareness do we have? We had Secretary Johnson here, I think it was 2 weeks ago, and he just made the blanket statement—and I appreciated the honesty—that, by the end of this administration we will not have achieved 100 percent situational awareness. I understand that. What percent are we at right now? Is there any estimate of that? Can anybody speak to that?

Mr. VITIELLO. I cannot be precise as it relates to the situational awareness across the 2,000 miles of the southwest border. It is very well understood what activity levels are, where the hot spots for activities are, and how our deployments support that. And so, as appropriate for this hearing, the technology is very important. The data that we collect as it relates to that activity and our observations and the recording of the outcomes of those individual interdictions feeds information where the assets and the agents give us that real-time information. So in a place like downtown McAllen, where you visited, in downtown Brownsville, where we do have surveillance technology, a very robust deployment of agents in the downtown environment. So in real time, you can collect information about activity and the results of the activity, the results of our interdictions, which includes the people who were arrested, the people who ran back, and what we call "gotaways."

In other locations, we use other methods to try and do that. There is lots of space along that 2,000 miles where we do not have that kind of deployment, so we use things like change detection technology to help inform overall.

There is also a piece of situational awareness that is having to understand what the capabilities of the criminal network are, how we interact with our fellow law enforcement agencies, our international partners, to understand what is happening on the other side of the border, and putting those pieces together along with the observations of people who live along the border that tell us this is out of the ordinary, this is not.

If you start to put all of those things together, it gives you an idea of what is happening across the entire border.

Chairman JOHNSON. OK. But, again, we are always looking for some kind of metric, and, certainly laws that we have passed call for a metric, call for a goal of 100 percent "situational awareness," or "operational control." So the question I have, since is certainly the idea behind some of these laws to specify that, are we not calculating that, are we not trying to track that metric now in anticipation of having potentially to comply with the requirement for 100 percent situational awareness?

Mr. VITIELLO. So we look at a suite of data that says "these are the arrests", we look at things like recidivism, there are other elements that we are trying to bring in the Secretary is focused on in the Southern Border and the Approaches Campaign, in the Unity of Effort, to tying the data together and giving us all a metric. We have struggled with the idea of defining situational awareness. I mean, I think it is one of those phrases or title that we seem to all understand, but when you get right down to it, how do you measure something that has a different connotation for different environments?

Chairman JOHNSON. So would the position of the Department of Homeland Security be they would just really reject or certainly resist having a piece of legislation where you have got that metric, 100 percent situational awareness?

Mr. VITIELLO. I think we would all enjoy having a defined set of circumstances that says if you have these four criteria met, then you do have situational awareness. We think it is broader. Obviously, if you have technology, a piece of machinery that surveils the border in real time, 24/7, that is an element of situational awareness. There are other pieces to that. It becomes difficult to decide exactly where you are at and what the actual definition is.

Chairman JOHNSON. While we are on this topic, before I turn it over to the Ranking Member, does anybody else want to comment on this? Ms. Gambler.

Ms. GAMBLER. We have, as I mentioned, reported on the need for CBP to put in place measures to assess progress made in securing the border. You were asking questions about sort of estimating flow and things like that. Our understanding—and certainly Deputy Chief Vitiello can speak to this perhaps better than I can, but those are estimates when you are talking about things—like the Border Patrol does record apprehensions, but the other data points that go into estimating flow, turnbacks, and gotaways, as we discussed are estimated by the Border Patrol.

Chairman JOHNSON. Thank you. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman. Senator Tester is on a little tighter timeline than I am. I have all the time in the world,

so I am just going to yield my time to him for a while, and maybe I could pick up in a little bit. Thanks.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Senator Carper.

Following up on the Chairman's questions, do any of you have a concise definition for "situational awareness"?

[No response.]

OK. That is good enough. I would just say I think before we can even talk about situational awareness and how important situational awareness is, we ought to know what the hell we are talking about.

So the next question is: Is situational awareness a prerequisite to having a secure border? Chief.

Mr. VITIELLO. I believe if we can come to terms on the definition for "situational awareness," then you can constructively then go from there, recognizing what the data is, and say whether you have situational awareness or not, and then based on the activity levels, the capability that CBP and others bring to the border security environment, then you can leap from there or jump from there or work out from there to a secure border definition.

Senator TESTER. All right. So moving forward here, I think we all want to have a secure border, but, look, if we want to get hung up on terminology, we can get hung up on terminology. Basically what we want to know is how many people are getting through and how many people are being apprehended and how secure is it, how safe is it. And are we spending the money in ways that make sense, whether it is on drones or radar or ground sensors of fences?

And so the next question I have—and most of these are going to be to you, Chief, but, Mr. Borkowski, feel free to jump in if you feel a necessity to. Can you tell me, are drones used on the Northern Border?

Mr. ALLES. I will answer that. Yes, sir, they are used on the Northern Border.

Senator TESTER. Are they used in concert with the Canadians?

Mr. ALLES. No. They are used in conjunction with the Border Patrol, sir.

Senator TESTER. And so it is not a joint effort. It is you guys——

Mr. ALLES. No, sir, it is not on the Northern Border.

Senator TESTER. How about radar on the Northern Border?

Mr. ALLES. We do pull in all FAA radar feeds, DOD feeds.

Senator TESTER. How about radar under 5,000 feet on the Northern Border?

Mr. ALLES. The coverage is limited.

Senator TESTER. OK. What about ground sensors?

Mr. VITIELLO. Yes, on the Northern Border, and those feeds are directly shared across the international boundary.

Senator TESTER. OK, that is good. How many miles would you say on the Northern Border ground sensors are utilized?

Mr. VITIELLO. I could be precise to the record with some data to each of the sectors along the Northern Border.

Senator TESTER. That would be fine.

So when we are talking about technology, like drones and ground sensors in particular—less on radar, but on ground sensors and

drones in particular—is there some reduction in manpower when they are utilized? Or is that not the case?

Mr. VITIELLO. In making us more efficient? Is that how you mean?

Senator TESTER. Yes. What I am saying is if you are using drones, do you need as many people on the ground? Or can you get by with less people on the ground and still have a safe border?

Mr. VITIELLO. Correct. Both the sensors and the aircraft allow for us to do more with fewer people.

Senator TESTER. With fewer people, OK. That is good to know.

Can you tell me, other than sharing the ground sensor information—Canada is a pretty good ally of ours. Is there anything else you guys do, besides border crossings, in a joint way?

Mr. VITIELLO. Yes. Under several frameworks signed by both leadership in the Department and at higher levels, we work with Canada in almost every area as it relates to border security, homeland security, and defense.

Senator TESTER. OK.

Mr. VITIELLO. There are a lot of programs, a lot of interaction day to day. We have people assigned in Canada that work out of my office.

Senator TESTER. OK. There is private land, there is public land, north and south, private land, public land, there are national parks, there are Indian reservations. Do your people go across private land without permission?

Mr. VITIELLO. Typically we are on the border everywhere, both private and public land.

Senator TESTER. Right.

Mr. VITIELLO. In places where we know that land is private, there is a recognition from the landowner and that within 25 miles, as the job demands, we enter private land.

Senator TESTER. Thank you for that. I mean, that is better than what I think I got for information last week, so I appreciate that.

I want to talk about partnerships for a second. When I first got in this job, I think the Border Patrol did a pretty poor job as far as building partnerships with—and this has been 8, 9 years ago, so you have improved—with Highway Patrol, with local police folks, with ranchers, with farmers, hopefully with other agencies, too. I am talking about Federal agencies. How do you feel those partnerships are working? And is there anything we can do to make those partnerships work better?

Mr. VITIELLO. I believe that we have recognized that that is part of how we are going to be successful in the environments that we work, having partnerships, leveraging each other's authority, exchanging information so that people are recognizing where threats are. That is always going to be part of the future. We have adopted that as a way forward.

We interact quite a bit with leadership in law enforcement, and the Stonegarden program that Congress gave us several years back after the Department was created is a very useful tool for us, and is very well thought of by State and local.

Senator TESTER. Could you give me your assessment—you went where I was going. Can you give me your assessment of border security in the Blackfeet Indian Reservation, for example—I do not

want to single those out, but if I said a reservation that bordered the Canadian border in Montana, that would be the one—compared to other areas on the northern border? Would you say it is equivalent, better, worse?

Mr. VITIELLO. I am not aware of any deficiencies that we have specifically with Blackfeet.

Senator TESTER. How about with the park, Glacier National Park?

Mr. VITIELLO. Same. We have an ongoing working relationship to be present and understand their concerns as well as being present on the border and patrolling.

Senator TESTER. So the need for additional tools—and I do not want to put words in your mouth. The need for additional tools when it comes to those lands—I mean, you have got it with Operation Stonegarden. You have it with your Park Service relationships, memorandums of understanding (MOU), whatever you might have.

Mr. VITIELLO. Correct, we do.

Senator TESTER. OK. That is good.

Well, I just want to say thank you for your work, all of you. Most of the questions were to Ron because I like him.

Mr. VITIELLO. Thanks. [Laughter.]

Senator TESTER. But the truth is I appreciate all your work, and you have got some people behind you that also work very hard, and I appreciate them, too.

I think the key is that, we have limited money here; at least I think that is across the board, but I am not sure it is across the board. So we have to make sure it is spent correctly and appropriately. And I know we might want a knee-jerk reaction to things when they happen, but the truth is that if we listen to you folks, I think we make better decisions. Thank you for your service.

Chairman JOHNSON. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Let me just ask: How many of you have testified on this subject before, before either a House or Senate Committee or Subcommittee? Just raise your hand. OK. Mr. Garcia, where have you been during your day job?

Mr. GARCIA. Testifying on other things.

Senator CARPER. OK. Good enough.

If you have been before this Committee, one of us has probably asked you to help us figure out what works so we can do more of that. What I am going to do is flip that question and ask each of you to give us an idea or two about some things that do not work and that we really should not do. What are some things you think that do not work? What are some things that we just ought not to do, you do not think they work, they are not worth the money? Mr. Alles.

Mr. ALLES. Good question, sir.

Senator CARPER. I am full of them.

Mr. ALLES. What is that, sir?

Senator CARPER. That is my best one today.

Mr. ALLES. I am struggling with that one. Because most of the stuff, as I think through it, that does not work is stuff that we actually stopped doing. One of the things we went through in our

own office was to analyze across all our offices which ones were most effective, most efficient, and then reorganize our structure based on that. So we actually look at that pretty regularly, year over year, to see what is not working and then try to adjust our organization and our assets to rid ourselves of those things. So we are in the process of downsizing aircraft. We are getting rid of about 40 or 50 aircraft. They are older aircraft, not good utility. We are organizing our offices along the north and the south so that we have our agents in the right places and getting——

Senator CARPER. I am going to have to—just hold it right there. I want you to take a couple minutes and think about that question. Think about some things that do not work that we should not be doing.

Go ahead, Mr. Borkowski.

Mr. BORKOWSKI. Yes, sir, thank you for that question. There are, I think, a lot of lessons that we have learned about things we should not do. For example, we should not treat technology or any other capital asset as an end. It is a means to an end, and we often get attracted by the bright shiny thing, and we do not think about why or how it will help us do our jobs.

Sometimes that is difficult because we do not always have metrics. That is because we do not have history. We are doing things that are new to us, and we have to understand that as well. We have to learn how to do things that are new to us and collect data and iterate on that. So that is one thing. Technology is a means to an end; it is not an end unto itself.

We cannot impose technologies on people who use it. We have to involve them, and they have to invite us to bring technologies. That is a classic mistake.

We cannot aspire to immature technologies before they are ready for us really to start to use them, and we do that very often.

So those are all sort of acquisition lessons learned that I would say that we have done in the past that we need to remember not to do in the future.

Senator CARPER. Those are good ones.

Mr. VITIELLO. Thank you.

Senator CARPER. Hold on just one sec.

My phone just went off, and it says "Rahm Emanuel," who used to be the President's Chief of Staff. But he is now the mayor of Chicago. I do not think it is him calling. But whoever has his old job over there is probably calling, so we will figure out who that is.

Mr. VITIELLO. I agree with my colleagues Assistant Commissioners Borkowski and Alles that this is a challenging question, and then I think we have learned——

Senator CARPER. Excuse me. I have got a phone call from the Chief of Staff boss, so I am going to ask you to excuse me just for a second. I will come back and try to reclaim my time.

Chairman JOHNSON. I will take over.

Senator CARPER. OK. Thanks. I apologize. I am still going to ask that question. Excuse me.

Chairman JOHNSON. Let us talk about fencing. When we were preparing for this meeting, we got a chart[1] up here showing the different types of fencing. But one of the charts I wanted to produce was I wanted to lay out the border, and I wanted to specify here are the different types of fencing along the lines, and I found out, well, I cannot show that because it is law enforcement sensitive. So I will first ask you, Chief Vitiello, why would the fencing and the quality of the fence and the type of fencing along the border be law enforcement sensitive? I mean, that is a secret that is not exactly a secret.

Mr. VITIELLO. I really do not understand that as well. I think that the documents that we sent over, that we were trading back and forth, that we were trying to approve late in preparing for today's testimony were marked. I am not sure of the origination of those markings.

I agree with you. If you live in a community that has the benefit of fencing as——

Chairman JOHNSON. You kind of know where it is.

Mr. VITIELLO. That people know where it is.

Chairman JOHNSON. Plus if you are a drug smuggler, you definitely know where it is. You have got that all mapped out.

Mr. VITIELLO. As you start to aggregate data like that or images like that, you start to show a picture across the southwest border, and it is easier to pick out some of the vulnerabilities. So that may be the origination of the markings. But we will certainly provide what we can.

Chairman JOHNSON. Which is, of course, what I wanted, because I want to see where we have our strengths and where we have our weaknesses.

Talk to me—and maybe—I am trying to think who would be best here. How effective can fencing be? And what has been the real problem in constructing it? We have environmental laws. We have eminent domain issues. We have lawsuits. We have passed laws that exempt ourselves from those. But what has been the real reality? Because, we have built close to 700 miles of fencing, but you can tell by the different types of fencing, there is some that works pretty good and some that, obviously might stop a truck, but certainly is not going to stop a human being. So just who is the best to just kind of walk about the history of, the multiple laws we have passed to build fencing, and then we relax them, set them up for discretion, they are not crystal clear, there is no time horizon on it. What has happened? We will start with Mr. Garcia, and then——

Mr. GARCIA. Mr. Chairman, if I understand, the first question you had was about possible impediments, legal impediments to fence construction.

Chairman JOHNSON. Correct.

Mr. GARCIA. When Congress first expressly authorized barrier deployment in 1996, although there was barrier deployment before that, it provided a waiver—DHS or I guess at that time the Immigration and Naturalization Service could waive two laws: NEPA, which concerns doing an environmental assessment, and the En-

[1] The chart referenced by Senator Johnson appears in the Appendix on page 1190.

dangered Species Act. Those two waivers—that waiver authority in many observers' minds was insufficient. The INS was required to deploy—essentially complete a triple-layered fencing project in San Diego, and over the course of 9 years, that project was not completed because of impediments caused by other environmental laws.

Congress responded to that pursuant to the REAL ID Act by providing DHS with very broad waiver authority to waive all legal requirements that may impede the expeditious construction of barriers and roads along the border, not simply in a specified place like San Diego, but anywhere along the U.S. border.

Chairman JOHNSON. Did it work?

Mr. GARCIA. That waiver authority was exercised in five instances, I believe between 2005 and 2008, and that certainly assisted Border Patrol in expeditiously constructing hundreds of miles of fence along the southwest border. There were legal challenges brought to halt certain border projects, but when DHS exercised waiver authority, courts would dismiss those challenges.

In terms of that waiver authority, I will note that it is not absolute. Besides the constitutional limitations—you cannot waive the Constitution. Another thing is that it refers specifically to the construction of barriers and roads. There is certainly some question as to whether it would apply to tactical infrastructure that is not a barrier or a road, like sensors or cameras.

DHS, when it has exercised waiver authority to border projects, it has often mentioned things like radio towers and cameras in addition to the fence. But whether waiver authority could be used exclusively for, say, a project to install towers or sensors along a particular stretch of the border, DHS has never done that, and that would raise a question: Is that a barrier?

Chairman JOHNSON. OK. Chief Vitiello, why don't you finish out? Then I will turn it back over to the Ranking Member.

Mr. VITIELLO. So I think we have used fencing and it has been part of border deployments for my entire career, and the images that you are showing here in the top left, the landing mat, that was designed, procured, and developed mostly by Border Patrol agents, a lot of the National Guard deployments were used over the years along the southwest border to build that fencing. Effective for short-term, surge operations when you are adding other things, technology, et cetera, it did us very well.

The fencing that was brought to us by the changes in the act and the mandate to do 700 miles are more the other images that you show there.

And then the vehicle barrier, as also represented there, is strategically placed in locations where it is very difficult to get to the border afoot, and so it is not necessary to have a pedestrian fence in places where the infrastructure does not support people walking toward the border.

And so all of them have contributed to higher levels of security. I think on the other side of the equation, it is a lot more expensive than we expected when we started, and it was much more difficult. I was in Texas as the Chief of the Rio Grande Valley in 2007 through 2010, and so when I arrived on duty there in 2007, we helped validate and set a requirement for fencing—as I recall,

about 75 miles. Most of that fencing was built, and it has made a difference. But it was not without lots of—excuse me? Most of it is in place, yes. It absolutely has made a difference. Yes, it has. But it was not without lots of challenges, difficulty with hydrology and flood control, et cetera, in South Texas, and lots of concerns about people who own that land, and we are still in cases in court about takings and condemnation, et cetera. That is part of the history. That is part of the lessons learned as we went through that whole project.

Chairman JOHNSON. Thank you. Senator Carper.

Senator CARPER. Thanks very much.

Senator Lankford, I had to leave the room for a moment right in the middle of asking a question. I was asking a really good question, and I asked them, rather than talk about what is working so we could do more of that, I asked them to tell us what is not working so that we can do less of that. And Mr. Alles is still thinking about it. He is coming up with some ideas, and Mr. Borkowski gave us, I thought, some great insights. And Ron here was, I think, about to get into it, and I had to slip out of the room. So do you want to pick up where we left off?

Mr. VITIELLO. So as I was saying, I was agreeing with both my colleagues. I think some of the lessons that we have learned with trying to fit technology in without the proper kind of awareness of all of its capabilities or lack of capabilities, I think one of the lessons we have learned is that as we move into this new version of the technology laydown, we have and are using field input for all of the installations.

Senator CARPER. Give us some examples of that.

Mr. VITIELLO. So we have this process, it is called "capability gap analysis," and those in business are familiar with gap analysis. As a Border Patrol agent, it is something that is well known in this environment. It allows us to go to the field and do surveys and walk the ground and understand what threats are faced at a station level, so the agents on the ground who are challenged day to day and patrolling the border, where are their biggest problems? And what kinds of technologies that they either have or think that are available will help them solve those problems? And so we do that, a station-by-station look, that is rolled up into a sector picture, and then that is rolled up into the headquarters.

We are in the process now of baselining the data. We have got about three-fourths of the workforce in the station-level data coming to us, and we will use that to help inform the plans that we have already made with OTIA, and then for unmet needs that we know are in the inventory, the things that work now that are being installed in places like Arizona will give us a hint of where to go next, what might be coming available that we can help do research on the DHS side.

Senator CARPER. Ms. Duong, what country was your family from?

Ms. DUONG. Vietnam, sir.

Senator CARPER. I knew it. North or South? Whereabouts?

Ms. DUONG. South.

Senator CARPER. Good. Great to see you.

Ms. DUONG. Thank you.

Senator CARPER. I served a little time over there.

Ms. DUONG. Thank you for serving.

Senator CARPER. Loved doing it. It was an honor.

Ms. DUONG. Thank you for keeping me safe and free all those years.

Senator CARPER. Thank you. You are welcome.

Same question: Give us an example or two of just what does not make sense and what we ought to be doing less of.

Ms. DUONG. Yes, sir. From an S&T standpoint, I would say that the biggest challenge always has been how do we transition from a research and development (R&D) effort into acquisition. And it is a challenge that is not unique to just DHS. DOD has the same challenge, and it has been in existence a lot longer than DHS as well.

Senator CARPER. Have you seen some instances where folks have overcome that challenge? Is there anything we can learn from that?

Ms. DUONG. Yes, sir. When I say it is a challenge, it does not mean that nothing transitions. Of course, we have transition in a lot of things in DHS as well as elsewhere. What I am trying to say is it is a challenge in the sense that the way the budget is structured—for example, I will give you a very specific example. Mr. Mark Borkowski and my Division have been working very closely hand in hand, and we even co-fund a lot of technologies that I have just talked about in my opening remarks. These are undergoing operational assessment right now.

So for the resource allocation plan cycle, which is for fiscal year 2017 to 2021, our two organizations sat down and tried to put in the budget on my side the technology cost to complete the development of technologies that we think would be ready for acquisition within that timeframe and delivered that in time. And OTIA's cost is the acquisition and maintenance of that. But we both do it because we know that it is the right thing to do, but I frankly doubt that the budget request that Mr. Borkowski put in will get approved just because of the way the budget is structured.

Being an operational department, CBP has many urgent needs, and if OTIA comes up and asks for a budget for a possible technology that might or might not be successful 3 years from now, it does not come as a very strong argument against other very urgent needs.

So the problem of what we call "wedging the budget," if we do not do that, then, of course, there is no smooth transition. Even if I am successful, let us say, to deliver technology in fiscal year 2018, by that time, when we get to that point and we pass all the operational assessment, and let us say OBP asks Mark, yes, we want the technology, we want the technology, and if Mark does not have it in his plan, at that time then he would have to scrounge for money because we cannot wedge the budget. So that is the problem that does impact most of us who are trying to bring very innovative technology into acquisition.

Senator CARPER. All right. Thank you.

Ms. Gambler, where do you work? You do not work at GAO, do you?

Ms. GAMBLER. I am.

Senator CARPER. You probably never thought about the idea of what does not work, have you?

Ms. GAMBLER. So I think two points, Senator, coming from GAO's work on border security and acquisitions more broadly.

One is determining what the user needs are up front before moving forward with deploying technology, and it is important—and we have reported on this as it relates to the surveillance technologies in Arizona—for CBP to better document the underlying analysis and justification for what it is deploying, where it is deploying it, and in what quantities. So we think that is important.

And then the second piece of that is to conduct robust testing of what is being deployed to ensure that you are identifying any risks as early on in the process as possible so that CBP is best positioned to be able to address those risks before moving toward full procurement and full deployment.

So I think those are two key themes emerging from our work.

Senator CARPER. OK, good. Thanks.

Mr. Garcia, do you have any ideas? I bet you do.

Mr. GARCIA. Well, I should begin by saying that I am an attorney, not a policy analyst, so I would certainly defer to my co-panelists on that issue. And I would also be happy to put you in touch, if necessary, with any of the CRS border security experts.

I could make an observation, though, and this is more in terms of the legislative role, and that is simply that a central issue for Congress has always been what is the appropriate level of discretion and what is the appropriate level of guidance that should be proffered to DHS through legislation. On issues of border security, sometimes Congress has been very specific; sometimes it has been very general. Sometimes it has re-evaluated things over times where it has provided a general authority and it later imposed a specific requirement; or other times it has had specific requirements that it has later deemed to be too onerous and provided a more general framework for DHS to operate with.

So the two observations would be, No. 1, the appropriate level of discretion and guidance may be different in Congress' view depending on the particular issue related to border security. And, No. 2, it is not necessarily guaranteed that just because Congress believes at a particular moment a certain level of discretion should be given or a specific amount of guidance should be given that they cannot change it at a later date.

Senator CARPER. OK. That was good. That was very helpful. I will just close with this thought: I usually get a better result in the end if I am trying to figure out how to do something by asking a lot of other people, "Well, what do you think?" And at the end of the day, we usually come up with a better idea, and we also, even if we do not use their idea, I think people just feel good about having been asked.

Mr. Alles, did I ever give you a chance to briefly comment? I know you tried to at the beginning, and you swung and missed.

Mr. ALLES. Second chance, sir.

Senator CARPER. Just real briefly, please.

Mr. ALLES. One thing I think that we have struggled with in the past is when we procure new assets, it is making sure they are provisioned properly. So that has been an issue for us in the past, and it is one thing we do not want to continue in the future. So we want to make sure—that affects our readiness so that is key.

Senator CARPER. Good. That makes a lot of sense. Thank you.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Let me ask a couple general questions. Then I am going to drive down into some specifics as well. Mr. Vitiello, let me ask you, do you need more people or do you need more technology? And I understand it is a little bit of both, but if you are going to weigh up between the two, what are you needing more than others?

Mr. VITIELLO. So you absolutely have to have the right mix, depending on the terrain, depending on the activity, the threats, et cetera. Right now I think our challenge is finishing what we started on the technology piece. I think that would do more for us. If you are just looking at the border environment, at the immediate border, the technology would be my priority, would be our priority for the agency.

Senator LANKFORD. OK. So let me ask this: The type of technology, as is most of our agencies—we met with an agency yesterday, and they have 207 different computer systems within their agency, and they do not all talk to each other. It has just kind of grown up organically over the years. At some point you realize it costs more to maintain all these different systems than it is to be able to just centralize to one system that we know that works.

How many different systems do you have? And I want to give you a for instance. Helicopters, how many different types of helicopters are we using?

Mr. ALLES. So that would be my area, sir. Goodness, I have to count the numbers: Hueys, A–Stars, Black Hawks, AC–120's. About five.

Senator LANKFORD. OK. Would it help us, are there one or two of those platforms that are more effective than others, that as we determine efficiency, effectiveness for what we are trying to accomplish with it? Maintaining the parts, maintaining the maintenance of five different types of aircraft on that has its own unique dynamic and cost on it.

Mr. ALLES. So the direction would be to go to two aircraft, a light enforcement helicopter, and a medium-lift helicopter.

Senator LANKFORD. OK. What would it take to get there?

Mr. ALLES. Basically procurements of new helicopters to replace the ones that are the odd types.

Senator LANKFORD. OK. Is that something that we need to help with? Or is that something you all are in process with right now?

Mr. ALLES. Part of it we are in process. With some of them we cannot entirely do with the budgets we have.

Senator LANKFORD. OK. You mean you cannot retire the old ones or you cannot replace those that need to be replaced with——

Mr. ALLES. I cannot replace all the ones that need replacing on current budgets. Some of it we can, some of it we cannot.

Senator LANKFORD. OK. So other technologies that are out there that we have multiple platforms of. Is there a need to be able to shrink down to one or two types that are more effective, that have been tried and tested? We have had five different types that are

tried and tested. Now we need to zero in to a couple. Are there any efficiencies of scale that we can gather from that?

Mr. BORKOWSKI. Yes, actually we sort of went the other way with the ground-based technology, because what we had was this very large, very expensive system, which was overkill for a lot of areas. So it made sense to us to have a multiple number of these technologies from small to large.

The way that we are handling that is we are designing a strategy where we can centralize our workforce that does maintenance on those so that we can take advantage of the economy of scale of the workforce. That is a work in progress.

It does continue, though, to be a concern. If we have multiple kinds of radars, multiple kinds of cameras, downstream we may want to make the cameras the same on different systems. But that will be a plan going forward.

Senator LANKFORD. OK. So tell me a time period on that. We have tried to make those decisions because—again, I am in the same spot. The more people that we have on maintenance, the fewer people that we actually have on patrol, lack of a better term.

Mr. BORKOWSKI. Well, we do not use Border Patrol agents to do the maintenance, first of all.

Senator LANKFORD. Well, dollars.

Mr. BORKOWSKI. Dollars, that is correct. And, by the way, I know this is counterintuitive, but the actual cost of sustaining the systems the way we are doing now has actually gone down because we are sustaining lower-cost systems. That does not mean we cannot drive efficiencies as we go forward and drive those costs even further down. But so far this has actually been a good trend.

I think the way we would deal with more combination is in what we call "technology refresh." As systems age in 3, 5, 7 years, what you replace those with, you would look for commonality. So that would be the timeline we would be talking about.

Senator LANKFORD. OK. Currently, what are we detecting that we cannot address, that our technology, whether it be infrared, ground systems, aerial systems, that we are detecting what percentage that we cannot address then, actually get someone to them in a manner to actually interdict?

Mr. VITIELLO. So the fixed and mobile technology does really well on ground targets, people crossing the border afoot or vehicles. Assets brought by VADER on the UAS has been very good at that. I think our biggest challenge collectively with Air and Marine and Mark's shop trying to procure is this slow radar detection for small—what they call "ultra-light aircraft." That has been a challenge for us. We have tried a couple of different systems, had some success, but not as far along as we would like to be.

The other big challenge based on terrain and kind of conditions is tunnel detection.

Senator LANKFORD. That is actually heading into my next question. So where are we technology-wise being able to pick that up?

Mr. VITIELLO. So we have a system that we have borrowed from DOD, and we have done some testing with and had some success with. But the terrain varies so much along the southwest border that it has been very difficult to find a box or a machine, if you will, that will give us the kind of fidelity that you would like to see,

the kinds of things we get with aircraft or fixed towers, mobile scopes, et cetera.

Senator LANKFORD. OK. What kind of interchange with ideas do we have with DOD and other folks to be able to swap what we have learned, what we have gained? How is that working? Are there impediments to that that we can help correct as far as communication? Are you finding any walls of separation?

Mr. BORKOWSKI. I think we have a great and very extensive and actually increasing relationship with DOD at all levels, from the Secretary level down to the colonel and lieutenant colonel running the program. I have an office that does that, Chief Vitiello has an office that does, and Ms. Duong has an office that does that. So we are very much plugged in with the technology they do. We have all kinds of programs to bring that into our environment and check it out and test it, and in some cases actually use it to support operations. Very extensive.

Senator LANKFORD. OK.

Mr. ALLES. One thing I would comment on, though, is we do have extensive collaboration. DOD has taken lately to wanting us to buy the systems from them, so before, excess military systems were passed over to us for use in homeland security. Now we are having to purchase those.

Senator LANKFORD. OK. Are you getting Walmart prices or are you getting Saks Fifth Avenue prices from them?

Mr. ALLES. It is not Saks Fifth Avenue. They do what they can, but there has been a big press to charge us for everything on the DOD side.

Senator LANKFORD. OK. Let me ask you one more thing on aircraft, the aerostat and how that is working, our blimp. Am I using the right term on that?

Mr. ALLES. So first I have to specify there are two aerostat systems. The system I work with is the Tethered Aerostat Radar System (TARS), high altitude 15,000 feet aircraft that works very well. It needs to be recapitalized. It is an older system. And then there is also—I will let Mark talk about the lower-altitude systems.

Mr. BORKOWSKI. Right, so the lower-altitude systems, the ones that we borrowed from DOD that they have used in Iraq and Afghanistan, those we call "tactical aerostats" that distinguish from TARS. We have five of them flying in Texas. They are relatively expensive. We are leasing them from DOD. But they have been extraordinarily effective there. So now we are in the process of deciding at that cost how often should we use them. That is where that is——

Senator LANKFORD. Is the cost actually the item itself or sustaining it?

Mr. BORKOWSKI. It is the operations and maintenance and sustainment of it. So we are basically leasing the DOD crews that operate those. We have been able to get DOD to transfer us four of the small ones as well as some towers. So we have gotten transfers of them. But right now we are leasing systems, and we are paying for the operations and support.

Senator LANKFORD. OK. And then one more thing just to wrap up, if I may, just this. I want to come back to a percentage that

I talked about before, percentage of people—and just a guess—that we can detect but we are not actually interdicting.

Mr. VITIELLO. So one of the suite of measures that we collect is called "effectiveness," and effectiveness is designed to get at how many people crossed the border last night and how many of them were apprehended. And so the data that we collect, again, as Anh talked about—this is an estimate, but the data for last year shows that we are in the 75-to 78-percent range on effectiveness across the southwest border.

Senator LANKFORD. Those are individuals that we saw, that we were able to actually pick up?

Mr. VITIELLO. Individuals and indications of people who crossed, either through a camera observation, an aircraft, an individual agent, or what we call "sign," footprints in the desert, if you will.

Senator LANKFORD. All right.

Mr. VITIELLO. You wrap those all up, and we try to do a 24-by-7 estimate of that activity across the southwest border. And then also that effectiveness ratio counts for the people who came in, the people who were apprehended, as well as the ones that ran back, what we call "turnbacks."

Senator LANKFORD. OK. Thank you.

Chairman JOHNSON. Thank you, Senator Lankford.

Let me pick it up there, because that is, in terms of testimony before the Committee, there is a discrepancy there. Maybe that is the discrepancy. If you are looking at detections and measuring versus—how many people you detected versus how many you apprehended, it is 75 percent. But you are not detecting everybody, which is one of the reasons I asked the question about some level of understanding of what situational awareness is. So is there any sense of what percent you are not detecting?

Mr. VITIELLO. At the departmental level, they are also attempting to look at the probability of apprehension, which would start to estimate the actual flow that will give you a scientific estimate, but still an estimate about the number of people who are crossing. When the technology and the deployment supports real-time information, you can be very confident in specific zones where there is enough agents and there is enough technology to show you what is happening in real time and record the responses in real time and the effect. So the effectiveness in those locations is very well documented. Again, not scientific because sometimes you do not see the people cross in real time. But you can use that camera data, you can use the agent data, and you can wrap those shift by shift, day by day, and you can start to look at trends across.

In the places where we do not have that kind of deployment, we are using this change detection technology, for instance, something that hangs off of the UAS that can fly the border, take a digital snapshot, if you will, and then an interval later, maybe an hour, maybe a shift, maybe a day, and look at that land again, and you can start to recognize change based on the way the pixels look in the picture. And that can tell you and verify when you do not have threat or when you do not have crossings, and then it will give you a lead to find out if there is change in those specific areas to go and investigate what it is.

So that has been very useful for us in these locations where we believe, based on the people who live there or based on our own activity levels, that there is not a lot of traffic, and we have been able to validate that, in fact, some of those locations do not see cross-border illicit traffic.

Chairman JOHNSON. And, again, I will definitely acknowledge this is very difficult to wrap your arms around in terms of what the data is, what the information is, what the truth is. But, we started this series of hearings on border security, and certainly DHS is pointing to the number of apprehensions being down, which is, a quasi-metric for how effective we are securing our border. At the same time, we started our first panel, people on the border themselves, and to a person, they were very emphatic making the point that the border is not secure. And another pretty interesting metric, I think depressing metric, when we had General McCaffrey here, in his testimony before us, he said they were only interdicting 5 to 10 percent of illegal drugs. So, I mean, there is a pretty big discrepancy, 75-percent apprehension rate of people coming into this country illegally, only 5 to 10 percent interdiction rate of drugs. As I grapple with that—plus Border Patrol agents talking somewhere between, people on the ground, say we have a 30 to 40 percent apprehension rate.

So, again, I realize this is very difficult to grapple with, but I really take a look at that interdiction rate of drugs as pretty indicative of how really not secure our border is. Can you just comment on that in terms of how that all relates?

Mr. VITIELLO. I think as we get better with these deployments, as we start to fill out the Arizona Technology Plan, as we start to move into the other locations—the next for us is South Texas—we will get better in all categories. We will get more effective at the immediate encounters on the border, and we will get more effective at the drug interdictions.

Looking at the worldwide estimate of production, which is an estimate, and looking at our seizure data, yes, there is a wide discrepancy. But if it is out there and our agents get wind of it, if they can follow it and track it down and make an interdiction, they are going to do that. Same for Air and Marine, same for the State and locals. There is a lot of help out there.

Chairman JOHNSON. But do you dispute that estimate in the 5- to 10-percent range? Do you think it is higher?

Mr. VITIELLO. I cannot dispute it. I am not familiar with how they do worldwide production, the aggregate of all the drugs that are produced. I assume we are in a small percentage of interdictions that are actually made.

Chairman JOHNSON. The reason I really point that out is, again, as we really explore this problem—I am from a manufacturing background, and our Ranking Member always talks about root cause as well. If I were really to put a finger on the root cause of our insecure border, it is really our insatiable appetite for drugs, and the drug cartels that have spawned, the destruction of public institutions in Central America that that has been created, this is a huge problem. And the drug cartels aligning themselves with international criminal organizations, potentially aligning them-

selves with terrorists, this is an enormous problem, which is why we are spending so much time on it.

Commissioner Alles, I really do owe you the ability to just respond to the Office of Inspector General's report on the drone program. I know when we were down there in McAllen, I think you were pretty emphatic that you did not agree with that. So I just want to give you the opportunity to give us your perspective on that Inspector General report.

Mr. ALLES. So part of what our discussion has been this afternoon has been on the whole issue of situational awareness or what we will call "domain awareness." And I think that was one of the key things missing from the Inspector General's report. The Predator UAS system that helps with domain awareness, it has sensors on it I never had before, we have never had in CBP before, that work over land and over water to detect movements of craft and also personnel, and they seem to have missed that for some reason. We had 18,000 VADER detections in the Tucson Sector alone in the year they did that report, 2013. So that is a pretty substantial detection rate for the technology.

I think the other part of it is they did not consider the actual value of the system in terms of seizing contraband. I would just mention we just finished a deployment in El Salvador that netted us $370 million in contraband. I mean, that is pretty impressive considering for this half of a year that we have just completed with the system, it has got $370 million of seizures. For the year they did the report, we had a 444-percent return on investment versus their flight hour calculation, the cost per hour, versus what we returned in contraband. So I think it has been a very successful system for us overall, and I look forward to better performance out of it in the future.

Chairman JOHNSON. I think one of the biggest problems cited in the Inspector General's report really was just hours of operation and just the inability to get it up as often as possible to drive that cost per operational hour down. Can you speak to that at all?

Mr. ALLES. So I do think this is an area we need to still work in. It is not achieving the number of hours I want it to achieve per year. Part of that had to do with the weather. But that is not all of it. There are other factors in there, too. We need to build that in the system in terms of personnel, maintenance, satellites, those kinds of things that we are working on. So we want to hit 6,000 hours every year. I would like to get it up more toward 9,000. I am not looking for the numbers they put out, 23,000 hours. Frankly, as I had mentioned to you guys down at Corpus, the systems would wear out in a few years flying at those kinds of rates and not be available.

Chairman JOHNSON. So, Chief Vitiello, very quickly, because, again, this is detection, and then you are in charge of apprehension, so you speak a little bit to the UAS program and how useful that is going to be and what are the drawbacks, what are the advantages.

Mr. VITIELLO. So I take the general description about VADER. This is something that we had never tried before, and there were people projecting on to it something that we were not even sure it was capable of doing. It turned out to be a very useful system, and

we now are on our way to procure more of them. And so we think it is going to be part of the future. It is obviously something that makes the UAS much more capable, already a robust system with the Executive Office for Immigration Review (EOIR), et cetera. But having the VADER and being able to see moving targets in real time is going to help us, and has. We have learned a lot with it in Tucson. We are starting to experiment, if you will, and use operational tests in South Texas, and we look forward to its success there as well.

Chairman JOHNSON. OK. Thank you. And, again, we saw a pretty amazing demonstration of that, too, when we were down there. Senator Carper.

Senator CARPER. That was good to hear. Very encouraging.

Maybe we could talk a little bit about effective budget cuts, and, Ron, if you and Mr. Alles and Mr. Borkowski would respond to this. It is my understanding that the House appropriators set discretionary spending levels for the Department of Homeland Security somewhere around $39 billion, maybe a shade over that. This amount is, I think, $350 million below this year's appropriation, almost $2 billion below what the President requested for 2016.

Let me just ask each of you if you can take a moment and talk to us about how these potential budget cuts will impact your work and the folks that you work with to secure our borders. Mr. Alles, do you want to go first?

Mr. ALLES. Yes, sir. I think that is going to—it is obviously potential. I do not know exactly where they will fall out, but the first area that would be of concern is in the flight hours area. We would like to maintain ourselves flying the 95,000 to 100,000 hour area, which is what we are projecting here in the coming years. If we are cut back, obviously then that is going to suboptimize our force. We are really situated aircraft and people-wise to operate at those levels. If we do not, we are not really being as efficient or effective as we can be.

A second part is I have very limited procurements. The only current procurement we are buying is a multi-role enforcement aircraft at two per year. If that actually——

Senator CARPER. I am sorry. What kind of aircraft?

Mr. ALLES. Multi-role enforcement aircraft. It is built up here at Gaithersburg—I am sorry, not in Gaithersburg. In Hagerstown.

Senator CARPER. You are talking King Air?

Mr. ALLES. It is a King Air. It is a Beech King Air. That is our only procurement. If that would for some reason stop because of money, then more than likely that line would close.

Senator CARPER. OK. Mr. Borkowski.

Mr. BORKOWSKI. Obviously—and I will leave it to the Chief and General Alles to talk about the operational impact, but in the acquisition system there is also a huge impact. First of all, obviously we cannot buy as much. Oftentimes that means we cut back on contracts. For example, what that can mean is I have an arrangement with industry. The arrangement is an up to but not necessarily all the way up to, and you can imagine what industry does. They project based on that, and they take some chances on the early part of it. Well, if I then cut some of that downstream effort

out, they do not get the return on investment. Now I have got a tough relationship with them.

The other thing that happens is all the competitions become winner takes all. They get very down and dirty and nasty. They increase protests. It delays the process. That also has a huge effect. It also affects their ability and their interest in investing in what they call "independent research and development," which is investment that we all need to provide for the future.

And then going to Ms. Duong's point, it makes it all that much more difficult to do this long-term kind of wedge planning for the next system that allows us to have a smooth transition, including with industry, from the S&T arena into the acquisition arena.

Senator CARPER. OK. Chief?

Mr. VITIELLO. Senator, it remains to be seen where those cuts are. We are obviously very concerned. This gives us a chance—gives me a chance, anyway, to amend my answer about what not to do. One of the challenges we have in——

Senator CARPER. We do not get a lot of second chances in life, do we?

Mr. VITIELLO. I appreciate that.

Senator CARPER. It is good to get one.

Mr. VITIELLO. So one of the challenges we have in CBP is that, corporately, CBP as a component, we have over 70 percent of the budget is applied to salaries. That is people. That is people in the field, almost everybody that is employed in CBP, the 65,000-plus, they are front-line people, a big mission support group here and smaller numbers in each of the field locations. But within the Border Patrol specifically, an enormous amount of money provided by you all and the taxpayer, but 93 percent of it goes to salary. So it becomes very difficult to decide what things you need to make that workforce capable that you cannot do with specific levels of cuts. That is our challenge, 93 percent labor, 7 percent that do everything else we have to do, all the cars and all the radios and all the phones and all the equipment that agents need to be capable, and that becomes a very difficult challenge for us.

Senator CARPER. OK. Thanks.

A different subject, life-cycle costs, and this would be for you, Ms. Gambler, Ms. Duong, and if we have time, for some of these guys as well. But I think Congress—well, not just Congress but others as well, but we are often better about buying new technologies than we are at paying to get the full value of those investments. It does not make a lot of sense—for example, we talked a little bit about this already—to buy advanced surveillance technologies if we are not prepared to pay for their ongoing operation and the maintenance and replacement costs to keep those assets running well and at full capacity, make sure we have the right people trained to do that stuff.

Could each of you comment, starting with you, Ms. Gambler, on whether this is a challenge for the Department in terms of border security investments? And what advice do you have for us, for Congress, on how to improve matters?

Ms. GAMBLER. With regard to the Arizona Technology Plan, when we did our report last year on that plan, we did assess the cost estimates that CBP had in place for the plan and some of the

highest-cost programs under the plan and found that CBP could take some additional actions to ensure that those life-cycle cost estimates better meet best practices. A key area that we reported on what the need for CBP to verify and validate its cost estimates against independent estimates to make sure that those estimates would be fully reliable and credible, and we made recommendations to CBP in that area to ensure that their life-cycle cost estimates more fully meet best practices. And we understand that—and Mr. Borkowski may be able to speak to this more—they are in the process of updating the life-cycle cost estimates for some of the technology programs under the plan going forward.

Senator CARPER. OK. Thank you. Ms. Duong.

Ms. DUONG. From the standpoint of technology that we in S&T are developing, we make sure that we do a good job at estimating the life-cycle costs before we submit that information to Mr. Borkowski, for example, for potential acquisition. And it is a process that we keep improving.

As you know, before we start a project, we already consult with our operating component in estimating the return on investment, and when I say "return on investment," it is on their investment, not my R&D investment. So we estimate that let us say if we pursue this particular technology, let us say we could find 10 more tunnels per year. Then what does that mean in terms—and we estimate throughout that it would cost X dollars to buy a new tunnel detection system that we are developing, then does that mean it would break even in 2 years, 5 years, 10 years?

So first it is just an estimate, and as we move further into the development of the solution, then we try to come up with a better and better estimate. And in the end, when we get to operational assessment, that is when we try to come up with a much better return on investment estimate to help CBP make the decision. So it is not just about, oh, look what great things this capability could do for you, but if you were to buy one or three or five systems and we estimate it would help you find five or 10 more tunnels, just be conservative, per year, then what does that mean in terms of cost saving? So we try to do that from an S&T standpoint to help them make the right decision.

The other part is about acquisition programs, and as you know, S&T does not—it is not in our responsibility to do acquisition. That is OTIA's responsibility. However, the Department does employ us as an adviser, and we try to make investments to help acquisition programs better understand the implication of the maintenance costs, the tail of anything. Just like you pointed out, Senator, a lot of times the acquisition cost is actually the lowest cost. It is the easiest one that everybody looks at.

So S&T always says that we want to be able to spend millions in order to save billions or hundreds of millions. So it is always a goal that we strive to achieve, and the Department has become more and more—in recognition of our role, and I am glad to say that S&T has become a trusted adviser for the Department along that line.

Senator CARPER. Good. Well, my time has expired. Mr. Chairman, are we going to have one more round so I can let these guys answer that question?

Chairman JOHNSON. I have got a couple more questions myself, also.

Senator CARPER. Great.

Chairman JOHNSON. Chief Vitiello, I have got a couple questions. I do want to go over this Office of Inspector General report that just came out today about the lack of the Department collecting data on prosecutorial discretion in Deferred Action on Childhood Arrivals. In the report it says that as of September 30, 2014, CBP's Office of Border Patrol reported it had released 650 DACA-eligible individuals. So you are keeping track of that? In what organized fashion are you tracking that?

Mr. VITIELLO. So in CBP specifically and the Border Patrol, when we process someone who is encountered by an agent and then we refer them either to deportation proceedings or in the case of unaccompanied children (UAC) to the U.S. Department of Health and Human Service (HHS) system, and then all of the encounters that we make are documented in a system, the enforcement system, so if it is appropriate, fingerprints, biographical data, photos, et cetera.

Chairman JOHNSON. But if you are apprehending somebody illegally crossing the border, how could they qualify under DACA?

Mr. VITIELLO. They would not.

Chairman JOHNSON. But you released 650 under that.

Mr. VITIELLO. I do not know that that is a CBP number. I have not seen the report. We have had very few encounters with DACA-eligible individuals in our context.

Chairman JOHNSON. Well, yes, I mean, according to this report, you have released 650, ICE released about 12,750. So, I mean, your percentage obviously is quite low, but I was just questioning why—how could anybody qualify under DACA coming into this country illegally?

Mr. VITIELLO. So we do have environments that we operate in such as checkpoints or people that are at the border that have not crossed the border and they are encountered by our agents, and they have eligibility under the standard. Not everybody we come in contact with obviously has crossed the border.

Chairman JOHNSON. I believe the Department has basically agreed with the recommendations of the Office of Inspector General to collect more data. Have you already been contacted in terms of the kind of data they are looking for as it relates to prosecutorial discretion?

Mr. VITIELLO. Specifically to that, I have not seen that. We are always looking for ways to identify where there are gaps in the system, and so the issue with the unaccompanied children last year, we struggled mightily with understanding how our data connected with the data that ICE keeps as it relates to the detention and then further on to removal proceedings within the Justice Department. That has been a struggle for us for a couple of years.

Chairman JOHNSON. So do you deal much with just the prioritization of who we are going to try and remove the aliens that pose a danger to national security, those that violated immigration control, aliens, fugitives, otherwise? I mean, is that something you deal with, or are you just basically—you apprehend them and somebody else deals with those criteria?

Mr. VITIELLO. So all the agents—there is a training regimen for everyone to understand what the priorities are as it relates to the memorandum, but obviously most of the work that we do—of the over 190,000-some arrests or apprehensions that were made so far this year, those are all recent border entrants, so they fall well within the priorities for action.

Chairman JOHNSON. So those priorities really do not affect you as much as they obviously affect ICE or other——

Mr. VITIELLO. Correct.

Chairman JOHNSON. The Department of Justice or HHS. OK. You did mention Border Patrol agents, the numbers. I just want to get your assessment. I know the Texas Department of Public Safety engaged in Operation Strong Safety, and they surged a lot of manpower to the border. I just want to get your evaluation, how effective that was, because we have talked about technology, different detection systems, fencing, that type of thing. In the end, we need manpower. And so just give me your assessment of how Operation Strong Safety worked, and I believe it was in McAllen, Texas. Or was that all of the Texas border? Or where was that centered?

Mr. VITIELLO. It is mostly South Texas. I have actually seen directly the deployments in the Rio Grande Valley. And obviously as an operator, I am going to tell you that more boots on the ground is always better. Is it the most efficient way and those kinds of things? That really would be for the State to tell you how effective their deployments have been. But I know that we have worked very closely with them, so most of our deployments, especially in South Texas, are near the river, and having the Department of Public Safety—they have some capabilities in rural enforcement and on the river, et cetera, but most of that deployment is related to hardtop, on the highways, and they have been an asset for us with regard to helping chase smugglers, et cetera.

Chairman JOHNSON. So Operation Strong Safety, is that continuing?

Mr. VITIELLO. As far as I know, it is.

Chairman JOHNSON. Again, have you measured at all—I mean, do you have kind of a before and after?

Mr. VITIELLO. I can look at all of the data that we have developed. I am not sure—obviously, locally we are aware of, their contributions directly. But, again, it is a situation where there are more boots on the ground, et cetera, in that particular location, and in their deployments they help us in the areas where we know traffic is going to eventually try to make it, if it has made it past us.

Chairman JOHNSON. We were down there, particularly the Sunday, the extra day I stayed down there. I mean, you see their presence. I would never try speeding around the Rio Grande Valley.

I would really be interested in any kind of analysis your agency or your Department can do in terms of what was the apprehension rate, what was the detection rate prior to the Operation Strong Safety, and what is it now, because I think it is just a really good test case of additional manpower, and we can kind of measure how much we have increased the manpower because of that.

Mr. VITIELLO. Yes. So we have seen—obviously, the prior testimony that you mentioned, we have seen lower levels of activity across the southwest border. That does include where Strong Safe-

ty is deployed. What is their contribution? What is the contribution of the other assets that we have been able to procure and send to the agents for their use and that capability there? That is the part that we struggle with. That is what you hear about data. That is what you want us to do better at.

Chairman JOHNSON. Yes. So, again, please look at that, because we also found out with aerostats, for example, when we talked to the people where those things were deployed, it shut down illegal crossings, but they just went someplace else. So—go ahead.

Mr. VITIELLO. That is often the case. I mean, I think what I have heard from the agents on the ground that are the benefit of that capability, they went from not having, high-altitude persistent surveillance, situational awareness, if you will, to having, a very capable system. We are advantaged in the sense that we do not have to use agents to monitor those sensors and run those systems. That is a contract. The other side of that coin is it is very expensive to do.

Chairman JOHNSON. And the other side, too, is when the wind is blowing, they are down, and let us face it, I would cross when the wind is blowing.

Mr. VITIELLO. Correct. That is why, we are very in favor of the Integrated Fixed Tower (IFT) deployments, the Refresh, and the additional Remote Video Surveillance System (RVSS), the cameras and sensors on the fixed and the mobile technology. We know those capabilities work. We have got a long history with some of it. We know that that is part of the future, and you will not be subject to the vagaries of the weather.

Chairman JOHNSON. OK. Thank you. I was actually trying to be shorter, but I have got so many questions. Senator Carper.

Senator CARPER. So many questions, so little time.

I would like to ask, Chief, if you and Mr. Borkowski and Mr. Alles would just go back to my last question about life cycle. Just do it in a minute, no more than a minute apiece. But could you just comment on whether this is a challenge for the Department in terms of border security investments and what advice, if any, you have for us on how to improve on this?

Mr. VITIELLO. Yes, I think we have—this is the data question. This is refining the assets that are available and recognizing the life-cycle costs.

As an operator, what we try to do is say this is the requirement, this is the problem we are trying to solve, and we leave it to the acquisition professionals to understand, what is out there, how much does it cost. And I think we have gotten really good at learning from the acquisition folks how to establish requirements and then recognizing that life cycle, what we call operations and maintenance (O&M), is crucial for us to understand before we make the final decisions on deployments.

Senator CARPER. OK. Thanks. Mr. Borkowski.

Mr. BORKOWSKI. Senator, we have got some pretty good processes that have grown in the Department that put some discipline to check the affordability, which includes whether or not we can pay for O&M. But there is a continuing problem, and I will just be frank, that when I challenge people, they blame it on Congress. So let me tell you what that is.

Senator CARPER. No.

Mr. BORKOWSKI. They do. I am not sure that is true, but I will tell you what they say. What happens, as we buy more technology, you would expect that the operation and maintenance costs would go up. So what our budget plan is, let us suppose I have $100 and I start with, $80 to buy it and $20 to operate it. Over time, as I spend that $80, after I have built all of my technology, maybe I am down to zero, and I have moved all of that money from buying to operating and maintaining. What happens is that the budget people do not look at that as a total of $100. They look at it as money to buy and money to operate. OK? They see the money to buy going down, and they say, "That is great. We love you. You have saved money." That is not really true, but that is what they say. "But we hate you for operation and maintenance because that has gone up, and you need to make it flat."

That is the real problem that we tend to have with operation and maintenance, is getting people to understand that if you buy more stuff, you need to operate and maintain it. And we have to look at the totality of the budget, not the individual pieces.

Senator CARPER. OK. Thank you. Mr. Alles.

Mr. ALLES. Sir, Senator Lankford asked kind of a key question here about numbers of different types of airplanes. We compute life cycles across each year's platforms, but as you think about kind of the big picture, five different kinds of airplanes, that means five different pilot training programs, five different maintenance and supply chains, five different maintenance training programs, those kinds of things. So one efficiency we need to keep working on on life cycles is these numbers of different platforms.

Senator CARPER. Good. Excellent.

A question, if I could, for Chief Vitiello. It is my understanding that CBP is doing an extensive gap analysis for border security that involves identifying what else is needed to better secure our southwestern border with Mexico. Could you just take a minute and give us a preview of what might be in that gap analysis? And do you think it might be done? And how could it be used?

Mr. VITIELLO. So describing the process, what we have tried to do with the capability gap analysis is going to the field, ask them what their challenges are, where they have specific things that they would like to solve with technology, with additional kinds of deployments, or other innovative ways to solve problems at the immediate border and, in specific zones, specific stations, specific sectors. And so what we have done is we have gone to the workforce. I explained to them what the process is, then gone out and taken surveys and gotten from the agents who walk the ground, who patrol the border, who are there, and gotten their ideas about what is required.

Then what we try to do is we take that data, that information at the station level, roll it up to the sector, the 20 sectors that are out there, then that will be fed up to us at the headquarters. Right now we are in a situation where the training is out for the bulk of the workforce, like 95, 98 percent of it. And then we have got about 70 percent of their ideas and their innovations about how to go forward with—specifically on the technology side. We have got about 70 percent of the data in.

Once we get all of the data, we will have a baseline. We will start to have conversations both with OTIA and S&T to find out, is there technology available? Is technology the best available resource for solving the problem as stated? And then we will be able to iterate that process as we learned about new things that are coming onboard, what the future looks like, using the success we know we have with other things, and try to fit a program together that says, "this is how many of these things that you need," and then you could go down specifically into the locations and say, for instance, the agents at Carrizo Springs need the brush cleared or they need additional RVSS. That is the kind of capability we look to have once the C-gap, the first iteration is in as we move forward.

Senator CARPER. Thank you for that.

The last thing I want to just touch on briefly is—and when we think of force multipliers, we think of a lot of stuff we talked about here today, and it is important. Sometimes I think in terms of our being able to better ensure that our borders are not so porous is to—I use the "needle in the haystack" analogy, and say the needles are the folks that are trying to get into our country—it could be human traffickers; it could be drug traffickers; it could just be people trying to flee a hellacious situation at home. But I would say there are a couple different ways to better find those needles in a haystack, and one of those ways is to make the haystack smaller. Another way is to have better equipment to detect the needles. And maybe another way would be to make the needle bigger.

I think to some extent, if we do immigration reform, do it smart, we can actually make some progress on this front. If we do a better job with intelligence—I think one of the reasons we do pretty well up on the Northern Border is the great relationship we have with the Canadians and a lot of sharing of intelligence and really doing a lot of joint operations.

The other thing I keep coming back to—and the Chairman and I have talked about this a fair amount; we have talked with General Kelly at SOUTHCOM about it, and that is to figure out how to convince a lot of people who live in Honduras, Guatemala, and El Salvador that they ought to just live there and somehow figure out how we can make them less likely to want to flee their country to come up here.

Do you all have any thoughts on any of this before we close? I would welcome that. Mr. Garcia, just very briefly any thoughts, please. Just very briefly. You may not have. That is fine.

Mr. GARCIA. I do not have any thoughts on that matter.

Senator CARPER. OK. That is OK. Ms. Gambler.

Ms. GAMBLER. I would just add on the unaccompanied alien children issue, which I think we have touched on a little bit today, GAO has a body of work looking at the unaccompanied alien children issues and have a couple of reports that will be issued this summer, including looking at U.S. programs in Central American countries to address some of those issues, as well as a report looking at screening, care, and custody for the children when they come to the United States.

Senator CARPER. Good.

Ms. GAMBLER. And so we will have some work on that this summer. That will help inform some of those points.

Senator CARPER. Good. We will welcome that. Thanks. Ms. Duong.

Ms. DUONG. Senator, I know the focus of this hearing is not about cargo——

Senator CARPER. I am going to ask you to be very brief.

Ms. DUONG [continuing]. Or POE, but I would point out that when we talk about needle in the haystack, that problem is exacerbated at the ports of entry because we know that trade and travel is increasing by 5 percent at least per year. So the strategy of reducing the size of the haystack is indeed one of the main strategies that S&T is pursuing technology for.

Senator CARPER. Excellent. Thanks.

Chief, just very briefly.

Mr. VITIELLO. I would just echo your comments as it relates to our partners in Canada. I think that relationship is a very good one. The local law enforcement and the Federal law enforcement as well as our partners in Canada, that makes a big difference. We are increasingly having those kinds of conversations in Mexico, and as we get smarter about how the Unity of Effort and the Joint Task Forces roll out, it will give us another opportunity to use the whole of government approach at the southwest border; and as our relationship with Mexico matures, it will be a benefit to all of us.

Senator CARPER. Thank you.

Mr. Borkowski, very, brief comments, please, before we close.

Mr. BORKOWSKI. Just I like the needle in the haystack. Technology attempts to make the needle glow, and if it deters, then it can reduce the haystack, so we agree with you. But we also agree with you that technology is not the only or not necessarily the best way to get there.

Senator CARPER. Thanks. Mr. Alles.

Mr. ALLES. Briefly, Joint Task Forces help, intelligence, investigations, coordination is key, and then I think working with Mexico better is going to help us.

Senator CARPER. Great. Thanks so much. Thank you all very much. A great panel. I appreciate it.

Chairman JOHNSON. Thank you, Senator Carper.

One of the advantages of me not making long opening statements, I will make a closing one, because I have got a comment. If you want to reduce the haystack, what you should do is try and reduce, maybe even eliminate the incentives for illegal immigration. One chart we have been putting up here is a history of unaccompanied children coming from Central America, and prior to Deferred Action on Childhood Arrivals, we were somewhere around 3,000 to 4,000 per year. And then, we issued those memoranda in 2012, and that number jumped to 10,000 the next year 20,000, the following year 51,000. I know it has come down a little bit, but it is still way above historic levels.

So I think we have to, again, looking at the reality of the situation, what causes these things, and we need to reduce those incentives. That is why I have always been very supportive of a functioning guest worker program. 8.1 million of those individuals here in this country illegally are working. It is a rational decision. When you have wages that are so much lower in Central America and Mexico than they are here in the United States, it is a rational eco-

nomic choice, particularly when the reality of the situation is, regardless of what the memorandum says, if you get into America, people are staying, particularly if you are a minor.

So I think we really need to take a look at our policy, and I want to solve the problem. I think realistically we are probably not going to have comprehensive—we do not really do comprehensive very well, so what I have certainly asked the Secretary, what I hopefully asked my Ranking Member is work with me, let us identify those incentives, let us reduce them, and let us start approaching this in a step-by-step basis. I come from a manufacturing background. You do not solve problems just like that. I am perfectly willing to engage in continuous improvement. Let us take the step-by-step incremental improvements. Let us identify the things we can do. So if all of you would be willing to work with this Committee to identify those incentives, identify those steps, maybe a small piece of legislation—we reported one out of our Committee last week in a business meeting, just allowing CBP on Federal lands in Arizona. I would like to do it across the border. Probably some resistance there. So how about we just take a look at Arizona and see if that would actually work.

So I really do hope that the Administration, the Department, your individual agencies will work with us. Let us identify those and, take a step-by-step approach and improve border security.

With that, the hearing record will remain open for 15 days—I forgot to thank all you folks. Again, thank you very much for your thoughtful testimony, for sitting here and answering in a very thoughtful manner. We really do appreciate it. I know how much time and effort goes into this, so thank you very much.

The hearing record will remain open for 15 days until May 28 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 4:24 p.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
"Securing the Southwest Border:
Fencing, Infrastructure and Technology Force Multipliers"
May 13, 2015

As prepared for delivery:

Good afternoon and welcome.

Today, we continue our border series hearings with an examination of the Department of Homeland Security's force multipliers in securing our border: fencing, tactical infrastructure and technology. Through our previous hearings, we have learned that each border sector across the U.S.-Mexico border is different. And the threats from our southwest border significantly differ from our threats on our northern border. These differences in terrain, climate and threats require that we understand each aspect individually and develop a holistic strategy in deploying various resources across our borders.

Not only are our border sectors unique, but illegal traffic constantly flows to our most vulnerable areas. Fencing in populated areas and at our ports of entry has redirected illegal traffic to the most remote areas along the border. There is no better example of this than in San Diego, which was one of our most highly trafficked areas until fencing was built in the mid-1990s and apprehensions decreased by 95 percent. This traffic was redirected to El Paso, Tucson and, today, the Rio Grande Valley sector. Earlier this year, when travelling to RGV, Senators Carper, Sasse and I viewed aerostats that had virtually eliminated illegal traffic in the areas covered by their surveillance, only to have the flow directed elsewhere.

The department has not always been successful in deploying force multipliers. In 2009, after repeated technical problems, costs overruns, scheduled delays, and spending approximately $1 billion on its Secure Border Initiative-network (SBI*net*), Secretary Napolitano froze funding for the program except for ongoing deployment in Arizona. Today, SBI*net* provides 53 miles of coverage, out of the 387 miles of Mexico-Arizona border. I am interested to hear from the department what lessons were learned from this program and how its latest plan, the Arizona Technology Plan, will avoid these missteps.

Fencing and tactical infrastructure has also been a challenge for the department. For example, we still are approximately 50 miles short of the legally required 700 miles of reinforced fencing along our southwest border. Access roads, lighting, low-water crossings, and bridges are also important resources for Border Patrol agents, as is clearing brush in various sectors. I look forward to hearing from our witnesses how fencing and infrastructure have served as force multipliers across our borders and what further resources are needed to help better secure our borders.

I thank the witnesses for their willingness to answer these important questions, and I look forward to their testimony.

Statement of Ranking Member Thomas R. Carper
"Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers"
May 13, 2015

As prepared for delivery:

I want to thank the Chairman for holding this hearing. When we visited south Texas together earlier this year, we heard again and again 'technology is the key to securing the border.' I couldn't agree more. And, I look forward to hearing from our panel today about the technologies and other tools that can serve as 'force multipliers' for our agents on the ground. I'm sure my colleagues and our witnesses would agree that we need smart, targeted border security investments.

To me, this means placing a priority on acquiring advanced cameras, sensors, and radars so our agents have real time situational awareness along the border. For example, I have been very impressed with the VADER technology on our drones and the mobile surveillance towers that I have seen along our borders.

It also means working with the Department of Defense to reuse equipment that is no longer needed in theater in places like Afghanistan, such as the aerostats now in use in the Rio Grande Valley. And finally, it means making sure the assets we do have are being used effectively. If we have a plane, helicopter, or drone in the sky, we need to equip those assets with the right cameras and radars so our agents are not flying blind.

Overall, I'd like to learn from our panel today about what technology is working along the border, so we can deploy more of it where it's needed. I'd also like our witnesses to talk to us about what is not working, so we limit or stop those activities. I know DHS has struggled in the past with some technology deployments, so I hope we can also talk about lessons-learned.

From what I understand, DHS – with the help from our friends at GAO – has already made many improvements to its acquisition policies. I look forward to hearing more about that today, as well. One lesson that I have learned over the years is that 'you can't manage what you can't measure.' That is why is vital that DHS continue to develop better metrics to measure its progress in securing the border.

Another lesson from my trips to the Mexican border is that things change. Migration and drug trafficking patterns are constantly shifting in response to our own border security efforts, as well circumstances in the countries where the migrants and drugs are coming from. That is why I believe our border agencies must be nimble, and why we in Congress must resist setting rigid plans in statute that will soon be outdated.

We also need to listen to the many experts who have told us that border security can't be won only at the border. We have to take other steps to address some of the factors that bring so many people to our borders. To me, that means passing comprehensive immigration reform and supporting the President's funding request for Central America.

With that, I look forward to the testimony and thank the witnesses for appearing here today.

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TESTIMONY OF

RANDOLPH D. ALLES
Assistant Commissioner
Office of Air and Marine

and

MARK BORKOWSKI
Assistant Commissioner
Office of Technology Innovation and Acquisition

and

RONALD VITIELLO
Deputy Chief
Office of Border Patrol

U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

Senate Committee on Homeland Security and Governmental Affairs

ON

"Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers"

May 13, 2015
Washington, DC

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. It is a pleasure to appear before you today on behalf of U.S. Customs and Border Protection (CBP) to discuss border security technology and tactical infrastructure between our Nation's ports of entry (POE).

Along the more than 5,000 miles of border with Canada, 1,900 miles of border with Mexico, and approximately 95,000 miles of shoreline, CBP secures our borders and associated airspace and maritime approaches to prevent illegal entry of people and goods into the United States.

The border environment in which CBP works is dynamic and requires continual adaptation to respond to emerging threats and changing conditions. We appreciate the partnership and support we have received from this Committee, whose commitment to the security of the American people has enabled the continued deployment the resources we need to secure the border.

DHS Unity of Effort and the Southern Border and Approaches Campaign

Before talking in detail about the technologies we are applying now and will apply in the future, we wanted to briefly touch upon two significant initiatives we at DHS have kicked off recently that act as coalescing and supporting functions for the border security work done by CBP. Secretary Johnson's Unity of Effort initiative has put in place new and strengthened management processes at DHS headquarters to enable more effective DHS component operations. CBP actively participates in these efforts, which include a new DHS Joint Requirements Council and significantly strengthened budget and acquisition processes. These efforts, synchronized by DHS headquarters acting in a trusted and transparent fashion, work across all elements of the Department to better assess, budget for, acquire, and field fiscally sustainable technology in support of CBP and the other DHS components.

In addition, DHS-wide border security activities are being strategically guided by our new Southern Border and Approaches Campaign. Looking across the range of Department roles, responsibilities, and capabilities, we are working together, with our U.S. Coast Guard and U.S. Immigration Customs and Enforcement partners to not only think about the challenges DHS faces in a more comprehensive way, but also greatly enhance our operational approach to working together in a way that embodies the Secretary's vision to have the Department act in a more unified way.

This is the new lens CBP is looking through to address its many challenges in border security.

Technology Investments between Ports of Entry

The use of technology in the border environment is an invaluable force multiplier to increase situational awareness. DHS continues to deploy proven, effective technology to strengthen border security operations between the ports — in the land, air, and maritime

environments. With enhanced surveillance capabilities, CBP can improve its situational awareness remotely, direct a response team to the best interdiction location, and warn the team of any additional danger otherwise unknown along the way. As a result, these investments increase CBP's visibility on the border, operational capabilities, and the safety of frontline law enforcement personnel.

In an era of declining and competing financial resources, it is imperative that DHS and CBP promote operational agility by leveraging technological advances and innovative practices. A key element of CBP's acquisition strategy, innovation is not simply the process of buying the newest technology; rather, it is the product of a collaborative culture that supports creativity, optimizes resource allocation and pursues the greatest return on investment and delivery of prioritized operational capabilities.

This Committee is familiar with the outcome of CBP's SBI*net* program, an earlier component of the DHS Secure Border Initiative (SBI) that was designed as a comprehensive and integrated technology program to provide persistent surveillance across U.S. borders. The program experienced significant schedule delays and cost overruns because it did not allow necessary flexibility to adapt to differing needs in the various regions of the border. SBI*net* eventually delivered systems to two Areas of Responsibility in Arizona that continue to operate successfully. Nevertheless, DHS cancelled SBI*net* on January 14, 2011, because it was too costly and the idea of one, all-encompassing program was unnecessarily complex for border technology.

Since 2011, DHS and CBP have approached our border technology requirements, ranging from small to large, simple to complex, in more manageable pieces tailored to specific regions on the border. For example, CBP's Arizona Technology Plan (ATP), which focuses on technology that specifically meets the needs of border conditions in Arizona, is the first of many phases in a multi-year effort to provide a cost effective mix of fixed and mobile technology across the Southwest border. Please see Attachment A for photographs of some of CBP's technology and tactical infrastructure.

The ATP acquisition strategy leverages "non-developmental" technology to the greatest extent possible, providing more flexible, less risky, and less costly procurements and deployments. CBP's Office of Technology Innovation and Acquisition (OTIA) works collaboratively with the Border Patrol to develop the technical requirements and the flexibility to trade those requirements against cost.

Fixed, Persistent Surveillance

The Integrated Fixed Tower (IFT) systems are one of the technologies acquired and deployed to the Southwest border in Arizona as part of the ATP. IFTs are fixed surveillance assets that provide long-range persistent surveillance. These systems cover very large areas and incorporate a Common Operating Picture (COP), a central hub that receives data from one or multiple tower units. The tower systems automatically detect and track items of interest, and provide the COP operator(s) with the data, video and geospatial location of selected items of interest to identify and classify them.

Remote Video Surveillance Systems (RVSS) are another fixed technology asset used in select areas along the Southwest and Northern borders. These systems provide short-, medium-, and long-range persistent surveillance mounted on stand-alone towers, or other structures. The RVSS uses cameras, radio and microwave transmitters to send video to a control room and enable a control room operator to remotely detect and, to a limited extent, track, identify and classify targets using the video feed.

For example, just recently[1], Border Patrol agents assigned to the Calexico Station were operating a RVSS at night when they observed a man carrying a duffle bag waving toward a vehicle that had stopped just north of the International Boundary Fence. The agents using the RVSS called in the observation to agents in the area who in turn stopped the vehicle. The driver consented to a search of the vehicle, and agents located almost 30 pounds of cocaine in the duffle bag. RVSS technology also recently disrupted a methamphetamine smuggling attempt, which ultimately led to the discovery of a sophisticated cross-border tunnel.[2]

In some areas along the Southwest border, CBP also uses Unattended Ground Sensors (UGS), which provide short-range persistent surveillance. These sensors support our capability to detect, and to a limited extent, track and identify subjects. Sensor capabilities include seismic, passive infrared, acoustic, contact closure and magnetic, although these capabilities are not necessarily available in all deployed UGS. When a ground sensor is activated, an alarm is communicated to a data decoder that translates the sensor's activation data to a centralized computer system in an operations center. Imaging Sensors (IS) are a specific type of unattended ground sensor with an integrated camera and the ability to transmit images or video back to the operations center. As with UGS, IS are monitored in a centralized system and geospatially.

Without fixed system technology such as IFT, RVSS, and UGS, the Border Patrol's ability to detect, identify, classify, and track illicit activity would be decreased. Fixed systems provide line-of-sight surveillance coverage to efficiently detect incursions in flat terrain. The Border Patrol integrates mobile and portable systems to address areas where rugged terrain and dense ground cover may allow adversaries to penetrate through blind spots or avoid the coverage areas of fixed systems.

Mobile Capabilities

The border environment between the ports of entry is dynamic. Working in conjunction with fixed surveillance assets, CBP's mobile technology assets provide flexibility and agility to adapt to changing border conditions and threats. Mobile technologies are deployed in California, Arizona, New Mexico, and Texas as well as several Northern border locations. Along the Southwest border, Mobile Surveillance Capability (MSC) systems provide long-range mobile surveillance and consist of a suite of radar and camera sensors mounted on Border Patrol vehicles. An agent deploys with the vehicle to

[1] http://www.cbp.gov/newsroom/local-media-release/2015-04-29-000000/border-patrol-agents-nab-two-calexico-men-smuggling.

[2] http://www.cbp.gov/newsroom/local-media-release/2015-04-27-000000/el-centro-sector-border-patrol-foils-methamphetamine.

operate the system, which automatically detects and tracks items of interest and provides the agent/operator with data and video of the observed subject.

Mobile Vehicle Surveillance Systems (MVSS) provide short- and medium-range mobile surveillance equipment mounted on telescoping poles and consist of a suite of camera sensors mounted on Border Patrol vehicles. An agent deploys with the system, which detects, and to a more limited extent, tracks, identifies and classifies items of interest using the video feed. The agent/operator observes activity on the video monitor to detect intrusions and assist agents/officers in responding to those intrusions.

Another system that is used by the Border Patrol, that does not need to be mounted to a vehicle, is the Agent Portable Surveillance System (APSS). These systems provide medium-range mobile surveillance, and are transported by two or three agents and mounted on a tripod. A single agent remains on-site to operate the system, which automatically detects and tracks items of interest and provides the agent/operator with data and video of selected items of interest.

These technologies not only provide significant security benefits and multiply the capabilities of law enforcement personnel to detect, identify, and respond to suspicious activity, but they also assist with public safety along the border. This past January, Colchise County Sheriff's Office requested assistance from Border Patrol agents when a hunter was reported missing.[3] Ultimately, it was an agent using mobile surveillance technology who was able to detect the hunter's flashlight and direct agents to the hunter's location. Mobile surveillance technology systems enable agents to position the technology where it is needed at a specific moment, extend our observational capabilities – in this case, by helping see through the darkness – and increase the accuracy and speed of our response.

The absence of mobile surveillance technology would limit the Border Patrol's ability to detect, identify, classify, track and rapidly respond to illicit activity. Additionally, mobile platforms provide a suite of capabilities that cannot be duplicated with alternatives such as handheld equipment. For example, mobile surveillance technology is mounted on masts to increase sensor elevation over trees/obstacles and provide elevation in flat terrain. MSC systems possess radar that autonomously detect items of interest and MSC detection ranges are significantly better than those of handheld alternatives.

Technology is critical to border security operations and through the deployment of these effective technologies, the Border Patrol gains more coverage of fixed surveillance gaps and situational awareness, and increases its ability to adapt to changing conditions and effectively detect, identify, track, and interdict potential threats along the Southwest border. A tailored blend of fixed, mobile and portable surveillance systems that complement one another, increases the Border Patrol's effectiveness in targeting a response to high-risk areas, enabling rapid response strategies to maximize limited manpower, and adjusting to seasonal/periodic traffic patterns.

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[3] http://www.cbp.gov/newsroom/local-media-release/2015-01-29-000000/border-patrol-rescues-lost-hunter

Using the non-developmental approach, most of the programs within the ATP are on contract and many systems have already been deployed, including APSS, UGS, IS and MSC systems. Although it is too early to declare complete success, the early indications of the ATP acquisition strategy are quite positive and, in some cases, far exceed our expectations.

Tactical Communications
In addition to the surveillance technology described above, CBP's Tactical Communications Program (TACCOM) land mobile radio (LMR) system provides critical secure voice communications for officer and agent communication. These systems support agents and officers from CBP's operational components—the Border Patrol, the Office of Field Operations (OFO), and the Office of Air and Marine (OAM)— and with other DHS Components, Federal agencies and public safety and first responder agencies. The system consists of both portable and mobile (vehicle-installed) radios as well as fixed radio equipment on towers and other structures. TACCOM covers approximately 1.2 million square miles nationwide.

DoD Technology
As part of CBP's efforts to seek innovative ways to acquire and use technology, CBP formed a partnership with the Department of Defense (DoD) to identify and reuse "excess" DoD technology. To date, CBP has acquired several types of technology, including thermal imaging equipment, night vision equipment, and tactical aerostat systems. The technology from DoD increases CBP's situational awareness and operational flexibility in responding to border threats.

We are currently operating DoD tactical aerostats flying over the Rio Grande Valley Sector as part of an extended evaluation. While still undergoing evaluation, the systems concurrently conduct real-world operations and boost technological capabilities in a high priority area of the border. We will continue to pursue additional opportunities to leverage DoD excess equipment. We will do this in a sustainable way by considering the full life cycle costs of the DoD equipment we are considering before acquiring it.

Tactical Infrastructure on the Border

Tactical infrastructure (TI), including fencing, roads, and lighting, is a critical element in CBP's layered and risk-based approach to border security. Tactical infrastructure is tailored and deployed to meet the unique conditions and associated illegal pedestrian and vehicle traffic in specific areas along the border.

In accordance with Section 102 of the Secure Fence Act of 2006 (P.L. 109-367), which requires DHS to construct the infrastructure necessary to deter and prevent unlawful border entry, CBP has deployed several different types of fencing along the Southwest border – in parts of California, Arizona, New Mexico, and Texas – as a means of TI. Primary Fence is typically about 18 feet high and uses steel bollards or pickets to impede illegal pedestrian and vehicular traffic. Secondary Fencing is used in conjunction with Primary Fencing and uses fence fabric to further impede illegal pedestrian traffic that has

breached the Primary Fence. Secondary Fencing is typically about 15 feet high and is constructed with horizontal rails in the form of steel tubes and fence fabric of either mesh or perforated metal sheeting. Tertiary Fencing provides a third layer of fencing and is typically either standard chain link or barbed wire. Vehicle Fencing uses steel bollards and wide flange sections to resist illegal vehicular traffic across the border. Vehicle fencing is typically used in rural or isolated locations that have a low occurrence of illegal pedestrian traffic.

Fence construction is intended to provide persistent impedance of illegal cross-border activity, which offers Border Patrol agents sufficient time to respond to and resolve threats. The physical stature of the fence affords agents additional cover, making physical assaults against them more difficult to carry out. CBP constructs border fence in locations based on a risk and vulnerabilities assessment of illicit cross-border activity. CBP has completed construction of 653 miles of fencing, as mandated by Congress in the *Secure Fence Act of 2006*, including 300 miles of Vehicle Fence and 353 miles of primary Pedestrian Fence along the Southwest border. In addition, there are approximately 36 miles of secondary Pedestrian Fence behind the primary fence and 14 miles of tertiary Pedestrian Fence behind the secondary fence.

The total cost to build fence in place (652.6 miles) is approximately $2.3 billion. CBP was allocated approximately $49 million in Fiscal Year 2015 to maintain and repair fence and gates, roads and bridges, lights, and other TI. This total only includes Border Patrol's prioritized TI maintenance and repair requirements. This level of funding for maintenance and repair of TI requirements was also part of the FY 2016 budget request.

The need to maintain, repair and replace outdated and aging fencing will continue to be an issue. In addition to the base $49 million requested for fence maintenance, the FY 2016 budget request also provides funding for CBP to complete the Naco Primary Fence Replacement Project. The project is a high priority fence project for the Border Patrol and involves removing and replacing an estimated 7.5 miles of existing primary pedestrian fence, addressing vulnerabilities that have been exploited by transnational criminal organizations.

In addition to fencing, DHS and CBP have invested in other security infrastructure such as all-weather roads and lighting. All-Weather Roads or "Border Roads" are generally oriented parallel with the border and provide Border Patrol and other law enforcement partners with direct access to, and enforcement of, the border. The roads are typically 20 feet wide and are designed to allow safe passage of two vehicles simultaneously. Like fencing, roads and lighting also require maintenance and repair to remain operational and effective.

Border Lighting enhances the ability of the Border Patrol to sustain situational awareness during hour of darkness, maintain a visible presence, and remove the tactical advantage of the criminal element while enhancing officer safety. Lighting is vital to protecting the tremendous investment in existing fencing, and it creates a well-lit zone for agents to

monitor and act to deter those attempting to breach the fence and make an illegal incursion into the United States.

When deployed in conjunction with other surveillance capabilities, tactical infrastructure creates a more secure border and provides a greater margin of agent safety. In coordination with the new DHS joint requirements process, the Border Patrol uses the Capability Gap Analysis Process to conduct mission analysis and identify capability gaps. From this analysis, the Border Patrol performs follow-on planning to identify operational requirements over the short, mid, and long-term and to identify potential solutions, which may (or may not) include fencing, roads, or other solutions depending on the nature, scope, severity, and geographic location of a given capability gap. With all technology and tactical infrastructure, CBP works closely with agents on the ground to develop operational requirements, conduct testing and evaluation, and obtain user feedback to ensure that the right tool is applied to the right capability gap. Terrain, threat, socio-economic, and political considerations vary greatly across sectors and regions, making a "one size fits all" approach ineffective.

Air and Marine Capabilities

CBP not only is responsible for security efforts along the nearly 7,000 miles of land borders, but also shares the responsibility with the U.S. Coast Guard along the Nation's 95,000 miles of coastal shoreline. CBP's comprehensive border security operations include the use of coordinated and integrated air and marine capabilities – including fixed wing, rotary, and unmanned aircraft systems (UAS), and patrol and interdiction vessels – to detect, interdict, and prevent acts of terrorism and the unlawful movement of people, illegal drugs, and other contraband toward or across the borders of the United States. These assets provide critical aerial and maritime surveillance, interdiction, and operational assistance to our ground personnel and multi-domain awareness for the DHS.

CBP's Office of Air and Marine (OAM) possesses a unique combination of authorities, capabilities, and law enforcement agents and officers with expertise in the air and maritime environments. OAM's 1,272 law enforcement personnel operate 257 aircraft, including nine UAS, 283 vessels, and a sophisticated domain awareness network across the United States. OAM's critical aerial and maritime missions fall into four core competencies: domain awareness, investigation, interdiction, and contingency operations and national assignments.

Since the formation of OAM within CBP 11 years ago, CBP has transformed a border air wing composed primarily of light observational aircraft into a modern air and maritime fleet capable of a broader range of detection, surveillance and interdiction capabilities. This fleet is extending CBP's detection and interdiction capabilities, extending our border security zones, and offering greater capacity to stop threats prior to reaching the Nation's shores. As we look to sustain and recapitalize our air and maritime fleet, we will look to the DHS joint requirement process to validate our mission requirements and the strengthened DHS budget and acquisition processes to ensure we have the funding and

sustainment to operate existing equipment to maximum capacity and that we receive new assets with the capabilities we require on time and on budget.

CBP's aerial surveillance capabilities are enhanced through recent investments and deployments of Multi-Role Enforcement Aircraft (MEA). The MEA has a multi-mode radar for use over water and land, an electro-optical/infrared camera system, and a satellite communications system. The MEA replaces several older, single-mission assets and remains the only asset customized to provide maritime support in the near-shore customs waters. With its sophisticated technology systems, the MEA is a highly capable, twin-engine aircraft and a critical investment in CBP's maritime surveillance capabilities. The FY 2016 Budget request supports the procurement of an additional two MEA.

Another important asset is the DHC-8 Maritime Patrol Aircraft (MPA). It bridges the gap between the strategic P-3 and UAS assets and the smaller assets providing support in the littoral waters. This tool allows OAM an unprecedented level of situational awareness in the Gulf of Mexico and the Caribbean.

OAM's tactical resources have also received a number of technological upgrades to add to their utility. The AS-350 helicopter has received avionics upgrades to allow the operators to focus more of their attention on the mission, making them more effective. OAM has also added detection technology to its fixed wing light observation aircraft, greatly increasing its tactical capabilities.

P-3 Long Range Trackers and Airborne Early Warning Aircraft provide critical detection and interdiction capability in both the air and marine environment. Sophisticated sensors and high endurance capability greatly increase CBP's range to counter illicit trafficking. As an example, one of our P-3s tracked an aircraft from Colombia to Canada stopping only once to refuel in Bermuda. On April 26, 2015, as part of Operation Martillo, an OAM crew aboard a P-3 Long Range Tracker that was operating in the open waters of the Eastern Pacific Ocean detected a panga-like twin-engine boat moving just off the Panamanian and Colombian border.[4] The OAM crew maintained surveillance and observed the boat's crew dump its cargo overboard – nearly 882 pounds of cocaine worth more than $65 million. A Colombian Navy vessel, working in coordination with the Joint Interagency Task Force-South (JIATF-South), intercepted the panga. OAM P-3s are an integral part of the successful counter-narcotic missions operating in coordination with the JIATF-South. The P-3s patrol in a 42 million square mile area that includes more than 41 nations, the Pacific Ocean, Gulf of Mexico, Caribbean Sea, and seaboard approaches to the United States.

In Fiscal Year 2014, CBP's P-3s operating from Corpus Christi, Texas, and Jacksonville, Florida, flew nearly 6,000 hours in support of counter illicit trafficking missions resulting in 135 interdiction events of suspected smuggling vessels and aircraft. These events led to the total seizure or disruption of more than 126,000 pounds of cocaine with an estimated street value of $9.47 billion.

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[4] http://www.cbp.gov/newsroom/local-media-release/2015-05-01-000000/cbp-p-3-crew-affects-65m-cocaine-disruption

Additionally, UAS are increasingly instrumental in CBP's layered and integrated approach to border security. The UAS consists of an unmanned aircraft, sensors, communication packages, pilots, and ground control operators. UAS are used to meet surveillance and other mission requirements along the Southwest border, Northern border, Southeast coastal area, and in the drug source and transit zones. Four Vehicle and Dismount Exploitation Radar (VADER) sensor systems are capable of detecting human movement along the ground and increase CBP aerial surveillance, enforcement, and security to prevent potential threats from illegally entering the United States. Since 2012, VADER has detected over 33,000 people moving across the Southwest border. Since 2006, this versatile platform has been credited with interdicting/disrupting 12,429 pounds of cocaine and 272,089 pounds of marijuana worth an estimated $1.6 billion. The UAS program has achieved over 27,500 flight hours since program inception in FY 2006.

UAS and P-3 aircraft are equipped with technology that provides full-motion video capture and provides real time and forensic analysis. This advanced detection and communication system enables CBP to disseminate images and other sensor data to operational users in real-time, increasing response effectiveness and speed.

Perhaps the most important advancements come in the area of data integration and exploitation. Downlink technology, paired with the BigPipe system, allows OAM to provide a video feed and situational awareness to its law enforcement partners in real-time. In addition, the Minotaur mission integration system allows multiple aircraft to share information from multiple sources, providing a never before seen level of air, land, and sea domain awareness. As the Minotaur system evolves, it will provide even greater awareness for a greater number of users.

OAM's Tethered Aerostat Radar System (TARS) is an effective surveillance asset used to provide land, maritime and aerial domain awareness, including detection of low-altitude aircraft and other potential threats. CBP assumed responsibility of TARS from the U.S. Air Force in 2013, but the aerostat surveillance system had been used by DoD since 1978 providing radar detection and monitoring of low-altitude aircraft and surface vessels along the U.S.-Mexico border, the Florida Straits, and a portion of the Caribbean. With eight aerostat sites – six along the Southwest border, one in the Florida Keys, and one in Puerto Rico – the TARS elevated sensor mitigates the effect of the curvature of the earth and terrain-masking limitations associated with ground-based radars, enabling maximum long-range radar detection capabilities. The aerostat system, capable of altitudes above 10,000 feet, consists of a helium-filled balloon, fixed site mooring and tether controls, command and control stations, data distribution network, and maintenance support vehicles and facilities.

A vital component of DHS's domain awareness capabilities, CBP's Air and Marine Operations Center (AMOC) integrates the surveillance capabilities of DHS's federal and international partners. Located in Riverside, California, the AMOC was established in 1988 as a state-of-the-art law enforcement domain awareness center to counter the airborne drug smuggling threat. The AMOC coordinates with DoD, FAA, and other U.S.

and international law enforcement partners, including the North American Aerospace Defense Command (NORAD), and the governments of Mexico, Canada, and the Bahamas, to detect, identify, track and support interdiction of suspect aviation and maritime activity, including criminal use of non-commercial air and marine conveyances, in the approaches to U.S. borders, at the borders, and within the interior of the United States. Coordinating with extensive law enforcement and intelligence databases and communication networks, AMOC's command and control operational system, the Air and Marine Operations Surveillance System (AMOSS), provides a single display that is capable of processing up to 700 individual sensor feeds and tracking over 50,000 individual targets simultaneously. The eight TARS sites represent approximately two percent of the total available radars in AMOSS, yet were able to account for detecting 53 percent of all suspect target detections.

For the first six months of FY 2015 the TARS sensor network detected 55 percent of all ultra-light aircraft activity resulting in the arrest or seizure of contraband. For example, last month, officers working at AMOC detected an ultra-light aircraft fly over the Colorado River and into the United States.[5] AMOC alerted Yuma Border Patrol agents who responded to the area, and with aerial observance provided by OAM Yuma Air Branch pilots, recovered 231 pounds of marijuana that had been dropped into an agriculture field. A week before that AMOC detected a possible ultra-light aircraft illegally enter U.S. airspace from Mexico near Jacumba, California.[6] OAM air interdiction agents using both fixed wing and rotary wing aircraft responded and confirmed the illegal ULA incursion. OAM enforcement crews informed Indio Border Patrol agents and guided them to an area where OAM had observed the ULA landing near the area next to a vehicle where agents were able to recover the ULA and a drop cage containing nearly 145 pounds of marijuana and 4.8 pounds of methamphetamine.

Additionally, OAM collaborates on security efforts with the Government of Mexico (GOM) through AMOC to combat transnational criminal organizations. This relationship, enhanced through the deployment of shared technology (AMOSS), increases GOM's ability to focus aviation enforcement efforts to better combat TCO operations in Northern Mexico and the contiguous U.S./Mexico border. The following recent seizure in Mexico illustrates the value of this effort:

In January, officers working at the AMOC detected a suspicious aircraft in Sonora, Mexico, travelling north towards the United States. The aircraft was tracked until it faded just north of Ensenada, B.C., Mexico. AMOC subsequently alerted GOM, via the AMOSS, of the activity and both the Mexican Federal Police (PF) and Air Force (SEDENA) responded to investigate. Mexican officials located the abandoned aircraft and short time later, where they discovered and seized 27 bags containing approximately 860 pounds of methamphetamine, 176 pounds of cocaine, 35 pounds of white heroin, and four pounds of black tar heroin.

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[5] http://www.cbp.gov/newsroom/local-media-release/2015-04-22-000000/ultra-light-aircraft-detected-dropping-drugs-sky

[6] http://www.cbp.gov/newsroom/local-media-release/2015-04-15-000000/coordination-between-border-patrol-sectors-and-office

As we continue to deploy border surveillance technology, particularly along the Southwest border, these investments in fixed and mobile technology, as well as enhancements of domain awareness capabilities provided by the AMOC allow CBP the flexibility to shift more officers and agents from detection duties to interdiction of illegal activities on our borders.

CBP is also looking to the future by working closely with the DHS Science & Technology Directorate to identify and develop technology to improve our surveillance and detection capabilities along our land and maritime borders. This includes investments in tunnel detection and tunnel activity monitoring technology; tactical communication upgrades, Small Unmanned Aircraft Systems (SUAS); low-flying aircraft detection and tracking systems, land and maritime data integration/data fusion capabilities, and border surveillance tools tailored to Southern and Northern borders, including unattended ground sensors/tripwires, upgrades for mobile Surveillance Systems, slash camera poles, and wide-area surveillance.

Furthermore, we continue to work with the Domestic Nuclear Detection Office to deploy human portable radiological and nuclear detection equipment. CBP can use such equipment to detect whether persons or vehicles encountered between ports of entry are carrying nuclear or other radioactive material.

Conclusion

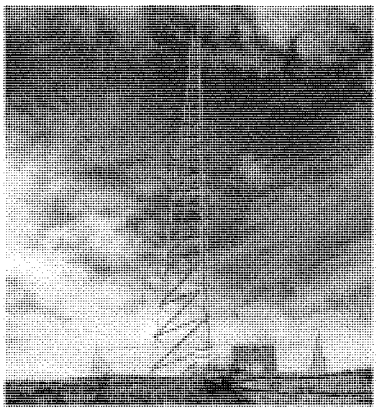
Technology is the primary driver of all land, maritime and air domain awareness — this will become only more apparent as CBP faces future threats. The information obtained from fixed and mobile surveillance systems, ground sensors, imaging systems, and other advanced technologies enhances situational awareness and better enables CBP to detect, identify, monitor, and appropriately respond to threats in the Nation's border regions.

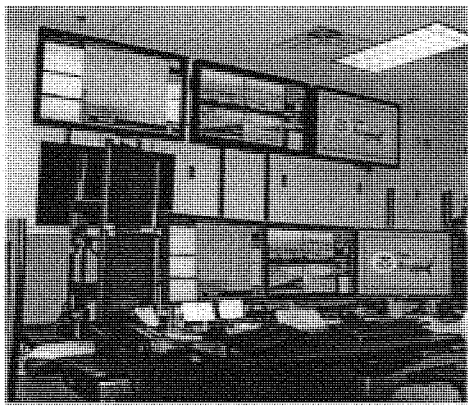
Knit together by the DHS Southern Border and Approaches Campaign and the new DHS joint requirements and other DHS management processes, CBP development and rapid application of technology allow DHS to achieve our strategic and operational objectives in effectively and efficiently securing U.S. borders and the approaches.

Chairman Johnson, Ranking Member Carper, thank you for the opportunity to testify today. We look forward to your questions.

ATTACHMENT A

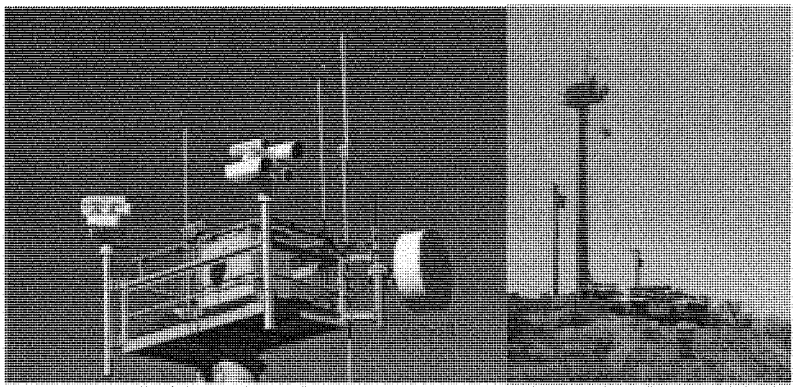
Integrated Fixed Towers

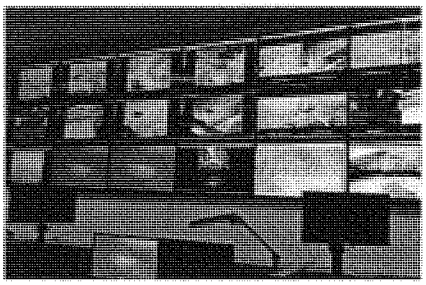


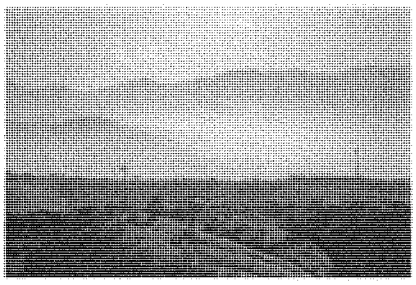


Mobile Surveillance Capability (MSC)

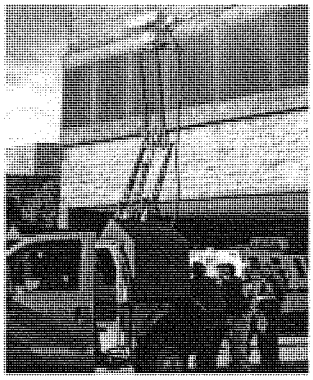
Remote Video Surveillance System (RVSS)







Mobile Vehicle Surveillance Systems (MVSS)



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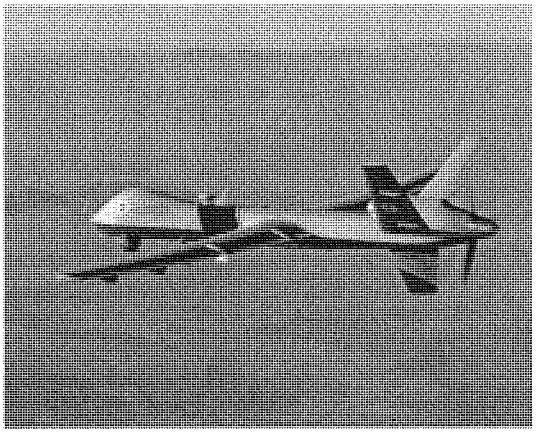
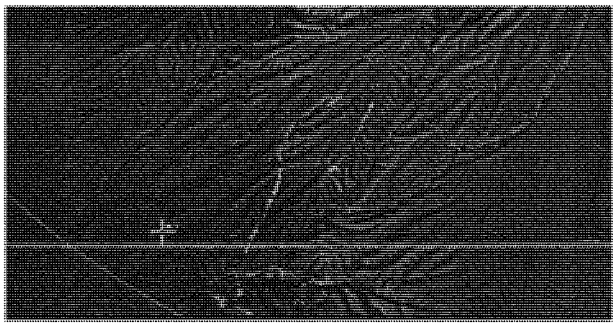
Unmanned Aircraft System



Vehicle and Dismount Exploitation Radar (VADER)



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Primary (Bollard) Fence

United States Senate
Homeland Security and Governmental Affairs Committee
Testimony of Anh Duong
Director, Borders and Maritime Security Division
Homeland Security Advanced Research Projects Agency
Department of Homeland Security Science and Technology Directorate
May 13, 2015

Good morning Chairman Johnson, Ranking Member Carper, and distinguished members of the committee. I thank you for this opportunity to testify today regarding the Department of Homeland Security (DHS) Science and Technology Directorate's (S&T) investments in support of border security.

S&T develops cutting-edge tools and technologies to prepare for and counter real-world threats. Whatever the scenario, whatever the threat, S&T's mission is to deliver effective and innovative insight, methods, and solutions for the critical needs of the Homeland Security Enterprise.

As the research and development arm of DHS, S&T does not procure or acquire products, off-the-shelf technologies, or services for the Department. Rather, S&T works with private industry, academia, government laboratories and other government partners to develop technical solutions for capability needs. By engaging with all key stakeholders early on during the development of solutions, we aim to create products that are useful for end users, including the DHS components and first responder community.

Under the leadership of Under Secretary Brothers, S&T has undertaken a number of initiatives across the Directorate to refine our strategic direction, ensure continuous understanding of operational challenges, and maximize our ability to identify, develop, and deliver force-multiplying solutions.

DHS Unity of Effort

Before talking in detail about the approach S&T is taking in technologies investment, I wanted to briefly touch upon a significant initiative DHS has kicked off recently that acts as a coalescing and supporting function for border security work across DHS. Secretary Johnson's Unity of Effort initiative has put in place new and strengthened management processes at DHS headquarters to enable more effective DHS component operations.

S&T actively participates in these efforts, which include a new DHS Joint Requirements Council and significantly strengthened budget and acquisition processes. Through these processes, S&T and other elements of the Department work together in a trusted, transparent fashion to better assess, budget for, acquire, and field fiscally sustainable technology in support of DHS border security efforts and the other primary DHS missions.

In addition, S&T was tasked last fall by the Deputy Secretary to explore the best ways to ensure knowledge of emerging technology and their potential application to DHS are incorporated into

the fabric of these management and decision-making processes. This exploration shaped our strategic vision and goals and is the new lens S&T is looking through to address DHS's many challenges.

S&T Visionary Goals and Strategic Plan

Over the past year, in collaboration with DHS Components, partners, and stakeholders, the S&T team has been working hard to develop visionary goals listed below that are well aligned with the 2014 Quadrennial Homeland Security Review, congressional guidance and Secretary Johnson's Unity of Effort initiative while providing a clear direction for S&T investments into the future:

- ***Screening at Speed: Security that Matches the Pace of Life*** - Noninvasive screening at speed will provide for comprehensive threat protection while adapting security to the pace of life rather than life to security. Unobtrusive screening of people, baggage, or cargo will enable the seamless detection of threats while respecting privacy, with minimal impact to the pace of travel and speed of commerce.
- ***A Trusted Cyber Future: Protecting Privacy, Commerce, and Community*** - In a future of increasing cyber connections, underlying digital infrastructure will be self-detecting, self-protecting, and self-healing. Users will trust that information is protected, illegal use is deterred, and privacy is not compromised. Security will operate seamlessly in the background.
- ***Enable the Decision Maker: Actionable Information at the Speed of Thought*** - Predictive analytics, risk analysis, and modeling and simulation systems will enable critical and proactive decisions to be made based on the most relevant information, transforming data into actionable information. Even in the face of uncertain environments involving chemical, biological, radiological or nuclear incidents, accurate, credible, and context-based information will empower the aware decision maker to take instant actions to improve critical outcomes.
- ***Responder of the Future: Protected, Connected, and Fully Aware*** - The responder of the future will be threat -adaptive and cross-functional. Armed with comprehensive physical protection, interoperable tools, and networked threat detection and mitigation capabilities, responders of the future will be better able to serve their communities.
- ***Resilient Communities: Disaster-Proofing Society*** - Critical infrastructure of the future will be designed, built, and maintained to withstand naturally occurring and man-made disasters. Decision makers will know when disaster is coming, anticipate the effects, and use already-in-place or rapidly deployed countermeasures to shield communities from negative consequences. Resilient communities struck by disasters will not only bounce back, but bounce forward.

To begin implementing these five visionary goals, S&T also recently completed the development of our 2015-2019 Strategic Plan. Published in April 2015, this new strategic plan lays out our strategic objectives, priorities, initiatives, and roadmaps. I will now discuss what S&T is specifically doing in the area of border security.

Border Security

Of the five S&T Visionary Goals discussed above, the following three are relevant to border security: ***Screening at Speed, Enable the Decision Maker,*** **and** ***Responder of the Future***. These goals require a common enabler – situational awareness – that is enabled by collection, integration, and analysis of large amounts of data from traditional and non-traditional sources. With new insights and actionable information, the results must then be shared in a timely manner with federal, state, local, and international partners to ***enable decision makers*** at various levels from the field to headquarters, to allow swift ***screening*** of people and goods with minimum disruption to the pace of life at our Ports of Entry, and arm our front line ***responders*** with proper knowledge to keep them safe and fully aware.

Technology is a powerful force multiplier to enhance border security and is a key strategy being pursued by DHS. For example, annual container shipments entering the United States are expected to grow at 4-5% per year for the foreseeable future; however, our DHS cargo security workforce is not expected to grow proportionally. In these circumstances, implementing force multiplying technologies to provide our workforce with timely and actionable information to focus screening and inspection activities on the highest risk cargo will be an effective way to cope with the increased volume while securing our border without impeding trade.

From an operational standpoint, DHS continues to deploy resources to enhance situational awareness of a broad border encompassing 328 ports of entry, 7,500 miles of land border, and 95,000 miles of shoreline against a multitude of ever-changing threats. Technology, insofar as it is a force multiplier, enables decision makers to better evaluate the flow of goods and people across our borders in order to determine when and where to utilize interdiction assets. With a risk-based approach to border security that integrates technology and analytics, operators will free up resources by avoiding costs associated with false alarms or inaccurate targeting information. Technology and knowledge products do not replace boots on the ground; rather they are an essential complement and critical to performing operational missions in a targeted, more efficient, more effective manner.

Situational Awareness – The Key Enabler to Effective Border Security

Considering both S&T visionary goals and today's operational needs, we believe that the biggest return on S&T investment can be gained by providing an enterprise capability to provide situational awareness across the Homeland Security Enterprise (HSE), enabling both tactical response and strategic risk-based resource allocation.

Our strategy to provide superior situational awareness to the decision makers in the HSE includes:

- Integrating and federating existing stove-piped sensor and non-sensor data sources from federal, state, local, tribal, and international law enforcement partners and sharing that data within the HSE;
- Developing and integrating of decision support tools and analytics to allow the HSE to translate the available data into actionable information and intelligence;

- Providing the capability to share the actionable information and intelligence with HSE partners; and
- Developing new sensors and sensor systems to fill the gaps. Currently, situational awareness can be significantly improved along our maritime and terrestrial borders. A substantial portion of S&T's current border security research and development portfolio is dedicated to identifying, developing, and operationally evaluating gap filling technologies. Some of these technologies include tripwires, radars, cameras, seismic and acoustic sensors that are discussed later in this testimony.

Providing Superior Situational Awareness in all Border Environments

S&T envisions a Border and Coastal Information System (BACIS) that (1) provides wide access to existing federal, state, local, tribal, and international data sources, (2) makes available decision support tools to translate the available data into actionable information and intelligence, and (3) enables sharing of the actionable information and intelligence with HSE partners.

The BACIS concept addresses the three unique border environments -- land borders, coastal and maritime borders, and at the ports of entry -- using common data tools and architectures. Some of this work is already underway.

- Land Borders – S&T initiated the Border Situational Awareness Apex program in FY15 to develop BACIS capabilities along the terrestrial borders. Apex programs are S&T's multi-year, cross-cutting, multi-disciplinary efforts aimed at solving problems of strategic operational importance to the Department. The Border Situational Awareness Apex program will enable the Homeland Security Enterprise to achieve increased border situational awareness leading to more effective border incursion detection, interdictions, and deterrence. Specifically, the increased situational awareness will result in:
    - Improved measurement of illegal border activity to understand current state and impacts from additional resources or other actions taken to improve security;
    - Improved assessment of risks by identifying current threats along with emerging patterns and trends; and
    - Improved alignment of resources to risk for current and future operations on both a tactical and strategic level.

- Coastal and Maritime Borders – S&T's Integrated Maritime Domain Enterprise (IMDE) and Coastal Surveillance System (CSS) projects are developing BACIS capabilities in the coastal and maritime environment. S&T is currently piloting IMDE/CSS at CBP's Air & Marine Operation Center (AMOC) in Riverside, California, obtaining customer/user feedback. IMDE/CSS integrates and federates existing federal, state, local, tribal, territorial, and foreign surveillance infrastructure and assets to detect, track, identify, and interdict maritime threats. Once completed, this new capability will improve the maritime domain awareness of DHS components in the coastal regions of the nation, resulting in increased small vessel interdiction efficiency and effectiveness. AMOC operators enthusiastically have embraced IMDE/CSS, while still a pilot, to assist in not only finding more bad actors but also allowing DHS to save money by pursuing threats more efficiently.

- Ports Of Entry - S&T's Apex Air Entry/Exit Reengineering (AEER) program is currently partnering with CBP to identify and evaluate processes and technologies (including biometrics) to efficiently inspect and examine travelers entering/leaving the U.S. In FY17 S&T plans to initiate the integration of Apex AEER and other Port of Entry security data into the BACIS information sharing environment.

Utilization of common data standards, tools, and architectures will allow us to efficiently develop BACIS capabilities in the three environments in parallel and ultimately allow their integration into a single enterprise capability as each is ready for deployment.

New Sensors and Sensor Systems to Fill the Gaps

As mentioned earlier, we need to improve situational awareness capability along our maritime and terrestrial borders. A substantial portion of our border security R&D portfolio consists of projects to enhance capabilities and provide new data/information sources for BACIS. The following represent a sampling of the capabilities being developed:

- *Ground Based Technologies* pursues technologies to provide new or improved border surveillance capabilities including radars, imagers, unattended ground sensors, tripwires, and related communication/power technologies;

- *Tunnel Detection and Surveillance* provides CBP and ICE capabilities to locate clandestine tunnels and the forensic analysis tools to support investigations and prosecutions;

- *Air Based Technologies* identifies, tests, and evaluates small Unmanned Aircraft System (SUAS) technology for possible use in border and maritime security and public safety missions;

- *Small Dark Aircraft* develops inexpensive, man portable, flexible, wide area sensors/sensor systems to detect and accurately track small aircraft, ultralights, and gyrocopters to enable their interdiction;

- *Cargo and Conveyance Security* develops technologies for collecting additional cargo data and invests in analysis methods necessary to translate new and existing cargo data into actionable information which in turn improves targeting, which raises the probability of detection of illicit or hazardous materials and expedites delivery of legitimate cargo;

- *Cargo Forensics* provides CBP with the enhanced capability to detect and investigate illegal activity through the forensic analysis of material collected from suspicious cargo/packages enabling enhanced trade compliance enforcement;

- *Land/Sea Cargo Scanning* develops software and hardware upgrades for CBP's legacy cargo scanning units, infusing state-of-the-art technology resulting in (1) improved performance, including reduced operator workload, increased contraband detections,

reduced false alarms, resulting in improved throughput, (2) increased reliability, and (3) reduced operation and maintenance costs; and

- *People Screening* supports CBP-led efforts to deploy a cost-effective biometric air exit capability and expands efforts to introduce improvements in CBP air entry inspection based process and technologies in support of the President's National Travel and Tourism Strategy.

Technology as Interim Operational Capability for the Border Workforce

S&T-developed technology is providing interim operational capabilities that DHS Components are putting to use to secure our borders. There are numerous operational prototypes/pilots across the land, maritime, and port of entry domains. Examples include the operational testing of a buried tripwire system along the U.S. border in Arizona and a tunnel activity monitoring system undergoing operational assessment in a border city in Texas. On the northern border, there is a Canada-U.S. Sensor Sharing pilot and a prototype system to detect and track small dark aircraft. Our IMDE/CSS pilot is providing maritime domain awareness of the waters off of Southern California, and there are plans to expand the system to portions of the Chesapeake Bay, Puget Sound, and the Great Lakes by the end of the fiscal year. In operational use at the Laredo, Texas Port of Entry is a prototype Aviation Scanner that non-intrusively images the internal voids (fuselage, empennage, wings, etc.) of General Aviation (GA) and small commercial aircraft for contraband thereby eliminating the costly and time consuming need to remove aircraft panels. S&T is partnering with industry in piloting commercial off-the-shelf electronic security devices to secure and track deliveries (packages, cargoes) between federal facilities in the National Capital Region. The devices detect unauthorized door openings, off-route deviations, and excessive delays along delivery routes and could be utilized to provide security for cargo in the global supply chain. DHS's utilization of these technologies will enable decision makers to leverage a risk-based approach to border security that integrates technology and analytics. This will free up operator resources by avoiding costs associated with false alarms or inaccurate targeting information.

Technology is an essential ingredient to enhance our capabilities on the border. However, only when knowledge of emerging technology and its specific application to address DHS capability gaps is used to inform full life-cycle budget and acquisition assessments will DHS make both effective and efficient decisions to get the right capabilities, at the right time, on budget to DHS operators in the field. We are not there yet in S&T or the Department whole, but we are making essential improvements to better secure our borders and conduct our other homeland security missions.

I thank the committee for giving me the opportunity to testify on this very important subject.

United States Government Accountability Office

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BORDER SECURITY

Progress and Challenges in DHS's Efforts to Implement and Assess Infrastructure and Technology

GAO-15-595T

GAO Highlights

[illegible]

Why GAO Did This Study

[illegible]

What GAO Recommends

[illegible]

May 13, 2015

BORDER SECURITY

Progress and Challenges in DHS's Efforts to Implement and Assess Infrastructure and Technology

What GAO Found

GAO reported in March 2014 that U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), had made progress in deploying programs under the Arizona Border Surveillance Technology Plan (the Plan), but that CBP could strengthen its management and assessment of the Plan's programs. Specifically, GAO reported that CBP's schedules and life-cycle cost estimates for the Plan and its three highest-cost programs met some but not all best practices and recommended that CBP ensure that its schedules and estimates more fully address best practices, such as validating its cost estimates with independent estimates. CBP concurred and is taking steps toward addressing GAO's recommendations, such as planning to update cost estimates by the end of calendar year 2015. Further, in March 2014, GAO reported that while CBP had identified mission benefits of technologies to be deployed under the Plan, such as improved situational awareness, the agency had not developed key attributes for performance metrics for all technologies, as GAO recommended. In April 2015, GAO reported that CBP had identified a set of potential key attributes for performance metrics for deployed technologies and CBP officials stated that by the end of fiscal year 2015, baselines for each performance measure will be developed and the agency will begin using the data to evaluate the contributions of specific technology assets.

In March 2015, GAO reported that DHS, CBP, and U.S. Immigration and Customs Enforcement (ICE) had taken steps to upgrade tactical communications equipment and infrastructure, such as completing full modernization projects in four of the nine southwest border sectors, but could benefit by developing performance and program plans. Since rolling out upgrades—which include replacing and updating equipment and expanding infrastructure—CBP had not established an ongoing performance monitoring plan to determine whether the systems were working as intended. CBP agreed to develop such a plan, as GAO recommended, and is working to complete the plan by the end of 2015. Further, GAO reported in March 2015 that ICE did not have a program plan to manage its portfolio of modernization projects. DHS concurred with GAO's recommendation to develop a plan and stated that ICE will develop a program to facilitate, coordinate, and maintain ICE's radio systems, and document resource needs, define program goals, and establish performance measures by January 2016.

In March 2012, GAO reported that the Office of Air and Marine (OAM) within CBP could benefit from reassessing its mix and placement of assets to better address mission needs and threats. GAO reported that OAM should clearly document the linkage of deployment decisions to mission needs and threat and its analysis and assessments used to support its decisions on the mix and placement of assets. GAO also reported that OAM could consider how border technology deployment will affect customer requirements for OAM assets. GAO recommended that CBP reassess the mix and placement of OAM's assets to include mission requirements, among other things. CBP concurred, and after May 2013, OAM began a realignment of personnel, aircraft, and vessels from the northern border to the southern border based on its evaluation of the utilization and efficiency of current assets and available funding to accomplish the transfers. In April 2015, OAM officials stated that they are working to provide GAO with the data and analysis used to support the realignment of assets.

Chairman Johnson, Ranking Member Carper, and Members of the Committee:

I am pleased to be here today to discuss the Department of Homeland Security's (DHS) efforts to acquire and deploy various assets to secure U.S. borders. In the years since DHS's inception, increased activity across the nation's borders has led to an increase of agency resources. For instance, at the end of fiscal year 2004, the first full year DHS existed as an agency, it had about 10,500 agents assigned to patrol the U.S. land borders and about 17,600 officers inspecting travelers at air, land, and sea ports of entry (POE).[1] At the end of fiscal year 2014, approximately 21,000 agents were assigned to patrol the U.S. land borders and more than 22,000 officers were assigned to air, land, and sea POEs.

In addition to this increase in personnel, DHS has employed a variety of technology, infrastructure, and other assets to assist with its efforts to secure the border. For example, in November 2005, DHS announced the launch of the Secure Border Initiative (SBI) program, which was responsible for developing a comprehensive border protection system using technology, known as the Secure Border Initiative Network (SBInet), and tactical infrastructure—fencing, roads, and lighting—along the southwest border to deter smugglers and aliens attempting to illegally cross the border. In January 2011, in response to internal and external assessments that identified concerns regarding the performance, cost, and schedule for implementing the systems, the Secretary of Homeland Security announced the cancellation of further procurements of SBInet systems. After the cancellation of SBInet, CBP developed the Arizona Border Surveillance Technology Plan (the Plan), in January 2011, which includes a mix of radars, sensors, and cameras to help provide security for the remainder of the Arizona border. Moreover, DHS has continued to deploy other tactical infrastructure along the southwest border.

DHS is also utilizing surveillance technology, tactical communications (TACCOM) systems, and other assets to assist its efforts to more effectively and efficiently secure the border. For instance, CBP and U.S.

[1]POEs are the facilities that provide for the controlled entry into or departure from the United States for persons and materials. Specifically, a POE is any officially designated location (seaport, airport, or land border location) where DHS officers or employees are assigned to clear passengers and merchandise, collect duties, and enforce customs laws, and where a person may apply for admission into the United States.

Immigration and Customs Enforcement (ICE) agents and officers responsible for securing the southwest border depend on land-mobile radio systems (radio systems) for secure, reliable, and timely exchanges of critical information to effectively carry out their mission, especially in remote areas along the southwest border. Further, CBP components, including the Office of Border Patrol (Border Patrol), also rely on the support of Office of Air and Marine (OAM) aircraft, vessels, and crew to help enforce border security. Within CBP, OAM operates a fleet of air and marine assets in support of federal border security efforts.

Over the years, we have reported on the progress and challenges DHS faces in implementing its border security efforts. My statement discusses our key findings in the following areas:

- DHS's effort to implement the Arizona Border Surveillance Technology Plan and deploy tactical infrastructure,
- CBP's and ICE' s efforts to modernize radio systems, and
- OAM mix and placement of assets.

This statement is based on related reports and testimonies we issued from 2009 through 2015 that examined DHS efforts to secure the U.S. border (see Related GAO Products at the end of this statement). It also includes selected updates we conducted in April and May 2015 on DHS's efforts to address our previous recommendations. Our reports and testimonies incorporated information we obtained and analyzed from officials from various DHS components and state and local law enforcement agencies. More detailed information about our scope and methodology can be found in our reports and testimonies. For the updates, we collected information from DHS on actions it has taken to address findings and recommendations made in prior reports on which this statement is based. We conducted all of this work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

CBP Has Taken Steps to Strengthen the Management of and Assess the Effectiveness of Its Border Surveillance Technologies and Fencing, but Additional Actions Are Needed

CBP Plans to Update Program Schedules and Life-Cycle Cost Estimates, but Has Not Yet Provided Complete Information to Reflect It Is Following Best Practices

In March 2014 and April 2015, we reported that CBP had made progress in deploying programs under the Arizona Border Surveillance Technology Plan, but that CBP could take additional action to strengthen its management of the Plan and the Plan's various programs.[2] The Plan's seven acquisition programs include fixed and mobile surveillance systems, agent portable devices, and ground sensors. Its three-highest cost programs which represent 97 percent of the Plan's estimated cost are the Integrated Fixed Tower (IFT), Remote Video Surveillance System (RVSS), and Mobile Surveillance Capability (MSC).[3]

In March 2014, we found that CBP had a schedule for each of the Plan's seven programs, and that four of the programs would not meet their originally planned completion dates. We also found that some of the

[2]GAO, *Arizona Border Surveillance Technology Plan: Additional Actions Needed to Strengthen Management and Assess Effectiveness*, GAO-14-368 (Washington, D.C.: Mar. 4, 2014), and *Homeland Security Acquisitions: Major Program Assessments Reveal Actions Needed to Improve Accountability*, GAO-15-171SP (Washington, D.C.: Apr. 22, 2015).

[3]The IFT consists of towers with, among other things, ground surveillance radars and surveillance cameras mounted on fixed (that is, stationary) towers. The RVSS includes multiple color and infrared cameras mounted on monopoles, lattice towers, and buildings and differs from the IFT in, among other things, the RVSS does not include radars. The MSC is a stand-alone, truck-mounted suite of radar and cameras that provides a display within the cab of the truck.

programs had experienced delays relative to their baseline schedules, as of March 2013.[4] More recently, in our April 2015 assessment of DHS's major acquisitions programs, we reported on the status of the IFT program in particular, noting that from March 2012 to September 2014, the program's initial operational capability date had slipped from the end of September 2013 to the end of September 2015. CBP officials said that this slip occurred because the program released its request for proposals behind schedule, and then received more proposals than anticipated. The subsequent bid protest extended the slip. CBP officials said these delays contributed to the IFT's full operational capability slip, but funding shortfalls are the major contributor to the delay. Originally, full operational capability was scheduled to occur by September 2015, but as of December 2014, it was scheduled for March 2022. The IFT program anticipated it would receive less than half the fiscal year 2015 funding it needed to remain on track, and it anticipated its funding plan would be reduced further in the future. As a result of this expected funding shortage, the program anticipated it would be able to deliver 24 of 52 planned IFT units, with the funding through 2020, and that it planned to deploy the IFT units to three of the six original Border Patrol Station areas of responsibility. Furthermore, the Chief of the Border Patrol had informed the program that 12 of the 28 remaining IFT units systems are not needed given changing threats.

Further, with regard to schedules, scheduling best practices are summarized into four characteristics of reliable schedules—comprehensive, well constructed, credible, and controlled (i.e., schedules

[4]The baseline schedule is to represent the original configuration of the program plan and to signify the consensus of all stakeholders regarding the required sequence of events, resource assignments, and acceptable dates for key deliverables. The current schedule is to represent the actual plan to date.

are periodically updated and progress is monitored).[5] We assessed CBP's schedules as of March 2013 for the three highest-cost programs and found in March 2014 that schedules for two of the programs at least partially met each characteristic (i.e., satisfied about half of the criterion), and the schedule for the other program at least minimally met each characteristic (i.e., satisfied a small portion of the criterion).[6] For example, the schedule for the IFT program partially met the characteristic of being credible in that CBP had performed a schedule risk analysis for the program, but the risk analysis was not based on any connection between risks and specific activities. For the MSC program, the schedule minimally met the characteristic of being controlled in that it did not have valid baseline dates for activities or milestones by which CBP could track progress. We recommended that CBP ensure that scheduling best practices are applied to the IFT, RVSS, and MSC schedules. DHS concurred with the recommendation and stated that CBP planned to ensure that scheduling best practices would be applied as far as practical when updating the three programs' schedules. In May 2015, CBP provided us a summary of its completed and planned milestones for the IFT, RVSS, and MSC programs. However, CBP has not provided us with a complete program schedule for the IFT, RVSS, and MSC, and, therefore, we cannot determine the extent to which the agency has followed best practices when updating the respective schedules.

In March 2014, we also found that CBP had not developed an Integrated Master Schedule for the Plan in accordance with best practices. Rather,

[5]GAO, *GAO Schedule Assessment Guide: Best Practices for Program Schedules*, GAO-12-120G (exposure draft) (Washington, D.C.: May 2012). We developed this guide through a compilation of best practices that federal agencies and industry use. According to this guide, for a schedule to be comprehensive, among other things, the schedule should (1) capture all activities, as defined in the work breakdown structure, (2) reflect what resources are needed to do the work, and (3) establish the duration of all activities and have specific start and end dates. To be well constructed, among other things, a schedule should have all of its activities sequenced in the order that they are to be implemented with the most straightforward logic possible. To be credible, the schedule should reflect the order of events necessary to achieve aggregated products or outcomes, and activities in varying levels of the schedule map to one another. Moreover, a schedule risk analysis should be conducted to predict a level of confidence in meeting the program's completion date. For a schedule to be controlled, the schedule should be updated periodically using actual progress and logic to realistically forecast dates for program activities, and a baseline schedule should be maintained to measure, monitor, and report the program's progress.

[6]GAO-14-368.

CBP had used separate schedules for each program to manage implementation of the Plan, as CBP officials stated that the Plan contains individual acquisition programs rather than integrated programs. However, collectively these programs are intended to provide CBP with a combination of surveillance capabilities to be used along the Arizona border with Mexico, and resources are shared among the programs. According to scheduling best practices, an Integrated Master Schedule is a critical management tool for complex systems that involve a number of different projects, such as the Plan, to allow managers to monitor all work activities, how long activities will take, and how the activities are related to one another. We concluded that developing and maintaining an integrated master schedule for the Plan could help provide CBP a comprehensive view of the Plan and help CBP better understand how schedule changes in each individual program could affect implementation of the overall plan. We recommended that CBP develop an integrated master schedule for the Plan. CBP did not concur with this recommendation and maintained that an integrated master schedule for the Plan in one file undermines the DHS-approved implementation strategy for the individual programs making up the Plan, and that the implementation of this recommendation would essentially create a large, aggregated program, and effectively create an aggregated "system of systems." DHS further stated that a key element of the Plan has been the disaggregation of technology procurements. However, as we noted in the report, collectively these programs are intended to provide CBP with a combination of surveillance capabilities to be used along the Arizona border with Mexico. Moreover, while the programs themselves may be independent of one another, the Plan's resources are being shared among the programs. We continue to believe that developing an integrated master schedule for the Plan is needed. Developing and maintaining an integrated master schedule for the Plan could allow CBP insight into current or programmed allocation of resources for all programs as opposed to attempting to resolve any resource constraints for each program individually.

In addition, in March 2014, we reported that the life-cycle cost estimates for the Plan reflected some, but not all, best practices. Cost-estimating best practices are summarized into four characteristics—well documented, comprehensive, accurate, and credible. Our analysis of CBP's estimate for the Plan and estimates completed at the time of our review for the two highest-cost programs—the IFT and RVSS programs—showed that these estimates at least partially met three of these characteristics: well documented, comprehensive, and accurate. In terms of being credible, these estimates had not been verified with independent

cost estimates in accordance with best practices. We concluded that ensuring that scheduling best practices were applied to the programs' schedules and verifying life-cycle cost estimates with independent estimates could help better ensure the reliability of the schedules and estimates, and we recommended that CBP verify the life-cycle cost estimates for the IFT and RVSS programs with independent cost estimates and reconcile any differences. DHS concurred with this recommendation, but stated that at this point it does not believe that there would be a benefit in expending funds to obtain independent cost estimates and that if the costs realized to date continue to hold, there may be no requirement or value added in conducting full-blown updates with independent cost estimates. We recognize the need to balance the cost and time to verify the life-cycle cost estimates with the benefits to be gained from verification with independent cost estimates. However, we continue to believe that independently verifying the life-cycle cost estimates for the IFT and RVSS programs and reconciling any differences, consistent with best practices, could help CBP better ensure the reliability of the estimates. As of May 2015, CBP officials stated that the agency plans to update the life-cycle cost estimates for the three of its highest-cost programs under the Plan, including IFT and RVSS, by the end of calendar year 2015.[7]

[7]GAO, *2015 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, GAO-15-404SP (Washington, D.C.: Apr. 14, 2015).

CBP Has Made Progress toward Assessing Performance of Surveillance Technologies and Fencing, but Has Not Yet Fully Applied Performance Metrics or Assessed the Contributions of its Technologies

We reported in March 2014 that CBP identified the mission benefits of its surveillance technologies, as we recommended in November 2011.[8] More specifically, CBP had identified mission benefits of surveillance technologies to be deployed under the Plan, such as improved situational awareness and agent safety. However, we also reported that the agency had not developed key attributes for performance metrics for all surveillance technology to be deployed as part of the Plan, as we recommended in November 2011. As of May 2015, CBP had identified a set of potential key attributes for performance metrics for all technologies to be deployed under the Plan; however, CBP officials stated that this set of measures was under review as the agency continues to refine the measures to better inform the nature of the contributions and impacts of surveillance technology on its border security mission.[9] While CBP has yet to apply these measures, CBP established a time line for developing performance measures for each technology. CBP officials stated that by the end of fiscal year 2015, baselines for each performance measure will be developed, at which time the agency plans to begin using the data to evaluate the individual and collective contributions of specific technology assets deployed under the Plan. Moreover, CBP plans to establish a tool by the end of fiscal year 2016 that explains the qualitative and quantitative impacts of technology and tactical infrastructure on situational awareness in specific areas of the border environment. While these are positive steps, until CBP completes its efforts to fully develop and apply key attributes for performance metrics for all technologies to be deployed under the Plan, it will not be able to fully assess its progress in implementing the Plan and determine when mission benefits have been fully realized.

Moreover, in March 2014, we found that CBP does not capture complete data on the contributions of these technologies, which in combination with other relevant performance metrics or indicators could be used to better determine the contributions of CBP's surveillance technologies and inform resource allocation decisions. Although CBP has a field within its Enforcement Integrated Database for maintaining data on whether technological assets, such as SBInet surveillance towers, and

[8]See GAO-14-368, and *Arizona Border Surveillance Technology: More Information on Plans and Costs Is Needed before Proceeding*, GAO-12-22 (Washington, D.C.: Nov. 4, 2011).

[9]GAO-15-404SP.

nontechnological assets, such as canine teams, assisted or contributed to the apprehension of illegal entrants and seizure of drugs and other contraband, according to CBP officials, Border Patrol agents were not required to record these data.[10] This limited CBP's ability to collect, track, and analyze available data on asset assists to help monitor the contribution of surveillance technologies, including its SBInet system, to Border Patrol apprehensions and seizures and inform resource allocation decisions. We recommended that CBP require data on asset assists to be recorded and tracked within its database and that once these data were required to be recorded and tracked, analyze available data on apprehensions and technological assists, in combination with other relevant performance metrics or indicators, as appropriate, to determine the contribution of surveillance technologies to CBP's border security efforts. CBP concurred with our recommendations and has taken steps to address it. In June 2014, in response to our recommendation, CBP issued guidance informing Border Patrol agents that the asset assist data field within its database was now a mandatory data field. Agents are required to enter any assisting surveillance technology or other equipment before proceeding. While this is a positive step, to fully address our recommendations, CBP needs to analyze data on apprehensions and seizures, in combination with other relevant performance metrics, to determine the contribution of surveillance technologies to its border security mission.

In addition, with regard to fencing and tactical infrastructure, CBP reported that from fiscal year 2005 through May 2015, the total miles of vehicle and pedestrian fencing along 2,000-mile U.S.-Mexico border increased from approximately 120 miles to 652 miles.[11] With the completion of the new fencing and other tactical infrastructure, DHS is now responsible for maintaining this infrastructure including repairing breached sections of fencing which cost the department at least $7.2 million in 2010, as reported by CBP. Moreover, we have previously reported on CBP's efforts to assess the impact of fencing and tactical infrastructure on border security. Specifically, in our May 2010 and September 2009 reports, we found that CBP had not accounted for the

[10]In addition to maintaining data on asset assists, the Border Patrol collects and maintains data on apprehensions and seizures in DHS's Enforcement Integrated Database.

[11]The length of the border with Mexico is defined by the U.S. International Boundary and Water Commission at 1,954 miles. The length of the land border is 675 miles, while the length of the border along the Colorado River and Rio Grande is 1,279 miles.

impact of its investment in border fencing and infrastructure on border security. CBP had reported an increase in control of southwest border miles, but could not account separately for the impact of the border fencing and other infrastructure. In September 2009, we recommended that CBP determine the contribution of border fencing and other infrastructure to border security. DHS concurred with our recommendation, and in response, CBP contracted with the Homeland Security Studies and Analysis Institute to conduct an analysis of the impact of tactical infrastructure on border security.[12]

DHS Components Have Taken Steps to Address Radio Interoperability Challenges, but Could Better Manage These Efforts

DHS Components Have Taken Steps to Upgrade Tactical Communications Equipment and Infrastructure, but Could Benefit by Developing Performance and Program Plans

To effectively carry out their respective border security missions, CBP and ICE agents and officers require interoperable communications—the capability of different electronic communications systems to readily connect with one another to enable timely communications—with one another and with state and local agencies, as we reported in March 2015.[13] In 2008, DHS components, including CBP and ICE, initiated individual TACCOM modernization programs to upgrade radio systems that were past expected service life to improve the performance of these systems and to help achieve interoperability across federal, state, and local agencies that are responsible for securing the border. In March 2015, we reported that from 2009 through 2013, CBP completed full modernization projects in 4 of the 9 sectors that constitute the southwest

[12]GAO, *Secure Border Initiative: DHS Has Faced Challenges Deploying Technology and Fencing Along the Southwest Border*, GAO-10-651T (Washington, D.C.: May 4, 2010), and *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed*, GAO-09-896 (Washington, D.C.: Sept. 9, 2009).

[13]GAO, *Border Security: Additional Efforts Needed to Address Persistent Challenges in Achieving Radio Interoperability*, GAO-15-201 (Washington, D.C.: Mar. 23, 2015).

border.[14] In these 4 sectors, Yuma, Tucson, Rio Grande Valley, and El Paso, CBP has (1) upgraded outdated analog tactical communications equipment and infrastructure to digital systems and (2) expanded coverage and provided capacity enhancements by procuring additional equipment and building out new tower sites in areas where CBP agents operate that were not previously covered with existing infrastructure.

In 2009, CBP also revised its modernization approach for all remaining sectors, halting the addition of any new tower sites, and adding a project known as Digital in Place (DIP) as a capstone to this program. The scope of the DIP project entails one-for-one replacements of analog systems with digital systems and does not provide additional coverage or capacity enhancements. CBP plans to implement DIP in the remaining 5 sectors along the southwest border that did not receive full modernization upgrades. As of May 2015, DIP projects had been completed in 3 of the 5 sectors along the southwest border—Big Bend, Laredo, and Del Rio—and were under way in other locations across the nation.[15] According to CBP, because DIP does not include new site build-outs, among other things, this approach will greatly reduce the costs associated with the full modernization approach and is expected to be completed in a relatively shorter time period.

Further, in March 2015 we found that CBP conducted a limited operational test in 1 sector, Rio Grande Valley, and both CBP and DHS officials stated that the agency does not plan to conduct additional testing on the deployed systems or conduct any operational testing for the DIP projects because the agency is replacing outdated equipment with commercial-off-the-shelf technology on a one-for-one basis.[16] In addition, CBP had not developed an agency-wide plan to monitor the performance of its radio systems. In particular, CBP had not yet collected sufficient data to determine how well the systems are functioning within and across sectors, and had not obtained perspectives from radio users since the systems were deployed in each location. We concluded that such

[14]There are 20 Border Patrol sectors across the United States. The 9 Border Patrol sectors that constitute the southwest border are San Diego, El Centro, Yuma, Tucson, El Paso, Big Bend, Laredo, Del Rio, and Rio Grande Valley. These sectors represent geographic focus areas for tactical communications modernization upgrade projects.

[15]CBP has not yet set time frames for completion of these upgrades.

[16]GAO-15-201.

information could help CBP better identify any challenges with use of the system and assess system performance. For example, although CBP collects information on radio system availability and maintenance, CBP officials stated that they have not used this information to assess overall system performance to determine the extent to which upgraded radio systems are meeting user needs or to identify areas in need of corrective action. According to CBP officials, the agency had not yet analyzed available data to determine the extent to which upgraded radio systems are meeting user needs or to identify areas in need of corrective action because complete operational data have not been collected for all sites to which radio systems were deployed and because these data are maintained across different repositories that are not currently linked together. CBP officials recognized the need to collect sufficient data to monitor radio system performance and at the time of our report, stated that the agency was taking steps to address this need by collecting data in recently modernized sites. They further stated that once the data had been collected, the agency planned to consolidate these data in a central repository.

Moreover, in March 2015 we found that most of the groups of CBP radio users we met with reported experiencing challenges relating to operational performance. For example, 7 of the 10 groups of CBP radio users we met with in the Tucson, Rio Grande Valley, and El Paso sectors stated that coverage gaps continued to affect their ability to communicate, even after the upgrades were completed. Specifically, 2 groups stated that coverage in some areas seemed to be worse after the upgrades were completed, 4 groups stated that coverage gaps had been reduced but continued to exist after the upgrades, and 1 group stated that while coverage had improved in some areas, the group did not receive the coverage enhancements it expected to receive, especially in critical areas. We recommended in March 2015 that CBP develop a plan to monitor the performance of its deployed radio systems. DHS concurred with this recommendation and stated that it will work to complete a CBP Land Mobile Radio System Performance Monitoring Plan by December 31, 2015.

We also found in March 2015 that ICE does not have complete information to effectively manage its TACCOM modernization program.[17]

[17]GAO-15-201.

Specifically, we reported that ICE has 58 completed, ongoing, or planned projects under its TACCOM modernization program and has taken some actions to modernize its TACCOM radio systems, including along the southwest border. Specifically, according to ICE officials, the agency has replaced individual analog TACCOM radios and equipment with digital systems across all 26 ICE regions, including the southwest border regions. In addition, while ICE has completed full modernization projects—which entail expanding coverage and capacity by building new sites—in other regions across the United States, it had not developed plans to modernize any southwest border regions. Instead, to meet the needs of ICE radio users in the southwest border regions, ICE officials stated that the agency's strategy focused on leveraging other agency infrastructure in areas where ICE does not have infrastructure until funding is approved to initiate modernization projects in these regions. For example, in Yuma and Tucson, ICE officials stated that the agency primarily uses CBP's radio system.

Further, we found that while ICE has developed some documentation for the individual projects, such as individual project plans, and provided us with an integrated master schedule for the 58 ongoing, planned, and completed projects, the agency had not documented an overall plan to manage its TACCOM modernization program and provide oversight across all projects.[18] For example, ICE officials were unable to provide documentation that all TACCOM equipment had been upgraded to digital systems.[19] Additionally, our interviews with groups of ICE radio users showed that agency efforts to upgrade its TACCOM technology—including leveraging other agency infrastructure in areas where ICE does not have infrastructure—may not be supporting ICE radio user needs along the southwest border. For example, 2 of the 3 groups of ICE radio users we met with in Tucson, Rio Grande Valley, and El Paso that operate on CBP land-mobile radio networks stated that coverage was worse after the upgrades or did not meet ICE radio user needs because the new system did not provide the capabilities the agency promised to deliver. The third group stated that CBP's modernization project upgrades enhanced coverage in a limited capacity but created new challenges for

[18]GAO-15-201.

[19]ICE TACCOM program officials stated that they could not locate this information because they do not have program documentation prior to 2009, when ICE's Office of the Chief Information Officer assumed responsibility for the ICE TACCOM program.

ICE because of the increase in communication traffic. Specifically, ICE radio users in this location stated that since they are using CBP channels, Border Patrol has priority of use, so when there is too much traffic on a channel, ICE radio users are unable to access the channel or get kicked off the system and hear a busy signal when attempting to use their radios. All 4 groups of ICE radio users we met with stated that operability and interoperability challenges frequently compromised their investigations and resulted in unacceptable risks to officer safety.

We reported that ICE officials agreed that ICE radio user coverage needs had not been met in the southwest border areas and at the time of our report stated that the agency was taking steps to assess radio user needs in these locations. Specifically, ICE officials stated that they were soliciting information from radio users on their operational needs and briefing ICE management to inform future decisions about ICE coverage and funding needs. However, at that time ICE officials also stated that there were no plans for creating a program plan to guide and document these efforts. We recommended that ICE develop a program plan to ensure that the agency establishes the appropriate documentation of resource needs, program goals, and measures to monitor the performance of its deployed radio systems. DHS concurred with this recommendation. In response to our recommendation, DHS stated that ICE's Office of the Chief Information Officer will develop a program to facilitate, coordinate, and maintain ICE's deployed radio systems, and will ensure that the agency establishes the proper documentation of resource needs, defines program goals, and establishes measures to monitor performance by January 31, 2016.

Additional Efforts Are Needed to Ensure That CBP and ICE Agents and Officers Receive Necessary Training

We also concluded in March 2015 that CBP and ICE could do more to ensure the agencies are meeting the training needs of all CBP and ICE radio users.[20] We reported that CBP provided training to its agents and officers on upgraded radio systems in each southwest border location that received upgrades. However, 8 of 14 CBP radio user groups we met with suggested that radio users be provided with additional radio training to enhance their proficiency in using radio systems. Further, we found that CBP does not know how many radio users are in need of training. We recommended in March 2015 that CBP (1) develop and implement a plan to address any skills gaps for CBP agents and officers related to

[20]GAO-15-201.

understanding the new digital radio systems and interagency radio use protocols, and (2) develop a mechanism to verify that all Border Patrol and Office of Field Operations radio users receive radio training. DHS concurred with these recommendations and estimated a completion date of March 31, 2016.

We also found that ICE provided training on the upgraded radio systems in one location, but 3 of the 4 ICE radio user groups we met with in field locations stated that additional training would help address challenges experienced by radio users. Further, ICE officials stated that they did not track the training that the agency provided. We recommended in March 2015 that ICE (1) develop and implement a plan to address any skills gaps for ICE agents related to understanding the new digital radio systems and interagency radio use protocols, and (2) develop a mechanism to verify that all ICE radio users receive radio training. DHS concurred with these recommendations. In response to these recommendations, DHS stated that ICE will propose an increase in training for new agents and will develop a mechanism to verify that all ICE radio users receive radio training by March 31, 2016.

OAM Could Benefit from Reassessing Its Mix and Placement of Assets to Better Address Mission Needs and Threats

Our March 2012 report on OAM assets highlighted several areas the agency could address to better ensure the mix and placement of assets is effective and efficient. [21] These areas included: (1) documentation clearly linking deployment decisions to mission needs and threats, (2) documentation on the assessments and analysis used to support decisions on the mix and placement of assets, and (3) consideration of how deployment of border technology will affect customer requirements for air and marine assets across locations.

Specifically, our March 2012 report found that OAM had not documented significant events, such as its analyses to support its asset mix and placement across locations, and as a result, lacked a record to help demonstrate that its decisions to allocate assets were the most effective ones in fulfilling customer needs and addressing threats, among other things. While OAM's Fiscal Year 2010 Aircraft Deployment Plan stated that OAM deployed aircraft and maritime vessels to ensure its forces were positioned to best meet the needs of CBP field commanders and

[21] GAO, *Border Security: Opportunities Exist to Ensure More Effective Use of DHS's Air and Marine Assets*, GAO-12-518, (Washington, D.C. Mar. 30, 2012).

respond to the latest intelligence on emerging threats, OAM did not have documentation that clearly linked the deployment decisions in the plan to mission needs or threats. We also found that OAM did not provide higher rates of support to locations Border Patrol identified as high priority, a fact that indicated that a reassessment of OAM's resource mix and placement could help ensure that it meets mission needs, addresses threats, and mitigates risk. OAM officials stated that while they deployed a majority of assets to high-priority sectors, budgetary constraints, other national priorities, and the need to maintain presence across border locations limited overall increases in assets or the amount of assets they could redeploy from lower-priority sectors. While we recognized OAM's resource constraints, the agency did not have documentation of analyses assessing the impact of these constraints and whether actions could be taken to improve the mix and placement of assets within them. Thus, the extent to which the deployment of OAM assets and personnel, including those assigned to the southwest border, most effectively utilized OAM's constrained assets to meet mission needs and address threats was unclear.

We also found in March 2012 that OAM did not document assessments and analyses to support the agency's decisions on the mix and placement of assets. DHS's 2005 aviation management directive requires operating entities to use their aircraft in the most cost-effective way to meet requirements. Although OAM officials stated that it factored cost-effectiveness considerations, such as efforts to move similar types of aircraft to the same locations to help reduce maintenance and training costs into its deployment decisions, OAM did not have documentation of analyses it performed to make these decisions. OAM headquarters officials stated that they made deployment decisions during formal discussions and ongoing meetings in close collaboration with Border Patrol, and considered a range of factors such as operational capability, mission priorities, and threats. OAM officials said that while they generally documented final decisions affecting the mix and placement of assets, they did not document assessments and analyses to support these decisions.

In addition, we reported that CBP and DHS had ongoing interagency efforts under way to increase air and marine domain awareness across U.S. borders through deployment of technology that may decrease Border Patrol's use of OAM assets for air and marine domain awareness. However, at the time of our review, OAM was not planning to assess how technology capabilities could affect the mix and placement of air and marine assets until the technology has been deployed. Specifically, we

concluded that Border Patrol, CBP, and DHS had strategic and technological initiatives under way that would likely affect customer requirements for air and marine support and the mix and placement of assets across locations. CBP and DHS also had ongoing interagency efforts under way to increase air and marine domain awareness across U.S. borders through deployment of technology that may decrease Border Patrol's use of OAM assets for air and marine domain awareness. OAM officials stated that they would consider how technology capabilities affect the mix and placement of air and marine assets once such technology has been deployed.

To address the findings of our March 2012 report, we recommended that CBP, to the extent that benefits outweigh the costs, reassess the mix and placement of OAM's air and marine assets to include mission requirements, performance results, and anticipated CBP strategic and technological changes. DHS concurred with this recommendation and responded that it planned to address some of these actions as part of the Fiscal Year 2012-2013 Aircraft Deployment Plan.[22] In September 2014, CBP provided this Plan, approved in May 2012, and updated information on its subsequent efforts to address this recommendation, including a description of actions taken to reassess the mix and placement of OAM's assets. In particular, CBP noted that in late 2012, it initiated some actions based on its analysis of CBP data and assessment of OAM statistical information, such as the priority for flight hours by location based on Border Patrol and OAM data on arrests; apprehensions; and seizures of cocaine, marijuana, currency, weapons, vehicles, aircraft, and vessels. According to OAM, after consulting with DHS and CBP officials and approval from the DHS Secretary in May 2013, the office began a realignment of personnel, aircraft, and vessels from the northern border to the southern border based on its evaluation of the utilization and efficiency of current assets and available funding to accomplish the transfers. CBP's actions are a positive step to more effectively allocating scarce assets. As of April 2015, OAM officials said that they were in the process of providing GAO with the data and analysis used to support this

[22]CBP stated that because of timing, it was not able to fully incorporate all elements of the GAO report's recommendations into the Fiscal Year 2012-2013 Aircraft Deployment Plan. In April 2012, DHS stated that CBP would document the mission requirements and threats that support the decisions on the mix and placement of OAM's air and marine assets in its Fiscal Year 2014-2015 Aircraft Deployment Plan to be completed in fiscal year 2013. However, in September 2014, CBP stated that it had not issued this plan.

realignment of assets in order to fully document implementation of the recommendation.

Chairman Johnson, Ranking Member Carper, and members of the committee, this concludes my prepared statement. I will be happy to answer any questions you may have.

GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement included Kirk Kiester (Assistant Director), as well as Carissa Bryant, Adam Gomez, Yvette Gutierrez, Jon Najmi, Meg Ullengren, and Michelle Woods. Other contributors to the work on which this statement is based included Cindy Ayers, Jeanette Espinola, and Nancy Kawahara.

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U.S. Senate Committee on Homeland Security & Governmental Affairs,
Hearing on "Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers"
May 13, 2015

Michael John Garcia
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Chairman Johnson, Ranking Member Carper, and Members of the Committee:

My name is Michael Garcia, and I am a legislative attorney in the American Law Division of the Congressional Research Service. I am honored to be testifying before you today regarding the legal authorities and requirements related to the deployment of fencing and other infrastructure along the U.S. borders.[1]

The primary statute governing the Department of Homeland Security's (DHS's) deployment of fencing and other barriers is Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA[2]). Congress made significant amendments to IIRIRA Section 102 through three enactments—the REAL ID Act of 2005, the Secure Fence Act of 2006, and the Consolidated Appropriations Act, 2008.[3] These amendments required that DHS construct hundreds of miles of new fencing along the U.S.-Mexico border, and also provided the Secretary of Homeland Security with broad authority to waive legal requirements that may impede the construction of barriers and roads along the border.

The amendments to IIRIRA Section 102, along with increased funding for border projects, resulted in the deployment of several hundred miles of fencing and other barriers along the southwest land border between 2005 and 2011.[4] A portion of this infrastructure is fencing that is primarily intended to prevent illegal border crossings by pedestrians (referred to by DHS as "pedestrian fencing"), while other types of barriers have been installed to impede vehicles from smuggling persons or contraband into the United States (referred to by DHS as "vehicle fencing"), but which do not stop crossings by persons traveling on foot. In some instances, secondary or tertiary layers of fencing may also be installed behind primary pedestrian fencing to further impede illegal crossings.

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[1] This testimony addresses matters covered more extensively in CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*, by Michael John Garcia.

[2] P.L. 104-208, div. C, §102(a)-(c), codified at 8 U.S.C. §1103 note. Unless otherwise indicated, references in footnote citations to "IIRIRA §102" refer to the current version of the statute. The text of IIRIRA §102, as amended, is attached as an **Appendix**.

[3] REAL ID Act of 2005, P.L. 109-13, div. B, §102; Secure Fence Act of 2006, P.L. 109-367, §3; Consolidated Appropriations Act, 2008, P.L. 110-161, div. E, §564(a).

[4] For a graphic illustration of these changes, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, by Lisa Seghetti, at "Figure 4. Tactical Infrastructure Appropriations and Miles of Border Fencing, FY1996-FY2013."

Largely on account of changes in DHS's border enforcement strategy and prioritization of resources,[5] the construction of additional fencing along the land border with Mexico has effectively halted. In October 2014, DHS indicated that it had constructed a total of 352.7 miles of pedestrian fencing (in addition to 36.3 miles of secondary fencing), and 299 miles of vehicle fencing along the southwest border.[6] The total amount of pedestrian and vehicle fencing identified by DHS was slightly less than the 653 miles that the U.S. Border Patrol had reportedly identified as appropriate for fencing and other barriers.[7] Unless the statute may reasonably be construed to permit DHS to construct a lesser mileage, it appears that DHS still needs to deploy fencing along nearly 50 additional miles of the southwest border before it satisfies IIRIRA's requirement that fencing be installed "along not less than 700 miles" of the border.[8].

Key Statutory Authorities and Requirements

Prior to 1996, federal immigration statutes did not expressly authorize or require the construction of barriers along the U.S. international borders.[9] In the preceding years, authority to deploy any such barriers appears to have primarily derived from the general responsibility of the Attorney General (and now the Secretary of Homeland Security) to "guard the boundaries and borders of the United States against the illegal entry of aliens."[10] Perhaps the most prominent example of this general authority being employed to construct barriers occurred in the early 1990s, when 10-foot-high steel fencing was installed along roughly 14 miles of the border near San Diego to deter illegal crossings.

In 1996, Congress passed IIRIRA, which expressly instructed immigration authorities to construct barriers along the international land borders to deter unauthorized migration.[11] In its current form, IIRIRA Section 102 has three key components: (1) Section 102(a) confers general authority to DHS to deploy barriers and roads along the U.S. borders; (2) Section 102(b) requires fencing to be installed along a certain mileage of the U.S.-Mexico land border; and (3) Section 102(c) enables the Secretary of Homeland Security to waive any legal requirement that impedes upon the expeditious construction of barriers and roads under Section 102.[12]

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[5] *See generally id.*

[6] *See* DHS Secretary Jeh Johnson, "Border Security in the 21st Century," Remarks as Delivered and Accompanying Slide Presentation, Oct. 9, 2014, *available at* http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century.

[7] *See* "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744: Hearing Before the Senate Committee on the Judiciary," Apr. 23, 2013 (remarks by DHS Secretary Janet Napolitano in response to question, stating that the U.S. Border Patrol had identified 653 miles along the southwest border where fencing was appropriate).

[8] IIRIRA §102(b)(1)(A).

[9] Border construction activities had previously been expressly authorized for purposes such as boundary demarcation. *See* Act of August 19, 1935, 49 Stat. 660 (authorizing the executive branch "to construct and maintain fences, monuments and other demarcations of the boundary line between the United States and Mexico," in accordance with relevant boundary and water allocation treaties between the two countries).

[10] Immigration and Nationality Act §103(a)(5), 8 U.S.C. §1103 (a)(5).

[11] P.L. 104-208, div. C., §102.

[12] IIRIRA§102, as amended, also includes provisions concerning the availability of judicial review of DHS's exercise of waiver authority; the acquisition of easements on private land to construct fencing; and consultation requirements with federal, state, tribal, and private entities regarding the placement of fencing.

General Authority to Install Barriers and Roads

IIRIRA Section 102(a) provides that the Secretary of Homeland Security "shall take such actions as may be necessary to install additional physical barriers and roads ... in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States." Although this provision is fashioned as a statutory command, providing that the Secretary "shall" take action, this command is qualified by the language that follows, which affords the Secretary the discretion to determine the appropriate amount of "additional" barriers to deploy, as well as the most appropriate locations to install barriers "to deter illegal crossings." Accordingly, this provision perhaps most reasonably could be construed as conferring general authority to DHS to construct barriers and roads along the international borders, so as to deter crossings in areas of "high illegal entry" (a term not defined by the statute).[13]

Section 102(a) generally authorizes the construction of roads and physical barriers, without specifying any particular form that such barriers may take, or establishing a maximum or minimum amount of "additional" barriers that may be constructed. For example, the authority conferred under Section 102(a) could be used to provide legal support for the installation of a concrete barricade near a land port of entry to assist in directing traffic to inspection sites. But it could also provide legal support for DHS to install hundreds of miles of additional fencing along the border, at least so long as the action was determined appropriate to deter illegal crossings in areas of high illegal entry.

Requirement for Installation of Fencing Along the Southwest Border

IIRIRA Section 102(b) imposes specific requirements upon DHS to construct reinforced fencing along the southwest border. The nature of these requirements has changed over the years, including to expand the mileage along the border where fencing must be installed, and to afford the Secretary greater discretion in determining the layers of fencing to be installed and the location of fence deployment.

Modifications of Fencing Requirements

The fencing requirements of IIRIRA Section 102(b) have been substantially revised over the years. To better appreciate the scope of the current requirements, it may be useful to review how Section 102(b) has been amended.

Original Requirement to Augment the San Diego Border Fence

As originally enacted, IIRIRA Section 102(b) directed immigration authorities to supplement the already existing 14-mile primary border fence near San Diego with two additional layers of fencing.[14] Environmental concerns and litigation resulted in significant delays in fulfilling this requirement.[15]

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[13] *See* Save Our Heritage Organization v. Gonzales, 533 F.Supp.2d 58, 61 (D.D.C. 2008) (distinguishing the Secretary's "general authority" to install barriers under IIRIRA §102(a) from the specific mandate under IIRIRA §102(b) to construct fencing in certain areas).

[14] P.L. 104-208, div. C, §102(b).

[15] In late 2003, the California Coastal Commission (CCC) essentially halted further construction of the San Diego fence. The CCC determined that DHS had not demonstrated, among other things, that the project was "to the maximum extent practicable" consistent with the policies of the California Coastal Management Program—a state program approved under the federal Coastal Zone Management Act, 16 U.S.C. §§1451, *et seq*. *See* California Coastal Commission, *W 13a Staff Report and Recommendation* (continued...)

Expansion of Fencing Requirements Under the Secure Fence Act of 2006

Congress substantially modified IIRIRA Section 102(b) by way of the Secure Fence Act of 2006. Section 102(b)'s original requirement concerning fencing in the San Diego area was replaced with a more expansive instruction to deploy "at least 2 layers of reinforced fencing," along with other tactical infrastructure, along five specified stretches of the southwest border. DHS estimated that this mandate covered roughly 850 miles.[16]

Although IIRIRA Section 102(b) no longer required additional fencing in the San Diego vicinity, DHS ultimately completed a double-layered fence pursuant to its more general authority under IIRIRA Section 102(a).

Modification of Fencing Requirements Pursuant to the Consolidated Appropriations Act, 2008

The most reeent revisions to IIRIRA Section 102 were enacted slightly more than a year after Congress passed the Secure Fence Act. The Consolidated Appropriations Act, 2008, amended IIRIRA Section 102(b) to significantly increase the Secretary of Homeland Security's discretion as to where to construct fencing along the southwest border. In particular, the 2008 Appropriations Act modified IIRIRA Section 102(b) in four ways:

- **Eliminated earlier requirement of double-layered fencing.** Whereas the prior language of IIRIRA Section 102(b) had generally required "at least 2 layers of reinforced fencing" to be deployed in specified areas, Section 102(b) now mandates only a single layer of reinforced fencing (while not precluding additional layers from being deployed, if deemed appropriate).
- **Provided more flexible requirements concerning location of fencing and other border infrastructure.** While the Secure Fence Act required fencing to be installed along specific stretches of the southwest border, the 2008 Appropriations Act replaced this specification with a more general requirement that fencing be deployed "along not less than 700 miles of the southwest border where fencing would be most practical and effective."[17] DHS was also instructed to construct "additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border." The Appropriations Act also amended IIRIRA Section 102(b) to provide that the Secretary was not obligated to deploy fencing or other border security infrastructure "in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location."[18]

(...continued)

on Consistency Determination, CD-063-03, Oct. 2003, *available at* http://www.coastal.ca.gov/cd/W8a-10-2003.pdf.

[16] 153 CONG. REC. 9890 (2007)(statement by Sen. Jeff Sessions, observing that DHS had found that, because of topographical issues along the border, the Secure Fence Act effectively required deployment of fencing along "close to 854 topographical miles").

[17] IIRIRA §102(b)(1)(A).

[18] *Id.* at §102(b)(1)(D).

- **New deadline for construction of fencing in "priority areas."** The earlier version of IIRIRA Section 102(b) required the construction of fencing along specified stretches of the border, totaling roughly 370 miles, by May 2008, and fencing along another 30-mile section by December 2008.[19] This was replaced with a new requirement that the Secretary of Homeland Security identify 370 miles "or other mileage" along the southwest border where fencing would be "most practical and effective," and complete construction of such fencing by December 31, 2008.[20] According to a 2010 report by the Government Accountability Office (GAO), DHS opted to comply with the priority fencing mandate by ensuring that reinforced fencing had been deployed along 370 miles of the southwest border before 2009.[21]
- **New consultation requirements.** Section 102(b) of IIRIRA now requires the Secretary of Homeland Security to consult with the Secretaries of the Interior and Agriculture, state and local governments, Indian tribes, and property owners "to minimize the impact on the environment, culture, commerce, and quality of life" in areas near where fencing is to be constructed.[22]

Selected Issues Concerning Current IIRIRA Section 102(b)

As noted above, the 2008 Consolidated Appropriations Act substantially modified IIRIRA Section 102(b) just over a year after the Secure Fence Act had done the same. These revisions, along with sometimes conflicting statements made by DHS officials concerning the agency's interpretation of its duties under Section 102(b), have potentially contributed to some disagreement regarding the nature of DHS's obligations. Four issues may be of particular relevance to Congress in exercising oversight of DHS's implementation of Section 102(b).

Type of Fencing Required Under Current Law

Whereas the Secure Fence Act had amended IIRIRA Section 102(b) to provide for "at least 2 layers of reinforced fencing," IIRIRA Section 102(b) no longer imposes this requirement—a single layer of reinforced fencing appears sufficient to satisfy any statutory mandate. DHS would appear to have discretion to construct additional layers of fencing if it deems such fencing to be appropriate.[23]

Some disagreement has arisen over DHS's use of "vehicle fencing" to satisfy IIRIRA's fencing requirements, as such fencing does not generally prevent crossings by foot.[24] IIRIRA Section 102(b) does not mandate that any particular type of fencing must be deployed along the southwest border, beyond

[19] Secure Fence Act, P.L. 109-367, §3.

[20] IIRIRA §102(b)(1)(B).

[21] GAO, *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed*, Sept. 9, 2009, at 8.

[22] IIRIRA §102(c)(i). The Consolidated Appropriations Act further provided that funds appropriated for FY2008 could not be expended for border construction activities under IIRIRA Section 102, unless DHS satisfied this consultation requirement. P.L. 110-161, div. E, §564(b).

[23] *See Save Our Heritage Organization*, 533 F.Supp.2d at 61 (upholding authority of DHS to construct additional double-layered fencing along border near San Diego under IIRIRA Section 102(a)).

[24] Vehicle fencing is "used primarily in remote areas to prohibit vehicles engaged in drug trafficking and alien smuggling operations from crossing the border." GAO, *Secure Border Initiative Fence Construction Costs*, Jan. 9, 2009, at 2.

providing that such fencing be "reinforced."[25] The statute does not specify, for example, that deployed fencing must be of a particular height, or be constructed in a particular style. In the absence of such specification, it would appear that DHS enjoys discretion to assess the appropriate type of fencing to deploy in order to achieve operational control of the southwest border.[26]

Total Miles Along the Border Covered by Fencing vs. Total Miles of Fencing

While IIRIRA Section 102(b) is sometimes characterized as requiring DHS to deploy "700 miles of fencing," the express language of the text seems to indicate a somewhat different mandate. Section 102(b) requires DHS to deploy fencing "along not less than 700 miles of the southwest border." This instruction focuses upon the actual mileage of the border covered by fencing, rather than the number of miles of fencing deployed. For example, if DHS hypothetically deployed 30 miles of fencing, but did so through the construction of a ten-layered, three-mile-long fence, it would have installed fencing along only three miles of the border. On the other hand, if DHS deployed such fencing as a single layer of fencing, it would have deployed fencing along 30 miles of the border.

Likely because of the phraseology of IIRIRA Section 102(b), DHS seems to count only the mileage of primary layers of fencing deployed along the southwest border when discussing its efforts to satisfy its statutory mandate, and not the total amount of secondary or tertiary fencing running behind it.[27]

Is DHS Required to Complete Fencing Along 700 Miles of the Border?

DHS has thus far deployed reinforced fencing along roughly 653 miles of the border.[28] At least on first look, it would appear that the department would need to install additional fencing along nearly 50 miles of the southwest border to satisfy the fence deployment specifications of Section 102(b). There have been conflicting views among some policymakers as to the firmness of this mandate. Although one clause of IIRIRA Section 102(b) requires fencing "along not less than 700 miles" of the border, another clause provides:

> Notwithstanding [the 700-mile mandate of this section,] nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.[29]

The meaning and effect of this proviso are arguably open to interpretation. One way to read the clause is simply to reflect the discretion that Congress intended to afford DHS in determining where to deploy

[25] "Reinforced fencing" is not defined by statute, but is commonly used to refer to fencing which is constructed in a manner that makes it more durable and sturdy than a typical fence.

[26] While IIRIRA Section 102(b) seems to distinguish "fencing" from other types of "physical barriers," it does not specify any particular features that deployed fencing must have, beyond being reinforced. Accordingly, at least so long as deployed barriers can reasonably be construed to constitute "fencing," it seems that DHS would have discretion to determine the appropriate type to be deployed at any particular location.

[27] *See* DHS: THE PATH FORWARD, HEARING BEFORE THE HOUSE COMMITTEE ON HOMELAND SECURITY, SERIAL NO. 111-1, 111th Cong., 1st Sess. (2009), Written Responses by DHS Secretary Janet Napolitano to Questions Posed by Rep. Lamar Smith, at 65 (identifying only primary pedestrian and vehicle fencing when identifying mileage of fencing deployed along the southwest border pursuant to IIRIRA Section 102(b)).

[28] *See* Remarks of DHS Secretary Jeh Johnson, *supra* footnote 6.

[29] IIRIRA §102(b)(1)(D).

fencing, in contrast to the more specific requirements contained in earlier versions of IIRIRA Section 102(b). While DHS is required to construct fencing along at least 700 miles of the border, the agency retains discretion to determine the most appropriate stretches along the U.S.-Mexico border where the fencing should be deployed.

But it might be possible to construe this "notwithstanding" proviso in a much broader fashion, under which DHS might permissibly construct fencing along less than 700 miles of the border, if DHS determines that a lesser mileage is the most appropriate means to achieve control of the border.

There are difficulties, however, with interpreting the "notwithstanding" proviso as authorizing DHS to deploy fencing along less than 700 miles of the southwest border. As an initial matter, the "notwithstanding" proviso does not expressly state that DHS may opt to install fencing along a lesser amount of *mileage* of the border than is specified elsewhere in Section 102(b)—rather, it says that fencing is not required at "any particular location," if the Secretary of Homeland Security determines that the installation of that infrastructure is not appropriate for "such location."

Moreover, courts typically follow the interpretive principle that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant...."[30] If Section 102(b)'s proviso is construed to mean that DHS is required to deploy only the amount of fencing along the border that it deems appropriate, the clause would render Section 102(b)'s mandate that fencing be deployed "along at least 700 miles of the border" superfluous. Indeed, if DHS is understood to be required to install only the amount of fencing or other barriers it deems appropriate, it would seem that Section 102(b) would be unnecessary—IIRIRA Section 102(a) already provides the department with authority to deploy additional barriers and roads along the border as it deems appropriate to deter illegal crossings, while affording DHS discretion to determine the appropriate amount or mileage to deploy. On the other hand, if the proviso is interpreted to mean that, in carrying out its mandate to construct fencing along at least 700 miles of the land border with Mexico, DHS is not legally required to install the required fencing at any particular point along the border, every provision of IIRIRA Section 102 can be given effect.

The legislative history behind IIRIRA Section 102(b)'s fencing requirements, including companion legislation and contemporary statements by Members of Congress, also seems to support a narrow construction of Section 102(b)'s "notwithstanding" clause. The modifications made to IIRIRA Section 102(b) by the Appropriations Act were originally a component of a package of amendments adopted by the Senate as part of a homeland security bill which, besides amending IIRIRA Section 102(b), would have required DHS to complete fencing along 700 miles of the border within two years.[31] While Congress ultimately opted to enact only the changes made to IIRIRA Section 102(b), and not the separate two-year deadline for fence deployment, presumably the Senate would not have originally approved both amendments if they were understood to be conflicting.[32]

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[30] Hibbs v. Winn, 542 U.S. 88, 101 (2004) (quoting 2A N. SINGER, STATUTES AND STATUTORY CONSTRUCTION §46.06, (rev. 6th ed. 2000)).

[31] *See* S.Amdts. 2412, 2480, and 2486, offered as amendments to S.Amdt. 2383, proposed by Sen. Robert Byrd in the nature of a substitute to H.R. 2638, Department of Homeland Security Appropriations Act, 2008, 110th Cong., 1st Sess. A detailed description of the Senate's consideration of these amendments is found in CRS Report R43975, *supra* footnote 1, at 11-13.

[32] Indeed, Senator Kay Bailey Hutchison, the sponsor of the amendment to IIRIRA Section 102(b) initially adopted by the Senate as part of a homeland security appropriations bill, was a cosponsor of the related amendment adopted by the Senate on the same day that would have required completion of fencing along 700 miles of the southwest border within two years. 153 CONG. REC. S10059 (daily ed., Jul. 26, 2007).

To date, it appears that every federal court which has discussed IIRIRA Section 102(b) has described the provision in mandatory terms: DHS is required to deploy fencing along 700 miles of the southwest border, but it retains discretion to determine the appropriate locations in which to deploy the required fencing.[33] It should be noted, however, that no court has definitively ruled that an alternative interpretation is not permissible. But the uniform interpretation suggests that, as a matter of first impression, Section 102(b) may be most reasonably construed as establishing a mandate to deploy fencing along at least 700 miles of the border.

For its part, DHS has appeared to take conflicting views regarding the firmness of IIRIRA Section 102(b)'s mandate. Initially, DHS appeared to construe the 700-mile requirement as a firm one. In notices issued in the *Federal Register* in 2008 describing border fencing projects undertaken under IIRIRA Section 102(b), Secretary of Homeland Security Michael Chertoff stated that "Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border...."[34] In March 2009, Secretary of Homeland Security Janet Napolitano wrote to the House Homeland Security Committee, and described IIRIRA as mandating that DHS construct at least 700 miles of fencing, but also indicated that at least for the immediate future, DHS would focus on fence deployment in priority areas.[35]

DHS later appeared to modify its interpretation of IIRIRA Section 102(b), and began to describe the "notwithstanding" proviso as permitting it to deploy fencing along less than 700 miles of the border, if the agency deemed a lesser amount of fencing to be appropriate to achieve operational control.[36] Indeed, four years after describing IIRIRA Section 102(b) as imposing a firm mandate, Secretary Napolitano gave

[33] *See* Gilman v. Department of Homeland Security, 32 F.Supp.3d 1, 5 (D.D.C. 2014) (describing IIRIRA Section 102(b) as having been "amended to mandate 'reinforced fencing along not less than 700 miles of the southwest border' and [to charge] the Secretary of Homeland Security with completing ... reinforced fencing [in priority areas] by the end of 2008. The precise location of the fence, however, was left to ... [DHS] to determine 'where fencing would be most practical and effective....'"); Arizona v. United States, No. 2:10-cv-01413-SRB, Order Dismissing Arizona's Counterclaims, at 16 (D. Az., Oct. 21, 2011) ("[A]s amended by the 2008 Appropriations Act, [IIRIRA Section 102(b)] provides for the construction of 700 miles of fencing and additional infrastructure along the border 'where [it] would be most practical and effective.'"); United States v. 1.04 Acres of Land, More or Less, Situate in Cameron County, Tex., 538 F.Supp.2d 995, 1004 (S.D. Tex. 2008) (describing the most recent amendments to IIRIRA Section 102(b) as "remov[ing] references to specific areas for the construction of the fence, giving the Secretary discretion on where to put the fencing. The Secretary of Homeland Security now has a general mandate to construct at least 700 miles of fencing along the United States-Mexico border where fencing would be most practical and effective."); *See also* United States v. 1.16 Acres of Land, More or Less, Situate in Cameron County, Tex., 585 F.Supp.2d 901, 907 n.3 (S.D. Tex. 2008) "[IIRIRA] Section 102(b) requires the Secretary of Homeland Security to construct a minimum number of miles of fencing in identified areas in the country.").

[34] Dept. of Homeland Security, "Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended," 73 FED. REG. 18294 (Apr. 3, 2008), *republished with additional document in* 73 FED. REG. 19077 (Apr. 8, 2008); "Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended," 73 FED. REG. 18293 (Apr. 3, 2008), *republished with additional document in* 73 FED. REG. 19078 (Apr. 8, 2008).

[35] DHS: THE PATH FORWARD, HEARING BEFORE THE HOUSE COMMITTEE ON HOMELAND SECURITY, SERIAL NO. 111-1, 111TH CONG., 1ST SESS. (2009), Written Responses by DHS Secretary Janet Napolitano to Questions Posed by Rep. Lamar Smith, at 65 ("As amended, the [IIRIRA Section 102(b)] mandates the completion of 700 total miles of fence. It also mandates that the Secretary identify priority areas "where fencing would be the most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States." As of March 6, 2009, DHS has completed approximately 611 of the 661 miles of fence identified by the Border Patrol as priority areas. While fencing remains an important tool in achieving effective control, it is only one element of our overall border security strategy that incorporates the proper mix of technology, personnel, and tactical infrastructure. Currently, there are no immediate funded plans to construct additional fencing.").

[36] *See* GAO Report, *supra* footnote 21, at 8.

testimony before the Senate Judiciary Committee in which she appeared to take the view that DHS was legally permitted to construct a lesser amount of fencing.[37]

On the other hand, the executive branch appears to have construed the 700-mile requirement as a firm one in litigation concerning fence deployment decisions. In defending DHS against a legal challenge by the state of Arizona in 2011, in which Arizona sought to compel DHS to complete construction of fencing along 700 miles of the border (and undertake other immigration enforcement actions), the Department of Justice did not dispute the existence of this mandate, but instead argued that DHS decisions as to where to locate such fencing and the speed by which fencing was to be deployed were committed to agency discretion.[38]

It should be noted that, in assessing the permissibility of an agency's interpretation of the laws it administers, reviewing courts typically accord the agency's interpretation of these statutes with some degree of deference, so long as the construction is reasonable.[39] In determining whether an agency's construction of a statute is reasonable, legislative intent is a touchstone for a reviewing court's analysis—an agency's interpretation might be entitled to deference when congressional intent is ambiguous and the agency's construction of the statute is reasonable.[40]

Assuming that DHS's interpretation of the requirements under IIRIRA Section 102(b) is subject to legal challenge, the degree of deference that a reviewing court gives to the agency's interpretation may be informed by a number of factors, including (1) whether the plain text of the statute is ambiguous, and DHS's interpretation is reasonable; (2) if other indicia of legislative intent favor a particular interpretation; and (3) the degree of deference that may be afforded to the DHS's interpretation of IIRIRA Section 102(b),[41] and whether the apparent modification of its interpretation entitles its current interpretation to a lesser degree of deference.[42]

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[37] COMPREHENSIVE IMMIGRATION REFORM, SENATE COMMITTEE ON THE JUDICIARY, SERIAL NO. J–113–4, Feb. 13, 2013, at 11 (Secretary Napolitano responded to a question regarding fence deployment by stating, "On the fence, the original act was for 700 miles. There was a subsequent amendment or adjustment to that—I think it was proposed by Senator Hutchison—to 655 miles. All but one mile of that is now complete, and the one mile or different little sections, most of them are in some litigation or another with private property owners. But the fence, to the extent it has been appropriated for, is complete.").

[38] Arizona v. United States, No. 2:10-cv-01413-SRB, Counterdefendants' Reply in Support of Their Motion to Dismiss Counterclaims, at 9 (D. Az., Jul. 12, 2011) ("DHS has already completed 649 of the 700 miles—over 92% of the target that Congress set a little over three years ago without a deadline—and ... much of this fencing covers the Arizona border."); Counterdefendants' Motion to Dismiss Counterclaims and Memorandum of Law in Support Thereof, at 22 (D. Az. Apr. 12, 2001) ("Section 102 of the IIRIRA (as amended) vests in the Secretary complete discretion for determining how to gain operational control of the border and where fencing and additional measures should be utilized in that effort ... Further, the Act prescribes no deadline for completing the construction of 700 miles of fencing or installing additional physical barriers, roads, lighting, cameras, and sensors along the southwest border, despite the fact that the Act prescribed deadlines in other instances.").

[39] *See, e.g.*, Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

[40] *Id.* at 842-843 ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."); United States v. Shimer, 367 U.S. 374, 383 (1961) (When an agency is tasked with "accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.").

[41] Agency interpretations of statutory requirements are usually afforded a lesser degree of deference when the agency interpretation is not the result of a notice-and-comment rulemaking process or formal adjudication. In such circumstances, the level of deference given to the agency's interpretation typically "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to (continued...)

Potential Constraints on Judicial Review

Regardless of the appropriate interpretation of IIRIRA Section 102(b)'s fencing mandate, the statute imposes no clear deadline for when the contemplated fencing must be deployed. In the 2011 litigation in which Arizona sought to compel DHS to complete construction of fencing required under IIRIRA Section 102(b), the reviewing federal district court dismissed Arizona's motion, in part because "no deadline mandates completion of the fencing and infrastructure developments or any required discrete action by a specified time."[43]

The absence of a deadline for the completion of the fencing requirements of IIRIRA Section 102(b) does not necessarily mean that DHS has no judicially enforceable legal obligation to complete any remaining fencing. The Administrative Procedure Act, for example, provides courts with the authority to compel a required agency action, when such action has been "unlawfully withheld or unreasonably delayed."[44] Determining whether an agency has unreasonably delayed undertaking a required action is a fact-specific determination made on a case-by-case basis, with reviewing courts typically showing more deference to an agency when there is not a statutory deadline for agency action.[45]

If a court determined that DHS had unreasonably delayed fulfillment of its obligations under IIRIRA Section 102(b), it might deem the completion of at least 700 miles of fence along the southwest border to constitute "a discrete agency action" that it would potentially have the power to compel.[46] The district court in the *Arizona* case found that completion of the border fence was not a "discrete agency action" that it could compel DHS to take, but it did not explain the basis for this conclusion.[47]

(...continued)

persuade, if lacking power to control." Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944). In *NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251 (1996), the Supreme Court afforded *Chevron* deference to the Comptroller of Currency's "deliberative conclusions" regarding the interpretation of banking laws, on account of the Comptroller being "charged with the enforcement of banking laws to an extent that warrants the invocation" of a high standard of deference to his interpretations. Subsequently, in *United States v. Mead Corp.*, the Supreme Court seemed to suggest that the conclusion it reached in *NationsBank* was at least partially on account of "longstanding precedent" recognizing the Comptroller's interpretative authority. *Mead Corp.*, 533 U.S. at 231 n.13. Accordingly, the possible relevance of *NationsBank* to decisions outside the banking context, including with respect to DHS interpretations of fencing requirements of IIRIRA, is unclear.

[42] A change in agency interpretation is not itself a ground to view the later construction as impermissible, at least so long as reasons for the change in policy are adequately explained. *See, e.g.*, National Cable & Telecommunications Ass'n v. Brand X Internet Services, 545 U.S. 967, 981 (2005).

[43] Arizona v. United States, No. 2:10-cv-01413-SRB, Order Dismissing Arizona's Counterclaims, at 16 (D. Az., Oct. 21, 2011).

[44] 5 U.S.C. §706(1).

[45] For further discussion, see CRS Report R43013, *Administrative Agencies and Claims of Unreasonable Delay: Analysis of Court Treatment*, by Daniel T. Shedd. *See also* Telecommunications Research and Action Center v. F.C.C., 750 F.2d 70. 79-80 (D.C. Cir. 1984) (observing that "the first stage of judicial inquiry is to consider whether the agency's delay is so egregious as to warrant mandamus," and identifying several factors that should be appropriately considered when assessing an agency delay claim).

[46] Norton v. Southern Utah Wilderness Alliance (SUWA), 542 U.S. 55, 64 (2004). Even assuming that the deployment of fencing "along not less than 700 miles of the border where it would be most practical and effective" could be considered a discrete agency action that a court could compel, it is unlikely a court would be able to direct DHS to deploy such fencing at a specific location. *See id.* at 65 ("[W]hen an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be.").

[47] *Arizona*, No. 2:10-cv-01413-SRB, Order Dismissing Arizona's Counterclaims, at 16 (D. Az., Oct. 21, 2011) (in considering Arizona's motion seeking to compel completion of fencing, finding that IIRIRA, as amended, did "not mandate any discrete agency action with the clarity to support a judicial order compelling agency action," but not explaining reasoning for this conclusion).

Because the *Arizona* court dismissed the case on these grounds, it did not address the issue of whether Arizona had standing to even bring the claim. In general, a plaintiff needs to show that it has suffered a concrete and particularized injury, and that the injury will be redressed by a favorable court decision.[48] It seems likely it would be very difficult for a plaintiff to identify a concrete, particularized injury that would be effectively remedied if DHS deployed fencing along an additional 50 miles of the border.[49]

Authority to Waive Legal Requirements Impeding Construction of Roads and Barriers

Section 102(c) of IIRIRA confers the Secretary of Homeland Security with broad authority to waive legal requirements that may impede the construction of barriers and roads along the border. The nature and scope of this waiver authority changed significantly pursuant to modifications made by the REAL ID Act of 2005. From 2005 through 2008, the Secretary of Homeland Security employed this waiver authority to facilitate the construction of hundreds of miles of fencing and other infrastructure along several sections of the southwest border. Each of these waivers remains in effect, and applies both to the construction and upkeep of covered fencing projects.

Original Waiver Authority

When initially enacted in 1996, IIRIRA Section 102(c) expressly authorized the waiver of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA),[50] to the extent that such waivers were determined necessary by the Attorney General to expeditiously construct barriers and roads under Section 102. Other federal laws, however, remained applicable to border construction projects. Federal immigration authorities appear to have not employed IIRIRA Section 102(c), as originally enacted, to waive NEPA and ESA requirements.[51]

Expansion of Waiver Authority Under the REAL ID Act

In part due to delays in the construction of fencing near San Diego,[52] Congress amended IIRIRA Section 102(c) via the REAL ID Act of 2005. As amended, IIRIRA Section 102(c) permits the Secretary of DHS to waive "all legal requirements" necessary to ensure expeditious construction of these security barriers. Such waivers are effective upon publication in the *Federal Register*.[53] Federal district courts are provided with exclusive jurisdiction to review claims alleging that the actions or decisions of the Secretary violate the U.S. Constitution, and district court rulings may be reviewed only by the Supreme Court, whose review is discretionary.

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[48] Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992).

[49] In addition to these constitutional requirements for standing, prudential considerations could also potentially inform a court's willingness to consider a legal challenge to DHS fence deployment decisions. *See, e.g.*, Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 474-475 (1982) (discussing prudential considerations informing court recognition of a plaintiff's standing to bring suit).

[50] P.L. 104-208, div. C, §102(c).

[51] *See* CCC Report, *supra* footnote 15, at 10.

[52] *See* H.REPT. 109-72, 109th Cong., 1st Sess. (2005) at 170-172 (conference report for emergency supplemental appropriations legislation to which the REAL ID Act was attached, describing purposes of the act).

[53] IIRIRA §102(c)(1).

The scope of this waiver authority is substantial, but neither absolute nor applicable to all border-related activities. The Secretary could not rely on Section 102(c) to waive requirements of the U.S. Constitution. Thus, for example, if DHS sought to condemn private land in order to construct fencing at that location, it could not waive the Fifth Amendment's requirement that "just compensation" be provided to the property owner. The Secretary may also waive only those legal requirements that, in effect, would impede the construction of barriers and roads under Section 102. The authority does not appear to permit the Secretary to waive legal requirements that only tangentially relate to, or do not necessarily interfere with, the construction of roads and barriers.[54] The decision of whether to waive a legal requirement is the responsibility of the Secretary of Homeland Security, and authority may be exercised in the Secretary's discretion. Until such time as the Secretary waives an applicable law, however, DHS must generally follow all legal requirements normally imposed on federal agencies.[55]

To date, the Secretary of DHS has provided notice in the *Federal Register* on five occasions regarding the invocation of waiver authority conferred under IIRIRA Section 102(c).[56] In multiple instances, lawsuits were brought challenging the constitutionality of an issued waiver. In each case, the reviewing federal district court upheld the exercise of waiver authority as constitutionally valid.[57] Parties in two of the cases sought Supreme Court review, but the Court declined to grant certiorari in either case.[58]

Conclusion

Congress has conferred DHS with express authority to construct barriers and roads along the international land borders to deter illegal crossings in areas of high illegal entry. Congress has also required DHS to deploy fencing along specified mileage of the southwest border.

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[54] In exercising waiver authority under IIRIRA, the DHS Secretary appears to have construed it as applying to physical infrastructure projects built in connection with the construction of barriers and roads, such as radio towers. *See, e.g.*, Dept. of Homeland Security, "Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended," 73 FED. REG. 19078 (Apr. 8, 2008) (waiving laws related to access, staging, and construction in the project area including "installation and upkeep of fences, roads, supporting elements, draining, erosion controls, safety features, surveillance, communication and detection equipment of all types, radar and radio towers and lighting").

[55] With respect to each of the fencing projects conducted between 2008 and 2011 in which the Secretary had exercised waiver authority, DHS has prepared an environmental stewardship plan (ESP) concerning the potential environmental effects of the project. After a project was completed, Customs and Border Protection (CBP) would prepare an environmental stewardship summary report (ESSR) "documenting the final 'footprint' of the sections built under the waiver to provide an 'as built' summary for the public and regulatory agencies." CBP, *Environmental Stewardship Plans (ESPs) Environmental Stewardship Summary Reports (ESSRs), available at* http://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/esp-essr. (providing links to ESPs and ESSRs).

[56] 70 FED. REG. 55622-02, Sept. 22, 2005 (waiving numerous laws potentially impacting fence construction in San Diego area); 72 Fed. Reg. 2535-01, Jan. 19, 2007 (applying to area in vicinity of the Barry M. Goldwater Range in southwest Arizona); 72 FED. REG. 60870-01, Oct. 26, 2007 (concerning the San Pedro Riparian National Conservation Area in southeast Arizona); 73 Fed. Reg. 18294 (April 3, 2008), *republished with additional document in* 73 FED. REG. 19077 (April 8, 2008) (applying to barriers and roads constructed in Hidalgo County, Texas); 73 FED. REG. 18293 (April 3, 2008), *republished with additional document in* 73 Fed. Reg. 19078 (April 8, 2008) (concerning border infrastructure projects in California, New Mexico, Texas, and Arizona).

[57] County of El Paso v. Chertoff, No. EP-08-CA-196, 2008 WL 4372693 (W.D. Tex. Aug. 29, 2008); Save Our Heritage Organization v. Gonzalez, 533 F. Supp. 2d 58 (D.D.C. 2008); Defenders of Wildlife v. Chertoff, 527 F. Supp. 2d 119 (D.D.C. 2007); Sierra Club v. Ashcroft, No. 04-CV-272, 2005 U.S. Dist. LEXIS 44244 (S.D. Cal. Dec. 13, 2005).

[58] *County of El Paso*, No. EP-08-CA-196, (W.D. Tex. Aug. 29, 2008), *cert. denied*, 129 S. Ct. 2789 (2009); *Defenders of Wildlife*, 527 F. Supp. 2d 119 (D.D.C. 2007), *cert. denied*, 128 S. Ct. 2962 (2008).

In recent years, legislative attention has primarily focused upon the fencing requirements contained in IIRIRA Section 102(b). Prior versions of Section 102(b) imposed specific requirements as to the location where fencing was to be installed and the layers of fencing to be constructed. The current provision affords DHS with significantly greater discretion to determine the appropriate location, layers, and types of fencing to be installed along the southwest border.

There has been some dispute as to whether DHS has discretion to construct less fencing than the amount specified under IIRIRA Section 102(b), on account of a proviso that posits that the agency is not required to construct fencing at any "particular location" where it deems fencing to be inappropriate. While there appears to be stronger support for construing Section 102(b) to establish a firm mandate for the deployment of fencing along 700 miles of the border, it is not clear whether a court would have the ability to compel DHS to install additional fencing (or that a plaintiff would have standing to bring such a claim).

Appendix. IIRIRA Section 102, as Amended (Text)

Sec. 102 - Improvement of Barriers at Border

(a) In General.-The Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.

(b) Construction of Fencing and Road Improvements Along the Border.-

(1) Additional fencing along southwest border.-

(A) Reinforced fencing.-In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

(B) Priority areas.-In carrying out this section [amending this section], the Secretary of Homeland Security shall-

(i) identify the 370 miles, or other mileage determined by the Secretary, whose authority to determine other mileage shall expire on December 31, 2008, along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

(ii) not later than December 31, 2008, complete construction of reinforced fencing along the miles identified under clause (i).

(C) Consultation.-

(i) In general.-In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

(ii) Savings provision.-Nothing in this subparagraph may be construed to-

(I) create or negate any right of action for a State, local government, or other person or entity affected by this subsection; or

(II) affect the eminent domain laws of the United States or of any State.

(D) Limitation on requirements.-Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.

(2) Prompt acquisition of necessary easements.-The Attorney General, acting under the authority conferred in section 103(b) of the Immigration and Nationality Act [8 U.S.C. §1103(b)] (as inserted

by subsection (d)), shall promptly acquire such easements as may be necessary to carry out this subsection and shall commence construction of fences immediately following such acquisition (or conclusion of portions thereof).

(3) Safety features.-The Attorney General, while constructing the additional fencing under this subsection, shall incorporate such safety features into the design of the fence system as are necessary to ensure the well-being of border patrol agents deployed within or in near proximity to the system.

(4) Authorization of appropriations.-There are authorized to be appropriated such sums as may be necessary to carry out this subsection. Amounts appropriated under this paragraph are authorized to remain available until expended.

(c) Waiver.-

(1) In general.-Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section [amending this section]. Any such decision by the Secretary shall be effective upon being published in the Federal Register.

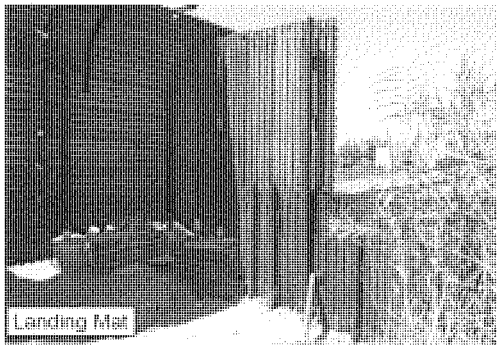
(2) Federal court review.-

(A) In general.-The district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1). A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court shall not have jurisdiction to hear any claim not specified in this subparagraph.

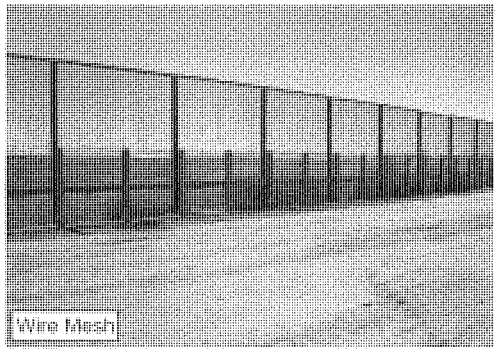
(B) Time for filing of complaint.-Any cause or claim brought pursuant to subparagraph (A) shall be filed not later than 60 days after the date of the action or decision made by the Secretary of Homeland Security. A claim shall be barred unless it is filed within the time specified.

(C) Ability to seek appellate review.-An interlocutory or final judgment, decree, or order of the district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

Types of Fencing Found on the Southwest Border



(Pedestrian Fence)



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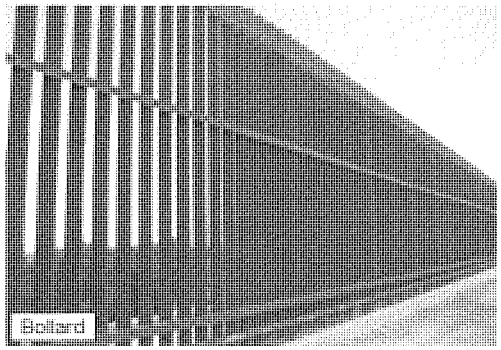
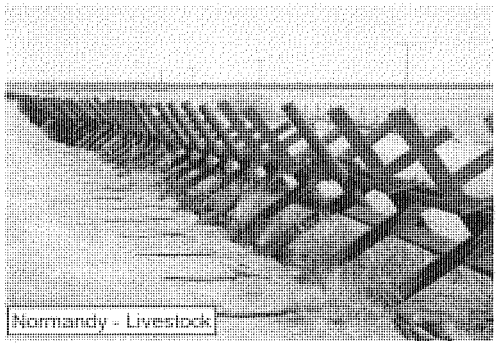


(Pedestrian Fence)



(Vehicle Fence)

WASHINGTON
LEGISLATIVE OFFICE

May 13, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security & Governmental Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security & Governmental Affairs
U.S. Senate
Washington, D.C. 20510

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ROBERT REMAR
TREASURER

RE: Senate Committee on Homeland Security & Governmental Affairs Hearing on "Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers"

Dear Chairman Johnson and Ranking Member Carper:

On behalf of the American Civil Liberties Union ("ACLU"), we submit this letter for the Senate Committee on Homeland Security & Governmental Affairs hearing on May 13, 2015: "Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers"

For nearly a century the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law.

(1) Current proposals to resource the border are damaging to border communities and unwanted by the Department of Homeland Security

Border-security bills and proposals are unwanted by DHS and not the type of border policy reform that is needed.

On May 6, 2015 the Committee on Homeland Seeurity & Governmental Affairs approved a border-security bill that even DHS doesn't want. The bill is the Arizona Borderlands Protection and Preservation Act,[1] sponsored by the state's two senators, John McCain and Jeff Flake. Despite the bill's name, there is nothing protective or preserving about this legislation. Rather it threatens to despoil a vast, 10-million-acre area of Arizona without any remotely corresponding border-security benefits. It would allow the government to conduct motorized patrols and to deploy communications, surveillance, and detection equipment on protected public lands, such as national parks, national monuments, and sacred Native American sites.

1 Arizona Borderlands Protection and Preservation Act. S. 750, 114th Cong. (2015), *available at* https://www.congress.gov/114/bills/s750/BILLS-114s750is.pdf (non-amended version).

Environmental groups are horrified because laws like this "pose significant risks to our nation's environment and public lands,[2] and the rule of law." The Coalition of National Park Service Retirees has called legislation similar to the McCain/Flake bill,[3] and proposals for additional border fencing, "the most direct assault on national parks ever to be advanced at any level in any Congress in U.S. history. . . . The outrage here is that national parks and other U.S. crown jewels could end up being trashed in the name of achieving national security gains that are fictitious."

The real goal of this bill and proposals for additional border fencing is to entirely seal the Southwest border, which is unattainable. A February 2015 report by the Bipartisan Policy Center stresses that "achieving 100 percent enforcement is an unrealistic expectation in any border security effort,"[4] noting that even the former East Germany's "kill zone" stopped only 95 percent of crossers.

Customs and Border Protection itself does not want the authority Arizona's senators are trying to impose through S.750. Instead, DHS, CBP's parent organization, has repeatedly disclaimed the idea that such legislation is required to further border security. Commissioner Kerlikowske also recently made comments against full fencing of the border.[5]

Americans do deserve border policy reform, just not like this.

(2) Real border reforms are needed to bring oversight and accountability to Customs and Border Protection

What any border bill *should* include are reforms to CBP that ensure the agency's oversight and accountability. James F. Tomsheck, CBP's former head of internal affairs, has called at least eight of the 35 CBP-caused deaths since 2010 "highly suspect," adding that "thousands of employees hired during an unprecedented expansion of the agency in the post-9/11 era are potentially unfit to carry a badge and gun."[6] Recent news reports have highlighted widespread corruption and integrity problems, including a CBS News report on Border Patrol sexual abuse,[7] and Politico Magazine's in-depth look at the Border Patrol's massive growth, which concluded that it is "America's most out-of-control law enforcement agency."[8]

S.750 goes in exactly the wrong direction by expanding Border Patrol's operations, instead of restoring respect for the rights of border residents and their environment. Border Patrol frequently acts as a "Constitution-Free Agency" in border communities up to 100 miles from any land or sea border.[9] CBP

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2 Pew Charitable Trusts, New Bills Threaten National Parks, Wilderness, Wildlife Refuges Within 100 Miles of Borders With Canada, Mexico, http://www.pewtrusts.org/en/about/news-room/news/2015/03/31/new-bills-threaten-national-parks-wilderness-wildlife-refuges (last visited May 12, 2015).
3 PR Newswire, NPS Retirees: 54 National Park Areas Jeopardized Under Bogus "National Security" Bill Advancing in U.S. House, http://www.prnewswire.com/news-releases/nps-retirees--54-national-park-areas-jeopardized-under-bogus-national-security-bill-advancing-in-us-house-147948645.html (last visited May 12, 2015).
4 BIPARTISAN POLICY CTR., MEASURING THE METRICS 44 (Feb. 2015), *available at* http://bipartisanpolicy.org/wp-content/uploads/2015/02/BPC_Immigration_MeasuringEnforcement.pdf.
5 *Hearing on proposed fiscal 2016 appropriations for programs under its jurisdiction before the* House Appropriations Committee, Homeland Security Subcommittee, 114th Cong. (2015) (statement of Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection).
6 Andrew Becker, *Border agency's former watchdog says officials impeded his efforts,* WASH. POST, Aug. 16, 2014, *available at* http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390_story.html.
7 Anna Werner and Laura Strickler, *"Disturbing" sex abuse within agency that patrols U.S. border, says former top official,* CBS EVENING NEWS, May 4, 2015, *available at* http://www.cbsnews.com/news/u-s-border-patrol-has-a-sex-abuse-problem-says-whistleblower/.
8 Garrett M. Graff, *The Green Monster*, POLITICO MAGAZINE, Nov./Dec. 2014, *available at* http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html#.VVJBbUfF-Ah.
9 *See* James Lyall, *The Constitution –Free Agency*, POLITICO MAGAZINE, July 29, 2014, *available at* http://www.politico.com/magazine/story/2014/07/border-patrol-constitution-free-agency-109375.html#.VVJB5EfF-Ah, *see also* ACLU, Know Your Rights: The Government's 100-mile border zone-map, https://www.aclu.org/know-your-rights-governments-100-mile-border-zone-map

instead urgently needs reforms to adopt best policing practices such as body-worn cameras,[10] an end to racial profiling,[11] and the type of comprehensive data collection lifted up by the President's own Task Force on 21st Century Policing.[12]

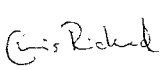
Support for S.750, and similar stand-alone border-security bills, is also a vote against comprehensive immigration reform because its enforcement-only approach offers no workable solutions to the broken immigration system, none of the common-sense immigration fixes that would benefit America enormously.

Senators should oppose S. 750 and similar proposals, leaving millions of acres in the border region alone, and instead enact sensible border and immigration reforms.

For more information, please contact ACLU Policy Counsel Chris Rickerd (202/675-2339); crickerd@aclu.org).

Sincerely,

Michael W. Macleod-Ball
Acting Director, Washington Legislative Office



Chris Rickerd
Policy Counsel

10 Fact Sheet, ACLU, Strengthening CBP with the Use of Body-Worn Cameras (June 27, 2014), *available at* https://www.aclu.org/strengthening-cbp-use-body-worn-cameras.
11 Chris Rickerd, ACLU, A Dangerous Precedent: Why Allow Racial Profiling at or Near the Border https://www.aclu.org/blog/speakeasy/dangerous-precedent-why-allow-racial-profiling-or-near-border (Dec. 8, 2014).
12 President's Task Force on 21st Century Policing, Interim Report (March 2015), *available at* http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf.

Statement for the Record

U.S. Senate Homeland Security & Governmental Affairs Committee

"Securing the Border: Fencing, Infrastructure and Technology Force Multipliers"

May 13, 2015

Founded in 1982, the National Immigration Forum (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.

Introduction

The National Immigration Forum (the Forum) thanks the Committee for the opportunity to provide its views on this hearing to discuss the matter of American border security. While it is important to consider what technology and infrastructure is needed at the border, we believe that passing broad immigration reform would have the most significant impact on border security. 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. We urge the members of the Committee not to lose focus on the on-going need to fix our broken immigration system through broad reform that includes a path to eventual citizenship.

We maintain relationships with the faith, business and law enforcement communities all across the country as well as with local non-governmental organizations. Our relationship with individuals outside of the Beltway, especially those in border states helps inform our views on border security. Based on conversations with these individuals, it is clear that our country needs sound border security policies and effective enforcement that is humane and transparent and takes into account the impact on the 15 million people who live along our borders. Smart enforcement and border security, coupled with immigration reforms that promote legal immigration, can improve security at the border and make our ports of entry more efficient for commerce. Moreover, 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.

Congress must avoid repeating the mistakes of the 1986 Immigration Reform and Control Act, which resolved the status of most undocumented immigrants but failed to provide for adequate future flow of legal immigrant labor. That oversight more than anything contributed to the

continued flow of undocumented immigrants into the country. Last summer's influx of unaccompanied children and families was not due to a lack of enforcement at our border, but rather, it is because the antiquated immigration system is not set up to deal with the humanitarian crisis in Central American and the unexpected influx of women and children seeking refuge.

On Capitol Hill, "border security first" is a common refrain in any conversation about immigration reform. Senate bill S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, mandated that an additional $38 billion be spent on border security and that the size of the border patrol be doubled. This approach failed to take into account the progress already made at the border and that U.S. border cities are statistically safer than other cities in their state. At the same time, S. 744 did set achievable conditions for legalization to move forward. 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."

Current State of Technology, Infrastructure and Fencing at Border

The Office of Border Patrol (BP), a department within CBP, is the primary federal law enforcement organization responsible for detecting and preventing undocumented immigrants, terrorists, and contraband from entering the United States. In carrying out its mission, BP relies heavily on fencing, infrastructure and technology.

In recent years, there has been an incredible amount of progress increasing the level of enforcement at our borders. 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.

651 of the 652 miles that the Border Patrol feels is operationally necessary has been built. 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 273 Remote Video Surveillance Systems with day and night cameras deployed on the Southwest Border. In addition, the agency relies on nearly 12,000 underground sensors 40 Mobile Surveillance Systems and 178 mobile video 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 over 100 aircraft and 8 Predator B unmanned aerial providing surveillance coverage of the Southwest border across Arizona, New

Mexico, and Texas along with 84 marine vessels. All of additional fencing, infrastructure, technology and boots on the ground are record levels for CBP.

Virtual Fencing

For the past seventeen years, DHS (and previously the Immigration and Naturalization Service) has been attempting to implement new technologies to secure the border, including attempts to create a "virtual border fence."[1] While it has made use of technologies developed by the Department of Defense, DHS has also commissioned its own border-specific equipment, with limited success.[2]

Integrated Surveillance Intelligence System (ISI System)

In 1997, the Clinton Administration implemented the Integrated Surveillance Intelligence System (ISI System) which promised to extend the reach of border patrol agents with "digital eyes and ears", at the border.[3] However, the program fell short of its stated goals. An audit of the ISI System uncovered dubious contracting practices, inadequate equipment and misuse of operations support centers.[4] Auditors found "little or no work performed" at one equipment maintenance and operations support center, even though $6.7 million was annually allocated to support the services the center supposedly provided.[5] Further, the government awarded the $43 million contract to International Microwave Corporation (IMC) without the benefit of competitive bidding.[6] According to a 2005 OIG Review, even though the ISI System showed issues with delays and inadequate integration into larger BP strategy, it was nevertheless incorporated into the next DHS virtual fence project, the America's Shield Initiative (ASI).[7]

In 2004 DHS deployed ASI, which utilized components of the ISI System in a similar attempt to create a virtual fence using radar, sensors and cameras.[8] However, a Review Board found less than a year later that ASI failed to integrate into the larger border control strategy.[9] A 2006 GAO report found ASI lacked adequate definitions of professional positions; as of August 2005, only 3 of 47 program office positions had defined roles and responsibilities.[10] A separate OIG review also described how the Remote Video Surveillance (RVS) system, which was managed under the ISI System and ASI, exhibited numerous problems, included lack of integration between cameras and

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[1] G. W. Schulz. "CIR obtains report describing past border surveillance program" The Center for Investigative Reporting, May 24, 2010. Available at http://cironline.org/blog/post/cir-obtains-report-describing-past-border-surveillance-program-715.
[2] Department of Homeland Security. "Report on the Assessment of the Secure Border Initiative-Network (SBI*net*) Program" 2011. Available at http://www.globalexchange.org/sites/default/files/DHS_Report.pdf
[3] Id.
[4] G. W. Schulz. "CIR obtains report describing past border surveillance program" The Center for Investigative Reporting, May 24, 2010. See note 1 above.
[5] Id.
[6] Id.
[7] Department of Homeland Security, Office of Inspector General. "A Review of Remote Surveillance Technology Along U.S. Land Borders." December, 2005. p. 1. Available at http://www.oig.dhs.gov/assets/Mgmt/OIG_06-15_Dec05.pdf
[8] United States Government Accountability Office, Report to Congressional Committees. "Border Security: Key Unresolved Issues Justify Reevaluation of Border Surveillance Technology Program. February, 2006. p. 7-8. Available at http://www.gao.gov/assets/250/249053.pdf
[9] Id.
[10] Id.

sensors and cost overruns.[11] Ultimately ASI wound up costing taxpayers $163.6 million dollars before it was cancelled. As of 2005, the government had spent approximately $340 million on the ISI System and ASI.[12]

Secure Border Initiative (SBI)

The following year, in another attempt to implement a virtual border, DHS's Customs and Border Protection (CBP) initiated the Secure Border Initiative (SBI), a multiyear, multibillion-dollar program aimed at securing U.S. borders and reducing illegal immigration.[13] The project was set to be constructed along the entire 2,100-mile Southwest border, and in 2010, CBP deployed SBI*net* systems (1st block), at a cost of almost $1 billion along 53 miles of Arizona's 387-mile border with Mexico.[14] CBP intended for the SBI*net* program to include technologies such as fixed sensor towers, a common operating picture and tactical infrastructure to enhance CBP's capability to detect, identify, classify, track and respond to illegal breaches at and between land ports of entry.[15]

Like previous programs, the GAO 2011 assessment of SBI*net* and SBI concluded that CBP had not developed adequate performance metrics justifying additional funding or demonstrating the effectiveness of virtual fence technologies[16]. Further, the report questioned the cost-effectiveness of SBI*net*, as well as the ability of the program to perform within its allocated budget and planned timeline.[17] After five years and nearly one billion dollars, SBI*net* only covered 2.5% of the total border—a mere fifty-three miles.[18] Then Secretary of DHS Janet Napolitano, in January of 2011, issued a directive to CBP to scrap the program — cancel any further procurement of SBI*net* systems — and use existing technology to create a cost effective alternative.[19]

Integrated Fixed Towers

In 2011, while everyone thought that SBI and SBI*net* and its programs were dead, CBP developed the Arizona Border Surveillance Technology Plan (the Plan). The Plan, funded at $242 million for fiscal year 2012, and with a 10-year life-cycle cost estimate of $1.5 billion, would implement Integrated Fixed Towers (IFTs), Remote Video Surveillance Systems and Mobile Surveillance Capability along the remainder of the Arizona border. Unlike SBI, the Plan's use of IFTs would be tailored specifically to individual regions along the border, and not integrated in a "one size fits

[11] Department of Homeland Security, Office of Inspector General. "A Review of Remote Surveillance Technology Along U.S. Land Borders." December, 2005. p. 1. See note 7 above.
[12] Id.
[13] United States Government Accountability Office, Report to Congressional Committees. "Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed before Proceeding." November, 2011. p. 2. Available at http://www.gao.gov/assets/590/586102.pdf.
[14] Id.
[15] Id.
[16] United States Government Accountability Office, Report to Congressional Committees. "Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed before Proceeding." November, 2011. p. 28. See note 1 above.
[17] Id.
[18] Id.
[19] Department of Homeland Security. "Report on the Assessment of the Secure Border Initiative-Network (SBI*net*) Program" 2011. p. 7-9. Available at http://www.globalexchange.org/sites/default/files/DHS_Report.pdf

all" solution to border surveillance.[20] Responding to other criticisms, a DHS report stresses the Plan would utilize competitive awarding of contracts and cost-effective procurement of equipment.[21]

However, similarly to their previous analyses of virtual fence programs, GAO concluded in a 2011 report that CBP's Plan does not have a robust cost estimate — one that includes a level of confidence and quantifies the impact of risk[22] — and recommends that CBP document the analysis justifying the technologies proposed in the Plan, determine its mission benefits, conduct a post-implementation review of SBI*net* and determine a more robust life-cycle cost estimate for the Plan.[23]

In 2012 CBP issued a solicitation for contractors to implement the Integrated Fixed Towers (IFTs) project. Now, DHS reports that it has developed plans for IFTs that will cost only $750 million for the rest of the Arizona border (323 miles), by capitalizing on existing technology and using competitive bidding.[24] To that end, in February of this year CBP award a $145 million contract for IFTs along the Southwest border.[25] CBP stresses the helpfulness of IFTs in aiding Border Patrol agents and enforcing border security more generally. However, the GAO report details several issues that sound extremely familiar to anyone following the "virtual fence" saga over the past decade. Lack of integration into larger border control strategy, failure to effectively evaluate maintenance and environmental costs and inadequate performance metrics continue to be problems that GAO finds in the DHS virtual fence program.[26]

The latest GAO report, issued in March 2014, is again critical of CBP for not developing an Integrated Master Schedule (IMS), which would allow evaluation of the utility and effectiveness of the many different aspects of the Plan.[27] GAO also urges CBP to revise its IFT test plan to better account for environmental factors and durability of equipment, as well as cost of maintenance.[28] While CBP plans on testing IFTs according to mission contributions, it currently doesn't consider environmental variability and equipment effectiveness. Both recommendations for an IMS and revised IFT test plan were rejected by DHS. DHS did concur with four other recommendations, including better management of scheduling and cost estimates.[29]

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[20] United States Government Accountability Office, Report to Congressional Committees. "Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed before Proceeding." November, 2011. p. 2. Available at http://www.gao.gov/assets/670/661570.pdf

[21] Department of Homeland Security. "Report on the Assessment of the Secure Border Initiative-Network (SBI*net*) Program" 2011. p. 7-9. See note 19 above.

[22] United States Government Accountability Office, Report to Congressional Committees. "Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed before Proceeding." November, 2011. p. 20-23. See note 20 above.

[23] Id.

[24] Department of Homeland Security. "Report on the Assessment of the Secure Border Initiative-Network (SBI*net*) Program" 2011. p. 2. Available at http://www.globalexchange.org/sites/default/files/DHS_Report.pdf.

[25] Homeland Security News Wire, "CBP Awards $145 million Border Towers Contract to Elbit" March 6, 2014 available at http://www.homelandsecuritynewswire.com/dr20140306-cbp-awards-145-million-border-towers-contract-to-elbit

[26] United States Government Accountability Office, Report to Congressional Committees. "Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed before Proceeding." November, 2011. p. 29. Available at http://www.gao.gov/assets/590/586102.pdf

[27] United States Government Accountability Office, Report to Congressional Requesters. "Arizona Border Surveillance Technology Plan: Additional Actions Needed to Strengthen Management and Assess Effectiveness." March, 2014. p. 20. Available at http://www.gao.gov/assets/670/661297.pdf

[28] Id.

[29] Id.

Recommendations

The National Immigration Forum recommends the following:

Fix our broken immigration system: Passing broad immigration reform would have the most significant impact on border security. 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.

- **Develop new border security metrics that are transparent and focus on outputs:** DHS needs to adopt transparent metrics to measure border security. When we talk about border security the current discussion centers on input measures such as how many miles of fencing have been built, how many drones are flying or how many boots on the ground we have, but this does not truly measure border security. DHS needs to move away from these measures and focus on output measures that actually assess achievements and progress. DHS actually has some of these metrics but the current lack of publicly available and consistent metrics has greatly contributed to the public's lack of clarity surrounding our nation's border security. It has also made it difficult for members of Congress to hold the agency accountable and to know what additional resources are needed or unnecessary in order to secure our border.

Conclusion

Our country needs effective enforcement that is humane and transparent and takes into account the impact on the 15 million people who live along our borders. Smart enforcement and border security, coupled with immigration reforms that promote legal immigration, can improve security at the border and make our ports of entry more efficient for commerce. Moreover, 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. The American people want better immigration policy. 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. The Forum looks forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law.

Post-Hearing Questions for the Record
Submitted to Mr. Mark Borkowski & Ms. Anh Duong
From Senator Claire McCaskill

"Securing the Border: Fencing, Infrastrueture, and Technology Force Multipliers"
May 13, 2015

Question: When the Department of Homeland Security was created, research and development spending was supposed to be consolidated within the Office of Science and Technology. Yet GAO found that millions of dollars in R&D funding was still being spent by DHS components.

How much is CBP spending on R&D?

Please provide a list of current R&D projects, including any projects with any of the national labs.

Response: As documented in the Department of Homeland Security (DHS) Future Years Homeland Security Program (FYHSP) System, U.S. Customs and Border Protection (CBP) does not budget any funding for Research and Development (R&D). All R&D projects are budgeted and executed by DHS's Science and Technology Directorate (S&T). Any R&D projects that may be reported by the Office of Technology Innovation and Acquisition (OTIA) are related to specific operational capabilities and do not comprise a concerted R&D program for the agency.

The confusion results because "research and development" is often used in an informal and colloquial sense. For example, in many acquisition programs, the program *develops* an operational system. While that system development is not "research and development" in the precise sense, it is sometimes characterized as the mature end of a research and development continuum.

This concept is made explicit in some of the way our budgets are structured. For example, one of the budget elements in the Border Security Fencing, Infrastructure, and Technology (BSFIT) appropriation is specifically called "Development and Deployment"—there's specifically an element of "development," although not specifically "research and development."

DHS S&T has direct responsibility for research and development of less mature technologies and technologies that have broad, cross-cutting applicability. The components tend to have funding responsibility for technology that is nearly ready for deployment in an operational environment (i.e., technology that is very mature) and that is intended for a specific mission application. In between those two extremes, it is not unusual for DHS S&T and components to partner on development activities.

Question#:	1
Topic:	CBP spending on R&D
Hearing:	Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

The DHS approach is not unique to DHS. For example, in the Department of Defense (DoD), research and technology is characterized along a continuum from basic research to system development. The DoD budget structure explicitly "codes" funding from 6.1 (less mature technology—basic research) to 6.5 (system development). The lower maturity efforts tend to be resident in DoD labs, but the higher maturity efforts tend to be part of acquisition programs.

CBP's OTIA is spending approximately $11M of BSFIT funding with DHS S&T on current R&D projects. The current list of projects executed by DHS S&T and funded by BSFIT are:

- Low Flying Aircraft Detection (LFAD) capability along the Northern Border,
- Fiber Optic Trip Wire for detecting illegal crossings along the border,
- Rapid Response Prototype Team (RRPT) – A joint effort with S&T to explore technical solutions that require limited development to explore their potential for border security applications.

Separately from DHS S&T, CBP is spending approximately $3.4M on the development of video analytics that would enhance our current video surveillance systems: specifically, the Waterways Automated Vessel Information (WAVI) system that will be capable of processing and analyzing real-time video surveillance data on the Northern Border waterways.

Question#:	2
Topic:	CBP programs
Hearing:	Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: GAO recently looked at 7 CBP programs, and 4 of them had no department-approved baseline: 1) the Land border Integration program; 2) the Non-Intrusive Inspection Systems; 3) the Strategic Air and Marine Programs; and 4) the Tactical Communications Modernization program. Without an approved baseline, it is impossible to measure whether a program is on track to meet its expected costs. Yet these programs got $4 billion in appropriations through Fiscal Year 2014. Furthermore, none of these programs have passed operational testing by DHS's Operational Test and Evaluation Office and none of them were programs for which acquisition documentation requirements were waived pursuant to former Undersecretary for Management's May 9, 2013 Memorandum.

Who authorized spending for these four programs without department-approved baselines?

Response: Although DHS and CBP have not completed the process of establishing the baseline as reflected in a signed Acquisition Program Baseline (APB) for each of the programs identified, Land Border Integration (LBI), Non-Intrusive Inspection (NII), Strategic Air and Marine Program (StAMP), and Tactical Communications Modernization (TACCOM) have gone through reviews at the Component and DHS level and reviews with Congressional staffs.

In 2011, LBI incorporated Western Hemisphere Travel Initiative (WHTI) and was approved at Acquisition Decision Event (ADE) 2A, which authorized and baselined the program to expand technology to outbound, pedestrian and checkpoint processing. The May 2011 Acquisition Decision Memorandum (ADM) authorized deployment of outbound, checkpoint and pedestrian technology. LBI fulfilled the ADM's contingencies and continued to implement technology.

CBP has been deploying small-scale NII systems since the 1980s, prior to the current DHS acquisition policy. Currently, the program is focused on maintaining its fleet of aging NII systems, most of which will reach the end of their useful lifespan by 2020. In 2009, the Department issued an ADM for the program to execute America Recovery and Reinvestment Act (ARRA) funding. The NII program does not have an approved Test and Evaluation Master Plan (TEMP). A TEMP was developed in the 2008 to 2009 time frame, but DHS leadership ultimately decided that a TEMP was not warranted, given that NII systems were commercial-off-the shelf (COTS) products largely proven through past performance.

Question#:	2
Topic:	CBP programs
Hearing:	Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

The TACCOM program also pre-dates the current DHS acquisition policy. Over the years, funds were inconsistently applied for procurement and upgrade of the infrastructure. In 2009, the Department reviewed and approved the program's use of ARRA funding to upgrade several operational areas. The Department again reviewed the program in 2010 to check on the status of executing the ARRA funds and an ADM was issued.

StAMP was established in CBP in 2006, prior to the current DHS acquisition policy, to acquire 13 types of air and marine assets. The majority of the StAMP assets have been procured. The program went to the Department ARB in 2008 and 2009 and ADM were issued. There are acquisition documentation records for some of the assets within StAMP that, for the most part, are approved at the component/office level. Since the ARB in November 2014, StAMP has continued to develop in line with the acquisition documents identified in the ADM. This includes an Operational Requirements Document (ORD) and Test and Evaluation Master Plan (TEMP) for the Multi-mission Enforcement Aircraft (MEA); and the Independent Cost Estimate (ICE) for the MEA and H60 program.

For the last four years, CBP component acquisition leadership and DHS representatives have conducted semi-annual reviews of the acquisition programs in CBP. Each program office attends one of two sessions and presents the status (cost, schedule and performance) of the program in question.

Question: For each of these four programs, please provide all final approvals by the Acquisition Review Board and Acquisition Decision Memoranda.

Response: The CBP Component Acquisition Executive's staff has been working with the DHS Office of Program Accountability and Risk Management (PARM) to complete the baselining and review of the four programs. For NII, TACCOM and LBI, the required acquisition documents — lifecycle cost estimates (LCCE) and APB — have been drafted and reviewed. These three programs are on track for review by a DHS Acquisition Review Board (ARB) in September 2015. The approved acquisition documents and ADMs will be signed and available after those ARBs.

The fourth program, StAMP, went through a DHS Program Review in November 2014 and an ADM was issued. The program office has been working to complete action items assigned in the ADM. In particular, the StAMP program office supported the development of an Independent Cost Estimate (ICE) by the DHS Cost Analysis Division (CAD). This ICE will be used to establish the cost baseline for the remaining StAMP efforts. The program office has also developed an Operational Requirements Document

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(ORD) and a Test and Evaluation Master Plan (TEMP) for the Multi-mission Enforcement Aircraft (MEA). As of June 2015, these four documents have been reviewed and the program office is addressing the comments. The Department is planning to bring the StAMP program to review in late June 2015 to check on progress toward a baseline, with an ARB anticipated in October or November 2015.

Question#:	3
Topic:	S&T projects
Hearing:	Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: During the July 17, 2013 Homeland Security and Government Affairs hearing, then-director of the Science and Technology Directorate (S&T) of the Department of Homeland Security (DHS), Dr. Sarah O'Toole stated that S&T will "now not invest unless the head of that component requests that S&T invest in a particular area." In a follow-up question for the record, I requested that S&T provide a list of the projects currently funded by S&T, and I specifically requested copies of the written requests from the components related to each project.

The responses to the questions did not included those written requests, making it impossible to determine if S&T is only funding projects specifically requested by components.

Please provide the written requests from components every project currently being funded or partially funded by S&T.

Response: S&T does not require formal, written requests from the Components for each individual project that S&T funds. Project requirements, which drive S&T investment decisions, originate from a range of sources including the following:

- Authorization and appropriation language from Congress
- Specific capability gaps and strategic focuses identified by Component leadership to S&T, often through direct communication between Component heads and S&T leadership
- Operational-level requests for S&T support in mission areas approved of by Component leadership (e.g., systems analysis and process engineering for a specific Border Patrol Sector to improve the efficiency and effectiveness of operations)
- Secretary and Deputy Secretary priorities, communicated both directly and through departmental bodies such as the Deputy Secretary's Management Action Group or Secretary-led Counter Terrorism Advisory Board
- Departmental, interagency, and intergovernmental groups (e.g., the First Responder Resource Group, which draws first responders together from throughout the nation to gather, prioritize, and advise on the needs of state, local, tribal, and territorial responders in the field)
- Experience by S&T employees embedded with Component operators through S&T's PIONEER program

Many of the above sources for project requirements originate in or are validated by Components. Many of the above processes were active under Dr. Tara O'Toole, and the remainder were developed or implemented under the leadership of Dr. Reginald Brothers.

Question#:	3
Topic:	S&T projects
Hearing:	Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Component leadership also continue to participate in S&T's annual evaluation of its projects, and the underlying requirements behind those projects, through the Portfolio Review.

In many cases, homeland security missions extend beyond the Department and its operational Components. Because of this, the people who provide the requirements for our projects also include many non-departmental and non-federal stakeholders such as state, local, tribal, and territorial first responders; non-governmental owners and operators of the nation's critical infrastructure; or interagency and intergovernmental partners in crosscutting missions such as biodefense. Though these projects often have indirect ties and benefits to Components, they will not typically be formally designated as such by Components.

We have included copies of any executed agreements we have with Components in Appendix A and would be happy to arrange a briefing to provide greater detail or answer any additional questions you may have.

THE 2014 HUMANITARIAN CRISIS AT OUR BORDER: A REVIEW OF THE GOVERNMENT'S RESPONSE TO UNACCOMPANIED MINORS ONE YEAR LATER

TUESDAY, JULY 7, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Ayotte, Ernst, Carper, Baldwin, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to first welcome our witnesses. I appreciate your testimony, which I have thoroughly read and studied. The hearing is really called to take a look at a one-year lookback at the humanitarian crisis that we experienced last year as unaccompanied children (UAC) streamed across our border in record numbers. The flow has been reduced, but I would still say it is at almost humanitarian crisis levels, and rather than read an opening statement, I will ask for unanimous consent to enter my written statement in the record.[1]

I would like to concentrate on a piece of Mr. Greenberg's testimony. I want to read a little bit of it, as soon as I find it.

Mr. Greenberg in his written testimony says, "In recent years, the number of unaccompanied children referred to the Department of Health and Human Services (HHS') Unaccompanied Children Program each year was generally in the range of 6,000 to 7,000 until fiscal year (FY) 2012. Those numbers increased from 2012 through 2014, from 13,625 in fiscal year 2012 to 24,668 in fiscal year 2013 to 57,496 in fiscal year 2014."

He goes on to say, "As I will discuss later, the number has fallen considerably in the last year, though it is still high relative to caseloads prior to fiscal year 2012."

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[1] The prepared statement of Senator Johnson appears in the Appendix on page 1241.

Now, we have presented this chart[1] a number of times that graphically depicts the dramatic increase in the unaccompanied children coming in primarily from Honduras, Guatemala, and El Salvador. And I do this from a standpoint of trying to lay out pictorially when did it all occur and what happened. And there is one dramatic event that occurred in 2012. It is called "Deferred Action on Childhood Arrivals (DACA)." It was implemented by this Administration, and I know there is an awful lot of state of denial from—saying, "Oh, that did not really cause this; it is a push factor." There are multiple factors, there is no doubt about it. But I think it is really quite clear that that unilateral Executive Action on Deferred Action on Childhood Arrivals was the primary cause for this surge. And what I want this hearing today to talk about is the incentives we create in this country in our laws for people to come into this country illegally.

We are a nation of immigrants. We need to recognize the fact that people that come into this country by and large are coming for the exact same reason our ancestors came here: they are seeking the opportunity that this country offers people. We need to understand that and we need to, to a certain extent, respect that if it is done legally. We cannot tolerate an uncontrolled border, an unsecured border, and an immigration process that is out of control that is all based on illegal immigration.

So we have to really take a look at our laws and take a look at those incentives for illegal immigration. Again, I would certainly look at Deferred Action on Childhood Arrivals as one of those incentives that created this crisis. So that is, from my standpoint, what I want to glean from this hearing today in the testimony and the questions we will be asking.

It is a serious issue. People's lives are put at risk because of these incentives, and we need to get to the bottom of this.

The other point I want to make is the difficulty in getting the information to actually solve this problem. Part of the problem there is we have three different departments with five different component agencies dealing with this, and these children are passed from one department and agency to the other, and we do not keep a real flowing record, and each agency is charged with a certain responsibility in the process, and there is just no overall coordination of everybody's effort. And from my standpoint, I do not believe we are really truly enforcing the laws the way that they were meant to. And as a result, we continue to incentivize this kind of illegal immigration. That has got to stop.

So, with that, I will turn it over to our Ranking Member, Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. Welcome to one and all. It is good to see you. Thanks for joining us today and for your testimony.

One of the things I think most of us here, whether Democrats or Republicans, agree on is that it is important that we address not just symptoms of problems, but that we address root causes, under-

[1] The chart referenced by Senator Johnson appears in the Appendix on page 1279.

lying causes that contribute to those problems. As the Chairman has said, there is no one single reason why all these people decided to come up to our country in droves the last couple of years. But I would suggest that one of the reasons why they want to come up here is because for a number of years they have lived hellacious lives that we contribute directly to.

We buy a lot of illegal drugs up here. A lot of it comes right through Honduras, Guatemala, and El Salvador. We sell them guns, and those guns are used to arm their gangs. The gangs make money off of the drugs that are sold here. The environment for job creation in those three countries is not very good because of the lack of rule of law. And when we deport people, we do not always deport, as we know, unaccompanied minors or maybe families with children, but adults, particularly adult males that have a criminal record. We send them right back down there. And what do they do? They go to work. And the work that they go to work on creates an even more dangerous, unappetizing, uneconomic environment. So I always keep that in mind. We contribute directly to the very difficult lives they have in those countries, and we have some obligation to do something about that, and I will talk about that in just a moment.

But as the Chairman says, a year ago we faced a humanitarian crisis at our Southern Border. Tens of thousands of women and children were turning themselves in to our Border Patrol agents and seeking protection after a grueling trip from Central America. Our border officers were overwhelmed in many instances. So were our shelters to house these children and families.

To address this crisis, our government swung into action on multiple fronts. We sought to comply with the 2007 law signed by former President George W. Bush dealing with unaccompanied minors. We set up emergency shelters. We surged agents and immigration judges to border areas. And we worked to find safe homes for the children until their cases could be adjudicated.

We also worked with the Governments of Guatemala, Honduras, and El Salvador to launch what I call the "truth campaigns," letting the people in those countries know about the dangers of the trip to the north, to the United States. And we collaborated with the Government of Mexico so that nation might better strengthen the integrity of its Southern Border. And it has.

Many others provided support, too, including local communities and faith leaders.

One year later, we no longer have a crisis, at least not of the proportion we did a year ago. It is true that many families and many children are still fleeing these countries, but those numbers are clearly down, I think by a little more than half. In fact, while that is an improvement, is that enough improvement? No, it is not. But even though the crisis appears to be over, we still have humanitarian responsibilities to protect the children in our custody, and we have a moral obligation to treat them fairly under our laws until we change those laws.

We must do this even as we try to resolve their cases more expeditiously and return to their own countries those who do not have grounds to remain here. I look forward to hearing from our wit-

nesses today about how you work together to effectively process and care for so many children.

While our border and immigration agencies are better equipped today than ever to handle another influx of immigrants, there is still a lot of progress that needs to be made. One area that I would like to focus on today is our immigration court system. As we all know, our immigration courts were badly understaffed even before last summer's border surge. With tens of thousands of new cases, wait times have gotten much worse. In fact, some immigrants with pending cases were informed they might not get a hearing before November 2019. Clearly, this is unacceptable.

That is why I wrote to our colleagues on the Senate Appropriations Committee earlier this year urging them to fund the President's request for 55 new immigration judge teams. I am pleased to say that the request appears to have garnered support in both chambers. These new judges will not solve the problem entirely, but they sure will be a big help.

We also know that cases often advance more efficiently when unaccompanied minors have a lawyer. Not surprisingly, most of these minors cannot afford one. That is why in Delaware, and in communities across the country, many lawyers have stepped up to the plate to offer pro bono legal services. I could not be prouder of the legal community in my own State. But many minors all over the country still lack attorneys, so there is work clearly to be done.

Ensuring an efficient and effective border security and immigration system is incredibly important. However, I believe we must also not lose sight of the reasons why, as I said earlier, so many folks feel the need to flee their country.

If we are to realize the kind of border integrity along our border with Mexico, we need to work with these three Central American countries—Honduras, Guatemala, and El Salvador—but not just them. We need to work with Mexico, we need to work with Colombia, with the Inter-American Development Bank, and others—the church, nonprofits—to help root out the causes of violence and poverty in the Northern Triangle while we do all this other stuff that we are trying to do.

Not that many years ago, we encountered a similar challenge in Colombia. We all recall that. And most people would agree that our support—along with that of others—helped turn that country around through the implementation of Plan Colombia. We also know that Mexican immigration has leveled off in large part because of the economic advances in that country. Meanwhile, Central American migration has spiked because of the intense violence and poverty in that region. Young people are particularly vulnerable to gang violence.

The Governments of Guatemala, Honduras, and El Salvador must take the lead on this—and they are. These three countries have already joined together in an unprecedented regional effort called the "Alliance for Prosperity" to improve the lives of their citizens. I like to say, as in Home Depot they advertise, "You can do it, we can help." They can do it, we can help, and we have an obligation to do that.

Later today, Senate appropriators will take up the administration's request for a dramatic new infusion of Federal aid to Central

America. I hope the appropriators will heed the President's call for a new focus and investment there. And by doing so, we can help sow some new seeds of hope and prosperity that can benefit generations of children to come.

Needles in haystacks. I think about it in terms of needles in haystacks. There is a big haystack down on the border. We are trying to pick out the needles. And the needles are people, families trying to get through, drug runners trying to get through, human traffickers trying to get through. And the haystack is huge. We need to make the haystack smaller, and one of the things we need to do that is to support the administration's proposal. It is like a new version of Plan Colombia. Plan Colombia worked. I think this one will work as well. In the meantime, we have got to do a whole lot of other stuff that we will hear about and talk about here today.

Thank you all.

Chairman JOHNSON. Thank you, Senator Carper. As you are well aware, I am all into root cause analysis, and I will agree with you. If you take a look at what is causing our unsecured border, I would say the root cause is our insatiable demand for drugs. And in testimony before this Committee by General McCaffrey, if you really want a metric that shows you how unsecure our border truly is, it is how much of the drugs we are actually interdicting. It is about 5 to 10 percent, even though we are spending, with all the agencies spending, about $25 billion on a war on drugs.

So, again, I agree with you. That is a root cause. But within that overall root cause of the overall problem, there are individual situations, and this is, the unaccompanied children coming in from Central America. I think there is a root cause there, and I think it is called "Deferred Action on Childhood Arrivals."

It is the tradition of this Committee to swear in witnesses, so if you will all rise and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. OSUNA. I do.

Mr. GREENBERG. I do.

Mr. MILLER. I do.

Mr. LANGLOIS. I do.

Chairman JOHNSON. Thank you. Our first witness will be Juan Osuna. Am I pronouncing that correctly?

Mr. OSUNA. That is correct.

Chairman JOHNSON. Good. Mr. Osuna is the Director of the Executive Office for Immigration Review (EOIR) at the U.S. Department of Justice (DOJ). Mr. Osuna served as an Associate Deputy Attorney General at the DOJ from June 2010 to December 2010, where he worked on immigration policy and other issues. From May 2009 to June 2010, Mr. Osuna was the Deputy Assistant Attorney General in the Civil Division, Office of Immigration Litigation. Prior to these positions, he served as Chairman of the Board of Immigration Appeals. Mr. Osuna.

Senator CARPER. Mr. Chairman, could I just interrupt for a second? If I can just ask a favor. I am not very good at acronyms. The Department of Homeland Security (DHS), I have got that. U.S. Immigration and Customs Enforcement (ICE), I have got that. But in reading your testimony, a couple of you used a lot of acronyms, and

if you persist in doing that, you are going to lose me. So just try to show some temperance there. Thank you.

TESTIMONY OF JUAN P. OSUNA,[1] DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE

Mr. OSUNA. Good morning, Mr. Chairman, Senator Carper, and Members of the Committee. Thank you for the opportunity to speak with you today about the mission of the Department's Executive Office for Immigration Review, our role in response to last year's border surge, and the work we continue to do with our Federal partners on this issue.

Our role in the removal process is to hear the cases of individuals charge with violating our immigration laws and deciding which of those individuals should be removed from the United States and which are eligible for some relief from removal.

We carry out this mission through our corps of immigration judges in 58 immigration courts around the country and our appellate tribunal, the Board of Immigration Appeals. All our cases start when the Department of Homeland Security files a charging document with one of our immigration courts.

Among the many challenges facing our courts, the largest is our growing pending caseload, which you referred to earlier, Senator Carper. There are more than 450,000 cases pending in immigration courts around the country, by far the most we have ever had. This backlog grew during recent budget cuts when the agency was unable to hire immigration judges and staff to replace those who left. In fact, while our immigration judge corps was shrinking, we continued to receive new cases, resulting in a continuously rising backlog.

From last summer's surge alone, the courts received more than 80,000 cases between July 14, 2014, and June 30 of this year. We are taking steps to increase our capacity to adjudicate cases through a vigorous hiring effort, and hiring judges is our first priority. Overall, with the 18 immigration judges that we added a few weeks ago, there are now 247 immigration judges around the country, and dozens more are at various stages of the hiring process.

Like our Federal partners, we took steps to respond to last year's border surge by adding new priorities to our existing priority, for all detained cases. Specifically, we added to our priority list unaccompanied children and those who arrived with children. We depend on our partners at DHS to identify these groups upon the filing of the charging document with the immigration court, and we are processing these cases as quickly as possible consistent with due process.

As anticipated, when we identified these new priorities, the focus of our limited resources on these priority case groups has had a significant impact on the non-detained, non-priority cases awaiting adjudication. Thousands of these cases have to be rescheduled far into the future to make room for the higher priority cases. Overall, 45 percent of case completions in our immigration courts so far this

[1] The prepared statement of Mr. Osuna appears in the Appendix on page 1245.

year have been in priority categories, meaning individuals detained by ICE and those who crossed the border since last year.

The numbers provide some insight into the work the immigration courts are doing. From July 18, 2014, when we started tracking our new priority case groups, to June 30 of this year, the immigration courts received approximately 35,000 cases for respondents DHS identified as unaccompanied children. It is important to note that many of these cases involving such children may not be currently pending before the court because the children are pursuing some sort of relief from removal, which requires work by the U.S. Citizenship and Immigration Services, which you will hear from a little later, which has initial jurisdiction over these cases.

The pending caseload for unaccompanied children is currently approximately 23,000. With a goal of holding an initial hearing for unaccompanied children within 21 days after receiving the case, I can report that more than 27,000 children have had an initial hearing scheduled by an immigration judge the date for which has passed, and immigration judges have issued more than 6,800 orders of removal.

Under the law, orders of removal in absentia result from an individual's failure to appear for a scheduled and properly noticed hearing when ICE has established that the person is removable. With regard to unaccompanied child cases, immigration judges have issued orders of removal in absentia in about 5,900 cases.

Children who appear in immigration court proceedings without an accompanying adult may require special care and modifications to normal courtroom procedures. We have in place guidance for adjudicating cases where the respondent is an unaccompanied child. Further, circumstances in a particular immigration court may require specialized dockets for children's cases. Following last summer's surge, all immigration courts are equipped to handle a juvenile docket, and 39 courts have current active juvenile dockets. Immigration judges also receive specialized training, most recently in April of this year, regarding juvenile cases.

We recognize that the presence of a representative can increase immigration court efficiencies, especially with children. We have taken numerous steps to encourage pro bono counsel to provide representation, and we ensure that unrepresented children are aware of those resources when they appear before immigration judges.

To assist in these endeavors, we operate a legal orientation program for child custodians under which custodians of unaccompanied children are provided with important information on pro bono resources, the immigration court process, and their roles and responsibilities. And a few months ago, we launched some representation programs that now operate in 24 immigration courts to provide direct representation to unaccompanied children.

Last year's border surge posed significant challenges for all Federal agencies, including ours. We responded by taking steps to work toward hearing these priority cases as quickly as due process allows. These steps included making docket adjustments, reprioritizing certain cases, and refocusing our immigration court resources. We are in continuous and frequent contact with our Fed-

eral partners at DHS and HHS on how we can continue to improve our collective handling of these challenging cases.

Thank you, and I am happy to answer any questions you may have.

Chairman JOHNSON. Thank you, Mr. Osuna.

Our next witness is Mr. Mark Greenberg. Mr. Greenberg is the Acting Assistant Secretary for the Administration for Children and Families at the U.S. Department of Health and Human Services. We have got that one, right?

By the way, I like your acronym, EOIR.

He also serves as both the Principal Deputy Assistant Secretary and the Acting Commissioner for the Administration for Children, Youth, and Families. Before joining HHS, Mr. Greenberg directed the Georgetown University Center on Poverty, Inequality, and Public Policy. Mr. Greenberg.

TESTIMONY OF MARK H. GREENBERG,[1] ACTING ASSISTANT SECRETARY, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. GREENBERG. Chairman Johnson, Ranking Member Carper, Members of the Committee, thank you for inviting me to testify today. In my testimony, I will be describing the responsibilities of the Department of Health and Human Services in relation to unaccompanied children and will then talk about a set of key developments relating to those responsibilities since the Committee's hearing on this topic last summer.

When unaccompanied children are referred to us by the Department of Homeland Security, we initially place them in one of a network of shelters while staff work to determine if they have an appropriate sponsor with whom they can live while they are awaiting their immigration proceedings.

When they arrive at a shelter, children are provided with a complete medical examination within 48 hours. Trained staff at the shelters conduct screenings to determine if the child may be a victim of abuse or a crime or human trafficking. Children in care receive medical, dental, mental health services, education services, recreational opportunities, a legal rights presentation, and access to legal services, access to religious services, case management, and clinical counseling.

While the children are in care at the shelters, we have a responsibility to place them in the least restrictive setting that is in the best interest of the child, taking into consideration the risk of harm to themselves or to the community or risk of flight.

Initially, we seek to place children with a parent or a close relative or, if that is not possible, a more distant relative or a family friend. If we cannot identify an appropriate sponsor and the child does not get repatriated or attain immigration relief, the child will remain in HHS case until he or she turns 18, at which point we will remand the 18-year-old to the custody of the Department of Homeland Security.

We seek to ensure that sponsorships are safe and appropriate. We require verification of the sponsor's identity and relationship to

[1] The prepared statement of Mr. Greenberg appears in the Appendix on page 1252.

the child. The potential sponsor must undergo a background check and complete an assessment that identifies risk factors and other serious concerns. In a set of cases, caseworkers perform home studies as an additional safety measure.

As part of the placement process, potential sponsors must agree that they will ensure that the child appears at court proceedings and must agree to inform the Department of Justice and Department of Homeland Security of any change of address. In addition, when we release the child to the sponsor, we provide the address information to the Department of Justice and the Department of Homeland Security.

I now want to highlight some key developments since last year's hearings. As you noted, last year it was the highest number of children in the history of the Unaccompanied Children Program. This year, the numbers are down significantly, though still high in historic terms.

Last year, we received over 57,000 referrals from the Department of Homeland Security. In the first 8 months of this year, we have received fewer than 18,000.

Last year, the President directed the Secretary of Homeland Security to establish an interagency group, the Unified Coordination Group (UCG), to ensure unity of effort across the administration. The UCG continues to operate. It has an ongoing role to facilitate requests from the Department of Homeland Security or HHS, if needed, and this can include requests for additional capability, operational coordination, planning support, situational assessment, and critical transportation capabilities.

Operating the Unaccompanied Children Program presents multiple challenges because of uncertainties about how many children will arrive and when. Incorporating lessons from last summer, we developed what we refer to as a "bed capacity framework" to ensure that we have enough year-round standard beds with the ability to quickly add temporary beds when there are seasonal fluctuations. This is a model that reduces funding during periods of low capacity while preserving the ability to respond to future increases.

Since 2011, we have reduced the amount of time children stay in shelters from an average 72 days to a little more than 30 days. We have maintained the average this year at 34 days.

While we seek to ensure that all releases are safe and appropriate, we know that sometimes a child may develop concerns about his or her placement, and in April, we expanded our help line in order to receive calls from children who are in distressed circumstances.

In addition, starting this month, HHS is beginning to offer post-release services to a child and sponsor in the first 6 months after release if a placement has been disrupted or is at risk of disruption.

In December of last year, we published our interim final rule that outlines safeguards that all of our facilities have to implement to protect children in custody from sexual abuse.

Last September, we provided funds to two grantees to expand legal representation. On June 15, we issued proposals for contractors to further expand the provision of legal services.

We welcome working with the Committee and Congress in efforts to improve the program. Thank you, and I will be happy to answer any questions.

Chairman JOHNSON. Thank you, Mr. Greenberg.

Our next witness is Mr. Phil Miller. Mr. Miller is the Assistant Director of Field Operations, Enforcement and Removal Operations, for the U.S. Immigration and Customs Enforcement at U.S. Department of Homeland Security.

That is ICE, and that is a whole lot easier to say than the long title.

Mr. Miller has served in a variety of positions——

Senator CARPER. ICE is good.

Chairman JOHNSON. Well, we know that one.

Mr. Miller has served in a variety of positions in the Department, beginning as an immigration inspector in 1996, and becoming a deportation officer in 1998, ICE Special Agent in 2001, and Field Officer Director of the New Orleans Field Office in 2009. Mr. Miller.

TESTIMONY OF PHILIP T. MILLER,[1] ASSISTANT DIRECTOR OF FIELD OPERATIONS, ENFORCEMENT AND REMOVAL OPERATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MILLER. Thank you, and good morning. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the role of ICE in addressing the ongoing challenges surrounding unaccompanied children arriving in the United States.

I currently serve as the Assistant Director of Field Operations, for ICE Enforcement and Removal Operations, where I oversee, direct, and coordinate the operational activities throughout the Nation's 24 field offices and their sub-offices. This includes the transportation and removal of unaccompanied children to further agency goals and ensure compliance with agency policy.

As you know, in 2014, there was an unprecedented influx of unaccompanied children from Central America to the United States. Through the whole of government, we continue to address this humanitarian border security issue in a manner that is comprehensive, coordinated, and humane.

As part of the unified effort, ICE is responsible for quickly and safely transporting unaccompanied children from the custody of U.S. Customs and Border Protection (CBP) to the custody of HHS and, if ordered, the removal of these children following the conclusion of immigration proceedings. Both of these functions are critical links in the overall process.

While unaccompanied children are not housed in ICE's detention facilities, their short-term care and custody requires the use of agency resources and the time and attention of ICE's officers. During the time that ICE maintains physical custody of the unaccompanied children for transportation and pending their placement with HHS, such minors are separated from adult detainees. Unac-

[1] The prepared statement of Mr. Miller appears in the Appendix on page 1267.

companied children are provided with regular access to snacks, drinks, consular officials, telephones, and other resources.

ICE transports unaccompanied children via ground, commercial air, and ICE charter flights. All 24 ICE field offices have primary and backup juvenile coordinators each of whom receive annual specialized training with respect to the unique vulnerabilities of children. These field office juvenile coordinators, a duty that I personally performed in 1999, serve as a local subject matter expert on proper processing, transportation, and placement of unaccompanied children. Additionally, they monitor operational practices for compliance with regulations, standards, and policy, and they are on call 24 hours a day, 7 days a week.

Currently, due to immigration court backlogs, immigration processes take months or even years. However, once removal proceedings have concluded and a final order of removal is issued, ICE takes appropriate enforcement action based on the Department's stated priorities.

Accordingly, HHS can transfer custody of an unaccompanied child to Enforcement and Removal Operations (ERO) and then ERO will remove the unaccompanied child in cooperation with HHS and the receiving government.

We have taken a number of steps to prevent further surge this year.

First, the President and Secretary have reiterated that recent arrivals and those attempting to cross the border are priorities for apprehension and removal.

Second, ICE has implemented procedures for efficiently obtaining travel documents and transferring unaccompanied children through a streamlined process that allows our ERO officers to continue to perform their other responsibilities.

Third, Secretary Johnson and Director Saldana have personally met with high-level officials in El Salvador, Mexico, Honduras, and Guatemala to secure their cooperation in stemming the flow of their citizens into the United States. While the humanitarian influx is a seasonal challenge, early indications are that our efforts are paying off.

While I am confident that we will not see a repeat of last year's unprecedented numbers, we are better prepared than ever before to deal with the arrival of unaccompanied children along the Southern Border. With the Committee's support, we continue to work closely with our sister agencies to address the care and processing of unaccompanied children arriving in the United States in a unified manner.

Thank you again for the opportunity to appear before you today, and I welcome your questions.

Chairman JOHNSON. Thank you, Mr. Miller.

Our final witness is Mr. Joseph Langlois. Mr. Langlois is the Associate Director of the Refugee, Asylum, and International Operations for U.S. Citizenship and Immigration Services (USCIS), at the U.S. Department of Homeland Security. Mr. Langlois is a career civil servant at USCIS, serving for more than 35 years in various positions from asylum officer to the Chief of the Asylum Division. Mr. Langlois.

TESTIMONY OF JOSEPH E. LANGLOIS,[1] ASSOCIATE DIRECTOR, REFUGEE, ASYLUM, AND INTERNATIONAL OPERATIONS DIRECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. LANGLOIS. Mr. Chairman, Senator Carper, and other distinguished Members of the Committee, thank you for the opportunity to testify at today's hearing on unaccompanied children. My name is Joseph Langlois, and I am the Associate Director of the Refugee, Asylum, and International Operations Directorate within U.S. Citizenship and Immigration Services, at the Department of Homeland Security. I oversee the asylum program at USCIS, which plays a critical role in upholding our Nation's long tradition of providing protection for those who have been persecuted or have a well-founded fear of persecution. My testimony today will focus on USCIS' role in adjudicating asylum applications filed by unaccompanied children.

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) changed the track for unaccompanied children seeking asylum in removal proceedings and introduced a new role for USCIS. Prior to the TVPRA, only immigration judges had jurisdiction to adjudicate asylum applications filed by unaccompanied children in removal proceedings. Under the TVPRA, unaccompanied children in removal proceedings now have the ability to file their asylum applications with USCIS. This arrangement allows unaccompanied children to initially present their claims in a non-adversarial interview with a USCIS asylum officer rather than in adversarial proceedings before an immigration judge. While the forum in which the claim is initially heard is changed, the eligibility standard for asylum remains the same.

In addition, if the asylum officer does not grant asylum, USCIS coordinates with ICE to transfer the case back to immigration court where unaccompanied children may renew their asylum claims in adversarial proceedings before an immigration judge.

Since implementation of TVPRA in 2009, approximately 13,000 unaccompanied children have filed asylum applications after having been placed in removal proceedings. Since TVPRA became law 6 years ago, USCIS has granted asylum to approximately 4,000 unaccompanied children. While the number of unaccompanied children being granted has been low compared to the number of arrivals and the number of applications, USCIS serves a vital role in protecting unaccompanied children who have been persecuted or have a well-founded fear of persecution by providing a non-adversarial forum to elicit their claims.

The asylum application process generally begins when a minor who was determined to be an unaccompanied minor by CBP or ICE indicates an intention to apply for asylum while in removal proceedings. ICE then instructs the unaccompanied child to file the asylum application with USCIS. In the meantime, the immigration judge grants a continuance of the removal proceedings or administratively closes proceedings in order for the unaccompanied child to file the application with USCIS and for USCIS to adjudicate the asylum application.

[1] The prepared statement of Mr. Langlois appears in the Appendix on page 1273.

During the pendency of the asylum case, asylum officers communicate with ICE attorneys to provide progress reports on the case, verify the status of removal proceedings, confirm court hearing dates, and arrange for the transfer of files between ICE and USCIS.

After USCIS receives the case, an asylum officer conducts an in-person, in-depth, non-adversarial interview of the unaccompanied child to fully explore the asylum claim. In addition, the asylum officer researches country conditions, completes a wide range of required biometric and biographic security checks. The asylum officer then determines whether the applicant is eligible for asylum and drafts a decision. Before any decision is finalized, a supervisor reviews the case to ensure that the decision is supported by the record and comports with the law.

In conclusion, USCIS plays an important role in adjudicating asylum applications for the small portion of unaccompanied children who choose to apply. USCIS continues to monitor trends of new application filings and stands ready to meet any future challenges with a firm commitment to quality and integrity.

Thank you for the opportunity to testify. I would be more than happy to answer your questions. Thank you.

Chairman JOHNSON. Thank you, Mr. Langlois.

Let me start with the chart.[1] As I stated earlier, there are multiple causes for, obviously, children coming into this country, but does anybody want to take a look at that chart and basically dispute my overall conclusion of what the primary cause of the spike of unaccompanied children coming to this country was Deferred Action on Childhood Arrivals, the message that we are sending to Central America that if you get to America, you are pretty well home free? Does anybody want to volunteer a challenge to that conclusion?

[No response.]

OK. Then I will—Mr. Greenberg? You twitched.

Mr. GREENBERG. First, I want to make clear that HHS is not an immigration agency, is not responsible for immigration policy, and our responsibilities are principally about providing shelter for the children and getting them to appropriate sponsors. The work on reasons for why children are coming is principally the work that has been done by the State Department and the Department of Homeland Security, and I would refer to the recent GAO report on this issue.

The GAO report highlights the importance of crime and violence and economic conditions in the home countries.

Chairman JOHNSON. Let me just ask, has there been a dramatic increase in crime or a dramatic reduction in economic conditions in Central America starting in the year 2012 that would be kind of a trigger for that, be a catalyst for that type of enormous spike? I have the murder rates, homicide rates per 100,000, and quite honestly, in most of these countries, they have dropped in El Salvador in 2009, 71; 2010, 64; 2011, 70; 2012, 43; 2013, 40. So, again, I realize Central America is not America, and, you have got a huge

[1] The chart referenced by Senator Johnson appears in the Appendix on page 1279.

wage differential. These are certainly pull factors. But, again, I am looking at what caused that spike.

I would say that nobody is really disputing that that is certainly a real possible cause right there. Let me get into some numbers here.

Since 2009, from El Salvador, Guatemala, and Honduras, there have been over 100,000—109,000 unaccompanied children coming into this country. Of the children coming in 2009, we returned about 30 percent; in 2010, we returned about 22 percent; in 2011, we returned about 24 percent; in 2012, 12 percent; 2013, 6.2 percent; 2014, 2.7 percent; and as of 2015, about 3.8 percent.

Now, again, we cannot really relate those returned versus when they came in, but that is just the returned versus the children coming into this country.

So, in all, we have returned about 5.7 percent, about 6,248 unaccompanied children, when we have had 109,000 come to this country illegally.

Now, is that sending a signal to people in Central America that as an unaccompanied child, if you come into America, you have a 94.3 percent chance of being able to stay? Is that a disincentive for making that trip or an incentive for making that trip? Anybody want to answer that? I would say it is an incentive.

Mr. Miller, there are currently, I think in your testimony you said about 6,800 final orders of removal that have been issued. Those are adjudicated cases, people have been ordered to be removed; children have been ordered to be removed from this country. So far in fiscal year 2015 we have removed 569. Why aren't we removing the 6,800?

Mr. MILLER. Well, Senator, first, the data I have shows that so far this fiscal year, as of mid-June, we had removed about 1,500 unaccompanied children.

Chairman JOHNSON. So 1,500 versus 6,800.

Mr. MILLER. Yes, sir. As a police manager, I have to look at all of the cases that we have to work, and I can tell you that if I am going to task my officers with going out after criminals that are at large in our community or going out after juveniles who are noncriminals in our community, I think it is good policing to go after the criminals. We face a very dynamic environment in a number of jurisdictions that are no longer honoring ICE detainers, and so rather than my officers being able to go and pick up criminals, convicted criminals in a jail, we have to go out with teams and find these people in the community. That is very resource-intensive, and if we have to prioritize those two populations, I think we are making appropriate prioritization, giving our policing responsibilities.

Chairman JOHNSON. Well, as long as we are talking about criminals, on Sunday we learned that 32-year-old Kathryn Steinle was killed in San Francisco by an illegal immigrant who had seven prior felony convictions. According to ICE data provided to Senators Grassley and Flake, from fiscal year 2010 through fiscal year 2014, 121 criminal aliens were released and have been subsequently charged with a homicide-related offense. What do you have to say about that lack of enforcement?

Mr. MILLER. I do not think that the two are necessarily—the larger data that we have been talking with your colleagues on the

House side about, that represented a number of different reasons why those persons could no longer be detained. Many of those are a function of law. There are both criminal—I am sorry, circuit court decisions in the Ninth Circuit; there are also binding Supreme Court——

Chairman JOHNSON. Tell me specifically what is preventing us, when we have people in this country illegally and they have had seven prior felony convictions, why aren't we able to deport those individuals?

Mr. MILLER. In that particular case, our detainer was not honored.

Chairman JOHNSON. Who did not honor it?

Mr. MILLER. San Francisco Sheriff's Department did not honor our detainer that we lodged.

Chairman JOHNSON. So you have no legal authority to detain that person yourself or apprehend them and deport them?

Mr. MILLER. In that particular case, that gentleman has an outstanding felony narcotics warrant, and we feel strongly that the Bureau of Prisons (BOP) made the right decision in trying to resolve that criminal warrant before taking—we are allowed to take further civil action.

Chairman JOHNSON. What is BOP?

Mr. MILLER. Bureau of Prisons——

Chairman JOHNSON. Again, that did not make sense to me right there. So tell me what happened. You seem to know a fair amount about that case. What happened in that case where that individual had seven prior felony convictions and he had been released, repeatedly obviously, and now a young woman is dead? Why did that happen?

Mr. MILLER. In that particular instance, he completed serving a Federal sentence for illegal re-entry after deportation by an aggravated felon. When he completed that sentence——

Chairman JOHNSON. Let me start over. Why didn't ICE pick him up immediately upon that and deport him? What is preventing us from doing just that? We have got him in custody. He serves his sentence. Why isn't ICE right there at the prison door escorting that person back to his country of origin?

Mr. MILLER. As I said, there was an outstanding narcotics warrant, felony narcotics warrant, and Bureau of Prisons, as we would have done the same thing, we would seek to resolve all criminal warrants before we go forward with removal. That has been our past practice for a number of years. We actually operate that within the criminal alien program. As a matter of agency direction, the officers are to resolve outstanding felony criminal warrants before proceeding with removal.

Chairman JOHNSON. So there was another criminal warrant, but he was released into general society to create a murder—or to commit a murder. I mean, does that make any sense to you? Because, I tell you, it does not make any sense to the American public. And that is the problem. That is what we are trying to grapple with here. That is the problem we need to solve. Senator Carper.

Senator CARPER. Just go ahead. How do we solve that problem? Because there is a disconnect here. We have got a guy, he is up, he has been incarcerated repeatedly, a felon, a repeat offender. He

is in prison where, in jail in San Francisco? We have got a drug—what is it? A drug charge against him, a Federal drug charge?

Mr. MILLER. There was a State felony warrant for narcotics.

Senator CARPER. OK.

Mr. MILLER. And I think that the Secretary is taking very proactive steps through the Priority Enforcement Program to try to bring a number of locations that are not honoring immigration detainers. We have established requests for notification that look to overcome a lot of the concerns that our State and local partners had in working through Secure Communities, and by establishment and working through the Priority Enforcement Program, we hope to have communities like San Francisco come back and begin working with us proactively.

Senator CARPER. Is there something we need to do here at our end on the legislative side to make sure that something like this does not happen again?

Mr. MILLER. I am not an attorney, Senator. I am a law enforcement officer, so I cannot really speak to the nuances of law or policy. I am told by our attorneys that there is limited ability to force communities to accept immigration detainers. Also, I think that has not been a historical police practice. Usually we work collaboratively to resolve outstanding criminal warrants and then to transfer custody when requests are made. I think some of the recent court decisions called into question ICE's ability to request that communities hold, sheriffs hold their inmates for 48 hours beyond the expiration of their sentence, and that is one of the reasons why Secretary Johnson in going forward with the Priority Enforcement Program has created a new paradigm where we will be communicating with these jurisdictions before the person is released from custody and being able to safely and effectively ensure their transfer of custody.

Senator CARPER. Maybe this is one that we could work on together to do a better job on. OK. Thank you.

Mr. MILLER. Very good.

Senator CARPER. I asked my staff to look to see if it is only the United States to which folks from Honduras, Guatemala, and El Salvador are fleeing to ask for asylum. What about these other countries? How about Mexico? How about Belize? How about Panama? How about Nicaragua? And they just gave me these numbers, and I thought it was pretty interesting. They said the United States is not the only country that is experiencing significant increases in asylum seekers from those three Central America countries I alluded to. Together, Mexico, Panama, Nicaragua, Costa Rica, and Belize have reported an increase of almost 1,200 percent from 2008 to 2014. That is like a 12-fold increase. And it is not just the United States. I just assumed they just want to come to the United States. Well, they just want to get out of Honduras, Guatemala, and El Salvador. And the numbers I think speak volumes.

Having said that, the numbers are down by about half. In fact, the numbers are down by a little bit more than half from this year to last year. Let me just ask you why the numbers are down by so much. Mr. Osuna.

Mr. OSUNA. Senator, I think there are a number of reasons. I do think that the administration feels that a lot of the measures that

we put in place last year, not only here domestically but also with our partners in Mexico and Central America, have had an effect. Certainly—and I would defer to my colleagues at the enforcement agencies here, but the administration does feel that that has been part of the reason why the numbers are down, is because of many of the——

Senator CARPER. OK. Thanks.

Others, please? Anyone want to share a thought with us? Please, do not be shy.

Mr. MILLER. I would just echo Mr. Osuna in that both Secretary Johnson and Director Saldana have met personally with a number of Central American officials. Coupled with the Department's outreach and coordination with the State Department, we are trying to overcome the message, the marketing by smuggling organizations last year that there were these unreal opportunities that were outside the law. And that seems to be taking hold. I think as Mr. Greenberg said, our colleagues from the State Department know a little bit more about this and the programs that are being operated. But it seems all indications are that our message is being well received, and our international partners are working in a high degree of collaboration to ensure that we do not have the same kind of humanitarian crisis that we did last year.

Senator CARPER. OK. Good, thanks.

Each of you give us one example of something that the Congress needs to do that will help continue to drive those numbers down. Each of you give us one good idea. Mr. Langlois.

Mr. LANGLOIS. Well, I think that——

Senator CARPER. And do it briefly.

Mr. LANGLOIS. Yes.

Senator CARPER. Just one good answer.

Mr. LANGLOIS. I think that cooperating with the nation states that are on the perimeters of these three countries to build their asylum adjudication process would assist us in this endeavor to have sanctuary provided by countries that are in the surrounding area. We have been working with Mexico for quite some time on their asylum system, so that would be one suggestion.

Senator CARPER. OK. Thanks.

Mr. Miller, one good example of what we can do.

Mr. MILLER. Support the President's request for contingency funding. As we saw last year, there was an opportunity to work collaboratively. We are doing that very effectively. Mr. Greenberg and I have been traveling together to the Southern Border to make sure that our teams are aware of the need to work together. But it was very difficult last year. The Department had to reprogram hundreds of millions of dollars and take away from other functions to accomplish our mission. I think with contingency funding in our 2016 budget, we would have that flexibility to not only deal with unaccompanied children, but any other unforeseen crises on the border.

Senator CARPER. All right. Thanks.

Mr. Greenberg, one good example.

Mr. GREENBERG. I need to largely defer to my colleagues on this one. What I would highlight is that in ensuring the efficiency of the

legal process for arriving unaccompanied children, the continued efforts to expand legal representation are essential.

Senator CARPER. All right. Thanks. Mr. Osuna.

Mr. OSUNA. Support the President's request for fiscal year 2016 for more funding for immigration court resources. That enables us to——

Senator CARPER. 55 judge teams?

Mr. OSUNA. 55 judge teams, which I thank you for——

Senator CARPER. I think it is in the—I think the appropriators have picked it up.

Mr. OSUNA. It is.

Senator CARPER. We are grateful for that.

Mr. OSUNA. Those resources are going to be critical for us to be able to have the capability to move these cases as quickly as we can.

Senator CARPER. All right. Good. Thank you all. You did a great job on those acronyms, too.

Chairman JOHNSON. By the way, let me quickly point out, the message we are sending to children in Central America is 2.7 percent of them are returned from 2014. Even using Mr. Miller's updated numbers of 1,500, that is about 10 percent. So, in other words, the message we are sending is if you get to America, 90 percent or more of you will be able to stay. That is the message. From what my understanding is, Mexico is doing a far better job of policing its Southern Border, increasing their apprehensions by 79 percent. I think that is probably the No. 1 reason our numbers are down here, and that is a good thing. Senator Peters.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Thank you, Mr. Chairman, and thanks to the panelists for being here today and your testimony.

As I have said on repeated occasions, I believe that ultimately we need to pass comprehensive immigration reform to deal with these issues in a comprehensive way, which is why we need to have comprehensive immigration reform.

At a hearing earlier this year discussing the Deferred Action for Childhood Arrivals and the Deferred Action for Parents of Americans, I spoke about two Michigan students as an example of the DACA program and what that means in individuals' lives. One of these individuals was someone who came here very young, who knows no other life other than being an American, and came here—not her decision—but came with a parent, did very well in school, became valedictorian of her high school, is now at the University of Michigan with dreams of becoming a physician. Yet without DACA protections, she would be deported, which makes no sense whatsoever, and to me, is not good public policy for us either.

I would like to enter, Mr. Chairman, if I may, a report from the American Immigration Council, and I think it speaks to some of the concerns that you raised as to whether or not this DACA program is responsible for some of the surge that was seen last year.

It is the American Immigration Council's (AIC) Special Report of June 2015, if I may enter that.[1]

Chairman JOHNSON. Without objection, so ordered.

Senator PETERS. Thank you, Mr. Chairman.

Basically, I would just highlight one part of it, where it says, "In its 2012 report, the Office of Refugee Resettlement stated that in a 5-month period between March and July 2012, the Unaccompanied Minor Program received almost 7,200 referrals, surpassing fiscal year 2011's referrals, showing,"—and this is a quote, "showing from the report that the rise in unaccompanied minors predated the implementation of the DACA program. Furthermore, individuals who arrived in the country after January 1, 2007, would not even be eligible for DACA."

Also, although I do not have the report, the Cato Institute did a report on July 29, 2014, and the Cato Institute said: "First, the surge in UAC began long before the June 15 announcement of DACA. It is true that DACA had been discussed in late May 2012, but the surge was underway by that time. From October 2011 through March 2012, there was a 93-percent increase in UAC apprehensions over the same period in fiscal year 2011. Texas Governor Rick Perry warned President Obama about the issues, again, before the DACA announcement."

And, second, they also raise in this Cato report that children coming now are not legally able to apply for DACA. So there are certainly reports from independent groups as wide-ranging as the American Immigration Council to the Cato Institute which dispel that notion.

And I think it goes back to what I said at the beginning of my comments, that ultimately Congress needs to roll up our sleeves, and we have to work to pass comprehensive immigration reform. If we do that kind of reform, we are going to provide clarity and certainty, improve border security, and ensure our immigration system is fair for all and makes our country stronger.

I think it is also important to remember that when we are talking about the unaccompanied children here today, we are referring to kids who came to the United States to seek a better life and who are often fleeing violence and exploitations. Social service organizations in Michigan have cared for some of these children, including teenagers who have fled from sexual trafficking and gang violence, which leads oftentimes to severe depression and attempts at suicide as well.

The United States has legal obligations to consider these children's welfare and to allow their asylum claims to have their day in court. So I think that leads my question to Mr. Langlois. You talked about your asylum program. If you could speak to some specific examples of a child that comes forward who would be granted asylum, what are they facing? Talk specifically and give us two or three examples.

Mr. LANGLOIS. In order to be eligible for asylum, an individual needs to establish that they have experienced past persecution or have a well-founded fear of persecution on one of the five protected

[1] The American Immigration Council Report referenced by Senator Peters appear in the Appendix on page 1280.

grounds. We call it race, religion, nationality, social group, and political opinion.

Individual minors are coming forward, the vast majority—it is over 90 percent that appear in front of us—are represented by counsel. They appear in front of us, and we have small numbers. Our approval rate is approximately 40, 42 percent, but the majority are fleeing severe violence that is connected to at least one of the protected grounds. So that is the overall view of what is occurring here.

Senator PETERS. Now, these children that come before you, you say they go into a non-adversarial situation, but it looks as if the number that actually get into that is a lot smaller than the number of unaccompanied minors that are coming across. So does a child, say a 10-year-old, have to say, "I want to file an asylum claim, and I would like to"—how do they even know that that is the avenue that they need to go?

Mr. LANGLOIS. Individuals who are deemed to be unaccompanied children by CBP or ICE are placed in removal proceedings in front of an immigration judge. When they are in front of the judge, they must request to apply for asylum when they are in front of the immigration judge in the adversarial hearing.

Senator PETERS. How is a 10-year-old going to know that?

Mr. LANGLOIS. The individuals that are in proceedings sometimes do have counsel; they sometimes do not. I am not familiar with how it occurs in front of an immigration judge.

Senator PETERS. Mr. Osuna.

Mr. OSUNA. Senator, I can take that on. It can be challenging for our judges when they have children in front of them, as you can imagine, and you pointed out the scenario perfectly. A 10-year-old in front of a judge, sometimes it is a challenge for the judge to be able to find out exactly what the case is all about.

Our judges take the necessary time to get to know what the child is all about, what the child's case is all about. Sometimes judges will have children come back a couple of times in order to get them comfortable, in order to hear what actually happened to them, and whether they wish to apply for asylum.

The point of taking the time, the judge taking the time, is not just also to hear what the child's case is all about, but also to give the child a chance to find a lawyer. And there are a lot of organizations out there that are stepping up and providing lawyers for these kids.

So for the most part, the process in immigration court is designed to get the child comfortable, to have the judge hear what the case is about, and to give the child a chance to find a lawyer or representative that can then assist them with the application for asylum, or for some other form of immigration relief.

Senator PETERS. If I may just take a brief follow up, the image is striking to have a 10-year-old child standing in front of a judge, and then next to them would be a government attorney, basically, seeking to have them deported. Is there any other place in our justice system here in America where we just allow a young child to stand before a judge without any kind of legal representation and plead their case?

Mr. OSUNA. Not to my knowledge. I think we are—immigration court, because there is no right to appointed to counsel in immigration court, we have those situations. And when it comes to children, it is all the more striking, which is why we are trying to do what we can with our Federal partners to increase representation programs, to do friend-of-the-court models, things like that in a lot of our immigration courts to try to provide as much capacity not just for lawyers but also for responsible adults to step forward and assist the children that are coming before our judges.

Senator PETERS. Because that has got to be a pretty frightening experience for a 10-year-old who may be the victim of violence from where they came, they are fleeing that, and they may be a victim of sexual trafficking, they are trembling, they are scared, and we expect them to understand that they need to start pleading that they have an asylum claim.

Mr. OSUNA. It absolutely can be very intimidating for obvious reasons, which is why we do what we can to try to give specialized training to our judges as to how to handle children coming before them. They are not like any adult case. They have to have specialized training, specialized procedures, specialized children's dockets, which I referred to earlier. And certainly the surge from last year provided that much of a bigger challenge because of the numbers.

Senator PETERS. Thank you. I appreciate it.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Baldwin.

OPENING STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you, Mr. Chairman. I want to thank you and Ranking Member Carper for holding this hearing and thank our witnesses for your insight and time.

When we held a hearing about a year ago, I was very interested in the discussions that the Committee and the witness panel had about root causes of the surge that we experienced in 2014. And it was clear to me that violence and instability in a number of Central American countries were key factors that pushed children to make a very perilous journey to our border. It is critical that we continue to understand the causes so that we can ensure that we do not see another surge as we did last year.

So I wanted to start on that topic, and I recognize we do not have a State Department witness on our panel today, but, Mr. Miller, at the beginning of your written testimony, you talk a little bit about the push and pull factors that led to the influx. You also mentioned in your testimony and in response to a question that Secretary Johnson and Director Saldana have met with officials in Honduras, in Guatemala, and El Salvador to request their cooperation in stemming the flow of their citizens to our borders. And I am wondering if you can outline for us or share with us some of the specific efforts that came out of those meetings and consultations.

Mr. MILLER. Thank you, Senator. While I was not present for those meetings, we were meeting with those officials to try to figure out an effective communications strategy to kind of overcome a lot of the marketing that smuggling organizations were doing to try to encourage children, thinking that they would be receiving some kind of immigration benefit that was not actually waiting for

them on the other side, and it appears that those collaborative efforts are yielding results.

And I would say that from my understanding of the Government Accountability Office (GAO) report—and the State Department has a very robust plan to continue that communication, and they have pointed to a number of indicators of economic difficulties, some of them stemming from agricultural problems, some of them tied to the lack of opportunities for these children. And I think that as we continue to work with our Central American partners and work collaboratively with the Department of State, we hopefully will be able to continue to address those in a unified U.S. Government manner.

Senator BALDWIN. Thank you.

Right now, as was noted by our Ranking Member, the Appropriations Committee in the Senate is looking at the President's request for foreign assistance to implement a new strategy for engagement in Central America. The President's request is at odds with the amount allocated by the House in their appropriations process.

Mr. Miller, in your opinion, what would the impact be on these root causes of the migration if Congress did not engage in a funding level that met the President's request?

Mr. MILLER. I would have fear that we would begin to backslide and lose some of the gains that we have experienced in the past year. And, we are trying to the best of our ability to mitigate a very dangerous journey for these children, and I think the more effective and the more that we can do through the State Department to meet their needs in their home country and work collaboratively with our foreign partners, we are going to mitigate or diminish the humanitarian crisis on our border, which, from my perspective as a law enforcement officer, is a good government function.

Senator BALDWIN. All right. Mr. Langlois, you did a great job of sort of outlining the two tracks of asylum proceedings, adversarial and non-adversarial, as a result of Congress' passing the TVPRA in 2008. You talked quite a bit about some of the training required to conduct child-appropriate interviews to make sure that asylum officers get that type of specialized knowledge in both asylum cases and dealing with children.

I wonder if you can talk a little bit more in detail about the training. Was that initiated back in 2009, or was that in response to last year's surge, or both?

Mr. LANGLOIS. The training to conduct interviews with children has been a longstanding training, I believe, with the asylum corps. I believe the first children's guidelines, for example, came out in 1995 or 1996. So we have had a history of interviewing children for asylum in the United States, and we have utilized a lesson plan to teach individuals the appropriate techniques. We have had a number of outside professors, consultants, and non governmental organizations (NGOs) assist us with the lesson plan. So it has been a long tradition.

The numbers started to increase most recently, which emphasized, of course, the importance of the training, but we have been conducting this training I believe since about 1995, if my recollection is correct.

Senator BALDWIN. And in terms of the resources available to minors who go through your non-adversarial process, tell me about the translation services that are available to minors. And, also, it is non-adversarial, but do minors get legal assistance in negotiating that process?

Mr. LANGLOIS. Unaccompanied children, just like all asylum applicants, have to provide their own interpretation without government expense. We have an interpreter on the telephone that listens in to the interpreting to make sure that it is correct and fraud is not occurring. But the unaccompanied child needs to provide his or her own interpreter at no government expense, as well as an attorney at no government expense.

Now, I did mention that over 90 percent of individual unaccompanied children are represented by the time they get to us, but that is coming from the courts, is where they start before coming to us, and 90 percent is the number that we are looking at. But it is no expense to the government, I believe.

Chairman JOHNSON. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. I want to thank all of you for being here today. One of the things I wanted to follow up on, when Secretary Johnson testified in 2014 about the crisis we were facing from unaccompanied children from Central America, one of the things he recommended at the time—in fact, when he testified before the Senate Appropriations Committee—and I recall hearing him say this—I think it was before this Committee as well. He talked about the differences in the law between countries that are contiguous to the United States of America and countries that are not contiguous to the United States of America. And he said that in terms of changing the law, we are asking for the ability to treat unaccompanied kids from a Central American country the same way as from contiguous countries, and it would help if the Senate amended the law for children to treat the children the same from a non-contiguous country as a contiguous country.

So as I understand it, the law is different if it is a child from Mexico, for example, that comes to the border in terms of what rights and legal explanations can be given that they can voluntarily return, and that that cannot happen with a Central American country. Is that true? And when you talk about steps we could take to help this situation, isn't that one of the steps we could take consistent with what Secretary Johnson told us at the time of this crisis? Whoever is the best person to answer that.

Mr. MILLER. Senator, that is my understanding of the TVPRA as well. I know operationally the Border Patrol, when they encounter either a Mexican national or a Canadian national, they can work collaboratively through their local repatriation agreements to assure—for children who wish to withdraw their application and return voluntarily, they work collaboratively with those respective governments to ensure the safe return of those children.

Now, to the Secretary's point that if we had that flexibility with other countries for those children who, at the time of encounter by CBP, whether it is Border Patrol or at the ports of entry, if they wish to withdraw their application and return to their country, we

have outstanding repatriation agreements with those countries. We have many opportunities to effect that repatriation in a safe and humane manner. And given the opportunity, we would be able to exercise a broader spectrum ability for those children who are not seeking any kind of protection.

Senator AYOTTE. And I understand that this law was put in place, I believe, when President Bush was in office in which we were changing treating the contiguous countries differently than the non-contiguous. But it seems to me that it has outlived its purpose and that you should be given the same tools as the Secretary had previously asked us. So is this a tool that you would still like to have, Mr. Miller?

Mr. MILLER. Yes, ma'am. We support the Secretary's effort to have broad spectrum ability to do the best thing in the interest of the children that we encounter.

Senator AYOTTE. Very good. Thanks.

I also wanted to point out, when Senator Peters had asked all of you about the relationship between, for example, the President's Executive Orders and DACA and the influx of unaccompanied children, at the time—and I recall this as well when we were dealing with the real influx—Secretary Johnson made actually a point of being very clear with the Central American countries because clearly there was an impression—regardless of how they got the impression, but there was clearly an impression at the time that somehow you could receive a permiso or pass if you made it to the United States. And I know that he clearly said he wanted them to understand that the children would not benefit from the President's DACA order.

So this clearly was some contributing factor in the sense that there was an impression or a misimpression in Central America or the children were being given a misimpression by perhaps the coyotes or other folks that were trying to make money off of them and bringing them here. So would you agree with me that that was a piece? Because certainly the Secretary addressed it at the time and had concerns about it.

Mr. MILLER. Yes, ma'am. Our colleagues from CBP and their post-interdiction interviews, we are well aware that that was a marketing strategy of the smuggling organizations, and I think the Secretary worked extensively both, to educate and to inform that that was not the case, that there were not permisos, and that persons who were interdicted after January 1, 2014, throughout the immigration court proceedings, throughout the life cycle, as we call it, of the immigration process, they would retain that date of interdiction and, thus, remain a priority.

Senator AYOTTE. Do you think that has been clearly communicated now so that that is not being conveyed? Or do you think that is still a concern that that is being misrepresented in those countries?

Mr. MILLER. To the best of my knowledge, from our colleagues in the State Department, that message has been received, and it seems to have contributed to the reduction in the influx this year.

Senator AYOTTE. Thank you all.

Chairman JOHNSON. Thank you, Senator Ayotte.

Mr. Miller, I am a little confused because earlier—you just said that according to those memoranda children coming here now, they do not have the benefits of Deferred Action on Childhood Arrivals. But you said—so they are a priority. But in your answer to my questions, you said that the priorities are really the criminals. So which is it? Are removals of children coming in here now a priority or not?

Mr. MILLER. It is a priority, but most law enforcement agencies, they prioritize criminal actions or the apprehension and removal of criminals higher than the apprehension——

Chairman JOHNSON. So it is not a top priority. Secretary Johnson in front of our budget hearing, on April 29, 2015, quote, he said, "You have to show the population of Central America that you are sending people back." That was the Secretary of Homeland Security. OK, we have got to show Central America that you are sending people back.

Mr. Miller, does it send the signal, are we showing people we are sending them back when we are sending, somewhere between 2.7 and maybe as much as 10 percent back? And, again, let us really take a look at the number. From 2009, unaccompanied children, 109,000 have come into this country, according to some of my figures—and we are not exactly sure what the real number is, but that is pretty close—we have returned a little over 6,000, which is about a 5.7-percent rate. So, I mean, I agree with Senator Peters. Deferred Action on Childhood Arrivals does not legally apply to these children, but in reality, isn't that what really children in Central America are relying on, the fact that the reality of the situation is that if you get into America, you have got a very low percentage chance, very low probability of being returned? I mean, isn't that the reality?

Let me just ask you the question this way: Do you believe we are, as Secretary Johnson said, showing the population of Central America that we are sending people back in any meaningful way?

Mr. MILLER. I think across the broad spectrum of all the persons interdicted on the border, yes, we are. We have worked very effectively with the adult population. We continue to make strides with the family units. And we will work collaboratively with our partners here at the table that, simply put, the juvenile process takes longer to mature. I do not have the data with me that shows the persons that have been removed, when they were interdicted, and when they entered into the court process. We see across the spectrum that by the time the case is mature, many of the people who have gone through this process and been adjudicated fully by the immigration court, they may have reached the age of majority before their case matures. That is not something that any one member is at fault for. That is something that is the nature of the process. These children, upon interdiction, have due process rights, and we have to wait for those rights to mature.

I can tell you that, going forward, we will continue to utilize our efforts appropriately. I mean, I stand by my previous statement that it makes good sense as police manager, if I have limited resources and I am faced with the task of going after criminals or going after non-criminal children, I think it is the appropriate choice to go after the criminals first.

Chairman JOHNSON. Again, from my standpoint, I think we need to disincentivize children from making that dangerous journey. I think that is compassion.

Mr. Greenberg, does HHS check the status, the immigration status, the legal status of sponsors of unaccompanied children that they turn unaccompanied children over to?

Mr. GREENBERG. We do make inquiry of a potential sponsor as to their immigration status.

Chairman JOHNSON. A hundred percent of the time?

Mr. GREENBERG. We make inquiry in all cases. In addition to that, for those cases that are subject to fingerprinting, we will get immigration information in the context of the fingerprint match.

Chairman JOHNSON. So if you find somebody who is in this country illegally, do you still turn those unaccompanied children over to an illegal immigrant parent?

Mr. GREENBERG. In the process of placing a child with a sponsor, we inquire about immigration status.

Chairman JOHNSON. It is simply a yes-or-no answer. Do you turn unaccompanied children over to illegal immigrant parents?

Mr. GREENBERG. We will place a child with an undocumented parent.

Chairman JOHNSON. That you know is undocumented?

Mr. GREENBERG. That is correct, yes.

Chairman JOHNSON. Do you then notify either ICE or DHS about that fact?

Mr. GREENBERG. We will provide the information about the location and the address of the sponsor at the time that we release the child.

Chairman JOHNSON. Do you notify any agency that that individual is in this country illegally?

Mr. GREENBERG. We will——

Chairman JOHNSON. Again, a very simple question. Do you inform DHS or ICE that you have just placed a child with somebody in this country illegally?

Mr. GREENBERG. We will respond to any inquiry we receive——

Chairman JOHNSON. No, really. Just answer the question. Do you tell DHS or ICE that you have just placed a child with somebody that you know is in this country illegally? Yes or no: Do you tell them that?

Mr. GREENBERG. We do not affirmatively do so.

Chairman JOHNSON. That is a no, then. Can you say no? That is a no, you do not inform ICE or DHS.

Mr. GREENBERG. We will provide the information upon their request.

Chairman JOHNSON. Do they ever ask you for it?

Mr. GREENBERG. In some circumstances, I understand that they do.

Chairman JOHNSON. Probably pretty rare.

One question I have for you—and I am not judging whether this is right or wrong, but in your testimony, you do state that children have the privilege of representation but at no expense to the government. But then you are talking about we are doing requests for proposals on legal services. I mean, can you square that for me? If current law is that there can be no expense to the government and

yet we are issuing grants for people to provide legal representation, just how does that—I mean, how do you get around the law? Which is basically what is happening, correct?

Mr. GREENBERG. We are complying with the law, Senator, and we have a specific responsibility under the law to help children in receiving legal representation.

Chairman JOHNSON. So there is a conflict in the law, is what you are saying. So, on the one hand, there is a law that says there can be no government expense utilized to provide legal representation, but there is another part of the law that gives you the authority to have legal representation at government expense. Is that basically what is happening?

Mr. GREENBERG. The law makes clear that we should be maximizing the use of pro bono resources, and we do seek to maximize the use of pro bono resources, but we need——

Chairman JOHNSON. But you are also——

Mr. GREENBERG [continuing]. To do more of that.

Chairman JOHNSON. You are also granting money for legal—or certainly asking for requests and paying for legal representation, are you not?

Mr. GREENBERG. That is correct, and we do have——

Chairman JOHNSON. So, again, it is your testimony that says legal representation is supposed to be granted, but at no expense to the government, and yet you are paying for it.

Mr. GREENBERG. We are following——

Chairman JOHNSON. Again, is that just, again, a conflict in the law?

Mr. GREENBERG. We do not believe it is a conflict in the law. We are following the requirements of the TVPRA.

Chairman JOHNSON. OK. I tell you what. It sounds like a real conflict in the law that we ought to address.

Mr. GREENBERG. The law is clear that it says that we should be using pro bono to the maximum extent possible. That makes clear that if we are doing that, we should be doing additional things beyond that.

Chairman JOHNSON. Well, it looks like the law is clear in two different—in a conflicting manner: on the one hand, at no expense to the government, and then it is clear that we should be spending money. So, again, I think that is a conflict that we need to address.

Mr. Osuna, real quick, what is the average time to adjudicate one of these claims? Do you have that stat at all? Are we talking months? Are we talking years?

Mr. OSUNA. You are talking for——

Chairman JOHNSON. For unaccompanied children.

Mr. OSUNA. Our commitment, Senator, is to have the initial hearing in 21 days, and we are adhering to that timeline.

Chairman JOHNSON. OK. That is just the initial hearing. I am talking about adjudication to the——

Mr. OSUNA. I do not have that number because these cases, as my colleagues have mentioned, do take a long time. Some cases have resulted already in removal orders because the child probably did not have a claim to——

Chairman JOHNSON. But a very low percentage of those.

Mr. OSUNA. 6,800——

Chairman JOHNSON. A very low percentage.

Mr. OSUNA. So they can take a significant amount of time. I will say that legal representation does help because, for obvious reasons, we——

Chairman JOHNSON. You have got a lawyer making sure that the person shows up.

Mr. OSUNA. Thus, fewer continuances and all that, so that does help in speeding up the court hearings, at least at the beginning of the process. But, yes, they can take a long time. I do not have a number to give you in terms of the latest surge of children, but it is certainly a matter of months and not weeks.

Chairman JOHNSON. Isn't it really more a matter of years?

Mr. OSUNA. Well, it depends. If the child does apply for some sort of relief from removal that requires a transfer to USCIS, then it can.

Chairman JOHNSON. Begging the indulgence of my Ranking Member here, Mr. Langlois is talking about a very low percentage of these UACs obtaining any kind of asylum, but yet we have a very low percentage of people with orders to remove. Again, I do not see how we can—this has got to be a very lengthy process then. I do not see—when you go back to 2009 and just see what a very low percentage of those people that have been returned and the very low percentage in total of the 109,000, this has got to be a very lengthy process.

Mr. OSUNA. It can be a lengthy process, and it is not just asylum, Mr. Chairman, but kids can also apply for special immigrant juvenile status, which is even more complicated because it involves the State court systems. I mean, that is the law that we have. That is the law that we work through. Again, I think that we certainly work through these cases as quickly as we can consistent with due process, and I know my colleagues do as well.

Chairman JOHNSON. I appreciate that. And, again, I appreciate you trying to comply with the laws, and I think that is what this Committee is trying to lay bare is the conflict within the law, the incentives we create for people coming to this country illegally. We need to address those conflicts and those incentives. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

I want to go back to root causes again with a little different focus. Among the things that our Chairman and I agree on is the idea that if folks who are citizens of Honduras, Guatemala, and El Salvador who want to come to this country to work for a limited period of time and be able to go home, maybe we ought to change our immigration laws so that that can happen. And that is one element of the comprehensive immigration reform legislation that passed the Senate several years ago.

Give us some advice. If we were to do piecemeal immigration reform or attempt again to do comprehensive immigration reform, what advice would each of you have to give us of an element or two to include in that legislative effort to help address the issues that we are addressing here today? Mr. Osuna.

Mr. OSUNA. Two comments, Senator. First, the administration does, as you know, support the comprehensive immigration reform bill that the Senate passed a couple years ago. That rough frame-

work I think is something that the administration and all the agencies here are behind. Specifically for my agency, that bill and other proposals have included significant resources and other additional tools for the immigration court system, and we would, of course, ask that any comprehensive immigration reform bill take into consideration the needs of the court system and the resource constraints.

Senator CARPER. All right. Thank you.

Mr. Greenberg, same question.

Mr. GREENBERG. Given our role in the process, I defer to my colleague agencies on this question.

Senator CARPER. All right. Fair enough. Mr. Miller.

Mr. MILLER. Senator, I would say that in looking to fix the broken immigration system, we would favor things—the opportunity to balance the age of the conviction versus the statutory requirement that we have today that, regardless of the age of the conviction, many times our officers are compelled to take action, and as a result, frequently we exercise a great deal of resources on the initial encounter with the individual, only for that to be mitigated thereafter.

I think if we put a temporal element to our enforcement prioritization in how individuals are charged under the Immigration Act, that would allow us to even better and more efficiently deploy our resources across the country.

Senator CARPER. Give us a really simple example of what you just said.

Mr. MILLER. A very simple example would be a narcotics conviction from the 1980s. At times, frequently, when the person is seeking, for example, to have their green card renewed, it will be a referral to ICE for an enforcement action because the person has this narcotics conviction from the 1980s. And as the statutory framework is today, we are asked to take the appropriate enforcement action, which would be to arrest and charge the person as an aggravated felon, notwithstanding any kind of—what the person has done since that initial conviction.

Senator CARPER. OK. I have got it. Thanks. Mr. Langlois.

Mr. LANGLOIS. As we discussed, individuals who are attempting to enter the United States unauthorized come for a variety of reasons. One reason, however, is that they are fleeing persecution. They have a well-founded fear of persecution or they have been persecuted in the past, and their claims should be heard. We should design the law to effectively and efficiently hear those claims.

Senator, you had mentioned a needle in a haystack. To a great degree, that analogy rings true here where you are trying to get to that needle efficiently and effectively in order to grant asylum to individuals who deserve protection but effectively and efficiently deny those individuals that are not eligible and return those individuals.

So to the extent that the law can grapple with that balance, that is what I would encourage, of course.

Senator CARPER. All right. Thanks. Thank you all.

Someone, I think, in your testimony today I thought mentioned that roughly 4,000 unaccompanied minors have been granted asylum. Was that correct?

Mr. LANGLOIS. That is correct, Senator. That was in my testimony.

Senator CARPER. And——

Mr. LANGLOIS. Since 2009.

Senator CARPER. Since 2009. Would you just give us some idea, since 2009, roughly how many unaccompanied children have sought asylum? Just roughly.

Mr. LANGLOIS. Yes. Since 2009, I do not have that figure exactly in front of me.

Senator CARPER. Just really roughly.

Mr. LANGLOIS. Actually, I can take it from right here. From 2009, we are dealing with roughly 13,000 individuals have applied for asylum since 2009 via the court. So they were in front of an immigration judge; they requested to file for asylum. They were given a continuance, and then they have filed. So 13,000 as of the end of the second quarter.

Senator CARPER. Is it safe to assume that there are more than 13,000 that have not filed or have not been before a court?

Mr. LANGLOIS. As we discussed, the process can take time, and there is——

Senator CARPER. I said earlier during your testimony, I leaned over and said to our Chairman, I said, "The process seems mind-numbing." And when I read your testimony coming down on the train today, I thought—and I told Senator Johnson, "Maybe I did not have enough coffee." You do not drink coffee on the train, but he said no, it was not the coffee.

Chairman JOHNSON. There was not enough coffee.

Senator CARPER. And I listened to you speak here today. It is hard to wrap my head around it. I think I speak for the Chairman as well. It is confusing, and a long and tortured road. But I do not know if there is something that we can do to help make it clear, more straightforward, or not. But I would sure be interested in exploring that.

I do not mean to be critical of your testimony. I thought you presented it very well. But, boy, it is really a long and tortured road.

I want to go back to the idea of no attorneys for unaccompanied minors at no expense to the government or to the extent that we can avoid that. I am just very proud of what we have done in our State of Delaware where our Chief Justice of the Supreme Court and his staff, his office, have really reached out to law firms all over our State and asked them to help out. And they have answered the call, and this has enabled us to provide a lot of legal counsel for young people and, frankly, at not much cost to the government. We need to do more of that.

Why is it in our financial interest to try to ensure that these kids have legal counsel? Is there some association with whether or not people have legal counsel, these kids are able to have legal counsel and they actually show up for hearings? Does it expedite their process or does it slow it down? Anybody.

Mr. OSUNA. Senator, there is no question, based on long experience from our immigration courts with these cases over many

years, that having counsel at the start of the process, especially for a child, makes the process more efficient. Immigration judges have to grant fewer continuances. The legal issues are clearer. Immigration judges do not have to spend a lot of time trying to tease out what the case is all about.

So in terms of efficiency, there is little doubt that counsel at the beginning of the process makes our court process much more efficient.

Senator CARPER. OK. Fine.

Mr. Chairman, if I may have one more quick question, if I may?

Chairman JOHNSON. Absolutely.

Senator CARPER. Mr. Langlois, I understand that we have begun to allow a limited group of children from Guatemala, Honduras, and El Salvador to apply in their home countries to come to the United States as refugees. I understand this is limited to those who have parents in this country who are citizens or legal permanent residents who meet certain requirements. Could you just describe this new effort and why it has begun?

Mr. LANGLOIS. Certainly, and it even has an acronym. The Central American Minors (CAM)——

Senator CARPER. I am sure it does. [Laughter.]

Mr. LANGLOIS. The Central American Minors Refugee and Parole Program, the "CAM program," as we call it—was designed to give an alternative to individuals that are in these three countries a safe and legal alternative to taking the dangerous road to the United States with smugglers. The program allows individuals who are lawfully present in the United States to file for their children that remain in—unmarried children that remain in these three countries. They file. A deoxyribonucleic acid (DNA) testing is done to make sure that the relationship is valid. Then we have the State Department, who is the manager of the program, they arrange for the child to be preliminarily interviewed in the country. When the case is ripe to be presented as a refugee or for parole, a USCIS refugee officer will conduct the extensive interview. We will do background checks on the interview, fingerprints. We also do checks on the individual who is petitioning that is in the United States to make sure that they are in the status that they claim, also if there is any criminal record of that individual, and then we arrange through the refugee program, if they are deemed refugee, for them to come to the United States.

Senator CARPER. Good. Thanks for that explanation. It actually sounds like common sense, and I think it sounds like a pretty good idea.

Mr. Chairman, thanks. It has been a good hearing, and to our witnesses, thank you all for your appearance and for your testimony. Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

I am going to use Senator Carper's fine example by allowing each of you to have the opportunity to make one final comment. But before I do that, I do want to requote Secretary Johnson before our budget hearing on April 29, 2015: "You have to show the population of Central America that you are sending people back."

To quote our Ranking Member, he frequently says, "You have to find out what works and do more of that." Well, we have an exam-

ple of what worked. In 2005, we were experiencing a real surge with Brazilian immigrants, 3 times higher than the previous year, 31,063. And as a result of that, in 2005, DHS Secretary Chertoff employed Operation Texas Hold 'Em where they prioritized existing space, dedicated bed space, and began detaining and removing all of the illegal Brazilians that were apprehended using expedited removals. By the following year, the number of people coming in illegally from Brazil dropped from 31,063 to 1,460.

So, again, I think, what this hearing—and by the way, again, I just want to thank you all for your testimony. This has been very enlightening. A very complex problem, multiple root causes, I certainly have my opinion in terms of what the primary root cause is, but what we have found from your testimony and what we have found from your answers to questions is so much—and I think somebody here said it, broken immigration system. It is. That is a very valid acknowledgment. It is a broken system. It is convoluted. It is obviously within these three departments and five different agencies trying to grapple with this thing, it is not fully coordinated. Often there are conflicting laws.

I am pleased to hear that our Ranking Member used the word "piecemeal" reform. I realize this administration does not want to talk about that, but, listen, we do not do comprehensive very well, because it is complicated. These things are not easy to deal with. So certainly what I asked Secretary Jeh Johnson when he was before this Committee was work with this Committee, let us identify these problems, these conflicts, and let us—because, quite honestly, the reality of the situation is we are not going to do comprehensive reform, not in the next 18 months. Even by Secretary Johnson's admission, we are not even going to have situational awareness of the border in the next 18 months.

So let us take a look at the problems. Let us take a look at the conflicts. Let us look at the convoluted process. Let us try and fully coordinate this. Let us start making the incremental improvements.

I come from a manufacturing background of continuous improvement, root cause analysis. So let us look at the root causes of these individual little problems, and working with you, with your help, with your expertise—again, I truly appreciate your service, and I understand that you are dealing with the laws we have got. That is what we have to deal with. But I think the only thing that is realistic that we can accomplish, at least in the next 18 months, is a—and let us not use "piecemeal" because that may have the wrong connotation. How about a step-by-step continuous improvement process? I think we have that attitude. The Ranking Member is willing to work with me. Let us prioritize those individual problems that we can address and start fixing this on a step-by-step basis.

With that, let us start with Mr. Osuna.

Mr. OSUNA. Thank you, Mr. Chairman, Senator Carper. I would just say that the border surge from last year was really unprecedented. I have been doing this job for a long time, and I have never seen the level of interagency coordination and discussion that this engendered really from the start, from when we first started identifying this issue in late April, May.

I think that it has been a challenge for all the agencies, but we have done the best we can. I think it has had an effect, and we look forward to continuing our discussion with you and with our fellow partners at the other agencies.

Chairman JOHNSON. Thank you. And I think I speak for the Ranking Member, too. When we went down to Rio Grande Valley and we talked to Customs and Border Protection, I think they did an extraordinary job grappling with a very difficult problem. And I think they kind of circumvented some rules, and God bless them for doing it. I mean, this is—again, we are a very compassionate society. This was a humanitarian crisis, and the people in those agencies I think rose to the challenge. So I think we really want to give them kudos for doing that. Mr. Greenberg.

Senator CARPER. I am Tom Carper, and I approve that message. [Laughter.]

Chairman JOHNSON. An act of real bipartisanship here.

Mr. GREENBERG. Thank you, Senators. First, I want to underscore Juan's remarks about how closely the agencies are, in fact, collaborating and cooperating in these efforts. I first met Juan last year when we were both in Texas and visiting facilities at the same time. As Phil Miller indicated, he, his colleagues, and I went together again to Texas this year to look at both HHS and DHS facilities. Our staffs talk every day. We appreciate the importance of coordination and we are working hard to accomplish that.

Chairman Johnson, I want to follow up on the issue around legal representation. My understanding is that the statutory language that you were referring to is language which is seeking to make clear that there is not a right to paid counsel at the expense of the government. We are clear that this is not about a right to paid counsel. I do not believe that there is an inconsistency in the language, but we would be happy to follow up with you and your staff and look at this more closely.

And then, finally, I just want to indicate that, having been before the Committee a year ago, there has been tremendous progress over the course of this last year. We look forward to continuing to build on it, and we look forward to working with you in doing so.

Chairman JOHNSON. Thank you, Mr. Greenberg. Mr. Miller.

Mr. MILLER. Thank you, Senator. I echo what my colleagues expressed that never before has there been greater coordination. While these agencies and different departments have different statutory requirements, different fiscal constraints placed upon them, we work at an amazing level of collaboration and cooperation, making joint decisions, sharing information in a way that I think is really without precedent. And as a result of that, we continue to work collaboratively, not just on issues relating to unaccompanied children, but we continue to work collaboratively with immigration judges on how to better streamline these processes, to look at what can we do more efficiently to reduce the non-detained docket.

One of our initiatives as part of Secretary Johnson's memoranda is to give opportunities to people who did not want to continue their non-detained court settings if they do not meet one of the Department's current priorities, making opportunities available where people can give us constructive feedback, and then we can share

that information across the one government, all of the agencies and departments dealing with these issues.

While there is a lot of work to be done—clearly, I think we are all in agreement with that—what we learned last summer is that we do not have to just sit there with our own agency and grapple with these struggles, grapple with these problems that we face every day, that by sharing information and coming to joint decisions, we can more effectively and efficiently work within the framework that we are given today and hopefully work with the Committee for a better framework tomorrow.

Chairman JOHNSON. OK. Thank you. Mr. Miller, we want to work with you. Mr. Langlois.

Mr. LANGLOIS. Certainly the border surge last year presented a wide range of challenges for the asylum corps in its attempt to adjudicate the cases. We experienced an increase in our caseloads of credible fear, of reasonable fear, and, of course, unaccompanied children's claims in the affirmative context.

Individuals that have suffered persecution deserve a just but very efficient adjudication of their claim. They deserve protection, and we must effectively give them that and efficiently give them that.

We have cooperate at unprecedented levels with CBP as well as ICE, as well as EOIR, to assist us in that endeavor. I think that, as usual, all procedures or systems can be improved, and we work very hard in order to do that. I think we have got an incredibly committed asylum corps that is applying themselves diligently to this task and cooperating fully with our partners in this task.

Chairman JOHNSON. Well, thank you, Mr. Langlois.

Again, I want to thank all the witnesses for your testimony and for your thoughtful answers to our questions. I will have more questions for the record. In particular, we have just got to get our arms around the information, the data, because you have to have that kind of data to really highlight where are the problem areas and what do you need to really address. So I want to work with all of your agencies to get that information.

This hearing record will remain open for 15 days until July 22 at 5 p.m. for the submission of statements and those additional questions for the record.

This hearing is adjourned.

[Whereupon, at 11:49 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson

"The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

As submitted for the record:

Good morning and welcome.

Last summer, we witnessed a humanitarian crisis as more than 51,000 unaccompanied minors from Central America came across the U.S.-Mexico border. The purpose of this hearing is to assess, one year after the crisis, what happened to those children.

That, of course, is not to imply that the crisis is over. Already this year, we have seen more than 15,000 unaccompanied minors from Central America arrive at the U.S.-Mexico border. Before the administration's announcement of Deferred Action on Childhood Arrivals (DACA), fewer than 4,000 minors from Central America were arriving at the border annually. In addition, we have learned that many more would be arriving if not for Mexico's increased enforcement at its southern border.

When minors arrive at the U.S.-Mexico border, the first thing many do is turn themselves over to Border Patrol agents. While in the Rio Grande Valley sector earlier this year — the center of the crisis — we were told by Border Patrol agents that many children and families crossed the Rio Grande, lit fires and waited for Border Patrol agents to pick them up. Others were used by the cartels as a diversionary tactic for higher value drug, human and sex trafficking.

U.S. Customs and Border Protection (CBP) is charged with apprehending and temporarily detaining unaccompanied minors arrested at the border.

Pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), children from noncontiguous countries must be transferred to the Department of Health and Human Services' Office of Refugee Resettlement (ORR) within 72 hours of apprehension and cannot be immediately transferred back to their home countries. U.S. Immigration and Customs Enforcement (ICE) is charged with transferring the custody of the unaccompanied minors from CBP to ORR. ORR then looks for placement for the child, either through sponsors or foster care. According to HHS, once the child is placed with the sponsor, pending limited exceptions for post-relief services, the role of HHS is concluded.

Once a child is placed with a sponsor, ICE provides the child with a notice to appear before an immigration judge. U.S. Citizenship and Immigration Services (USCIS), within DHS, is responsible for initial jurisdiction over all asylum applications filed by unaccompanied

minors. TVPRA provisions provide the unaccompanied minors who do not obtain asylum during the USCIS process with a second opportunity to make their case before an immigration judge. The Executive Office of Immigration Review (EOIR) in the Department of Justice (DOJ) then conducts immigration proceedings to determine whether an unaccompanied minor qualifies for asylum or another immigration benefit, or must be repatriated to his home country. If an unaccompanied minor does not show up for his court hearing or if no immigration benefit is granted, EOIR issues a final order of removal, which ICE is then charged with executing.

Clearly, this is a complex process. The children who arrived at our borders last summer and who are still arriving are subject to the jurisdiction of three different federal departments and five component agencies, all of which answer to multiple congressional committees. It comes as no surprise that statistics the committee has requested regarding the status of these children today are not readily available and are disjointed when presented.

What we do know is that more than 51,000 children from Central America entered the U.S. last summer, and fewer than 2,000 have been repatriated to their home countries. When asked what has happened to the minors since they were turned over to sponsors, agencies start pointing fingers at each other. The Department of Health and Human Services claims it has no responsibility to follow up with children once they are handed off to sponsors. The Department of Justice suggests it only issues orders of removal and cannot enforce those orders. The Department of Homeland Security has stated that ICE has not repatriated more children because of delays in immigration courts and the long time that asylum adjudications take. Today we have all the departments represented at this hearing to help us understand the unique role each plays and to sort out who is legally responsible for unaccompanied minors during the removal proceedings required pursuant to the TVPRA.

This is an important inquiry. What both DHS Secretary Jeh Johnson and former DHS Secretary Michael Chertoff have recognized is that those migrating from Central America are extremely market-sensitive. If you do not show the population in Central America that you are sending people back, more will likely embark on a dangerous, sometimes deadly, journey to enter the United States illegally. Congress has created a convoluted system that all but guarantees minors from noncontiguous countries will not be returned home, that a message from the U.S. will not be sent, and that more young children will be enticed to risk their lives. Isn't it time to re-evaluate our laws and to seek a more workable and straightforward system — one that eliminates, or at least drastically reduces, the incentives for illegal immigration?

I thank the witnesses for their willingness to answer these important questions and I look forward to their testimony.

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Statement of Ranking Member Thomas R. Carper
"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"
July 7, 2015

As prepared for delivery:

A year ago, we faced a humanitarian crisis at our southern border. Tens of thousands of women and children were turning themselves in to border patrol agents and seeking protection after a grueling trip from Central America. Our border officers were overwhelmed. So were our shelters to house these children and families.

To address the crisis, our government swung into action on multiple fronts. We sought to comply with the 2007 law signed by former President George W. Bush dealing with unaccompanied minors. We set up emergency shelters. We surged agents and immigration judges to border areas. And, we worked to find safe homes for the children until their cases could be adjudicated.

We also worked with the governments of Guatemala, Honduras and El Salvador to launch what I call 'truth campaigns' about the dangers of the trip north. And, we collaborated with the government of Mexico so that nation might better strengthen the integrity of its southern border.

Many others provided support too, including local communities and faith leaders.

One year later, we no longer have a crisis. It is true that many children and families are still fleeing these countries, but the numbers are clearly down. In fact, they are less than half of what we saw last year at this time. But even though the crisis appears to be over, we still have humanitarian responsibilities to protect the children in our custody, and we have a moral obligation to treat them fairly under our laws.

We must do this even as we try to resolve their cases more expeditiously and return to their own countries those who do not have grounds to remain here. I look forward to hearing from our witnesses today about how they work together to effectively process and care for so many children.

While our border and immigration agencies are better equipped today than ever before to handle another influx of immigrants, there is still much progress to be made. One area that I would like to focus on today is our immigration court system. As we all know, our immigration courts were badly understaffed even before last summer's border surge. With tens of thousands of new cases, wait times have gotten much worse. In fact, some immigrants with pending cases were informed they might not get a hearing before November of 2019. Clearly, this is unacceptable.

That is why I wrote to our colleagues on the Senate Appropriations Committee earlier this year urging them to fund the President's request for 55 new immigration judge teams. I'm pleased to say that the request appears to have garnered support in both chambers. These new judges won't solve the problem entirely, but they will certainly be a big help.

We also know that cases often advance more efficiently when unaccompanied minors have a lawyer. Not surprisingly, most of these minors cannot afford one. That is why in Delaware, and

in communities across the country, many lawyers have stepped up to the plate to offer pro bono legal services. I couldn't be prouder of the legal community in my home state. But many minors all over the country still lack attorneys, so there is more work to be done.

Ensuring an efficient and effective border security and immigration system is incredibly important. However, I believe we must also not lose sight of the reasons why so many families feel the need to flee their native countries. Many of them live horrific lives where violence is pervasive and where hope and economic opportunity are too rarely found.

If we are to realize the kind of border integrity along our border with Mexico, we need to work with these three Central American countries, along with Mexico, Columbia and others, to help root out the causes of violence and poverty in the Northern Triangle.

Not that many years ago, we encountered a similar challenge in Colombia. And, most people would agree that our support – along with that of others – helped turn that country around through the implementation of Plan Colombia.

We also know that Mexican migration has leveled off in large part because of the economic advances in that country. Meanwhile, Central American migration has spiked because of the intense violence and poverty in the region. Young people are particularly vulnerable to gang violence.

The governments of Guatemala, Honduras and El Salvador must take the lead on this – and they are. These three countries have already joined together in an unprecedented regional effort called the Alliance for Prosperity to improve the lives of their citizens. They can do it, we can help.

Later today, Senate appropriators will take up the Administration's request for a dramatic new infusion of federal aid to Central America. I hope they will heed the President's call for a new focus and investment there. By doing so, we will help sow new seeds of hope and prosperity that can benefit generations of children to come.

Thank you again, Mr. Chairman, for holding this hearing. I join you in welcoming our witnesses and look forward to their testimony and the questions that will follow.

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Department of Justice

STATEMENT OF

JUAN P. OSUNA
DIRECTOR
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

FOR A HEARING ENTITLED

"THE 2014 HUMANITARIAN CRISIS AT OUR BORDER:
A REVIEW OF THE GOVERNMENT'S RESPONSE TO
UNACCOMPANIED MINORS ONE YEAR LATER"

PRESENTED ON

JULY 7, 2015

Statement of Director Juan P. Osuna
Executive Office for Immigration Review
Before the Senate Committee on
Homeland Security and Governmental Affairs
July 7, 2015

Introduction

Mr. Chairman, Senator Carper, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today about the Department of Justice's Executive Office for Immigration Review (EOIR), and our role in the Government-wide response to last year's influx of unaccompanied children and families from Central America on the South Texas border.

EOIR administers the Nation's immigration court system, composed of both trial and appellate tribunals. EOIR's immigration judges decide whether an alien is removable based on the facts and the charges filed by the Department of Homeland Security (DHS) and, if removable, whether the alien is eligible for and merits relief or protection from removal. EOIR is responsible only for civil immigration proceedings, and EOIR's immigration judges have no role in state or federal criminal proceedings. EOIR's immigration judges, for example, do not determine the guilt or innocence of aliens charged with criminal wrongdoing at the border or in the interior of the country.

Current State of the Immigration Courts

The immigration court system is facing many challenges. The largest challenge we face is our growing pending caseload. With a backlog reaching 449,569 cases pending as of May 26, 2015, we are engaged in a focused process to hire many more immigration judges to adjudicate these cases. The 101 percent backlog increase over the past five years is in part due to budget cuts, which left the agency unable to hire immigration judges to replace immigration judges that left the agency, and unable to hire new positions to maintain its adjudicatory capacity. Last year's influx also greatly added to the courts' caseload. The courts received more than 75,000 new cases from July 18, 2014, to May 26, 2015.

Congress and the Administration have responded to these difficulties by allocating significant resources in 2015 to the immigration courts, and we are working vigorously to swiftly and responsibly increase our capacity to adjudicate cases through a robust hiring effort. Hiring adjudicators is my top priority in accomplishing that goal. We are actively working to review the thousands of applications we have received for immigration judge positions to find the best candidates to become judges in the Nation's immigration courts. The hiring process is long because we take great care to screen these Attorney General appointees. We evaluate their temperament, knowledge of immigration laws and procedures, litigation experience, ability to handle complex legal issues and to conduct administrative hearings, and their knowledge of judicial practices and procedures. The new resources appropriated in Fiscal Years (FY) 2014 and 2015 will help us rebuild and increase our adjudicative capacity to better address the pending caseload. Overall, with the 18 immigration judges EOIR brought aboard last month, there are

now 247 immigration judges in 58 courts around the country. This is 7 above our low of 240 during the hiring freeze, but 25 below our pre-sequester high of 272 in 2010. We appreciate the House and Senate appropriations marks for providing for the requested 55 new immigration judges in FY 2016 and will work to bring these judges on board as soon as possible.

Those immigration judges will join the dedicated corps of professionals who have been working tirelessly to keep up with the pace of incoming cases and address the case backlog. Last summer, EOIR realigned its adjudicative priorities, and refocused its immigration court resources. To address the cases of those who crossed our southern border primarily on or after May 1, 2014, EOIR added to its top priority the adjudication of cases of recent border crossers that fall into the following four groups as DHS identifies them: (1) unaccompanied children; (2) families in detention; (3) families released on "alternatives to detention" (ATD); and (4) detained cases of recent border crossers. We are processing these cases as quickly as possible. For unaccompanied children, current agency policy dictates that the first master calendar hearing will be not less than 10 and not more than 21 days following the DHS filing of the charging document with the court. Adults with children released on ATD have their first master calendar hearing not less than 10 and not more than 28 days following such a filing. Following that first hearing, immigration judges are scheduling these cases on the shortest timelines possible without jeopardizing due process.

As anticipated and announced when we identified these new priorities, the focus of EOIR's limited resources on these case groups has had the effect of displacing many of the non-detained, non-priority cases awaiting adjudication further into the future. In some immigration courts, the volume of priority cases has been such that the judges in those courts are working almost exclusively on priority cases, and not on other cases that had already been pending on court dockets but that now must wait for hearings at a future date. Consistent with EOIR's long-standing policy of rescheduling non-priority cases when a priority case requires additional docket time, EOIR announced in February that it is rescheduling some hearings for November 29, 2019, to allow the agency to keep the open cases on the docket, to provide respondents with scheduling information, and to maintain data on the cases. Most, however, are likely to receive other dates, either earlier or later, as docket times become available in the relevant immigration court, depending on available hearing time, the immigration court's priorities, and the level of complexity of the pending cases. We continuously monitor the effects of our prioritization strategy, and work with our stakeholders and federal partners, including DHS, to evaluate those priorities, manage our dockets and look for ways to ease the backlog of cases, while keeping in mind the role of the immigration courts to provide those charged with removal with an opportunity to be heard.

EOIR's Role in the Process

For most removal cases, jurisdiction with EOIR begins when DHS, Immigrations and Customs Enforcement (ICE), files the charging document with the immigration court and ends when an immigration judge completes the case by issuing a final order.[1] Following the filing of

[1] Decisions of immigration judges are final unless a party appeals to the Board of Immigration Appeals (BIA). A BIA decision is binding on all DHS officers and immigration judges unless the Attorney General or a federal court modifies or overrules it.

the unaccompanied child's case with the immigration court, current agency policy dictates that EOIR will schedule a first master calendar hearing not less than 10 and not more than 21 days from that filing. If the respondent does not appear for that scheduled hearing, and the immigration judge is satisfied that the person received proper notice of the hearing and that ICE proved removability, the law provides that the immigration judge may order the respondent removed *in absentia*. When the respondent appears for the scheduled master calendar hearing, the immigration judge reviews the charges ICE has filed against the respondent and provides certain advisals to assist with the processing of the case. The individual hearing is then scheduled for the next available date, taking into account any needs the respondent has for a continuance, including to obtain counsel, and scheduling issues for any counsel already retained, as well as any scheduling needs of DHS counsel. Appearance is similarly required for the individual hearing, the final results of which can be an order of removal, a grant of relief or protection from removal, or a continuance to a new hearing date. Upon completion of the case, EOIR no longer has jurisdiction over the matter unless a party files an appeal or a motion to reopen. If an immigration judge orders the respondent removed, and the respondent waives appeal, the authority to remove the individual rests with ICE. If an immigration judge orders a form of relief or protection, processing of any associated immigration benefits rests with DHS's U.S. Citizenship and Immigration Services (USCIS).

When an unaccompanied child files certain claims, however, the process differs in important ways from what most consider the typical course of adjudication in immigration court. Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), USCIS became responsible for initial adjudication of unaccompanied children's asylum applications. USCIS has initial jurisdiction over all asylum applications for unaccompanied children, even those to whom DHS has issued a Notice to Appear in immigration proceedings. Further, the TVPRA also provides an opportunity for such children to have USCIS adjudicate their claim for asylum, even if the child did not previously file for asylum with USCIS and had a pending claim in immigration court, on appeal to the Board of Immigration Appeals, or in federal court.

As such, EOIR may receive a charging document in an unaccompanied child's case, but the immigration judge may continue the case pending USCIS's adjudication of the asylum claim, or may administratively close the case pending such adjudication. Note that an administrative closure does not end the immigration court's jurisdiction over a particular case. Rather, it places the case on hold until a party to the case moves the immigration court to recalendar it.

Another avenue of relief an unaccompanied child may pursue is Special Immigrant Juvenile (SIJ) status. SIJ status requires a three-step process: a finding by a state court, the grant of a petition by USCIS, and a grant of adjustment of status. The procedures for the adjustment of status step differ based on whether DHS has already placed the child in removal proceedings at the time of filing. When the child has already filed the SIJ petition, USCIS has exclusive jurisdiction over adjudication of it, so an immigration judge may continue or administratively close the case upon receipt. Once DHS places the child in removal proceedings, however, EOIR has exclusive jurisdiction to adjudicate applications for adjustment of status.[2] Similar to the pending asylum claim, if a case has been administratively closed pending the adjudication of the

[2] There is an exception for arriving aliens, who almost always must file with USCIS.

SIJ petition, the parties may file a motion to recalendar after USCIS makes a decision on the petition. It is at that point that the immigration judge would be able to fully adjudicate the adjustment of status application, and complete the case.

Unaccompanied Children in Immigration Court

Children who appear in immigration court proceedings without an accompanying adult may require special care and modifications to normal courtroom procedures. In May 2007, to facilitate more efficient immigration proceedings, EOIR developed guidance and suggestions for adjudicating cases where the respondent is a person under 18, without a parent or legal guardian in the United States who is available to provide care and physical custody.[3] The suggestions focus primarily on assisting the judge in evaluating whether the child understands the nature of the proceedings, is able to effectively present evidence about the case , and has appropriate assistance, taking into account the respondent's age, development, experience and self-determination. Circumstances in a particular immigration court may require specialized dockets for children's cases, and responsibility for such dockets may be assigned to certain immigration judges. Following last summer's surge of cases involving unaccompanied children, all immigration courts are equipped to handle a juvenile docket, and 39 of them currently have active juvenile dockets.

All immigration judges are able to handle cases involving unaccompanied children. Immigration judges also receive periodic training, most recently in April of this year, on handling juvenile dockets, including cases that involve unaccompanied children. Immigration judges employ child-sensitive procedures in cases involving unaccompanied children and decide, on a case by case basis, whether special attention is required. Obviously, procedures for a younger child appearing alone in immigration court will likely differ from those procedures employed for an older teenager. Immigration judges take steps to ensure that a "child-appropriate" hearing environment is established and can make common sense adjustments to procedure as appropriate.

Recent Statistics

For the time period of July 18, 2014, through May 26, 2015, EOIR received 31,987 new charging documents for respondents whom ICE has identified as unaccompanied children who crossed the southwest border on or after May 1, 2014. The pending caseload, or the number of these cases that have not had an initial case completion, is 21,999. Of the receipts, 25,777 children have had a master calendar hearing scheduled, the date for which has passed.

Under the law, a respondent's failure to appear at a scheduled hearing may result in the immigration judge ordering the respondent removed *in absentia* when the immigration judge is satisfied that the notice to appear and notice of the time and place of the proceeding was properly provided to the respondent and to any representative on file or adult custodian, and ICE has established that the respondent is removable as charged in the notice to appear. As noted above,

[3] These guidelines may also apply in cases in which children are accompanied by a parent or guardian or in which children testify as witnesses.

EOIR had held 25,777 master calendar hearings in these cases as of May 26, 2015, and immigration judges issued orders of removal *in absentia* in 5,453, or 21 percent, of those cases.

For the same time period, there have been 10,591 initial case completions for unaccompanied children. Of those completions, 6,248 were removal orders (to include those issued *in absentia*); 2,671 were cases that were administratively closed, including 64 due to an immigration judge's decision to close the case following DHS's exercise of prosecutorial discretion; 1,199 were cases that were terminated, including 12 due to an immigration judge's decision to terminate following DHS's exercise of prosecutorial discretion; 422 were voluntary departure orders; 36 were other administrative completions; 9 were other immigration judge decisions; and 6 were decisions granting relief.

Many who are following this issue closely are surprised by how infrequently immigration judges grant children relief from removal. To understand the reason for these infrequent grants of relief from removal, it is important to understand EOIR's defined role in adjudicating unaccompanied children's claims for relief or protection.

Facilitating Efficient Proceedings Involving Unaccompanied Children

By statute, all respondents have a right to representation at no expense to the government. EOIR recognizes that the presence of a representative can increase immigration court efficiencies for respondents of all ages, including resolving those cases in which an individual should be found removable. Immigration judges encourage the use of appropriate *pro bono* resources whenever a child respondent is not otherwise represented. Immigration courts also provide to unrepresented respondents a list of providers who may be available to provide free legal services. In September 2014, EOIR issued guidance concerning the "Friend of the Court" process, which describes the various roles an individual or organization can take to serve the immigration court by assisting with roles often left to children's sponsors or the children themselves.

EOIR, working with its federal partners, has taken numerous steps to support and encourage *pro bono* counsel and non-attorney accredited representatives to provide representation. In cases where individuals lack representation, immigration judges are instructed and trained to conduct removal proceedings in a manner that protects the due process of the individuals appearing before them. Regardless of representation status and in the specific case of children, EOIR operates a Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC), under which custodians of unaccompanied children are provided with important information on these adult sponsors' roles and responsibilities and the immigration court process. While contractors of LOPC do refer children for representation, LOPC does not itself provide representation or funding for representation. EOIR is currently operating 14 LOPC program sites. The LOPC provider in New York is also operating a National Call Center, which assists custodians nationwide in making appointments for LOPC presentations within those 14 sites. The Call Center also provides, and arranges for LOPC sites to provide, telephonic orientation programs for individuals who do not live near, and cannot travel to, an existing LOPC site.

On September 12, 2014, through justice AmeriCorps, the Department of Justice and the Corporation for National and Community Service (CNCS) awarded more than $1.8 million in grants to legal aid organizations for a new direct representation program for certain unaccompanied children. In May 2015, CNCS announced the second Notice of Funding Opportunity for this program's second year. Also, EOIR is currently providing contract funding for attorneys to represent unaccompanied children appearing before the Baltimore Immigration Court through the Baltimore Representation Initiative for Unaccompanied Children. Further, throughout the last several months, EOIR representatives have participated in conversations with stakeholders that focused on increasing access to *pro bono* legal services for unaccompanied children. The meetings fostered creative thinking on ways to improve legal services for unaccompanied children. The meetings involved a wide range of stakeholders, including federal and local government agencies, non-profit legal service providers, the private bar, and key community leaders.

The President's FY 2016 Budget request includes $50,000,000 for the legal representation of unaccompanied children. When unaccompanied children are represented, we expect that courts will be able to reduce the number of continuances granted for the purpose of obtaining counsel, preparing any applications for relief, and gathering evidence. In addition, counsel can facilitate court proceedings, resulting in more efficient hearings and earlier identification of relevant legal issues. All of these factors will assist in reducing EOIR's case backlog while providing fair and efficient adjudicatory proceedings.

Conclusion

Last summer's influx in border apprehensions along the South Texas Border has increased the burden on the immigration courts by more than 40,000 cases from July 2014 to November 2014, and, as noted above, by more than 75,000 as of the end of May 2015. As we work hard to employ the resources Congress has provided, we continue to ask a great deal of sitting immigration judges and staff to process these tens of thousands of cases before them in a continued effort to reduce the impact on the hundreds of thousands of cases that were already in queue. We are continuously aware of the fact that each case involves a person whose future remains uncertain while waiting for the immigration court to schedule and hear their case. EOIR is dedicated to continuing an open dialogue with Congress, our federal agency partners, stakeholders, and the general public to continue to improve upon the efficiencies of the immigration courts and the immigration system as a whole.

Statement by

Mark Greenberg
Acting Assistant Secretary
Administration for Children and Families
U.S. Department of Health and Human Services

Before the

Committee on Homeland Security and Governmental Affairs
United States Senate

July 7, 2015

Chairman Johnson, Ranking Member Carper, and members of the Committee, thank you for inviting me to discuss the Department of Health and Human Services' (HHS) responsibilities regarding unaccompanied children. In my testimony today, I will describe the role that HHS plays in relation to unaccompanied children under Federal law, and then discuss a set of key developments in relation to our responsibilities since the Committee's hearing on this topic last summer.

Role of the Office of Refugee Resettlement

Under the Homeland Security Act of 2002, (P.L. 107-296), an unaccompanied alien child (UC) means "a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom – (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."

Most children referred to the Unaccompanied Children Program, both historically and currently, are from Honduras, Guatemala, and El Salvador. There are a number of reasons that unaccompanied children embark on the dangerous journey from their home countries to the United States. Some of these children are fleeing from poverty and violence in their home country, seeking to rejoin family members already here, and/or hoping to find work to support their families in their home countries. The age of these unaccompanied children, their separation from parents and relatives, and the perilous journey they undertake make them especially vulnerable to human trafficking, exploitation, and abuse on their way to the United States.

In recent years, the number of unaccompanied children referred to HHS's Unaccompanied Children Program each year was generally in the range of 6,000 to 7,000 until fiscal year (FY) 2012. Those numbers increased from 2012 through 2014, from 13,625 in FY 2012 to 24,668 in FY 2013 to 57,496 in FY 2014. As I will discuss later, the number has fallen considerably in the last year, though it is still high relative to caseloads prior to FY 2012.

Historically, the great majority of unaccompanied children were males over the age of 14. While older males still comprise the majority, in recent years, the share that are female and younger have both increased. Between 2012 and 2014, the share of unaccompanied children who are female has grown from 23 percent to 34 percent, and the share of children 12 and under has grown from 11 percent to 21 percent. In addition, in 2012 only one percent of children referred to us were ages five and under while in 2014 this number rose to three percent.

Most unaccompanied children arrive at the border between U.S. and Mexico, and when they do, the Department of Homeland Security (DHS) refers children to the HHS Office of Refugee Resettlement (ORR) within 72 hours, except in exceptional circumstances, after determining that the child is an unaccompanied child.

When unaccompanied children are referred to ORR, they are cared for in one of a network of shelters while staff work to determine if they have appropriate sponsors with whom they can live while awaiting immigration proceedings. HHS funds shelters through grants to non-profit organizations. HHS currently funds shelters in 15 states, but the majority of shelters are within 250 miles of the Southern border. Upon arrival at a shelter, a child is provided with a complete

medical examination within 48 hours. This examination includes a general medical screening, which is conducted by either a doctor or nurse practitioner. All children receive age appropriate care including vaccinations as well as screening for tuberculosis and certain other communicable diseases.

Soon after a child arrives, trained staff conduct an initial interview. This interview is used as a first round of HHS screening to determine whether the child may be a victim of abuse, a crime, or human trafficking. The screening also indicates if the child may have any immediate mental health needs. If a mental health concern is detected during this screening, such as a history of trauma or violence, additional screenings are completed by specially-trained mental health clinical staff or case managers with clinical experience. These screenings determine whether the child requires specialized services, such as a home study conducted by a grantee case worker, typically a social worker, prior to his or her release to a sponsor (if an appropriate sponsor is available). The screenings also determine whether the child is a potential victim of human trafficking and, therefore, eligible for the additional services and legal assistance available to certain trafficking victims in the United States.

Pursuant to Federal law and the Settlement Agreement in *Flores v. Reno*, a consent agreement entered into in 1997, a child in HHS care receives medical, dental, and mental health services; education services; recreational opportunities; a legal rights presentation and access to legal services; access to religious services; case management services which include services to identify a parent, relative, or other appropriate sponsor; and clinical counseling on a weekly basis

to treat any mental and emotional health issues, like depression or post-traumatic stress, for example.

Placement of an unaccompanied child with a sponsor

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that we seek to place children in the least restrictive setting that is in the best interest of the child, taking into consideration any danger the child may pose to him or herself or to others in the community and any risk of flight. Generally, such a setting is with a sponsor. Accordingly, while a child is in a shelter, we seek to identify an appropriate sponsor for the child. Initially, we seek to place a child with a parent or a close relative. If that is not possible, we explore whether it is possible to place the child with a more distant relative (such as a second cousin) or a family friend. If it is impossible to identify an appropriate sponsor, and the child does not return to his or her home country, the child will remain in an HHS shelter or be placed in foster care until the child turns 18 or until the immigration proceedings are completed, whichever occurs first. If the immigration proceedings have not completed or a final order of removal has been issued, HHS remands the youth to the custody of DHS when the child turns 18.

Before placing a child with a sponsor, HHS goes through a set of steps to ensure that a sponsorship will be safe and appropriate. In accordance with the TVPRA, we require verification of a sponsor's identity and relationship to the child. To meet this requirement, we require care provider staff to complete and document a thorough assessment of the child's past and present relationships to potential sponsors, whether family or non-relative. HHS care provider staff evaluates the nature and extent of the sponsor's motivation to care for the child. If

the child is not being released to a parent or legal guardian, the care provider staff considers the child's parent's or legal guardian's perspective on a child's potential release to a particular sponsor. This process is accomplished through interviews, careful review of submitted documentation, and outside confirmation of a sponsor's identity. These steps, along with any information the child provides to care provider staff, allows us to verify a sponsor's identity and relationship to the child.

In addition, the potential sponsor is required to undergo a background check and complete an assessment that identifies risk factors and other serious concerns. The background check consists of a public records check for the sponsor for criminal history, self-reporting by the sponsor of criminal history or domestic violence, and interviews with the child by a trained professional to uncover any criminal or domestic violence concerns about the sponsor. A psychosocial assessment of the child and the sponsor is also completed by case managers and clinicians, using a standard set of questions for every child and prospective sponsor. A background check based on fingerprints is required if the sponsor is not the child's parent or legal guardian or if any concerns are raised, including if there is concern for the child's safety. We perform these checks on all non-parent, legal guardian sponsors and on parents, legal guardians, if there is a known criminal history, documented risk to the safety of the unaccompanied child, the child is especially vulnerable, and/or the case is being referred for a mandatory home study. The fingerprints are taken and run against the Federal Bureau of Investigation and DHS databases.

In certain cases, case workers perform home studies as an additional safety measure. Home studies are required, under the TVPRA, if:

1) The child is a victim of a severe form of trafficking;

2) The child is a special needs child with a disability as defined in section 3 of the Americans with Disability Act of 1990;

3) The child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or

4) A child's proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking based on all available objective evidence.

Currently, home studies are done in seven to ten percent of cases before children are released to sponsors. Post-release services are performed for all cases in which a home study was conducted, in order to help link the child and the sponsor with community services or to provide other on-going assistance.

In the great majority of cases, we are able to place a child with a parent, relative, or other appropriate sponsor. As of May 31, 2015, approximately 90 percent of children who were released from shelters in FY 2015 were released to a parent, relative, or non-relative sponsor. The remainder of those released were remanded to DHS' custody because they had reached 18 years of age; were repatriated to their country of origin; or were placed in the Unaccompanied Refugee Minor (URM) program.

Post-release Responsibilities

As part of the placement process, HHS informs potential sponsors of their responsibility for ensuring the child appears at all appointments and court proceedings related to his or her immigration case and report to ICE for removal if subject to a removal or voluntary departure order. The sponsor must also agree to notify EOIR and DHS of any change of address, as well as attend a legal orientation provided by EOIR if it is available in the community where the sponsor resides. It is then up to the child, and the sponsor, to ensure that the child attends proceedings. Additionally, HHS coordinates with EOIR and informs EOIR of the current address of the sponsor at the time of release in order to assist EOIR's LOPC providers in their outreach efforts. HHS is not a party to the child's immigration case.

Once a child has been placed with a parent, relative, or other sponsor, the care and well-being of the child becomes the responsibility of that individual. For the great majority of children who are released to sponsors, HHS does not provide ongoing post-release services; rather, those services are limited to children for whom there had been a home study, and to a limited number of other children who have been determined to have mental health or other needs and who could benefit from ongoing assistance from a social welfare agency.

While we seek to ensure that all releases are safe and appropriate, we are aware that in some circumstances, a child may subsequently develop concerns about his or her placement. In April of this year, HHS expanded its ORR Help Line, initially intended to handle calls from potential sponsors, to also receive calls from children. Prior to release to a sponsor, HHS tells each child about the Help Line and provides him or her with a wallet card that reminds the child to call the

toll-free Help Line number if he or she needs help and to call 911 if he or she is in immediate danger. In addition, HHS will offer post-release services to the child and sponsor if the child was placed within 180 days and the placement has disrupted or is at risk of disruption. In the event that post-release service case workers or the Help Line workers are concerned about a child's safety, they are required under state and local laws to report those concerns to state or local child protective services.

Management of Child's Information

Since 2006, case information about children in HHS care has been entered into a secure, web-based database by our grantees. In January 2014, ORR updated the data system to what is now known as the Portal. The Portal has the ability to house demographic information along with child assessments and other case information, such as reports of abuse or neglect while in HHS care or prior to the child's arrival in the U.S. We continue to develop enhanced data reporting capabilities on the Portal.

HHS has strong policies in place to ensure the confidentiality of unaccompanied children's personal information and the security of the Portal database. These children may have histories of abuse or may be seeking safety from threats of violence. They may have been trafficked or smuggled. HHS does not release information about individual children that could compromise the child's location or identity.

Key Developments since July 2014

The number of arriving unaccompanied children has fallen significantly since the summer of 2014. In FY 2014, ORR received a total of 57,496 referrals from DHS. One third of those arrivals came in May and June of 2014. Arrival numbers began falling in July, and in the first eight months of FY 2015, ORR received fewer than 18,000 referrals of unaccompanied children and released over 15,000 unaccompanied children to sponsors. Historically, arrivals have been highest in the early months of summer; last May, we received 9,431 referrals; this May, the number was 3,350. HHS has approximately 4,000 children in its care as of June 30.

In substantial part, the number of unaccompanied children has fallen over the past year, because the Federal Government has engaged in an aggressive, coordinated, multi-agency response to provide humanitarian care for unaccompanied children while also improving foreign government cooperation, increasing border security, and providing assistance to governments in Central American countries to curb the flow of unaccompanied children.

In response to the increase of unaccompanied children at the Southwest border in FY 2014, the President directed the Secretary of Homeland Security to establish an interagency group, the Unified Coordination Group (UCG), to ensure unity of effort across the Administration. HHS and DHS are the lead agencies for the Federal management and care of unaccompanied children. The UCG has an ongoing role to facilitate requests from DHS or HHS, if needed, which may include additional capability, operational coordination, planning support, situational assessment, and critical transportation core capabilities.

Operating the Unaccompanied Children Program presents multiple challenges because of uncertainties about how many children will arrive and when. The U.S. government has continued to take steps to deter families and children from making the dangerous journey to the United States in the first place. Incorporating lessons learned from last summer, HHS has also adjusted a number of its practices to efficiently and effectively respond to both seasonal and unexpected fluctuations in migration while also maintaining high standards of care for this vulnerable population.

Because of the large seasonal fluctuations in arrival numbers, it is appropriate to have a mix of "standard" beds that are available year-round, and "temporary" beds that are called upon as needed in the event of a seasonal increase in arrivals. Accordingly, HHS developed a bed capacity framework for FY 2015 designed to make standard shelter capacity more adjustable by having a sufficient base number of standard beds, with the ability to quickly add temporary beds. This model, implemented in November 2014, reduces funding during periods of low capacity while preserving the ability to respond to future increases.

In recognition of the seasonality of migration, HHS directed providers operating shelter and foster care facilities with 50 or more beds to revise their proposed FY 2015 budgets to maintain capacity but reduce operating costs by a target of 25 percent between August and February, which is typically the low season for the program. Because arrival numbers remained lower than anticipated, ORR notified grantees to extend the low season an additional month through March 2015. In addition to these changes, HHS also delayed the delivery of approximately 1,200 additional beds until February 2015, which were originally scheduled to come online in mid-

September 2014. These actions are expected to result in FY 2015 savings of approximately $100 million relative to the grantee-submitted budget requests, representing a reduction of approximately 21 percent of the proposed budget amounts for those grantees.

As of June 2015, ORR has facilities in 15 states, with a capacity of 7,700 permanent beds. In addition, HHS has plans in place that would allow us to add up to approximately 6,000 additional temporary beds upon 30 days' notice, if needed and pending funding availability. At this time HHS is not expecting to deploy temporary shelters in FY 2015, but it is important for the Federal Government to be prepared to provide humanitarian care as rapidly as possible given the myriad of factors that can impact migration flows. Accordingly, in May 2015, HHS awarded five contracts for services related to temporary shelters for unaccompanied children with a combined contract minimum award amount totaling $6.1 million. These contract vehicles can be engaged to provide flexible options for the following services on a regional basis throughout the United States: shelter staffing, wrap-around services, training and technical assistance to shelter providers, transportation, and medical and clinical staffing and equipment. HHS will conduct outreach to elected officials and other stakeholders if temporary shelter capacity is determined to be needed.

In recent years, HHS has improved the efficiency of its case processing while ensuring that children's needs are carefully reviewed and sponsor background is checked. As a result, HHS has reduced the average length of stay of a child in shelter care from 72 days in FY 2011 to 34 days in FY 2015. While we continue to look for efficiencies, we must be mindful of the need to not truncate the processes in ways that risk the safety of children.

Since last year, HHS has created a Division of Policy within ORR to focus on strengthening policies to govern the care of unaccompanied children and their placement with sponsors. We have posted multiple policies on the ORR website, and will continue to add more in the coming months. For example, we have posted policies describing the background checks required before a child is released to a sponsor and safeguards that must be in place to prevent sexual abuse or sexual harassment of the unaccompanied children.

In addition, in December 2014, HHS published its interim final rule (IFR) for implementation of Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children as required by the Prison Rape Elimination Act of 2003 (PREA). The IFR outlines safeguards that all ORR facilities must implement to protect children in ORR custody from sexual abuse. The IFR requires facilities to adopt zero tolerance policies, appoint a compliance manager to oversee implementation of appropriate safeguards and training, conduct criminal background checks during the hiring process, maintain minimum staffing levels, and conduct unannounced rounds, and use monitoring to maintain surveillance of youth/staff and youth/youth interaction.

As noted previously, we have expanded our Unaccompanied Children Help Line to receive calls from children concerned about the safety of their placements. In addition, in March of this year, we enhanced our background check process to require child abuse and neglect checks in all cases involving non-relative sponsors. While we do not provide post-release services in all cases, we have expanded the provision of post-release services, effective July 1. We will now provide post-release services to all children released to a non-relative sponsor, and to recently released

children who have contacted the ORR Help Line for assistance and either are no longer living with their sponsor or are having serious conflict with their sponsor. In addition, effective July 1, we have expanded the implementation of home studies for all children ages 12 and under being released to non-relative sponsors.

Under Federal law, HHS has a responsibility to ensure that unaccompanied children receive counsel to the greatest extent practicable and, consistent with section 292 of the Immigration and Nationality Act (i.e., stating that a person in removal proceedings before an immigration judge shall have the privilege of being represented, but at no expense to the Government), making every effort to utilize pro bono counsel. We continue to actively work to expand the availability of pro bono counsel and other legal services for unaccompanied children On June 15th, HHS issued a request for proposals for contractors to provide legal services to unaccompanied children; including pro bono legal representation to the greatest extent practicable, direct representation to the greatest extent practicable, screenings for legal relief eligibility and human trafficking; friends of the court services; and Know Your Rights presentations for children in HHS shelters. In addition, because there are not enough pro bono counsel, in September 2014, HHS provided funds to two grantees to hire attorneys to provide post-release legal representation to unaccompanied children in cities where a large percentage of children are expected to be released to sponsors and their removal proceedings are expected to be held. We believe that this expansion of representation will improve efficiency in the immigration courts, as the caseload has increased due to the previous increase of unaccompanied children crossing the southern border.

Conclusion

We welcome working with this Committee and Congress in efforts to improve the program.

Thank you for the opportunity to discuss this critical issue with you. I would be happy to answer any questions.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

PHILIP T. MILLER

ASSISTANT DIRECTOR FOR FIELD OPERATIONS
ENFORCEMENT AND REMOVAL OPERATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON
"The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

BEFORE THE

U.S SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

July 7, 2015

340 Dirksen Senate Office Building
Washington, D.C.

INTRODUCTION

Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee, thank you for the opportunity to appear before you today to discuss the U.S. Immigration and Customs Enforcement (ICE) role in addressing issues related to unaccompanied children (UC) arriving in the United States.

As you know, in 2014 there was an unprecedented surge of families and unaccompanied children from Central America to the United States. Among the reasons for this increase are push and pull factors such as better economic conditions in the United States, the desire to be with family members who are already present in the United States, and escalating violence in Central American countries, e.g., violent street gangs and drug cartels. Through the whole of government, we continue to address this humanitarian and border security issue in a manner that is comprehensive, coordinated, and humane. While ICE is one of several agencies involved in the processing of unaccompanied children, ICE plays a critical role by quickly and safely transporting unaccompanied children from U.S. Customs and Border Protection (CBP) custody to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) custody, and effectuating removal orders as appropriate following the conclusion of immigration proceedings.

Apprehension and Processing

When CBP encounters a child attempting to enter the United States without permission, CBP begins the interview process to determine the child's status, reviews available documentation, and determines if the child is accompanied by a parent or legal guardian. During processing of a minor, immigration officers serve the minor (assuming he/she is old enough to

participate meaningfully in this process) with relevant forms to inform the minor in their native language of his or her rights and the usual flow of the process. During this process, CBP also screens the minor for any human trafficking indicators and any claim of credible fear. If human trafficking indicators are identified during screening or at any time while the UC is in CBP custody, CBP is required to notify ICE Homeland Security Investigations (HSI) for further follow-up, analysis, and possible investigatory action. HHS is also notified and the child is transferred to their custody.

Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), an unaccompanied child who is a national of Canada or Mexico may be permitted to withdraw his or her application for admission and be returned to the child's country if there are no human trafficking indicators or claims of fear, and the child is able to make an independent decision to withdraw his or her application for admission. Pursuant to other provisions of the TVPRA, unaccompanied children who are nationals of noncontiguous countries, such as Honduras, Guatemala, or El Salvador, are placed in removal proceedings before an immigration court. The vast majority of children encountered in the Rio Grande Valley during last year's influx came from these three countries and were placed in removal proceedings. Under the TVPRA, while immigration judges maintain jurisdiction over removal proceedings, U.S. Citizenship and Immigration Services (USCIS) has initial jurisdiction over any asylum claims filed by UC. Thus, UC may file asylum applications directly with USCIS while they are in removal proceedings. This provision allows UC to have their asylum claims initially heard in a non-adversarial setting by a specially-trained USCIS asylum officer. If relief is not granted, the application is renewed before the immigration judge in removal proceedings.

CBP is responsible for the short-term care of UC, but once a determination is made that the child is an unaccompanied minor, the Department of Homeland Security (DHS) is required by law to transfer UC to HHS/ORR for care and placement. ICE is responsible for their transfer to HHS/ORR. UC are not housed in ICE's detention facilities. In fiscal year (FY) 2012, ICE transfers of UC to HHS/ORR reached nearly 12,000. In FY 2013, that number nearly doubled to 23,000. In FY 2014, DHS transfers of UC to HHS rose to nearly 58,000. As of the end of the third quarter of FY 2015, we have seen a return to more manageable numbers with 18,246 UC transferred to HHS, though this is still high relative to the historic levels we saw prior to FY 2012.

Placement of Unaccompanied Children

Consistent with the TVPRA, except in exceptional circumstances, DHS is required to transfer the custody of a UC to HHS/ORR within 72 hours after determining that such child is unaccompanied. In accordance with the *Flores* Settlement Agreement, and as required under TVPRA, HHS/ ORR places UC in the least restrictive setting that is in the best interest of the child, subject to considerations such as danger to self, danger to others/the community, and risk of flight. Once HHS notifies DHS that a shelter bed is available, it is DHS's responsibility to quickly and safely transport the unaccompanied child from CBP custody to HHS/ORR. ICE transports UC via ground, commercial air, and ICE charter flights. ICE has implemented procedures for efficiently transferring UC that have streamlined the process and allowed our Enforcement and Removal Operations (ERO) officers to continue to perform their other responsibilities.

All 24 ICE ERO field offices have primary and back-up juvenile coordinators, each of whom receive annual, specialized training with respect to the unique vulnerabilities of children. These Field Office Juvenile Coordinators serve as local subject matter experts on the proper processing, transportation, and placement of UC; monitor operational practices for compliance with regulations, standards, and policy; and are on call 24 hours a day, 7 days a week.

During the limited time ICE maintains physical custody of a UC for transport, and pending his or her transfer to HHS/ORR, such minors are separated from adult detainees for their safety. During this time, minors are also provided with regular access to snacks, milk, juice, consular officials, telephones, and other resources.

Through USCIS, UC may also seek various forms of relief (such as asylum) or pursue Special Immigrant Juvenile status or other programs designed to assist victims of crime and human trafficking.

Removal of Unaccompanied Children

Once removal proceedings have concluded and a final order of removal is issued, ICE may take appropriate enforcement action based on the Department's stated priorities. Since 2012, 7,013 UC have been removed from the United States and returned to their countries of origin. Of those, 1,682, 2,347, and 601 were repatriated to Honduras, Guatemala, and El Salvador, respectively.[1]

DHS has taken a number of important new steps to deter unlawful migration in the first place. First, the President and the Secretary have reiterated that recent arrivals and those attempting to cross the border are priorities for apprehension and removal. Second, Secretary

[1] Note that these removal counts are based on designation of unaccompanied children at time of initial book-in and individual aliens may no longer be under the age of 18 at the time of removal.

Johnson and Director Saldaña have personally met with high level officials from Mexico, Honduras, and Guatemala to secure their cooperation in stemming the flow of their citizens into the United States. As an example, in recent years, ERO implemented the Guatemalan and Honduran pilot initiatives in the Rio Grande Valley region to streamline repatriations to these countries and to decrease the average length of stay of individuals in ICE custody. Third, DHS and the Department of State have established in-country refugee processing in Guatemala, El Salvador, and Honduras, for eligible children of those lawfully present in the United States. DHS continues to encourage families to take advantage of that program. Early indications are that our efforts are working. Compared to this time last year, CBP total apprehensions along the southwest border are down by 34 percent, and the numbers of UC apprehensions are down by 51 percent. To be clear, the humanitarian influx is a seasonal challenge and we are still in the season when the influx occurred last year. Nevertheless, I am confident that we will not see a repeat of last year's unprecedented numbers this year.

CONCLUSION

We are better prepared than ever before to deal with the arrival of unaccompanied children along the southern border and one year later, we are seeing a decrease in those illegally crossing our borders. With the Committee's support, we continue to work closely with our sister agencies to address the care of and processing of unaccompanied children arriving in the United States.

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. I look forward to answering any questions.

U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

JOSEPH E. LANGLOIS
ASSOCIATE DIRECTOR, REFUGEE, ASYLUM AND INTERNATIONAL OPERATIONS DIRECTORATE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

"THE 2014 HUMANITARIAN CRISIS AT OUR BORDER: A REVIEW OF THE GOVERNMENT'S RESPONSE TO UNACCOMPANIED MINORS ONE YEAR LATER"

BEFORE
THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JULY 7, 2015
10:00 AM
SD-342 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee: Thank you for the opportunity to testify at today's hearing on unaccompanied children (UC). I am Joseph Langlois, the Associate Director of the Refugee, Asylum and International Operations (RAIO) Directorate within U.S. Citizenship and Immigration Services (USCIS) at the Department of Homeland Security (DHS). One of the components I oversee is the Asylum Division, and my testimony today will focus on the Asylum Division's processing of asylum applications filed by UCs.

William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

The TVPRA introduced a wide range of safeguards for UCs, including the current regime for processing asylum applications filed by UCs. An unaccompanied child as defined in statute) is a child who: (1) has no lawful immigration status in the United States; (2) has not attained 18 years of age; and (3) with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. Under the TVPRA, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) determine whether a minor is a UC upon apprehension. These agencies must transfer the custody of apprehended UCs to the U.S. Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) within 72 hours of determining that the minor is a UC, unless there are exceptional circumstances. With the exception of some UCs from contiguous countries, these UCs are issued a Notice to Appear (NTA) before an immigration judge of the Executive Office for Immigration Review (EOIR) within the U.S. Department of Justice for removal proceedings under section 240 of the Immigration and Nationality Act (INA). (UCs from contiguous countries may be allowed to withdraw their application for admission and return to their home country voluntarily if CBP determines that they have not been a victim of a severe form of trafficking and are not at risk of being trafficked in the home country, that they do not have a credible fear of persecution in the home country, and that they are able to make an independent decision to withdraw their application for admission.)

Once DHS has placed a UC in removal proceedings before an immigration judge, the UC may seek to apply for relief, including asylum, as a defense to removal. Prior to the TVPRA, UCs who wished to apply for asylum in removal proceedings were required to file their asylum applications with immigration judges in an adversarial proceeding in immigration court. The TVPRA, however, created a new role for USCIS in the processing of UC asylum applications. Under the TVPRA, while immigration judges maintain jurisdiction over removal proceedings, USCIS has initial jurisdiction over any asylum claims filed by UCs. Thus, UCs may file asylum applications directly with USCIS while they are in removal proceedings. This provision allows UCs to have their asylum claims initially heard in a non-adversarial setting by a specially-trained USCIS asylum officer. Moreover, if USCIS does not find the UC eligible for asylum, the case is sent back to the immigration judge for a *de novo* hearing on the claim.

USCIS Processing of Asylum Applications Filed by Unaccompanied Children

UCs who indicate to an immigration judge an intention to apply for asylum in removal proceedings are instructed to file their asylum applications with USCIS instead of EOIR. As part of these instructions, the ICE attorney in immigration court provides the UC written guidance that directs the filing of the asylum application at the USCIS service center, or if extenuating circumstances warrant expeditious processing, directly at an asylum office. In the meantime, ICE generally requests a continuance with the immigration judge to provide time for the UC to file the asylum application with USCIS and for USCIS to adjudicate the asylum application.

After receiving the case, the USCIS service center verifies that the asylum application has been properly filed with USCIS, enters the application into the case management system, and forwards the file to the appropriate USCIS asylum office with jurisdiction over the applicant's address. In cases where CBP or ICE has already determined that the applicant is a UC, and that determination is still in place on the date the asylum application was filed, USCIS adopts that determination, assumes jurisdiction over the application, and proceeds with the asylum interview and adjudication. If CBP or ICE has not already made a determination that an applicant in removal proceedings is a UC, or if the prior UC determination has been terminated, an asylum officer makes an independent UC determination in order to establish whether USCIS has jurisdiction over the asylum application. In these rare instances, asylum officers determine whether the applicant was a UC on the date of the initial filing of the asylum application by examining an applicant's age, immigration status, and whether the applicant has a parent or legal guardian in the United States available to provide care and physical custody to him or her. In the uncommon case that the asylum office is the first federal entity to make a determination that the applicant is a UC, the asylum office will notify HHS as required by the TVPRA.

Once USCIS assumes jurisdiction, USCIS asylum officers conduct in-person, in-depth, non-adversarial interviews. USCIS has been prioritizing the scheduling of asylum interviews for UCs since Fiscal Year 2014, consistent with EOIR's expedited scheduling of UC cases. These interviews are conducted by specially trained asylum officers who fully explore the asylum claim, research country conditions, and complete required security checks. These checks include comprehensive biographic and biometric identity and background checks that are mandatory for all applicants and are used to screen for security concerns, misrepresentation, criminal and immigration history, and other factors that affect eligibility. Asylum officers then determine whether the individuals are eligible for asylum and draft a decision. Supervisors review 100% of asylum officers' decisions prior to service. If USCIS does not grant asylum, the UC is returned to immigration court, where the UC may renew his or her asylum application, where an immigration judge conducts a *de novo* hearing of the case.

Appropriate training of adjudicators who perform this work is of paramount importance to USCIS. In addition to the basic training required of all USCIS officers, asylum officers receive eight weeks of specialized training that includes comprehensive instruction on all aspects of the job, including asylum law, fraud detection and prevention, security protocols, non-adversarial interviewing techniques, credibility analysis, and country conditions research. In addition, all asylum officers receive training on child-appropriate interview techniques and guidelines for children's asylum claims. Asylum officers are trained to conduct child-

appropriate interviews taking into account the applicant's age, stage of language development, background, and level of sophistication.

Each USCIS asylum office has designated at least one asylum officer who serves as the point of contact for issues related to UCs. These designees are responsible for communicating with the local ICE Principal Legal Advisor Offices regarding the status of asylum applications for UCs in removal proceedings, verifying the status of removal hearings, and arranging the transfer of A-files between ICE and asylum offices. The point of contact also notifies HHS whenever the asylum office identifies a UC.

Statistics on Asylum Applications Filed by Unaccompanied Children

Overall Trends: FY 2009 to present

USCIS has received a total of 13,004 asylum applications filed by UCs apprehended by CBP since Fiscal Year 2009, when the TVPRA was first implemented. The table below shows that this total represents only 6% of the number of UCs apprehended by CBP during this period.

UC asylum cases filed by apprehension year

Year	UC Apprehensions by CBP	New Asylum Cases Filed by UCs	Percentage
FY 2009	19,819	431	2%
FY 2010	19,173	593	3%
FY 2011	17,786	534	3%
FY 2012	27,053	1,235	5%
FY 2013	41,908	2,753	7%
FY 2014	73,471	6,990	10%
FY 2015 thru May 31	22,869	468	2%
TOTAL	**222,079**	**13,004**	**6%**

In addition, since the TVPRA was implemented in Fiscal Year 2009, 92% of UCs who filed for asylum with USCIS were from Guatemala, Honduras, or El Salvador. During this time period, the USCIS asylum approval rate for all UCs was 42.6%, close to the overall approval rate of 41% for all new asylum applications received by USCIS during the same time period.

It can take a number of months for UCs to file asylum applications after their arrival in the United States, which is reflected in the number of "New Asylum Cases Filed by UCs" in FY 15 thus far. Asylum applications received by USCIS in one Fiscal Year may have been filed by UCs who arrived in a previous Fiscal Year. In Fiscal Year 2014, 69% of UCs who filed asylum applications with USCIS did so more than 300 days after their arrival in the United States. In

Fiscal Year 2015, 49% filed their asylum applications more than 300 days after their arrival in the United States.

Recent Arrivals: Entered United States between 10/01/13 and 7/31/2014

Of the UCs who arrived in the United States between 10/01/13 and 7/31/14, 7,041 have applied for asylum with USCIS under the TVPRA initial jurisdiction provision. Of these 7,041 applicants, USCIS has:

- adjudicated 3,887 of their cases, approving 1,616 for an approval rate of 41.6%;
- administratively closed 161 cases;
- 2,993 cases pending, of which 61% were filed in the last three months.

While USCIS has seen significant increases in asylum applications from UACs in the last two Fiscal Years, these receipts still constitute only a fraction of the number of UACs apprehended by CBP during the same timeframe.

Special Immigrant Juvenile Status Program

UCs may be eligible to apply for programs or relief other than asylum. One such program is the Special Immigrant Juvenile (SIJ) status program, which is administered by the Field Operations Directorate within USCIS. SIJ classification is an immigration protection for foreign-born, non-U.S. citizen or lawful permanent resident children present in the United States who have been abused, neglected, or abandoned by a parent. SIJ status is an immigration classification that may allow these children to immediately apply for lawful permanent resident status if otherwise eligible and a visa is available. SIJs are subject to the employment-based fourth preference (EB-4) visa quota limits and share these visas with other categories of special immigrants (e.g., religious workers).

The TVPRA expanded eligibility for SIJ by adding children placed under the custody of an individual or entity, which could include a custodial parent. The TVPRA also removed the need for a juvenile court to determine the child eligible for long term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable.

The SIJ program is unique in that only children who have been subject to court proceedings under state law are eligible to apply. The role of the state is to make certain child-welfare related findings based on state law about a child's dependency on the court or custody, the non-viability of parental reunification, and the best interests of the child. USCIS does not have a role in these determinations. The role of USCIS is to determine if the child meets the statutory requirements for SIJ classification under immigration law; thus, USCIS must determine that the appropriate state court has made the necessary declaration pertaining to the child's dependence on the court, or the child's placement under the custody of a state agency, a private agency, or a private individual or entity appointed by a State or juvenile court, consistent with a finding that reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under applicable state law, and that it would not be in the child's best interest to be returned to his or her previous country of nationality or last habitual residence. If a child in the custody of HHS seeks a juvenile court order that also alters his or her HHS custody

status or placement, HHS must consent to the juvenile court's jurisdiction. HHS consent is not required if the order simply restates the child's current placement.

Some UCs may be eligible for SIJ status. However, because the UC designation is not germane to the adjudication of an SIJ case as it is for determinations regarding asylum jurisdiction, USCIS does not gather information on a petitioner's unaccompanied child status as part of the SIJ petition. Therefore, USCIS cannot provide statistics as to the number of SIJ petitions filed by UCs specifically. USCIS does track overall trends in SIJ petitions, and has seen a steady increase in the total volume of SIJ petitions filed with the agency.

U.S. Citizenship and Immigration Services
Special Immigrant Juvenile (SIJ) Status
Receipts, Approvals, and Denials
Fiscal Years 2014 through 2015 (May)

FISCAL YEAR	MONTH	RECEIPTS	APPROVALS	DENIALS
2014 Totals		5,817	4,605	245
2015 Totals		6,814	5,257	198

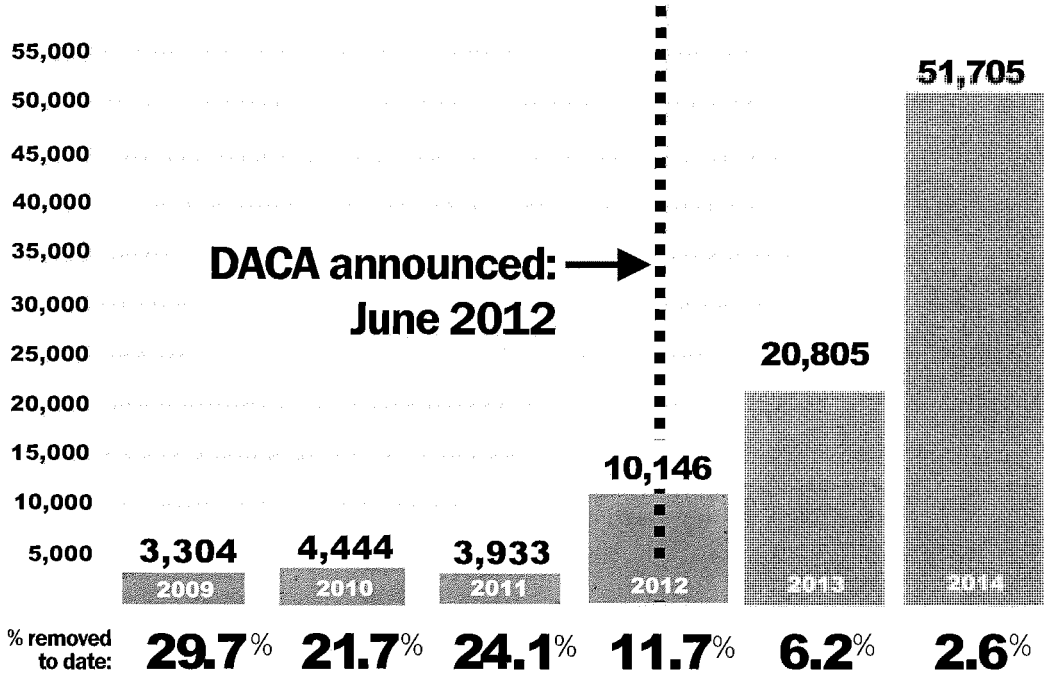
Conclusion

The TVPRA established a new, multifaceted system for providing care for UCs and addressing their immigration status, assigning responsibilities to various agencies across the federal government. USCIS plays a limited but important role in taking initial jurisdiction of asylum applications filed by UCs, conducting their asylum interviews in a non-adversarial setting, and adjudicating their claims. To date, while a relatively small percentage of UCs apprehended at the border have applied for asylum with USCIS, the number of filings has increased over the last two years and may continue to do so. USCIS continues to monitor trends and stands ready to meet future challenges with a well-trained workforce dedicated to quality and integrity.

Thank you for the opportunity to testify. I look forward to answering any questions.

UAC APPREHENSIONS

UNACCOMPANIED CHILDREN: HONDURAS, GUATEMALA, EL SALVADOR



U.S. Border Patrol, U.S. Customs and Border Protection.

RON JOHNSON
U.S. SENATE

STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

HEARING ON "THE 2014 HUMANITARIAN CRISIS AT OUR BORDER: A REVIEW OF THE GOVERNMENT'S RESPONSE TO UNACCOMPANIED MINORS ONE YEAR LATER"

JULY 7, 2015

Contact:
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Washington, DC 20005
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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the children and families that have fled Central American violence to the United States.

Our recently revised report, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 2015) (Exhibit A),[1] provides information about the tens of thousands of children—some travelling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. It also seeks to explain the basic protections the law affords them, what happens to the children once they are in U.S. custody, and what the government has done in response.

As described in the *Guide*, unaccompanied children and families are still fleeing Central American violence in large numbers. This current situation demonstrates how essential it is that the United States maintains its legal protections for children who flee here. Many of these protections are codified in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA). Indeed, the influx of children since last summer shows the need to better implement and even strengthen TVPRA protections. Several proposals to strengthen those protections passed the Senate in 2013 with bipartisan support, including proposals to complement Border Patrol officers with child welfare experts, require Border Patrol to consider the "best interests" of a child, and provide lawyers to unaccompanied children.[2]

[1] http://immigrationpolicy.org/special-reports/guide-children-arriving-border-laws-policies-and-responses.
[2] Ex. A, pp. 13-14.

With respect to the many children who fled violence with their mothers, we remain deeply troubled by the Administration's use of family detention. Research shows that family detention leads to psychological and physical harm.[3] We are even more troubled by the government's recent acknowledgement of healthcare failures at the Dilley, TX family detention center, where children were given adult-dose hepatitis vaccines.[4] Although Secretary Johnson's recent announcement of "substantial changes" to family detention policy is a strong first step, U.S. family detention must end.

* * *

We continue to urge Congress to strengthen protections for vulnerable immigrants, and to work to comprehensively reform our outdated immigration system, in a way that meets our needs and reflects our proud history as a nation of immigrants.

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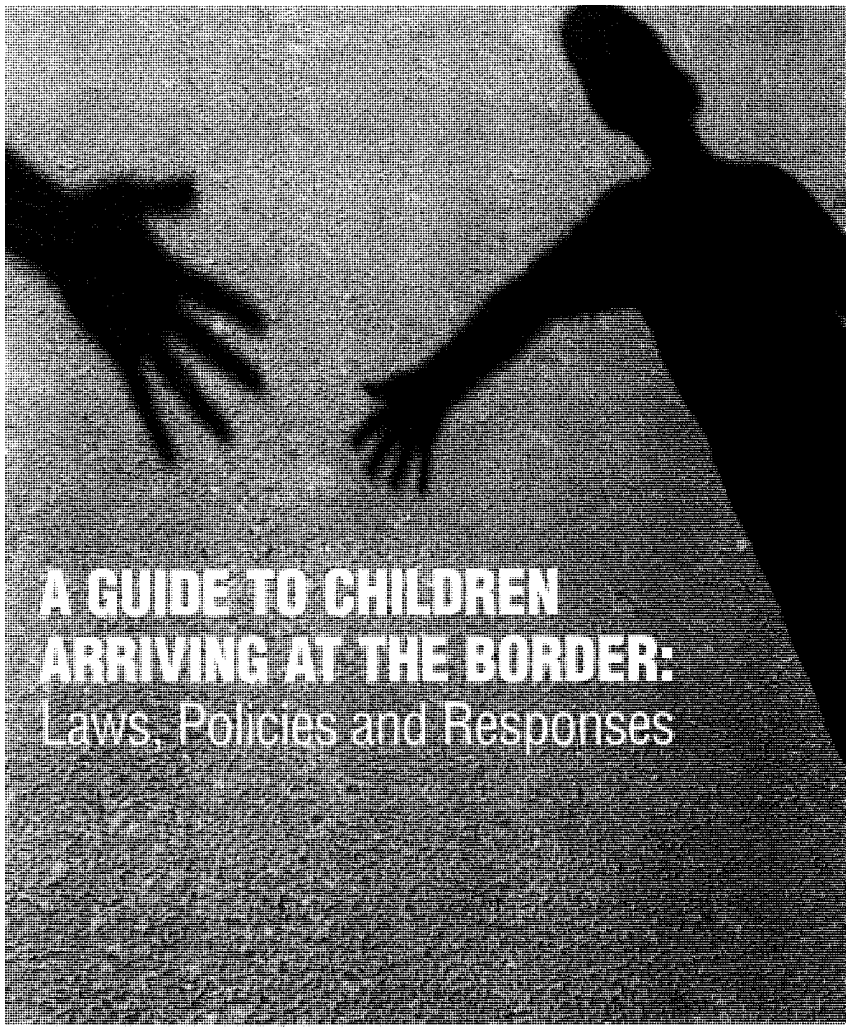
[3] Ex. A, pp. 10-11.

[4] American Immigration Council, "Vaccine Overdose to Detained Children Another Sign that Family Detention Must End," July 4, 2015, http://www.americanimmigrationcouncil.org/newsroom/release/vaccine-overdose-detained-children-another-sign-family-detention-must-end.

ATTACHMENT A



A GUIDE TO CHILDREN ARRIVING AT THE BORDER:
Laws, Policies and Responses

American Immigration Council

Special Report | June 2015

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at *www.immigrationpolicy.org* and our blog at *www.immigrationimpact.com*.

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PREFACE

The American Immigration Council is updating this Guide which was first issued in summer 2014. It provides information about the tens of thousands of children—some travelling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. This Guide seeks to explain the basics. Who are these children and why are they coming? What basic protections does the law afford them? What happens to the children once they are in U.S. custody? What have the U.S. and other governments done in response? What additional responses have advocates and legislators proposed? The answers to these questions are critical to assessing the U.S. government's responses and understanding the ongoing debate about whether reforms to the immigration laws and policies involving children are needed.

BACKGROUND: WHO ARE THE CHILDREN, WHY ARE THEY COMING, AND WHAT OBLIGATIONS DO WE HAVE?

What does "unaccompanied children" mean?

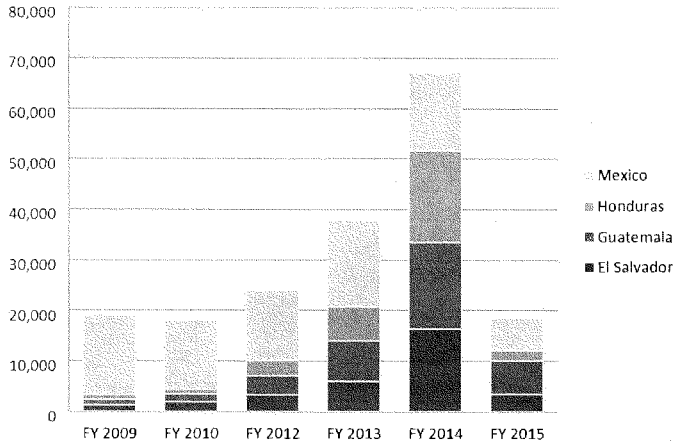
Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. "Unaccompanied alien child" (UAC) is a technical term defined by law as a child who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."[1] Due to their vulnerability, these young migrants receive certain protections under U.S. law. The immigration laws do not define the term "accompanied" children, but children arriving in the United States with a parent or guardian are considered accampanied.

Where are these children and families coming from?

The vast majority of unaccompanied children and families arriving at the southwest barder came from Mexico, Guatemala, Honduras, and El Salvador, although unaccampanied children may arrive from any country. Over the past few years, increasing numbers of children and families have been fleeing violence in Guatemala, Honduras, and El Salvador—a region of Central America known as the "Northern Triangle." According to U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), between October 1, 2013 and September 30, 2014, CBP encountered 67,339 unaccompanied children. The largest number of children (27 percent of the total) came from Honduras, followed by Guatemala (25 percent), El Salvador (24 percent), and Mexico (23 percent).[2] The number of unaccampanied children arriving at the southern border has decreased since its peak in the summer and fall of 2014. Between October 1, 2014 and April 30, 2015, CBP apprehended 3,514 unaccompanied minors from El Salvador, 6,607 from Guatemala, 1,977 from Honduras, and 6,519 from Mexico.[3] This represents approximately a 45 percent decrease from the same time period the prior year.[4] The apprehensions of "family units" (children with a parent or legal guardian) also declined. There were 16,997 family unit apprehensions from October 1, 2014 to April 30, 2015, a 35 percent decrease from 26,341 apprehensions during the same time frame the year before.[5]

As discussed below, this decrease in apprehensions likely is tied to increases in apprehensions in Mexico and increased security measures along Mexico's southern border.

Unaccompanied Migrant Children Encountered FY 2009-FY 2015*



Source: CBP.
*FY 2015 through April 30, 2015.

Why are children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary motivation for recent migration, while identifying additional causes including poverty and family reunification.[6] A report by the Assessment Capacities Project (ACAPS), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively.[7] A 2014 analysis conducted by Tom Wong, a University of California-San Diego political science professor, took the UNDOC data and compared it to the data on unaccompanied children provided by CBP. Wong found a positive relationship between violence and the flow of children: "meaning that higher rates of homicide in countries such as Honduras, El Salvador, and Guatemala are related to greater numbers of children fleeing to the United States."[8]

While a child may have multiple reasons for leaving his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a primary motivation for fleeing. Research conducted in El Salvador on child migrants who were returned from Mexico found that 60 percent listed crime, gang threats, and insecurity as a reason for leaving.[9] In a United Nations High Commissioner for Refugees (UNHCR) survey of 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico, 48 percent of the children "shared experiences of how they

had been personally affected by the...violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors."[10] Furthermore, the violence frequently targets youth. Recruitment for gangs begins in adolescence—or younger—and there are incidents of youth being beaten by police who suspected them of gang membership.[11]

Are children coming to the United States because of DACA?

No. U.S. immigration enforcement policy, including deferred action programs that would allow certain undocumented immigrants to remain in the United States temporarily, is not a primary cause of the migration. Notably, the rise in violence and corresponding increase in unaccompanied child arrivals precede both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of an immigration reform bill S.744—positive developments that are sometimes cited as pull factors by Obama Administration critics. In fact, in its 2012 report, the Office of Refugee Resettlement (ORR) stated that "in a five month period between March and July 2012, the UAC program received almost 7,200 referrals—surpassing FY2011's total annual referrals," showing that the rise in UACs predated the implementation of the DACA program. Furthermore, individuals who arrived in the country after January 1, 2007 would not be eligible for DACA.

Would more Border Patrol resources deter border crossers?

There is little evidence to support the proposition that the border must be further fortified to deter an influx of children and families. Treating the current situation as simply another wave of unauthorized immigration misses the broader policy and humanitarian concerns driving these children and families' migration. In fact, many women and children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.[12]

Furthermore, CBP's resources along the southwest border are already significant. There were 18,156 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2014.[13] The annual Border Patrol budget stood at $3.6 billion in FY 2014.[14] The Border Patrol has at its command a wide array of surveillance technologies: ground radar, cameras, motion detectors, thermal imaging sensors, stadium lighting, helicopters, and unmanned aerial vehicles.[15]

What are our obligations under international law?

The United States has entered into treaties with other countries to ensure the protection and safe passage of refugees.[16] Among the most important are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture, prohibits the return of people to a country where there are substantial grounds to believe they may be tortured.[17]

The United States has implemented these treaties in various laws and regulations. They form the basis for both our refugee program and asylum program. (An asylee is simply a refugee whose case is determined in the United States, rather than outside it.) In fact, under our laws, anyone in the United States may seek asylum, with some exceptions, or protection from torture with no exceptions. It can be difficult and complicated to determine whether an individual has a valid claim for asylum

or protection from torture. To meet its protection obligations, the United States should ensure that children are safe, have an understanding of their situation and their rights, and have adequate representation when they tell their stories to a judge.

Do Central American children qualify for protections under international and U.S. law?

Many of the children fleeing to the United States have international protection needs and could be eligible for humanitarian relief. According to UNHCR's survey of 404 unaccompanied children from Mexico, El Salvador, Honduras, and Guatemala, 58 percent "were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection." Notably, of those surveyed, UNHCR thought 72 percent of the children from El Salvador, 57 percent from Honduras, and 38 percent from Guatemala could merit protection.[18] While international protection standards are in some cases broader than current U.S. laws, the fact that over 50 percent of the children UNHCR surveyed might qualify as refugees suggests that a thorough and fair review of these children's claims is necessary to prevent them from being returned to danger.

Moreover, children may qualify for particular U.S. forms of humanitarian relief for victims of trafficking and crime, or for children who have been abused or abandoned by their parents. A 2010 survey conducted by the Vera Institute of Justice indicated that 40 percent of children screened while in government custody could be eligible for relief from removal under U.S. laws.[19] Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining whether these children qualify for some form of protection can be a time-consuming process.

What types of U.S. immigration relief do children potentially qualify for?

The most common types of U.S. immigration relief for which children potentially are eligible include:

Asylum: Asylum is a form of international protection granted to refugees who are present in the United States. In order to qualify for asylum, a person must demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group.

Special Immigrant Juvenile Status (SIJS): SIJS is a humanitarian form of relief available to noncitizen minors who were abused, neglected, or abandoned by one or both parents. To be eligible for SIJS, a child must be under 21, unmarried, and the subject of certain dependency orders issued by a juvenile court.

U visas: A U visa is available to victims of certain crimes. To be eligible, the person must have suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

T visas: A T visa is available to individuals who have been victims of a severe form of trafficking. To be eligible, the person must demonstrate that he or she would suffer extreme hardship involving unusual or severe harm if removed from the United States.

What is the Trafficking Victims Protection Reauthorization Act (TVPRA)?

The original Trafficking Victims Protection Act was signed into law in 2000 to address human trafficking concerns. It was subsequently reauthorized during both the Bush and Obama Administrations in 2003, 2005, 2008, and 2013.

The TVPRA of 2008, signed by President Bush, responded to concerns that unaccompanied children apprehended by the Border Patrol "were not being adequately screened" for eligibility for protection or relief in the United States.[20] The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated. At the outset, unaccompanied children must be screened as potential victims of human trafficking.[21] However, as described further below, procedural protections for children are different for children from contiguous countries (i.e., Mexico and Canada) and non-contiguous countries (all others). While children from non-contiguous countries are transferred to the Department of Health and Human Services (HHS) for trafficking screening, and placed into formal immigration court removal proceedings, Mexican and Canadian children are screened by CBP for trafficking and, if no signs of trafficking or fear of persecution are reported, may be summarily returned home pursuant to negotiated repatriation agreements.[22] The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (e.g., a one-year filing deadline).[23] It also required HHS to ensure "to the greatest extent practicable" that unaccompanied children in HHS custody have counsel, as described further below—not only "to represent them in legal proceedings," but to "protect them from mistreatment, exploitation, and trafficking."[24]

Can new arrivals obtain a grant of Temporary Protected Status?

Although Salvadorans and Guatemalans in the United States have been eligible for Temporary Protected Status (TPS) in the past, there currently is no category that would include children or families arriving today or at any point since the spring of 2014. TPS is a limited immigration status that allows an individual to remain temporarily in the United States because of civil war, natural disasters, or other emergency situations that make it difficult for a country to successfully reintegrate people. TPS requires a formal designation by the Secretary of Homeland Security, in consultation with the Secretary of State, and requires, among other things, that a country formally request this designation from the U.S. government.

How have other countries in the region responded to the increase in child migrants?

Mexico, with support from the United States, has responded to the increasing number of children and families fleeing Central America by expanding its security measures along its southern border as well as its internal enforcement. Part of the Mexican government's southern border security plan is funded through the Mérida Initiative and as of October 2014, about $1.3 billion dollars in U.S. assistance went to Mexico through this initiative.[25]

According to the Migration Policy Institute, migrants report an "increased presence of immigration officials in pickup trucks patrolling the roads and bus stations en route to the train line. Raids on hotels and restaurants where migrants shelter in traditional cities [i.e., cities along previously established migrant routes] have occurred. And immigration agents, in raids supported by federal

police and the military, are targeting the trains, removing migrants from the train cars and detaining them.[26] The companies that run the cargo trains on whose roofs migrants travel (referred to as "La Bestia") also are working with the Mexican government to increase train speed in order to prevent migrants from riding on them.[27]

Deportations from Mexico to the Northern Triangle countries increased significantly over the course of 2014, and this trend has continued into 2015. Mexico apprehended more than 15,795 minors between January and August of 2014, compared to 9,727 minors for all of 2013.[28] According to a Pew Research Center analysis of data from the Mexican government, Mexico deported 3,819 unaccompanied minors from Central America during the first five months of FY 2015—a 56% increase over the same period from FY 2014.[29]

A report by the Human Rights Institute at Georgetown Law School found that while "Mexican officials are supposed to screen unaccompanied children for international protection needs, they often fail to meet this responsibility."[30] The report also found that the detention conditions deterred children from accessing the asylum process and that the Mexican government is failing to consistently inform children of their rights or screen them for international protection eligibility.[31] Without these practices, the report argued, "current practices place a burden on migrant children to investigate the law and procedures and affirmatively apply for asylum."[32]

What is in-country processing?

In November 2014, the U.S. Department of State announced the launch of its in-country refugee processing program in El Salvador, Guatemala, and Honduras. The program is intended "to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States."[33] The new program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to submit an application to have their children join them in the United States if they qualify for refugee status or humanitarian parole.

Parents may submit applications for this program to the State Department. Once the application is submitted, the International Organization for Migration (IOM) will work with the child in country and invite them to pre-screening interviews. Both the child and the parent will have to submit ta DNA testing to ensure the biological relationship, and DHS will conduct an interview for refugee eligibility. As with all refugees, the children will have to submit to and pass security checks to be eligible for refugee status.[34] If they do not qualify for refugee status, it is possible that they may qualify for humanitarian parole on a case-by-case basis. Although humanitarian parole permits a person to travel safely to the United Sates to reunite with a parent, unlike refugee status, it does not provide a path to citizenship.

While this program will help some eligible children and a parent, its impact is expected to be limited. Any refugees admitted under this program would count against the current limit of 4,000 refugee admissions for Latin America and the Caribbean. In contrast, 68,541 children crossed the border in FY 2014. The program itself is rigorous, and its requirements—a parent with legal status and DNA and security checks—will limit who qualifies. Eleanor Acer of Human Rights First argued that "[p]ractically speaking, the program will need to actually extend protection in a timely manner to a meaningful number of applicants if it is to be viewed as a credible alternative to some families with at-risk children." Additionally, Acer note that in the past, U.S. officers have used "the existence of in-country resettlement…to limit access to protection."[35]

PROCEDURES AND POLICIES: WHAT HAPPENS TO CHILDREN AND FAMILIES WHEN THEY ARRIVE AT THE BORDER?

How are unaccompanied children treated compared to adults and children arriving in families?

How a noncitizen is treated upon apprehension depends on where the person is apprehended (near the border or in the interior), what country he or she is from (a contiguous country or a noncontiguous country), and whether he or she is an unaccompanied minor.

Adults and families, when apprehended in the interior, typically are placed in removal proceedings before an immigration judge.[36] However, that is not necessarily the case for adults or families apprehended at or near the border. In FY 2013, 83 percent of adults removed by the U.S. were deported through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.[37] The most common summary removal processes are expedited removal, used when a noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents,[38] and reinstatement of removal, used when a noncitizen unlawfully reenters after a prior removal order.[39]

As discussed in detail below, unaccompanied children receive greater protections under U.S. law.

What happens to unaccompanied children once they are in U.S. custody?

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP.[40] Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings.[41]

Children from non-contiguous countries, such as El Salvador, Guatemala, or Honduras, are placed into standard removal proceedings in immigration court. CBP must transfer custody of these children to Health and Human Services (HHS), Office of Refugee Resettlement (ORR), within 72 hours, as described below.

Each child from a contiguous country—Mexico or Canada—must be screened by a CBP officer to determine if he or she is unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these conditions apply, CBP will immediately send the child back to Mexico or Canada through a process called "voluntary return." Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process.[42]

Non-governmental organizations (NGOs) have expressed concern that CBP is the "wrong agency" to screen children for signs of trauma, abuse, or persecution.[43] The public justice group Appleseed issued a report that stated, "as a practical matter" CBP screening "translates into less searching inquiries regarding any danger they are in and what legal rights they may have."[44] Appleseed also expressed concern that the U.S.-Mexico repatriation agreement has been geared towards "protocols of repatriations logistics," rather than best practices for child welfare.[45]

Do children get attorneys?

In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the "privilege" of being represented "at no expense to the Government."[46] This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel to represent them free of charge are represented in immigration court. And, although Congress has directed the Secretary of Health and Human Services (HHS) to ensure the provision of counsel to unaccompanied children "to the greatest extent practicable," Congress further explained that the Secretary "shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge."[47]

A vast network of pro bono legal service providers has responded to the call, and during the past year, the Obama Administration provided some funding to legal service providers in order to increase representation for unaccompanied children. The Justice AmeriCorps program, announced in June 2014, awarded $1.8 million for representation of certain children in immigration court,[48] and HHS subsequently provided an additional $9 million for representation in FY 2014 and FY 2015.[49]

But while pro bono legal service providers represent many children nationwide, they still are unable to meet the need. As of April 2015, children in over 38,000 pending cases remained unrepresented.[50] These children are forced to appear before an immigration judge and navigate the immigration court process, including putting on a legal defense, without any legal representation. In contrast, DHS, which acts as the prosecutor in immigration court and argues for the child's deportation, is represented in every case by a lawyer trained in immigration law. As a result, advocates, including the American Immigration Council, filed a nationwide class-action lawsuit challenging the federal government's failure to provide children with legal representation in immigration court. The case, *JEFM v. Holder*, is currently pending before a federal district court in Washington State.

How have immigration courts responded to the increased volume of cases?

In the summer of 2014, the Executive Office for Immigration Review (EOIR), the division within the Department of Justice which houses the immigration courts, adopted a new policy with respect to prioritizing cases for adjudication. The stated goal of this new policy was to "[f]ocus the department's immigration processing resources on recent border crossers" (i.e., individuals who arrived on or after May 1, 2014). Under the policy, the immigration courts are to prioritize the following cases: (1) unaccompanied children who recently crossed the southwest border; (2) families who recently crossed the border and are held in detention; (3) families who recently crossed the border but are on "alternatives to detention" and (4) other detained cases.[51] Immigration courts now schedule a first hearing for unaccompanied children within 21 days of the court's receiving the case.[52] Given the speed at which these cases progress, the expedited children's dockets often are referred to as "rocket dockets." Children on the rocket dockets may be provided with less time to find attorneys before immigration courts move forward with their cases—and, as a result, may be required to explain why they should not be deported without the help of an attorney. If they are unable to do so, unrepresented children may be ordered removed or required to "voluntarily" depart from the United States.[53]

Can unaccompanied children be detained?

Yes, but special laws govern the custody of children based on child welfare standards that take the "best interests" of the child into account. Unaccompanied children must be transferred by DHS to the custody of HHS within 72 hours of apprehension, under the Homeland Security Act of 2002 and TVPRA of 2008.[54] HHS's Office of Refugee Resettlement (ORR) then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.

Under the TVPRA of 2008, HHS is required to "promptly place" each child in its custody "in the least restrictive setting that is in the best interests of the child."[55] As such, children in ORR care are generally housed through a network of state-licensed, ORR-funded care providers, who are tasked with providing educational, health, and case management services to the children.[56]

Under international law, children "should in principle not be detained at all," according to UNHCR.[57] Detention, if used, should only be a "measure of last resort" for the "shortest appropriate period of time," with an overall "ethic of care."[58] Detention has "well-documented" negative effects on children's mental and physical development,[59] including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.[60]

Children who arrive with a parent may be detained by DHS in family detention centers, described below.

Can unaccompanied children be released from custody?

Yes. ORR seeks to reunify children with family members or release them to other individual or organizational sponsors whenever possible, on the grounds that children's best interests are served by living in a family setting. ORR also is required to ensure that individuals taking custody of the children are able to provide for their well-being.[61] Federal regulations, following a court settlement in the case *Flores v. Reno*, outline the following preferences for sponsors: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child's parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.[62] The sponsor must agree to ensure that the child attends immigration court.

As of May 2014, ORR reported that the average length of stay in its facilities was approximately 35 days and that about 85 percent of the children served are released while their deportation proceedings are in progress.[63]

Does the Government detain families?

Yes. The increase in families fleeing violence and arriving at the southwest border—frequently mothers with children—has reignited a debate over the appropriate treatment of families in the immigration system. Family immigration detention has a complicated and troubled history in the U.S.[64]

Prior to 2006, ICE commonly detained parents and children separately. In FY 2006 appropriations language, however, Congress directed ICE to either "release families," use "alternatives to detention

such as the Intensive Supervised Appearance Program," or, if necessary, use "appropriate" detention space to house families together.[65] ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. But, as the Women's Refugee Commission explained, the "Residential Center" was a "former criminal facility that still look[ed] and [felt] like a prison."[66] The Hutto detention center became the subject of a lawsuit, a human rights investigation, multiple national and international media reports, and a national campaign to end family detention.[67] In 2009, ICE ended the use of family detention at Hutto, withdrew plans for three new family detention centers, and said that detention would be used more "thoughtfully and humanely."[68]

Yet, in the summer of 2014, in response to the increase in families fleeing violence and arriving at the southwest border, the federal government established a makeshift detention center on the grounds of the Federal Law Enforcement Training Center in Artesia, New Mexico, a remote location more than three hours' drive from the nearest major city. According to the DHS Secretary, the detention and prompt removal of families was intended to deter others from coming to the United States.[69]

Over the course of the summer and fall 2014, over hundreds of women and children were detained in Artesia. The facility was ultimately closed several months later, but the government has continued its policy of detaining women and children. Currently families are housed in three facilities: the South Texas Family Residential Center in Dilley, Texas, Karnes County Residential Center in Karnes City, Texas, and Berks Family Residential Center in Leesport, Pennsylvania. Both the Dilley and Karnes facilities are owned and operated by private prison companies. By the end of May 2015, Dilley's capacity will be 2,400, making it by far the largest family detention center in the United States.

Family detention is rarely in the "best interests of the child," as opposed to community-based alternatives.[70] Detaining children leads to serious mental health problems and chronic illnesses, and detaining families can have long-lasting effects on the psychological well-being of both parents and children.[71]

In 2014 and 2015, several detained families filed lawsuits to challenge various aspects of family detention. One case challenges the government's policy of detaining families as a means to deter others from coming to the United States. In this case, *RILR v. Johnson*, a federal court issued a preliminary injunction to prevent the government from using deterrence as a factor in making a bond determination.[72] In a second case, lawyers for children held in family detention facilities have claimed that the government is violating the terms of the settlement agreement in *Flores*, discussed above. This settlement established national standards for the detention, release and treatment of children detained by DHS for deportation.

Can alternatives to detention be used for families?

Yes. ICE operates two alternatives to detention (ATD) programs for adult detainees—a "full service" program with case management, supervision, and monitoring (either by GPS or telephone check-in), and a "technology-only" program with monitoring only.[73] According to U.S. government data, 95 percent of participants in ICE's full service program appeared at scheduled court hearings from fiscal years 2011 to 2013.[74] Further, in FY 2012 only 4 percent were arrested by another law enforcement agency.[75] ICE's alternatives program, as well as being more humane, is also less expensive than detention—$10.55/day as opposed to $158/day.[76] As to asylum seekers, a prior

U.S. government-commissioned study found that "asylum seekers do not need to be detained to appear," and "[t]hey also do not seem to need intensive supervision."[77] Bipartisan support has emerged for alternatives to immigration detention.[78] ICE, in early 2015, issued requests for proposals for "family case management services" for up to 300 families apiece in Baltimore/Washington, NYC/Newark, Miami, Chicago and Los Angeles.[79]

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

During the summer of 2014, the Obama Administration's response to Central American children and families arriving in the U.S. focused largely on enforcement measures, rather than humanitarian measures that had previously received legislative support, and would have been more tailored towards the vulnerable arriving population.

The Administration requested significant funding to support an "aggressive deterrence strategy" and implemented family detention and "rocket dockets" for children and families. Its in-country refugee processing program has been expected to assist relatively few people. Congressional legislative proposals, at the time and since, have largely focused on rolling back procedural protections for children. That said, proposals also exist to more holistically protect children and families reaching the United States, several of which passed the Senate in 2013 as part of its comprehensive immigration reform bill.

U.S. Government Response—Administration's and Congress' Actions

The following table summarizes the Administration's and Congress' major actions since summer 2014:

Date	Who	Action Taken
June 2, 2014	President Obama	Declared "urgent humanitarian situation" and directed a coordinated federal response under emergency homeland security authorities.[80]
June 20, 2014	DHS	Announced intention to detain families at the Border Patrol training center in Artesia, NM.[81] Detainees arrived in Artesia around the beginning of July.[82]
June 30, 2014	President Obama	Sent letter to Congressional leaders declaring intent to seek emergency funding for "an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers."[83]
July 8, 2014	President Obama	Sent letter to Speaker Boehner (attaching OMB analysis) requesting $3.7 billion in emergency appropriations.[84] Request included:[85] • **HHS**: $1.8 billion for care of unaccompanied children • **DHS-ICE**: $1.1 billion (incl. $879 million for detention and removal) • **DHS-CBP**: $432 million (incl. $364 million for additional apprehensions) • **State**: $295 million in Central American foreign aid • **DOJ-EOIR**: $45 million for additional immigration judges, $15 million to provide lawyers for children.
July 9, 2014	DOJ-EOIR	Immigration courts prioritized cases of recent border crossers who are unaccompanied children, families in detention, and families on alternatives to detention.[86]

July 11, 2014	DHS	Modified contract with Karnes County, TX to detain families at ICE's existing detention facility for adults there.[87]
July 31, 2014	Senate	Bill to provide $2.7 billion in emergency appropriations failed in procedural vote.[88]
August 1, 2014	House of	• Passed legislation to repeal DACA.[89] • Also passed legislation to provide $694 million in emergency appropriations,[90] and the "Secure the Southwest Border Act" to roll back procedural protections for Central American unaccompanied children.[91]
August 1, 2014	DHS	• Announced intent to transfer $405 million from other DHS programs to address humanitarian challenge. Congressional Appropriations Committees finished approving transfers to ICE on August 6.[92] • ICE began to detain families at Karnes, TX detention facility.[93]
September 22, 2014	DHS	Agreed to pay town of Eloy, AZ to modify its existing agreement with ICE so that the private company CCA can build a new family detention facility in Dilley, TX.[94] DHS publicly confirmed the opening of Dilley the next day.[95]
November 18, 2014	DHS	Announced ICE will close the Artesia, NM family detention facility and transfer the detainees to the new Dilley, TX family detention facility.[96]
December 3, 2014	State Dep't	Launched in-country refugee processing program in El Salvador, Guatemala, and Honduras.[97]
December 16, 2014	Congress and President Obama	FY 2015 "Cromnibus" appropriations bill, signed by President, provided:[98] • **HHS**: $80 million increase to care for unaccompanied children[99] • **State**: $260 million to implement a "prevention and response strategy" in Central America[100] • **DOJ-EOIR**: $35 million increase for immigration courts[101] • **Education**: $14 million to assist state and local educational agencies experiencing increases in immigrant youth.[102]
February 2, 2015	President Obama and DHS	The Administration's request for DHS funding for FY 2016 included:[103] • **DHS-ICE**: $893 million for salaries and expenses over FY '15 request, incl. $615 million increase for detention ($435 million for family detention) • **DHS-CBP**: $743 million increase for salaries and expenses over FY '15 request.
March 4, 2015	Congress and President Obama	FY 2015 DHS Appropriations bill, signed by President, provided:[104] • **DHS-ICE**: $703 million increase for salaries and expenses, incl. $539 million increase for detention ($362 million for family detention)[105] • **DHS-CBP**: $314 million increase for salaries and expenses over FY '14.
May 27 and June 1, 2015	House and Senate	136 Representatives and 33 Senators wrote letters asking DHS Secretary Johnson to end family detention.[106]

Recent Legislative Proposals

Since the summer of 2014, most legislative proposals have focused on rolling back the procedural protections that the TVPRA affords to Central American unaccompanied children. For example, the House's 2014 "Secure the Southwest Border Act" would have amended the TVPRA to (1) treat children from non-contiguous countries similarly to Mexican and Canadian children, but (2) strike the current requirement that the child be able to make an "independent decision to withdraw the child's application for admission" before proceeding with voluntary return; (3) require those children who may have been trafficked or fear return [or require the remaining children] to appear before an immigration judge for a hearing within 14 days of screening; and (4) impose mandatory detention until that hearing.[107]

Other proposals have offered variations on these themes. For example, the "Protection of Children Act of 2015," which the House Judiciary Committee moved forward on March 4, 2015, would enact the above four changes—but additionally, expand from 72 hours to 30 days the time limit for CBP to transfer remaining unaccompanied children to HHS custody.[108] That bill, among others, also proposes restricting HHS' ability to provide counsel to unaccompanied children.[109] Or, the "HUMANE Act," sponsored by Sen. John Cornyn (R-TX) and Rep. Henry Cuellar (D-TX) in 2014,[110] would have gone further to place children with a fear of return into a new 7-day expedited process, during which the child would be required to prove her eligibility for immigration relief to an immigration judge while mandatorily detained, before moving on to a standard removal proceeding in immigration court.[111]

Proposed Solutions

Before summer 2014, bipartisan support existed for legislative reforms to more holistically protect children and families reaching the United States. Since then, NGOs and advocacy groups have reiterated support for those reforms, as well as for aid to address root causes of child and family migration from Central America.

These reforms include:

Incorporating a "best interests of the child" standard into all decision-making, not just custody decisions.[112] Bipartisan immigration reform legislation which passed the Senate in 2013 (S. 744) would have required the Border Patrol, in making repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."[113] Amendment 1340 to S. 744, which was not voted on as part of a compromise, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.[114] Organizations have also recommended adopting more child-specific procedures.[115]

Child welfare screening to replace or augment Border Patrol screening. Border Patrol agents are currently tasked with screening Mexican and Canadian children for trafficking and persecution and preventing their return to persecutors or abusers. NGOs have uniformly questioned Border Patrol's ability to do so adequately,[116] and reform proposals have ranged from improved training for CBP officers (included in S. 744),[117] to pairing CBP screeners with child welfare experts (also in S. 744)[118] or NGO representatives,[119] to replacing CBP screeners with USCIS asylum officers.[120] CBP Commissioner Kerlikowske recently expressed openness towards similar proposals.[121]

Due process protections and resources. NGOs have advocated for a system that provides procedural protections and resources to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.[122] Proposals include appointed counsel,[123] additional resources to legal orientation programs[124] and additional resources to backlogged immigration courts (all included in S. 744).[125] More recent proposals also include additional U.S. Citizenship and Immigration Services (USCIS) asylum officers,[126] and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.[127]

Detention reforms. NGOs have proposed that children be detained as little as possible,[128] released to families or other sponsors whenever appropriate,[129] and if detained, supervised in a community-based setting[130] because of detention's severe impact on children.[131] At least one Senator has promised legislation to end the detention of asylum-seeking families if no family member poses a threat to the public or a flight risk.[132] Along these lines, organizations and legislators have recommended improving detention conditions,[133] and expanding alternatives to detention (as S. 744 proposed),[134] by reallocating detention funding to those cheaper alternatives.[135]

Aid to sending countries. NGOs have proposed aid to sending countries and Mexico, to invest in systems that protect and care for children, help youth live productive lives, and ultimately reduce violence and address root causes of flight.[136] In January 2015, the White House announced it was seeking $1 billion in Central American assistance in its FY 2016 budget.[137]

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[62] 8 C.F.R. § 1236.3(b) (2014), https://www.law.cornell.edu/cfr/text/8/1236.3; see also CRS, UAC Overview, note 20, p. 8.

[63] U.S. Department of Human Services, Administration for Children and Families, 2014, note 56.

[64] Women's Refugee Commission (WRC) and Lutheran Immigration and Refugee Service (LIRS), *Locking Up Family Values: The Detention of Immigrant Families*, 2007, http://www.womensrefugeecommission.org/component/docman/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families-locking-up-family-values-the-detention-of-immigrant-families?q=locking+family, p. 2.

[65] Ibid., p. 6.

[66] Ibid., p. 2.

[67] Margaret Talbot, "The Lost Children," *The New Yorker*, March 3, 2008, http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_talbot?current=all.

[68] Nina Bernstein, "U.S. to Reform Policy on Detention for Immigrants," *N.Y. Times*, Aug. 5, 2009, http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&_r=0.

[69] Jeh Johnson, Written Testimony, "Written testimony of DHS Secretary Jeh Johnson for a Senate Committee on Appropriations hearing titled 'Review of the President's Emergency Supplemental Request'," July 10, 2014 (citing government's "aggressive deterrence strategy," and stating "Our message is clear to those who try to illegally cross our borders: you will be sent back home"), https://www.dhs.gov/news/2014/07/10/written-testimony-dhs-secretary-jeh-johnson-senate-committee-appropriations-hearing.

[70] Human Rights Watch, "Trauma in Family Immigration Detention," May 15, 2015, http://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention.

[71] Declaration of Luis H. Zayas, *RILR v. Johnson*, No. 15-cv-11, Dkt. #38-7 (D.D.C. April 17, 2015), https://www.aclu.org/sites/default/files/field_document/38_2015.4.17_declaration_of_luis_zayas.pdf, p. 2-3.

[72] *R. I. L-R. v. Johnson*, No. 15-cv-11, Memorandum Opinion, Dkt. #33 (D.D.C. Feb. 20, 2015), https://www.aclu.org/legal-document/rilr-v-johnson-memorandum-opinion; R. I. L-R. v. Johnson, No. 15-cv-11, Order, Dkt. #32 (D.D.C. Feb. 20, 2015), https://www.aclu.org/legal-document/rilr-v-johnson-order.

[73] U.S. Government Accountability Office (GAO), "Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness," GAO-15-26, November 13, 2014, http://www.gao.gov/products/GAO-15-26, pp. 9-10. In the full-service program, 52 percent are monitored by telephone and 48 percent by GPS, while in the "technology-only" program, 97 percent are monitored by telephone and 3 percent by GPS. Ibid., p. 26.

[74] Ibid., p. 30-31.

[75] U.S. Department of Homeland Security, Office of Inspector General, "U.S. Immigration and Customs Enforcement Alternatives to Detention (Revised)," OIG-15-22, Feb. 4, 2015, https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf, pp. 6-7, 23.

[76] Ibid., p. 14. *See also* National Immigration Forum, "The Math of Immigration Detention," August 2013 (calculating potential savings from use of alternatives to detention), http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf.

[77] Vera Institute, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* 2000, http://www.vera.org/sites/default/files/resources/downloads/INS_finalreport.pdf, p. 31. The Vera study showed 84 percent compliance by asylum seekers even with minimal supervision without potential redetention, and 78 percent compliance by those simply released without supervision. Ibid.

[78] Council on Foreign Relations, Jeb Bush and Thomas F. McLarty III, Chairs, *Independent Task Force Report No. 63, U.S. Immigration Policy*, July 2009, http://www.cfr.org/immigration/us-immigration-policy/p20030?breadcrumb=/bios/2472/edward_alden?page=2, pp. 106-107; Human Rights First, "Elisa Massimino and Grover Norquist on Immigration Detention," May 2, 2013, https://www.youtube.com/watch?v=rOGc7PWdhWg.

[79] "Family Case Management Services," FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=ce539b68d84cd9ae9f59ea99c906b56a&tab=core&_cview=1 (Baltimore/Washington); "Family Case Management Services—NY," FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=ec67398fe25f07d71361dc09c11a2394&tab=core&_cview=1 (New York City and Newark); "Family Case Management Services—Miami," FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=a9cc4a72fd8a46d5165d40da4a1ec68b&tab=core&_cview=1; "Family Case Management Services—CHI," FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=3278335b5d772d1beaea5b237590778a&tab=core&_cview=1 (Chicago); "Family Case Management Services—LA," FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=8009f850fc1b7f29f5915d3da81f72d2&tab=core&_cview=1 (Los Angeles).

[80] Barack Obama, "Presidential Memorandum -- Response to the Influx of Unaccompanied Alien Children Across the Southwest Border," June 2, 2014, https://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr, citing e.g., 6 U.S.C. § 111(b)(1)(D), https://www.law.cornell.edu/uscode/text/6/111; The White House, Homeland Security Presidential Directive/HSPD-5, "Management of Domestic Incidents," Feb. 28, 2003, http://fas.org/irp/offdocs/nspd/hspd-5.html. *See also* The White House, "Fact Sheet: Unaccompanied Children from Central America," June 20, 2014, https://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america.

[81] Alicia Caldwell, "US to open immigrant family detention center in NM," *Associated Press*, June 20, 2014, http://news.yahoo.com/us-open-immigrant-family-detention-center-nm-002246367--politics.html.

[82] U.S. DHS Secretary Jeh Johnson, "Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations," July 10, 2014, http://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations.

[83] Barack Obama, Letter, "Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation's Southwest Border," June 30, 2014, [hereinafter "June 30 Letter to Congress"], https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle.

[84] Barack Obama, Letter, July 8, 2014, [hereinafter "July 8 Letter to Speaker"], p. 1, https://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf.

[85] Ibid., p. 5-6.

[86] Department of Justice, "EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S.," July 9, 2014, http://www.justice.gov/iso/opa/resources/2142014791124449 59.pdf; Department of Justice, "EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S.," July 9, 2014, http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us.

[87] U.S. DHS, "South Texas ICE Detention Facility to House Adults With Children," July 31, 2014, http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children.

[88] The bill did not include DACA repeal or rollbacks of procedural protections. "Emergency Supplemental Appropriations Act, 2014," S. 2648, 113th Cong., https://www.congress.gov/bill/113th-congress/senate-bill/2648. This bill appropriated $1.2 billion to HHS, $763 million to ICE (with no limit on detention funding), $343 million to CBP, over $60 million for immigration judges, $50 million for lawyers for unaccompanied children, $212.5 million to the President's "Economic Support Fund" to address root causes of Central American migration, and $85 million to the Department of State for "International Narcotics Control and Law Enforcement." U.S. Senate Committee on Appropriations, "Chairwoman Mikulski Releases Summary of Emergency Supplemental Funding Bill," July 23, 2014, http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill. The bill died in a cloture vote, with 50 Senators voting to continue and 44 opposed. Democratic Sens. Mary Landrieu of Louisiana and Joe Manchin of West Virginia joined with Republicans in opposing the bill. Elise Foley, "Senate Fails on Border Control Funding," *Huffington Post*, July 31, 2014, at http://www.huffingtonpost.com/2014/07/31/senate-border-crisis_n_5639727.html.

[89] "An Act to prohibit certain actions with respect to deferred action for aliens. . . ," H.R. 5272, 113th Cong. (2014), https://www.congress.gov/bill/113th-congress/house-bill/5272. The bill passed 216 to 192, largely along party lines. "Four Democrats -- Reps. John Barrow (D-Ga.), Nick Rahall (D-W.Va.) Mike McIntyre (D-N.C.) and Collin Peterson (D-Minn.) -- voted with Republicans. A larger group of 11 Republicans voted with Democrats against the bill: Reps. Jeff Denham (R-Calif.), David Valadao (R-Calif.), Cory Gardner (R-Colo.), Mike Coffman (R-Colo.), Ileana Ros-Lehtinen (R-Fla.), Mario Diaz Balart (R-Fla.), Dave Reichert (R-Wash.), Adam Kinzinger (R-Ill.), Joe Heck (R-Nev.), Mark Amodei (R-Nev.) and Fred Upton (R-Mich.)." Elise Foley, "House Votes To Strip Deportation Relief From Dreamers," *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-bill-daca_n_5643287.html.

[90] "An Act making supplemental appropriations. . . .," H.R. 5230, 113th Cong., https://www.congress.gov/bill/113th-congress/house-bill/5230. That bill appropriated $197 million to HHS, $334 million to ICE ($262 million for detention), $71 million to CBP, $70M to various National Guard units, $40 million in Central American aid, and $22 million for temporary immigration judges and video technology. Ibid., Division A, "Supplemental Appropriations and Rescissions." The bill also expanded waivers of other federal laws (such as environmental laws) for CBP activities on federal land, but prohibited placing unaccompanied alien children at military installations if it would "interfere with activities of the Armed Forces." Ibid., Division B, Title III. The bill passed 223 to 189. One Democrat, Rep. Henry Cuellar of Texas, joined Republicans voting for the bill, while four Republicans joined Democrats in opposition: Reps. Stephen Fincher of Tennessee, Paul Broun of Georgia, Thomas Massie of Kentucky and Walter Jones of North Carolina. Elise Foley, "House Passes Dead-On-Arrival Bill to Address Border Crisis," *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-border-bill_n_5643259.html.

[91] "Secure the Southwest Border Act of 2014," H.R. 5230, 113th Cong., Division B, Title I, at https://www.congress.gov/bill/113th-congress/house-bill/5230. Other sections in this Title would have prioritized removal hearings for unaccompanied children for those children whom had "most recently arrived" (i.e., "last in, first out") (Sec. 102); directed EOIR to designate up to 40 temporary immigration judges for the duration of the humanitarian crisis (Sec. 103); tightened screenings for custodians of unaccompanied children to require "a mandatory biometric criminal history check" based on fingerprints, and prohibit as custodians whom had been convicted of a sex offense or human trafficking (Sec. 104); and unrelated to unaccompanied children, barred from asylum any individual who had committed "any drug-related offense punishable by a term of imprisonment greater than 1 year" before arriving in the United States (Sec. 105).

[92] Mark Felsenthal, "U.S. administration transferring $405 million for border operations," Reuters (Aug. 1, 2014) (DHS notified Congress on August 1 that it would "reprogram" funds), at http://news.yahoo.com/u-administration-transferring-405-million-border-operations-024645833.html. Ultimately, DHS reprogrammed $333.8 million from other DHS agencies into ICE—$267.6 million from the Federal Emergency Management Agency's (FEMA's) disaster relief fund, $31.5 million from the Coast Guard, and $34.7 million from the Transportation Security Administration (TSA) into (1) ICE's Custody Operations account ($261.1 million), which operates ICE detention, and (2) ICE's Transportation and Removal Programs account ($72.7 million), which operates planes that deport individuals. U.S. DHS, "Budget-in-Brief Fiscal Year 2016," p. 54, February 5, 2015, http://www.dhs.gov/publication/fy-2016-budget-brief. The Senate Appropriations Committee approved that transfer on August 4, and the House Appropriations Committee approved that transfer on August 6. Ibid. Reuters also reported on August 1 that CBP would internally move $70.5 million from other activities to "meet increased demands from the border situation." It is not clear from public budget documents if and from where that transfer occurred.

[93] U.S. DHS, "South Texas ICE Detention Facility to House Adults With Children," July 31, 2014, http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children.

[94] John Burnett, "How Will A Small Town In Arizona Manage An ICE Facility In Texas?," NPR, Oct. 28, 2014, http://www.npr.org/2014/10/28/359411980/how-will-a-small-town-in-arizona-manage-an-ice-facility-in-texas; "City of Eloy Request for Council Action," requested Sept. 17, 2014 (obtained through the Freedom of Information Act, on file with American Immigration Council).

[95] Daniel González, "Feds detaining migrant families despite criticism,"

Arizona Republic, Sept. 24, 2014, http://www.azcentral.com/story/news/politics/immigration/2014/09/24/migrant-family-detentions-expanded-despite-criticism/16139209/.

[96] Amanda Peterson Beadle, "DHS Announces the Transfer of Immigrant Families from Artesia to New Facility," *Immigration Impact*, Nov. 18, 2014, http://immigrationimpact.com/2014/11/18/dhs-announces-transfer-immigrant-families-artesia-new-facility/#sthash.6kRqlvWw.dpuf.

[97] U.S. Department of State, "Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States," Dec. 3, 2014, http://www.state.gov/r/pa/prs/ps/2014/12/234655.htm.

[98] "Consolidated and Further Continuing Appropriations Act, 2015," H.R. 83, Pub. L. No. 113-235, 113th Congress, Dec. 16, 2014, https://www.congress.gov/bill/113th-congress/house-bill/83/text.

[99] Ibid., Division G, Title II, "Administration for Children and Families, Refugee and Entrant Assistance"; *see also* U.S. Senate Committee on Appropriations, "Summary: Fiscal Year 2015 Omnibus Appropriations Bill," Dec. 9, 2014, p. 34 [hereinafter "Senate Cromnibus Summary"], http://www.appropriations.senate.gov/news/summary-fiscal-year-2015-omnibus-appropriations-bill.

[100] Ibid., Division J, Title VII, Sec. 7045(a) ("Central American Migration Prevention and Response,") and (d) "Guatemala," (f) "Honduros," and (g) "Mexico." *See also* Senate Cromnibus Summary, note 99, p. 53. Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83, Cong. Record H9307-H10003, at p. H9951-52, H9956-57 (Dec. 11, 2014) [hereinafter "Cromnibus Explanatory Statement"], available at https://www.congress.gov/crec/2014/12/11/CREC-2014-12-11-pt2-PgH9307.pdf.

[101] Ibid., Division B, Title II, "Administrative Review and Appeals." *See also* U.S. DOJ, "Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2015 Budget Request At a Glance," accessed May 31, 2015, p. 1-2 (requesting $35 million increase for FY 2015, from $312.2 million to $347.2 million), http://www.justice.gov/sites/default/files/jmd/legacy/2014/07/09/eoir.pdf; Cromnibus Explanatory Statement, note 100, p. H9345. The Explanatory Statement states, "The agreement includes funding for 35 new Immigration Judge Teams Allowing EOIR to adjudicate up to 39,000 more cases annually." Ibid. The Explanatory Statement also provides generally supportive language regarding legal orientation programs and lawyers for children, although it does not provide specific funding amounts. Ibid. ("Within the amounts provided, EOIR shall take steps as specified in the House and Senate reports to expand adjudication capacity, enhance the Legal Orientation Program, improve court efficiency and better serve vulnerable populations such as children through continuation of fiscal year 2014 pilot programs.").

[102] Ibid., Division G, Title III, "English Language Acquisition."

[103] U.S. DHS, "Congressional Budget Justification FY 2016," Feb. 2, 2015, http://www.dhs.gov/publication/congressional-budget-justification-fy-2016.

[104] Department of Homeland Security Appropriations Act, 2015, H.R. 240, Pub. L. No. 114-4, Mar. 4, 2015, https://www.congress.gov/bill/114th-congress/house-bill/240/text. *See also* Mark Noferi, "DHS Funding Controversy Over, But Enforcement-First Approach Remains," *Immigration Impact*, Mar. 6, 2015, http://immigrationimpact.com/2015/03/06/dhs-funding-controversy-enforcement-first-approach-remains/.

[105] Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding H.R. 240, Department of Homeland Security Appropriations Act, 2015, Jan. 15, 2015, http://docs.house.gov/billsthisweek/20150112/114-HR240-ES.pdf, pp. 25-26.

[106] Roque Planas, "House Democrats Tell Obama Administration to End Family Detention," *Huffington Post*, May 27, 2015, http://www.huffingtonpost.com/2015/05/27/democrats-family-detentio_n_7453008.html; Elise Foley, "Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On," *Huffington Post*, June 2, 2015, http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495287.html.

[107] "Secure the Southwest Border Act of 2014," note 91, Sec. 101, *amending* U.S.C. § 1232(a)(2), (5).

[108] "Protection of Children Act of 2015," H.R. 1149, 114th Cong., Sec. 2, https://www.congress.gov/bill/114th-congress/house-bill/1149/text.

[109] Ibid., Sec. 2(a)(3)(b), amending 8 U.S.C. § 1232(c)(5), to change the statutory direction to HHS from ensuring that children "have counsel" to "have access to counsel" (emphasis added), and clarifying that such access will be "at no expense to the Government." *See also* "Asylum Reform and Border Protection Act of 2015," H.R. 1153, 114th Cong., Sec. 2 ("Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in removal proceedings"), https://www.congress.gov/bill/114th-congress/house-bill/1153/text.

[110] "Helping Unaccompanied Minors and Alleviating National Emergency Act" (HUMANE Act), S. 2611, 113th Cong., https://www.congress.gov/bill/113th-congress/senate-bill/2611/text.

[111] Ibid. at Secs. 101(1)-(2), 102.

[112] The "best interests of the child" standard is internationally recognized. In the U.S. child welfare system, it applies special importance to "family integrity, health, safety, protection of the child, and timely placement." The United States Conference of Catholic Bishops (USCCB) has thus recommended a "transnational family approach," with a holistic assessment of all family members for potential reunification, performed by child welfare professionals. United States Conference of Catholic Bishops (USCCB), Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee, June 25, 2014, [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf, p. 12.

[113] "Border Security, Economic Opportunity, and Immigration Modernization Act," S. 744, 113th Cong., Sec. 1115(b)(1)(B), http://www.law.cornell.edu/uscode/text/8/1255a, http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html. If repatriation occurs, the ABA first recommends screening by a legal advocate, and the involvement of a formal intercountry child welfare agency. James Silkenat, President, American Bar Association, Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014, [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014june25_unaccompaniedalienminors_1.authcheckdam.pdf, p. 3.

[114] S. 744, 113th Cong., Amt. 1340, https://beta.congress.gov/amendment/113th-congress/senate-amendment/1340/text. *See also* The Young Center for Immigrant Children's Rights, http://theyoungcenter.org/news/historic-senate-bill-protecting-

childrens-safety-in-immigration-legislation/.

[115] USCCB and others have thus recommended procedures reflecting this paradigm—an appointed lawyer and child advocate in the process, repatriation only after screening by a child welfare advocate, the development of child-appropriate asylum procedures, and separate children's dockets in immigration court, with specialized training for judges. USCCB HJC Testimony, note 112, p.11-12; National Immigrant Justice Center (NIJC), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014 [hereinafter NIJC HJC Statement], http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf, p. 8. S. 744 would also have instituted a multi-year program to ensure "safe and sustainable repatriation." S. 744, 113th Cong., Sec. 3612 (j), http://www.lawandsoftware.com/bseqimo/bseqimo-senate-3612.html.

[116] Appleseed, *Children at the Border*, 2011, note 43, p. 6, 32. As one organization put it, children "do not divulge their complex histories of abuse and neglect during a first meeting with strangers," let alone "armed strangers in uniform." Center for Refugee and Gender Studies, *Calling on President Obama to Protect Child Migrants*, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), http://cgrs.uchastings.edu/our-work/june-2014-policy-statement-children. Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, "Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers.... That's not our job." David Nakamura, "Border agents decry 'Diaper Changing, Burrito Wrapping' with influx of children," *Washington Post*, June 20, 2014, http://www.washingtonpost.com/politics/border-agents-decry-diaper-changing-burrito-wrapping-with-influx-of-children/2014/06/20/1a6b6714-f579-11e3-8aa9-dad2ec039789_story.html.

[117] S. 744, 113th Cong., Sec. 3611 (requiring training by child welfare professionals of CBP officials "likely to come into contact with unaccompanied alien children"), http://www.lawandsoftware.com/bseqimo/bseqimo-senate-3611.html; Sec. 1115(c) (requiring training on preserving children's best interests), http://www.lawandsoftware.com/bseqimo/bseqimo-senate-1115.html; see *also* Women's Refugee Commission, Halfway Home, Feb. 2009, note 43, p. 2; American Immigration Lawyers Association (AILA), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014 [hereinafter AILA HJC Statement], http://www.aila.org/content/default.aspx?docid=49015, p. 6.

[118] "Child Trafficking Victims Prevention Act," S. 744, 113th Cong., Sec. 3612(d), (e), (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), http://www.lawandsoftware.com/bseqimo/bseqimo-senate-3612.html; USCCB HJC Testimony, note 112, p. 10.

[119] Lutheran Immigration and Refugee Service (LIRS), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014, p. 2 [hereinafter LIRS HJC Statement] (on file with American Immigration Council).

[120] Appleseed, *Children at the Border*, 2011, note 43, p. 6.

[121] Mark Noferi, "Commissioner Kerlikowske Offers Vision of Change at CBP," *Immigration Impact*, Apr. 24, 2015, at http://immigrationimpact.com/2015/04/24/commissioner-kerlikowske-offers-vision-of-change-at-cbp/, citing House Committee on Appropriations, "Budget Hearing - United States Customs and Border Protection" (Apr. 23, 2015), http://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394143.

[122] Conversely, USCCB and other organizations have stated that "subjecting these families to expedited removal procedures, as intended by the Administration, could undercut their due process rights." USCCB HJC Testimony, note 112, p. 10.

[123] S. 744, 113th. Cong, Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and the particularly vulnerable), http://www.lawandsoftware.com/bseqimo/bseqimo-senate-3502.html. The Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others in the 113th and 114th Congresses, would provide counsel to unaccompanied children and the mentally disabled. https://www.congress.gov/bill/114th-congress/house-bill/1700/text; Richard Simon, "Lawmakers seek legal aid for youths caught crossing Southwest border," Los Angeles Times, June 23, 2014, http://www.latimes.com/nation/nationnow/la-na-nn-immigrants-legal-aid-20140623-story.html. Those bills would not provide counsel in DHS expedited removal processes, were Congress to change the law to allow DHS expedited removal or summary return of unaccompanied children.

Organizations have uniformly recommended counsel for unaccompanied children. See American Immigration Council, *Two Systems of Justice*, March 2013, http://www.immigrationpolicy.org/sites/default/files/docs/aic_twosystemsofjustice.pdf, p. 12 ("Counsel should be appointed in cases where an immigrant is unable to retain a lawyer, beginning with minors"). See also, e.g., USCCB HJC Testimony, note 112, p. 12; AILA HJC Statement, note 117, p. 6; NIJC HJC Statement, note 115, pp. 5-7; ABA HJC Statement, note 113, p. 3. Children fleeing abuse and violence are often particularly incapable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony, note 112, p. 11.

Organizations have also reported that counsel assists in ensuring children attend court proceedings. American Immigration Council, Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court (July 2014) (92.5 percent of children represented in immigration proceedings appear), http://immigrationpolicy.org/sites/default/files/docs/taking_attendance_new_data_finds_majority_of_children_appear_in_immigration_court_hnpl_1.pdf; Safe Passage Project, Statement to the House Judiciary Committee, June 25, 2014, ("Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel."), http://www.safepassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/, p. 2.

Organizations have also called the "justice AmeriCorps" program of pro bono lawyers it a "step in the right direction," but "not adequate to meet overwhelming need." See, e.g., NIJC HJC Statement, note 115, p. 6 ("given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant children remains.")

[124] Organizations also have recommended increasing Legal Orientation Program funding to provide know-your-rights presentations to all detainees nationwide. Lutheran Immigration and Refugee Service (LIRS) and Women's Refugee Commission (WRC), *Locking Up Family Values Again*, October 2014, http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf, p. 17; Human Rights First, *How to Manage the Increase in Families at the Border*, June 2014, http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf. S. 744 would have

provided such an increase. S. 744, 113th Cong., Sec. 3503, http://www.lawandsoftware.com/bseoima/bseoima-senate-3503.html.

[125] Bipartisan support has emerged for providing additional resources to backlogged immigration courts, even before the recent children's crisis. See American Immigration Council, *Empty Benches: Underfunding of Immigration Courts Undermines Justice*, May 2015, http://immigrationpolicy.org/just-facts/empty-benches-underfunding-immigration-courts-undermines-justice, p. 1 & n. 10. Recently, the House of Representatives passed appropriations legislation that would provide the largest increase in immigration judges in history—$74 million for 55 new immigration judge teams. H.R. 2578, 114th Cong., https://www.congress.gov/bill/114th-congress/house-bill/2578/text; Mark Noferi, "Bi-Partisan House Bill Recommends Largest Increase Ever in Immigration Judges," *Immigration Impact*, May 21, 2015, http://immigrationimpact.com/2015/05/21/bi-partisan-house-bill-recommends-largest-increase-ever-in-immigration-judges/#sthash.4lkzFDxk.dpuf. S. 744 would have added 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. S. 744, 113th Cong., Sec. 3501(a). S. 744 did not include extra funding for USCIS asylum officers.

[126] Human Rights First, *How to Manage the Increase*, June 2014, note 124, p. 2.

[127] USCCB HJC Testimony, note 112, p. 10-11 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services); LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22. USSCB also recommended improving background checks for sponsors, as well as increased funding to the Legal Orientation Program for Custodians (LOPC), to inform sponsors of their responsibilities. USCCB HJC Testimony, note 112, p. 11.

[128] UNHCR Detention Guidelines, note 57, "Guideline 9.2, Children," ¶¶ 51-57, 2012; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 2-3.

[129] USCCB HJC Testimony, note 112, p. 11.

[130] More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. Women's Refugee Commission, *Halfway Home*, 2009, note 43, p. 37-38; USCCB HJC Testimony, note 112, p.13.

[131] UNHCR Detention Guidelines, ¶ 52; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 7-8.

[132] Senator Richard Blumenthal, "Stop locking up child refugees," *The Hill*, Feb. 25, 2015, http://thehill.com/opinion/op-ed/233659-stop-locking-up-child-refugees.

[133] In particular, groups have criticized conditions in CBP's short-term detention facilities. ABA HJC Statement, note 113, p. 2; AILA HJC Statement, note 117, p. 5; WRC, *Halfway Home*, note 43, p. 5-12. On June 11, 2014, a group of civil, immigrant, and human rights organizations filed an administrative complaint on behalf of 116 children who had reported abuse and mistreatment while in CBP custody, such as shacking, inhumane conditions, inadequate access to medical care, and verbal, sexual, and physical abuse. ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention*, June 11, 2014, https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during. Additionally, the American Immigration Council released a report detailing the lack of accountability for complaints filed against CBP officials by individuals in custody. American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014 (of 809 complaints of alleged abuse, 97 percent resulted in "no action taken"), http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse.

Several legislative proposals have been introduced to address short-term CBP detention conditions. These include H.R. 3130, the Protect Family Values at the Border Act, introduced by Rep. Lucille Roybal-Allard (D-CA) in the 113th Congress, http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3130; and Amendment 1260 to S. 744, introduced by Sen. Barbara Boxer (D-CA) in the 113th Congress, https://beta.congress.gov/amendment/113th-congress/senate-amendment/1260/text. Additionally, H.R. 4303, the Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, introduced by Rep. Steve Pearce (R-NM) and Rep. Beto O'Rourke (D-TX) in the 113th Congress, would have established an ombudsman over border-related concerns. https://beta.congress.gov/bill/113th-congress/house-bill/4303/.

[134] S. 744, 113th Cong., Sec. 3715 (establishing "secure alternatives programs that incorporate case management services," with "nongovernmental community based organizations"); United States Conference of Catholic Bishops and Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System* (Washington, DC: May 2015), http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf, p. 28; Human Rights First, How to Manage the Increase, June 2014, note 124.

[135] ICE requested $122 million for alternatives to detention in fiscal year 2016—an increase of $28 million over the President's budget for FY 2015, to increase the daily population in ATD from 27,219 participants at the end of FY 2014 to 53,000 participants. U.S. DHS, "U.S. Immigration and Customs Enforcement Salaries and Expenses," 45, 64-67, February 2015, http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification_15_0325.pdf.

[136] LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22; Council on Foreign Relations, *Independent Task Force Report* No. 63, pp. 106-107.

[137] USCCB HJC Testimony, note 112, p. 13-15.

[138] Joseph R. Biden Jr., "Joe Biden: A Plan for Central America," N. Y. Times, Jan. 29, 2015, http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html; The White House, Office of the Vice President, "FACT SHEET: Promoting Prosperity, Security and Good Governance in Central America," Jan. 29, 2015, http://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame. Some have criticized the White House aid request as overly focused on security. Alexander Main, "Will Biden's Billion Dollar Plan Help Central America?" *North American Congress on Latin America*, Feb. 27, 2015, https://nacla.org/news/2015/02/27/will-biden%27s-billion-dollar-plan-help-central-america.

Statement of the American Immigration Lawyers Association

Submitted to the Senate Committee on Homeland Security and Governmental Affairs Hearing: "The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

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As the national bar association of more than 14,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) respectfully submits this statement for the record.

During the summer of 2014, the United States experienced a peak in the number of unaccompanied children and families from El Salvador, Guatemala and Honduras apprehended at our southwestern borders. Today, the life threatening dangers these refugees face in these Northern Triangle countries of Central America have not diminished. Recent United Nations High Commissioner for Refugees (UNHCR) statistics show a 1,185 percent increase since 2008 in asylum applications by Central Americans to countries in regions other than the U.S.

Despite initially calling the situation "an urgent humanitarian crisis" in early June 2014, the Obama Administration's response to the regional refugee situation quickly turned toward dramatic enforcement measures such as the massive expansion of family detention. The Administration also began exploring ways to circumvent U.S. protection standards and to expedite the processing and removal of unaccompanied alien children (UACs).[1] Since that summer, several legislative proposals that would roll back critical legal protections for unaccompanied alien children – such as the misnamed "Protection of Children Act" (H.R. 5143) introduced in 2015 by Representative John Carter (TX-31) – have been introduced but have not passed.

Existing U.S. legal standards protecting unaccompanied children, principally embodied in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) and the *Flores Settlement Agreement*, are among the most carefully developed in the world. Compromising these protections would harm vulnerable child victims of violence. It would result in children who are eligible for, and desperately need, humanitarian protection in the United States being sent back to the violence they escaped. Our nation should not scale back its protections for vulnerable

[1] June 30, 2014 Letter from President Obama to Congress, available at www.aila.org/uac.

children. The situation in the Northern Triangle presents an opportunity for the United States to demonstrate its leadership and affirm its commitment to humanitarian and child protection.

That historical commitment is being shaken to its core by the Obama Administration's family detention policies. The government's own data show that 88 percent of families are demonstrating that they are likely to succeed on their asylum claims based on the extreme violence and persecution they have personally endured. The detention of traumatized children and mothers profoundly impacts their emotional and physical well-being, with enduring consequences. Family detention is not consistent with our nation's most fundamental values and must end. There is no justification for it, and there is no excuse.

AILA's Recommendations on Legal Standards and Protections for Unaccompanied Children

- Neither Congress nor the administration should extend the "contiguous country" process currently used for Mexican children to children from non-contiguous countries. Applying the contiguous country process, or elements of it, to children from other countries would compromise the important protections the TVPRA provides to ensure physical safety and proper screening for humanitarian protection.

- As specified in statute, every unaccompanied child should have the opportunity to consult with legal counsel and appear before an immigration judge in removal proceedings before he or she is deported. Summary removal procedures, such as expedited removal or pre-hearing voluntary departure, should never be used for children.

- The Department of Justice Executive Office for Immigration Review (EOIR) should be funded to hire enough judges and staff so it can provide prompt hearings for unaccompanied children without compromising standards of due process and fairness. With about 350,000 cases in the current EOIR backlog, scheduling delays are a leading reason cases cannot move forward promptly. Under no circumstances should pressure be placed on immigration judges to handle cases at a faster rate by denying legitimate requests for continuances.

- No child should face deportation alone. But unfortunately, most still do. The government should provide counsel for children in removal proceedings when they cannot afford a private attorney. The lack of counsel compounds the vulnerability of children as they move through our nation's complicated removal system. Even children who have survived trauma or persecution or live in fear of return are often left to navigate the laws on their own and present their claims without any legal assistance.

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- Know-your-rights and legal screenings should be sufficiently funded to ensure that every child and adult receives the benefits of these programs. Although not a substitute for legal representation, these programs are the only opportunity for most individuals – including children – to obtain information about their rights and responsibilities under the law, information vital for them to be able to make informed decisions about how to proceed. Research shows that EOIR's Legal Orientation Program (LOP) participants move through the immigration court process an average of 12 days faster than detainees who do not have access to LOP, resulting in significant savings for both the immigration court and the Department of Homeland Security (DHS) immigration detention system.

- The Asylum Division of the United States Citizenship and Immigration Services (USCIS) should be funded to hire more asylum officers to promptly adjudicate asylum applications. Asylum officers have better training than CBP and Immigration and Customs Enforcement (ICE) officers in reviewing the petitions of vulnerable individuals. Currently, the Asylum Division has a substantial backlog in asylum applications, and increasing its capacity would improve overall efficiency in the process.

- Care, screening and protection for Mexican children should be brought on par with all other unaccompanied children. Mexican children are treated differently under the TVPRA and face nearly automatic repatriation, with limited screening for relief, without the advice of counsel. Their deportation decisions are not made by immigration judges, but by CBP officers and agents. All unaccompanied children should be screened by a professional with training in child welfare, trauma, counseling, and international humanitarian and immigration law, and should appear in removal proceedings before an immigration judge.

- Although the administration is facing enormous operational pressures, it should ensure that pressure is not placed on these vulnerable children to make quick decisions that may jeopardize their well-being. Many of the unaccompanied children who come to the border have been trafficked, persecuted in their home countries, or subjected to domestic violence, abuse, and neglect. These traumatized children may require medical care and even counseling before they can share intimate details of their suffering and appear before a judge.

- Unaccompanied children should be cared for and housed in the least restrictive environment, as mandated by law. They should be separated from non-relative adults while in the government's physical custody. An unaccompanied child should not be held in secure facilities unless a determination is made that he or she poses a danger to himself, herself or others.

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Legislative Proposals to Downgrade Due Process for Child Victims

Since last summer, several bills have been introduced that would subject all unaccompanied children to the same expedited screening that is currently applied to those unaccompanied children who come from "contiguous countries" (Mexico/Canada). A fundamental flaw in this mechanism is the reliance on Border Patrol officials to identify trafficking, persecution and other refugee claims. UNHCR has concluded that this screening mechanism--as is currently applied to Mexican children--is ineffective and often results in the return of children to situations of trafficking and persecution.

Currently, the TVPRA requires that unaccompanied children from non-contiguous countries be transferred out of the custody of the Department of Homeland Security (DHS) and into the custody of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) within 72 hours of identification. ORR screens the children for medical and other immediate needs as well as for vulnerability factors such as trafficking or fear of persecution.

By contrast, under current law Mexican children face nearly automatic repatriation, with limited screening for relief that takes place within 48 hours (but typically 12 hours) of apprehension, and without the advice of counsel. Their deportation decisions are not made by immigration judges, but by Customs and Border Protection (CBP) officers and agents. No matter their country of origin, traumatized children cannot be expected to express to an armed Border Patrol agent the details of their trafficking experiences. For any unaccompanied child, CBP facilities are not a suitable environment for interviewing minors, nor are CBP officers and agents the best officials to conduct interviews about sensitive topics such as persecution, trafficking, and other possible trauma.

Research demonstrates that Border Patrol screenings fail to protect even *adults* who have legitimate fears of returning home. In 2005, the bipartisan United States Commission on International Religious Freedom (USCIRF) conducted an extensive study of Border Patrol's use of expedited removal and found serious flaws in the protections afforded to legitimate asylum seekers through the expedited removal process.[2] In particular, it found that Border Patrol was not following proper procedures in screening and referring individuals for credible fear interviews. In 2014, AILA and other organizations submitted a complaint to the DHS Office for Civil Rights and Civil Liberties (CRCL) citing many case examples of individuals in whose cases CBP never asked about fear of return in the first place or ignored statements of fear.[3] In response, CRCL has opened an investigation.

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[2] United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal* (February 8, 2005), *available at* http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal.

[3] National Immigrant Justice Center et al., *Complaint re: inadequate U.S. Customs and Border Protection (CBP) screening practices block individuals fleeing persecution from access to the asylum process, available at* http://www.aila.org/infonet/aila-nijc-and-others-file-crcl-complaint.

New findings published in May 2015 by the Office of the Inspector General (OIG) for the Department of Homeland Security (DHS) found that CBP uses Operation Streamline to refer people who are known to have a fear of persecution and are seeking asylum to the Department of Justice (DOJ) for criminal prosecution for illegal entry and reentry—a practice that is in gross violation of asylum law.[4]

Instead of lowering standards for children from noncontiguous countries, AILA recommends that Congress raise the standards for screening and protection for all unaccompanied children.

- All unaccompanied children should be screened by a professional with training in child welfare, trauma, counseling, and international humanitarian and immigration law.

- Protocols for screening unaccompanied children could be improved upon by adopting best practices from the criminal justice and child welfare fields which have developed comprehensive protocols for rape, sexual assault and child abuse cases. These criminal justice and child abuse practices are designed to ensure that complainant victims are given adequate time to report such incidents given the trauma victims suffer and the need for time to recover emotionally and physically. Interviews should be done in a safe setting and manner that minimizes the likelihood of re-traumatizing the victim.

- All children should be given the opportunity to tell their story in an environment where the full and fair adjudication of their protection claims can take place before a neutral, trained adjudicator.

- All children should be provided counsel in removal proceedings when they cannot afford a private attorney or obtain pro bono counsel. Children who have survived trauma or persecution or live in fear of return should not be left to navigate the laws on their own. The lack of counsel compounds the vulnerability of children as they move through our nation's complicated removal system.

Expedited Court Hearings and *In Absentia* Removals of UACs

In the summer of 2014, the Department of Justice Executive Office for Immigration Review, which has jurisdiction over the immigration courts and immigration judges, announced that it would begin to prioritize hearings for recent border crossers, including unaccompanied children.[5] Immigration courts were directed to ensure that recently-arrived children have their first master

[4] DHS OIG, Streamline: Measuring Its Effect on Illegal Border Crossing (May 15, 2015), *available at* http://www.aila.org/infonet/dhs-oig-report-cbp-effect-illegal-border-crossing.

[5] Department of Justice, *Department of Justice Actions to Address the Influx of Migrants Crossing the Southwest Border in the United States* (undated), *available at* http://www.aila.org/infonet/eoir-fact-sheet-priorities-addressing-border-surge

calendar hearing date within 21 days of the date that their notice to appear (NTA) is filed with the immigration court.[6] Many immigration courts, including those with the highest volumes of cases, have responded to these directives by establishing specialized, fast-track dockets for handling children's cases.

The expedited processing of unaccompanied children's legal cases has had serious consequences. Legal service providers have observed significant numbers of children who have either received defective notice of their removal proceedings and upcoming hearing dates, or who have received no notice at all. As a result, immigration judges have issued numerous removal orders against children without their presence or knowledge ("*in absentia*").

In absentia orders should not be issued in children's cases when they have not received adequate notice of their immigration proceedings. Counsel should be provided to all children and families in removal proceedings; mechanisms to ensure adequate notice in each case should be put in place; faulty *in absentia orders* that have been issued against children should be reopened; and Congress should fully fund the immigration court system so that hearings for all respondents can be held in a timely manner.

While some have claimed that upwards of 90 percent of these children have not shown up for their hearings, this is far from accurate. The fact is that the majority of children continue to show up for court proceedings–almost 80 percent.[7] Historically, that number jumps substantially for children who have legal counsel—92.5 percent in cases completed from fiscal year 2005 through June 2014.[8]

Conclusion

The current legal standards protecting unaccompanied children are among the most carefully developed in the world. Our nation should not scale back its protections for vulnerable children. The situation in the Northern Triangle presents an opportunity for the United States to demonstrate its leadership and affirm its commitment to humanitarian and child protection.

Thank you for your attention to this important matter. If you have questions or concerns, feel free to contact Gregory Chen, AILA's Director of Advocacy, gchen@aila.org, 202/507-7615.

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[6] *See* David Rogers, *Migrants' right to counsel argued*, Politico (Sept. 3, 2014) (quoting counsel for the government at oral argument in *J.E.F.M. v. Holder* as stating existence of 21-day policy).

[7] EOIR data from July 18, 2014 through May 26, 2015, obtained by the American Immigration Council, indicates that 78.8 percent of unaccompanied children, or 20,324 children out of 25,777, have likely appeared for their first hearing. This number is calculated by subtracting the number of *in absentia* orders issued (5,453) from the total number of master calendar hearings scheduled for unaccompanied children, where the date has passed (25,777).

[8] See http://immigrationpolicy.org/just-facts/taking-attendance-new-data-finds-majority-children-appear-immigration-court.

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July 2, 2015

The Honorable Ron Johnson
Chairman, U.S. Senate Committee on Homeland Security and Government Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member, U.S. Senate Committee on Homeland Security and Government Affairs
513 Hart Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Carper:

We respectfully request that you include the attached written statement in the formal written record for the hearing on the 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later, before the Senate Homeland Security and Governmental Affairs Committee on July 7, 2015.

We appreciate your attention to this matter. If you have additional questions, please contact Melysa Sperber, ATEST Director, at msperber@humanityunited.org or (631) 374-0749.

Sincerely,

Coalition to Abolish Slavery and Trafficking (CAST)

Coalition of Immokalee Workers (CIW)

ECPAT-USA

Free the Slaves

National Domestic Workers Alliance (NDWA)

National Network for Youth (NN4Y)

Polaris

Safe Horizon

Solidarity Center

Verité

Vital Voices Global Partnership

World Vision

The Alliance to End Slavery and Trafficking (ATEST) is a U.S. based coalition that advocates for solutions to prevent and end all forms of human trafficking and modern slavery around the world. ATEST member organizations include: Coalition to Abolish Slavery and Trafficking (CAST), Coalition of Immokalee Workers (CIW), ECPAT-USA, Free the Slaves, Futures Without Violence (FUTURES), International Justice Mission, National Domestic Workers Alliance (NDWA), National Network for Youth (NN4Y), Polaris, Safe Horizon, Solidarity Center, Verité, Vital Voices Global Partnership, and World Vision. ATEST is a project of Humanity United.

Statement for the Record
U.S. Senate Committee on Homeland Security and Government Affairs,
July 7, 2015
"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

The Alliance to End Slavery and Trafficking (ATEST) is a U.S.-based coalition that advocates for solutions to prevent and end all forms of human trafficking and modern slavery around the world. One year ago, we watched the humanitarian crisis with unaccompanied children unfold at our border. With several of our members working with this extremely vulnerable population both in their home countries and once they arrive in the United States, we knew the hardships, trauma, and exploitation faced by so many who arrived at the U.S. border to turn themselves in. Fortunately, there were safeguards put in place by Congress to provide due process for these children and to determine whether they were eligible for status as a human trafficking survivor or refugee. We were saddened to see the response from members of Congress calling for the swift removal of these vulnerable children, denying them any due process to determine if their cases of exploitation or well-founded fear of persecution were valid.

Despite a drop in the numbers of unaccompanied minors trying to cross into the United States, we are alarmed that efforts to deny such due process for these children continue in Congress. In particular, we are writing to express our serious concerns about calls by Congress for changes to the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") intended to circumvent a fair process within the removal proceedings. Amending the TVPRA is not the solution. The proposed changes would weaken legal and human rights protections for the many unaccompanied children who would qualify for asylum or other existing forms of relief. These changes would also increase the vulnerabilities of victims of human trafficking by curtailing access to due process, legal representation, and child-appropriate services. Eliminating these protections does not provide additional immigration benefits to these children – it only provides time and process for children's voices to be heard.

ATEST opposes any attempt to amend or eliminate section 235 of the TVPRA, which provides important procedural protections for unaccompanied children and assists them in navigating the complex immigration process for an accurate determination of eligibility for relief as victims of trafficking or persecution. We are deeply concerned about legislative attempts to circumvent these important protections and remove the children apprehended at the border through a non-judicial process. We should abide by our own national values as well as international obligations and affording these children proper screening for trafficking and persecution, as well as the opportunity to receive fair and full consideration of their legal claims before an immigration judge. However, members of Congress propose expedited removal of children without access to legal counsel. Removals would follow cursory screenings that have already proven entirely inadequate to identify genuine refugee and trafficking claims among Mexican children.

Traumatized children, including victims of human trafficking, do not open up immediately. Given the corruption of police in their home countries, their ability to trust law enforcement officials here is severely compromised. They often need time in an appropriate setting not only to express their true reasons for fleeing to the United States, but also to be interviewed by the right individuals – namely, those who have expertise and training in human trafficking, as well as child welfare and development.

There are multiple examples of the current provisions working to properly identify trafficking victims from the children that have crossed the border. For instance, "Sara" was living with women after her mother left to find work in the United States. When she was 15 years old, a group of men kidnapped her and forced her to live with them. They abused her sexually and made her have sex with other men who paid them. When she was 17, she finally was able to escape and tried to come to the U.S. to find her mother. Sara was arrested by immigration officials while crossing the southern U.S. border. She was held in detention for about two months. She didn't see a judge or talk to legal aid, but she spoke to a social worker who ultimately identified her as a trafficking victim.

Sara was identified as a human trafficking victim because she interfaced with the right people. She was identified because she was not summarily deported from the border when she arrived to the United States. She was identified because of the procedure protections Congress instituted in the 2008 TVPRA. ATEST knows through the work of its member organizations that trafficked children will not self-identify and instead need individuals trained in child welfare and human trafficking to ask very specific, child-sensitive questions.

Congress gave consideration to the unique circumstances of children when it unanimously passed the bi-partisan TVPRA in 2008. The law includes protections such as the access to counsel and the appointment of child advocates, which help ensure that unaccompanied children from non-contiguous countries receive proper care and that their requests for asylum and other legal relief are processed fairly and in a way that is consistent with age and development. In addition, the Homeland Security Act of 2002 requires that all unaccompanied minors be transferred from Department of Homeland Security (DHS) custody to the Department of Health & Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours of apprehension because ORR has the expertise and training to care for children. The role of HHS in this humanitarian crisis is essential, and ATEST opposes any attempt to weaken this framework.

If Congress amends section 235 of the 2008 TVPRA, girls like Sara will not be identified. Girls like Sara will be forced back into sexual slavery. Children are forced by their traffickers to commit crimes, such as being induced or coerced into child sexual exploitation. Traffickers use threats and violence to create additional barriers for children reporting what really happened. An armed, uniformed border officer with no training to work with children or trafficking victims, yet with the final say to determine whether a child stays or goes, risks sending already-vulnerable populations back to certain harm.

Given the violence in the key sending countries, we question whether changes in law would have a substantial impact on the flow of children to the United States. Instead of focusing on rolling

back due process protections for children and sending them back to danger, ATEST recommends Congress put their efforts toward the following areas.

Addressing the Root Causes:

The humanitarian crisis demands greater international cooperation, particularly regional approaches, to strengthen child protection systems in the countries from which vulnerable youth are fleeing. The United States should work with social service providers and government agencies in countries of origin to provide additional resources and training to provide protection to children fleeing physical abuse, sexual abuse, and human trafficking at home, and forced conscription into gangs, much like child soldier recruitment. In addition, the U.S. Government should support NGOs and coordinate closely with child welfare service providers, educators, and medical and other social service providers to prevent abuse, as well as working with prosecutors in countries to hold traffickers, child abusers, perpetrators, and gangs accountable for their actions. The U.S. should be working with NGOs and the governments of origin to ensure the safe repatriation and reintegration of any children who are returned to their home countries after fleeing to the United States, including specialized services for human trafficking victims. Finally, the U.S. should work with the origin governments to address other root causes of migration, including violence against adults, the lack of safe and decent work in origin countries, and the lack of appropriate education services, the absence of which denies children a system of support and protection.

Screening:

Child welfare specialists who have been trained in recognizing not only signs of child abuse, but also indicators of human trafficking should be deployed to Customs and Border Protection stations that regularly process unaccompanied children and to ORR surge shelters where they can help identify potential victims of human trafficking. In a child-friendly and child-appropriate environment, Department of Homeland Security officials should ensure all children are asked specific questions to determine if a child has been trafficked in the United States or abroad prior to repatriation, especially asking questions that lead to the identification of "attempt to traffic" cases, and cases that indicate a pattern of trafficking children to prevent future trafficking cases. DHS should contract with NGOs that have experience in identifying and providing services to child trafficking victims. Assistance provided from the U.S. Government to Mexico to strengthen its interdiction efforts should be conditioned on screening to identify vulnerable children at risk of human trafficking or other abuses.

Shelter:

Once a child has been identified as a potential victim of human trafficking, ORR should expedite a request for appropriate shelter placement. The child victim should not remain at surge shelters or transit centers. Immediately, ORR should assign a child advocate to each child victim and should provide access to an attorney. Finally, ORR should refer each child victim to a social service provider that should locate a shelter that specializes in serving trafficked children, or the social service provider should work with the local child protective service division to facilitate

services for trafficked children. Resources must be released to service providers and other community-based entities that are likely to encounter children released from ORR custody, such as Runaway & Homeless Youth agencies, child welfare institutions, and even schools.

Release:

While many children have family members in the United States who can care for them, there is a risk that traffickers would try to manipulate the system and pose as family members. Traffickers may pose as sponsors; thus, family relationships need to receive careful scrutiny. In releasing a child, it is imperative ORR takes precautionary steps to ensure that the sponsor will care for and protect the child upon release. Precautions should include fingerprinting the sponsors and conducting a home visit if necessary. Fingerprinting all sponsors applying for release of UACs is essential because it serves a first line of defense against releasing a child to a potential trafficker. ORR, however, should not share such fingerprint information with DHS-ICE for immigration enforcement purposes.

Recommendations:

(1) **Don't change the TVPRA.** Blaming existing law for the UAC crisis is illogical, as these protections have been in effect for six years. Significant increases in UACs entering the United States began only three years ago, as violence escalated in many of the children's home countries. If that law were to blame, UACs would be coming from all countries, while in reality they are coming primarily from countries where violence is taking place.
(2) **Recognize that UACs are at risk of being trafficked.** The increased vulnerability of unaccompanied children was why the provisions in the legislation existed and why the TVPRA's protections should continue. The protections do not grant amnesty; rather they ensure that basic human rights are met.
(3) **The U.S. Government should ensure all unaccompanied children are afforded basic legal protections.** Even though numbers of UAC's have dropped considerably, from initial screening to the final stages of release or removal, the United States has a responsibility to protect any child's most fundamental rights not to be exploited or persecuted. And U.S. Government efforts should not stop there. They need to address the root causes of the crisis, including violence, lawlessness, and persecution in the home countries.
(4) **Show the world that the U.S. Government is a leader in the fight against human trafficking.** The U.S. response to this crisis puts the country at risk of losing the moral authority to ask other nations to strengthen efforts to identify and protect trafficked and persecuted children.

We recognize the challenges and pressures you face as you work toward a just solution for the unaccompanied immigrant children. The efforts we've outlined are a better approach than weakening the protections that these children deserve. We hope that you will continue to oppose any changes that would eliminate current polices that protect and serve child victims of human trafficking.

CGRS Statement for Hearing:

"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

Senate Homeland Security and Governmental Affairs Committee

July 7, 2015

The Center for Gender & Refugee Studies of the University of California Hastings College of the Law (CGRS) applauds the Committee for calling today's hearing to review the treatment of unaccompanied child migrants in the United States. In particular, CGRS applauds the Committee's attention to the humanitarian aspect of the recent surge in children coming to our border. Understanding this humanitarian dimension is essential for developing policy solutions that consider the stark reality faced by children in the region, marked by systematic violations of fundmantal rights.

For sixteen years, CGRS has been advancing protections for women and children fleeing gender-related and other forms of violence and documenting the root causes of such persecution. It has become clear that short-term "fixes" with a myopic focus on lowering the numbers of individuals who reach our border are fundamentally flawed. Policy reactions such as fast-track deportations and hearing procedures, detention of migrant families[1] as a deterrent, and interdiction of migrants south of the U.S.-Mexico border short-sightedly compromise the rights of refugee children while failing to solve the core regional problems that drive migration. Instead, the United States must seek long-term solutions that address the root causes of migration—including shockingly high levels of violence against children and the social exclusion and marginalization of children.

This statement provides an overview of the findings of our recently published study, *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges*.[2] Unprecedented in scope, this two-year regional study examines the root causes of child and family migration and its recent spike, as well as conditions and policies in children's countries of origin, transit countries, and destination countries (including the United States) in the region.[3] We conclude with key recommendations for Congress on addressing root causes of migration by filling gaps in protection and guaranteeing rights for migrant children. The findings and recommendations of our study are based on hundreds of interviews with children, parents, and key social and political actors, combined with the experience of experts who work with migrant children.

Children affected by migration in Central and North America represent an urgent human rights, human development, refugee, and humanitarian challenge.

The challenge to protection of children's fundamental human rights begins in the sending countries of Honduras, El Salvador, Guatemala, and Mexico. In those countries, childhood has become synonymous with witnessing or suffering violence; experiencing human rights violations and discrimination on various

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[1] Although children arriving with parents or legal guardians are not "unaccompanied" per 6 U.S.C. § 279(g), we nonetheless briefly address the needs of these children in our recommendations—as the findings of our study are relevant to both accompanied and unaccompanied children fleeing violence.

[2] Center for Gender & Refugee Studies and National University of Lanús, eds., *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges* (February 2015), *available at* http://cgrs.uchastings.edu/Childhood-Migration-HumanRights [hereinafter *Childhood, Migration, and Human Rights*].

[3] For purposes of this statement, child(ren) refers to all persons under the age of 18.

grounds; suffering from social exclusion; and being deprived of education, employment opportunities, medical services, and even food. These conditions force children and/or their parents to migrate. The deprivations and violations of their rights continue during transit, especially in Mexico—with governmental actors and criminal syndicates preying on children and families by raping, kidnapping, extorting, or beating them, and with the governmental institutions enforcing migration control policies that are designed to punish and deter migration rather than to protect children.

The challenge to child protection endures in the destination countries of Mexico and the United States, where policies focused on migration enforcement take priority over children's best interests and rights, resulting in children being repatriated to the very conditions they fled. It also persists in Mexico and the United States for migrant children and children in mixed status families who live in the shadows and on the margins of society. Finally, the violation of rights comes full circle in children's countries of origin following their return, because the key root causes that forced them to migrate from Central America and Mexico—violence, social exclusion, poverty, and separation from family—remain unchanged.

Violence as a Driver of Migration of Children in Central and North America

Honduras

Violence and the threat of violence, deprivation of fundamental human rights—in particular the right to develop—and the right to reunite with family members are the three main factors that propel Honduran children to travel north.

Of the 200 children interviewed for *Childhood, Migration, and Human Rights*, 65% stated the main reason they decided to migrate was to escape from violence in their communities, including death threats from criminal groups, the continuous fighting between rival gangs, common crime, and intrafamilial violence.[4] Statistics demonstrate the direness of the situation. On the extreme end of the spectrum, from 2002 to 2014, nearly 10,000 cases of summary executions and violent deaths of children and youths under the age of 23 were recorded in Honduras.[5] From January to March of this year, 80 such cases were documented.[6] Moreover, between 2005 and 2012, the cases of violent deaths of girls and women grew exponentially, from 175 cases in 2005 to 606 in 2012: a 246% increase. In 2012, the violent deaths of girls and young women, ages 0-30, comprised 48% of the 606 recorded cases.[7]

Although Honduras has enacted progressive laws regarding children's rights and protection from harm, in practice the State fails to enforce the laws and to protect against violence. Honduran military officials—with training and support from the United States—have begun stopping children from attempting to emigrate, trapping children in dangerous and harmful situations. Consular officials also fail to secure the rights of children in transit and destination countries. Moreover, Honduras does not ensure safe repatriation of children, and has no programs in place to enable returned children to remain safely.

El Salvador

Violence and the threat of violence, poverty coupled with deprivation of human rights, and the need to reunify with family members are the leading reasons Salvadoran children leave home.

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[4] *Childhood, Migration, and Human Rights* at 84.
[5] *Childhood, Migration, and Human Rights* at 81.
[6] Casa Alianza, *Informe Mensual de la Situación de los Derechos de los Niños, Niñas, y Jovenes en Honduras* 2 (March 2015).
[7] *Childhood, Migration, and Human Rights* at 82-83.

Violence against children occurs at all levels in El Salvador, including in the home and society at large. A 2014 report revealed that 59% of Salvadoran boys and 61% of Salvadoran girls interviewed identified violence, crime, and threats from gangs as primary push factors of migration.[8] Indeed, El Salvador has one of the highest murder rates in the world; children as a group comprise more than 90% of all homicide victims.[9] El Salvador also has one of the highest rates of femicide/feminicide in the world at a rate of 12 murders per 100,000 women in 2011, with 1 in 4 female victims between the ages of birth to 19.[10] Nearly 1,400 children and young people were murdered in 2013 and there were 326 homicides reported in the first two months of 2014 alone.[11]

Child abuse, as reported by UNICEF and others, is widespread in El Salvador. Seven out of 10 children experience physical abuse at home, including severe physical violence and sexual and psychological abuse.[12] The more than 18,750 cases of violations of the rights of children reported in 2013 represent a 159% increase from 2012 to 2013 of cases of violations of the right to personal integrity, a 78% increase in reported violations of the right to protection from mistreatment, and a 38% increase in reported violations of the right to protection from sexual abuse and exploitation.[13] Female children are twice as likely to be victims of rape as compared to adult women, and the majority of rapes of girls take place in the home.[14]

Despite El Salvador's progressive laws on gender and children's rights, the government does not protect its children, allowing perpetrators to harm them with impunity. The Foreign Ministry recently committed to developing protocols to ensure that consular officials protect and defend the rights of Salvadoran nationals overseas, but there has been little progress. El Salvador further lacks programs to assist returning children to safely and effectively reintegrate into and remain in society. In July 2014, officials from the National Council for Childhood and Adolescence assumed responsibility for interviewing repatriated children, however, the interviews have focused on dissuading children from attempting to migrate again, rather than assessing them for risk to ensure their safety.

Guatemala

The violation of rights in a context of extreme poverty; ethnic, gender, and other types of discrimination; violence and the threat of violence; and family reunification are the central factors causing children to migrate from Guatemala.

Like El Salvador and Honduras, violence occurs against children in the home and in society. The National Council Against Child Abuse in Guatemala completed a study showing that a striking 70% of children in Guatemala live in situations of violence.[15] Twenty percent (20%) of Guatemalan children interviewed by the United Nations High Commissioner for Refugees (UNHCR) for a recent study, reported that they had suffered or been threatened with serious harm as a result of violence in their society including violence perpetrated by gangs or organized crime (not including violence in the home).[16]

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[8] *Childhood, Migration, and Human Rights* at 172.
[9] *Childhood, Migration, and Human Rights* at 161.
[10] *Childhood, Migration, and Human Rights* at 161, 177.
[11] *Childhood, Migration, and Human Rights* at 173.
[12] *Childhood, Migration, and Human Rights* at 179.
[13] *Childhood, Migration, and Human Rights* at 174.
[14] *Childhood, Migration, and Human Rights* at 180.
[15] ECPAT International, *Informe de Monitoreo de País sobre la Explotación Sexual Comercial de Niños, Niñas y Adolescentes: Guatemala* 17 (2014) [hereinafter ECPAT], http://www.ecpat.net/sites/default/files/CMR_GUATEMALA_FINAL.pdf.
[16] *Childhood, Migration, and Human Rights* at 135-36.

Sexual violence against girls and other gender-based violence are ubiquitous in Guatemala. To illustrate, child pregnancies have averaged more than 40,000 per year in Guatemala, with the level reaching as high as 59,000 in 2012. Many of these cases of early pregnancy involve victims under the age of 14.[17] Moreover, in 2013, 198 complaints of femicide/feminicide and 31,836 complaints of other forms of violence against women were reported and impunity for such crimes remained at 93%. More than 5,500 femicides/feminicides were documented in the country between January 2000 and December 2010; this does not include unreported cases.[18]

The efforts of the Guatemalan State to guarantee basic social rights, access to justice, and the integrity and capacity of public institutions remain weak and limited. Guatemala also lacks a culturally sensitive approach to indigenous migrant children, increasing their vulnerability. Although some public institutions have procedures and guidelines in place for migrant children, Guatemala still lacks an inter-institutional protocol to guide their different actions, roles, and competencies. Institutions tasked with child protection—with the assistance of other relevant institutions—do not provide comprehensive monitoring of and follow-up on reintegration of migrant children.

Mexico: as a country of origin/sending country

Mexican children migrate to the United States to reunify with family members, to seek the opportunity to develop, and increasingly to escape violence and the threat of violence.

Recent statistics demonstrate that murders of children have spiked dramatically in Mexico. The Special Rapporteur on the Rights of Children and Adolescents of the Inter-American Commission on Human Rights gathered information and documentation from civil society organizations on 2,000 cases of children who were murdered and mutilated between 2006 and 2014.[19] Between the years 2000 and 2009, there was an increase of more than 200 cases per year of children who died by homicide nationally. In Ciudad Juarez, the numbers of children killed increased dramatically from 44 cases in 2000 to 168 cases in 2009.[20] Mexico ranks 16th worldwide for homicides against women and girls with rates climbing steadily since 2007. For example, girls between the ages of birth to 19 represent more than 50% of the total victims in Ciudad Juarez—an area known for high rates of murders of women and girls—for which there is data.[21] Mirroring these findings of increased violence, a study conducted by UNHCR from 2014 found that the percentage of Mexican children who reported migrating for reasons related to violence had tripled from an earlier UNHCR study finding that only 13% of children interviewed named reasons for migration related to violence.[22]

High levels of impunity and corruption exist, particularly for violence by organized criminal syndicates, but also for intrafamilial violence in Mexico. In addition, Mexico does not guarantee children the right to develop in terms of access to education, skills training, job opportunities, and health care. Until recently, Mexico's consular policies included little attention to migrant children's rights. The National Migration Institute and Mexican consulates have signed numerous bilateral agreements with the United States regarding repatriation of Mexican nationals. The agreements, however, focus on the logistics of return,

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[17] ECPAT at 14.
[18] *Childhood, Migration, and Human Rights* at 136; *see also* Groupo Guatemalteco de Mujeres (GGM), *Compendio Estadistico* 2010-2013, *Organismo Judicial* (including updated statistics that show levels of violence have continued unabated), http://ggm.org.gt/wp-content/uploads/2012/08/Compendio-OJ-2010-a-2013.pdf .
[19] *Childhood, Migration, and Human Rights* at 295.
[20] *Childhood, Migration, and Human Rights* at 296.
[21] *Childhood, Migration, and Human Rights* at 15, 295.
[22] *Childhood, Migration, and Human Rights* at 292.

rather than the protection, welfare, and rights of children. No programs exist to support sustainable reintegration of returned children into communities.

Mexico: as a transit and destination country

Mexico's laws and policies regarding migrants focus on enforcement rather than human rights and protection needs. These laws and policies apply with equal force to children and adults. With training and support from the United States, Mexico has significantly increased its enforcement efforts along its southern border. Increased enforcement, however, has not deterred migration. If anything, amplified enforcement makes children even more vulnerable following repatriation and often leads to remigration.

United States

Migrant children face violations of their fundamental rights at each stage in the migration process in the United States. At the screening stage, U.S. Customs and Border Protection (CBP) fails to fulfill its duty to identify Mexican unaccompanied children with protection needs. CBP's use of expedited removal procedures for adults, also places children traveling with their parents (including from Central America and Mexico) at risk of return to persecution or torture, or to situations harmful to their best interests.

Detention of children, including CBP's temporary detention of migrants (children and families included) apprehended at and near the border, further violates children's rights. Some CBP agents have verbally, physically, or sexually abused children, and the holding facilities deprive children of adequate nutrition, bedding, recreation, and fresh air, and lack basic medical care and psychological services. The practices of the Office of Refugee Resettlement (ORR) for unaccompanied children have been problematic in recent years as there has been a move toward greater institutionalization of children. This context is problematic as facilities used are located far from legal, medical, and mental health services; the release process of children in its custody has been expedited without adequate screening; and post-release services are inadequate. Children held in family detention centers—a regressive practice reinstituted in 2014—also face daily violations of their rights.

Deficiencies in the adjudication and consideration of children's cases exist in the U.S. immigration system. For example, inconsistent with decision-making affecting children in other areas of U.S. law, there is no application of the best interests of the child standard for migrant children. In addition, the United States places migrant children in removal proceedings without the right to appointed counsel or access to child advocates (or guardians). Immigration relief options in the United States—which, for the most part, were not specifically designed for children—do not cover all those in need of protection. U.S. migration law does not prioritize family reunification, and avenues for regular immigration status for family members of those residing in the United States fall far short of the need for relief. Further, increased immigration enforcement has led to the detention and deportation of many more parents of U.S. citizen children.

Despite advances in U.S. law intended to ensure the safe repatriation and sustainable reintegration of unaccompanied children, the United States continues to repatriate migrant children without considering the best interests of the child and leading to return of some children back to persecution or death. Major deficiencies in the U.S. repatriation program include its failure to address root causes of migration and the false belief that deportation deters future migration.

Regional approach

Existing bilateral and regional accords regarding migration in Central and North America fall far short of an adequate response. They lack a binding rights-based approach, or enforcement mechanisms

to ensure compliance and do not require substantive protection of children's rights. The accords tend to be logistical in nature; however, even these agreements are not respected, repatriating children in and to risky circumstances. In addition, regional and bilateral security initiatives—including the growing militarization of borders—have exacerbated the vulnerability of migrant children by, for example, strengthening organized criminal networks, making the journey more dangerous, and resulting in detention and deportation of those in need of international protection. Finally, regional and bilateral economic accords contribute directly to the root causes of migration of children by substantially benefiting multi-national companies and the U.S. economy generally, at the expense of the economies and communities in Central America and Mexico.

Recommendations for Congress

1. Do not deny children and other migrants fleeing persecution territorial access to the United States. Congress should ensure that the United States cease training, funding, and encouraging governments of Mexico, Honduras, El Salvador, and/or Guatemala to interdict migrants in order to prevent them from making the journey north to seek protection. Such action risks returning migrant children and families to persecution or torture, contrary to the principle of *non-refoulement*, and forces them to remain in situations of extreme danger—including many women and girls who are victims of gender-based and sexual violence. The United States should urge and support the capacity of Mexico and other countries in the region to screen migrants for vulnerabilities and ensure that those fleeing persecution, torture, or trafficking have access to protection and due process.

2. Do not restrict Trafficking Victims Protection Reauthorization Act (TVPRA) protections for unaccompanied children. Congress must ensure the continuing viability and robust implementation of TVPRA protections for unaccompanied children. These prohibit expedited screening and/or repatriation of unaccompanied children from non-contiguous countries (including Honduras, El Salvador, and Guatemala). Expedited screening risks children's return to persecution, torture, or trafficking. Such risks are heightened for girls, who are frequently victims of gender-based and sexual violence but are often too afraid or ashamed to reveal such information to enforcement agents at the border. With respect to current expedited screening under the TVPRA, which may be applied only to children from Mexico and Canada, Congress should seek to ensure that U.S. agencies implement appropriate child-sensitive procedures and screening by child welfare professionals.

3. Mandate alternatives to detention of children and families. Congress should prohibit the detention of migrant children and migrant families with children. Alternatives to detention have proven effective and are more humane than practices that involve the deprivation of liberty.[23] Congress should outlaw the use of family detention centers for recently-arrived mothers with young children from Central America. Mothers and children should be released and/or placed in alternatives to detention, especially when presenting asylum claims. Any restrictions on liberty should be subject to full due process protections.

4. Mandate appropriate conditions and treatment of migrant children in federal facilities, including oversight mechanisms. Congress should ensure that all agencies adhere to federal standards regarding conditions for children and the treatment of children in immigration custody (per the *Flores v. Reno* settlement), regardless of where children are detained and which agency has formal custody—and should enact these standards into law. Congress should mandate development by ORR, Immigration and Customs Enforcement (ICE),[24] and CBP of clear, independent oversight systems to monitor conditions and treatment of children in custody and allow civil society organizations to monitor detention or shelter

[23] Lutheran Immigration and Refugee Service, *Alternatives to Detention Programs, an International Perspective* (May 15, 2009).
[24] While DHS detention standards include independent monitoring, greater clarity on the standards is needed.

facilities. In every stage of federal custody, including during initial apprehension by CBP, children should have access to nutritious food, drinking water, restrooms, a blanket and mattress for sleeping, and medical and psychological care as needed.

5. Mandate right to counsel and appointment of child advocates. Congress should mandate the appointment of counsel for all children in removal proceedings who are principal applicants[25] on a claim for relief and who lack an attorney. Congress should also mandate that an independent child advocate be appointed for all unaccompanied children.

6. Ensure children are not returned to harm by creating appropriate forms of relief from removal. Congress should enact a form of discretionary "best interests" relief that halts removal proceedings and grants lawful permanent resident status to migrant children ineligible for other forms of relief when repatriation is clearly against their best interests.

7. Ensure that removal proceedings and asylum interviews of children and families are subject to full due process protections and not accelerated. Accelerating cases places unaccompanied children and families at risk of removal to life-threatening situations or situations contrary to their best interests. It poses serious barriers to relief by making it difficult to secure representation (especially *pro bono* representation) in time or to adequately prepare cases. The Executive Office for Immigration Review (EOIR) and U.S. Citizenship and Immigration Services (USCIS) should not expedite unaccompanied children's or migrant families' cases or asylum interviews. Many mothers' and girls' cases involve gender-based violence, requiring time and effort to prepare due to the sensitivity of the issues involved and reluctance to reveal abuse. Via oversight or legislation, Congress should ensure that these cases are subject to full due process protections and not accelerated.

8. Protect against inappropriate termination of parental rights due to immigration enforcement. Congress should amend federal law to require states to consider on a case-by-case basis a parent's detention or deportation as a "compelling reason" to delay filing for termination of parental rights unless reunification with the parent would not be in the child's best interests.

9. Reform immigration policies and the immigration system. Congress should immediately enact immigration system reform that places immigrants in irregular status on a path to citizenship, including parents of U.S. citizen and lawful permanent resident children, and expands visa availability and categories for family unity and for laborers such as domestic workers, nannies, and construction workers. Immigration reform should also create a path to citizenship for DAPA and DACA recipients and should ensure that deported parents of U.S. citizen children, lawful permanent residents, and DACA beneficiaries are allowed to re-enter the United States and apply for immigration relief. This type of comprehensive reform is the only way to provide mixed status families with long-term stability.

10. Ensure an individualized best interests determination (BID) prior to the repatriation of any unaccompanied child. Congress should require BIDs prior to repatriation of any unaccompanied children and should direct agencies to develop a BID procedure that identifies a child's immediate protection needs, provides durable solutions for these needs, and guarantees the child's rights. In addition, unaccompanied children must be given a chance to seek all forms of relief available to them prior to the initiation of a repatriation process, have access to an attorney to represent them in all types of immigration proceedings, and have a child advocate to advocate for their best interests.

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[25] A principal applicant is a child who seeks immigration relief on his or her own, as opposed to as a derivative on his or her parent's application. Principal child applicants can be unaccompanied or accompanied.

11. Create best practices and sustainable programs for repatriation and reintegration, connected to development and rule of law programs. Via oversight and/or legislation, Congress should ensure that the U.S. Agency for International Development, in conjunction with the Department of State, the Department of Health and Human Services, the Attorney General, international organizations, and NGOs develop and implement best practices and programs in the United States and within the country of return to ensure safe and sustainable repatriation and reintegration of unaccompanied children (whose repatriation is found to be in their best interests). These should be connected to larger development projects that address root causes of migration and enable youth to find alternatives to re-migration, working with local community organizations. Programs should address gender-based violence and gender discrimination in-country and ensure girls' physical safety, education, and job opportunities.

12. Ensure CARSI funds strategic development initiatives that address the root causes of migration, not just military and law enforcement, and require accountability for human rights abuses. The Central America Regional Security Initiative (CARSI) has largely emphasized combating narco-trafficking and gang activity in the region through law enforcement and military backing. CARSI's approach raises significant concerns given the well-documented human rights abuses committed by military and police, lack of transparency in judicial systems, and lack of accountability for human rights abuses. Congress should provide oversight and/or legislation to ensure that CARSI specifically address the root causes of child migration through strategic development initiatives (see #13 below) that promote accountability and respect human rights. This should include funding for reforming the police and ensuring that military and police comply with basic human rights standards. CARSI should also include assistance for judicial independence, transparency, and accountability, including oversight by civil society. Additionally, CARSI should include reintegration support, in collaboration with civil society, to children returning from the United States.

13. Increase U.S. funding for human development plans, employment and educational opportunities, and community-based programs in Honduras, El Salvador, and Guatemala. Congress should approve funds and provide oversight and/or legislation to ensure that critical U.S. aid supports national human development plans, rather than focusing on security measures. The United States should in particular increase funding for teacher training, job training programs and educational opportunities for youth, and programs focused on the development of small businesses. The United States should also increase funding for evidence-based, community violence prevention programs that provide shelter for crime victims and support youth who leave gangs and return to their communities. Finally, the United States should ensure that civil society plays a central role in developing aid initiatives, and make funding transparent and accountable.

14. Build the capacity of under-resourced national child welfare systems in Honduras, El Salvador, and Guatemala. Congress should approve funds and provide oversight and/or legislation to ensure that the United States invests in national child welfare systems in sending countries. Funds should be allocated to build additional shelters (beyond capital cities), increase staff and staff training, and develop enforcement mechanisms to protect at-risk children. Funding should include assistance for children repatriated to their communities. Follow-up and out-of-home care is needed especially for girls, who are at heightened risk of abuse by families.

15. Expand target population of Public Law 109-95, Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005, to include repatriated child migrants. This law mandates that the U.S. government and its partners respond to the needs of at-risk children in the developing world in a comprehensive, coordinated manner. It should include repatriated child migrants.

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Thank you for your careful attention to these issues and for the opportunity to share our findings and recommendations. If you have any questions about this statement, please contact Blaine Bookey or Eunice Lee, CGRS Co-Legal Directors by email (bookeybl@uchastings.edu; leeeunice@uchastings.edu) or phone (415-565-4877).

CWS statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs regarding its hearing on the response to unaccompanied minors on Tuesday, July 7 2015

As the committee discusses Central American children who are seeking safety, Church World Service (CWS) urges all Senators to recognize the importance of providing individuals access to life-saving protection. Children, families, women and men are fleeing violence, gang conscription, trafficking and sexual exploitation in the Northern Triangle. In Honduras alone, murders of women and girls have increased by 346 percent, and murders of men and boys are up by 292 percent since 2005. Asylum requests by Guatemalans, Hondurans and Salvadorans fleeing to Mexico, Panama, Nicaragua, Costa Rica and Belize have increased by nearly 1200 percent since 2009.[1] Individuals seeking safety within the region and in the United States have clear and compelling protection concerns.[2] As the number of children and families seeking safety in the United States has risen in the past five years, the U.S. government has failed to recognize this as a refugee issue. Nevertheless, the United States has moral and legal obligations under international[3] and U.S.[4] law to see that individuals seeking protection are not returned back into the hands of traffickers and others who seek to exploit them.

CWS is strongly opposed to legislation that would roll back any part of the Trafficking Victims Protection Reauthorization Act (TVPRA) passed unanimously by both the House and Senate and signed into law by President Bush in 2008. Laws governing asylum should not be weakened just as more children and families are in need of their protection. Deporting children more quickly, before they are screened for trafficking and protection concerns, only perpetuates a cycle of vulnerable children whose concerns are not being addressed and who are passed along to further exploitation and abuse. Deporting vulnerable children places them back into the hands of gangs and those who seek to exploit them, and increases the power these groups hold over children and entire communities.

While CWS supports the Central American Minors Affidavit of Relationship (CAM/AOR) program, it is only one of many ways that the United States must offer protection to children fleeing violence. The program is designed to help unmarried children under the age of 21 from El Salvador, Guatemala and Honduras who have a parent living in the United States and meet other criteria seek refugee or parole status in the United States. To apply, a parent with legal status in the United States must file an Affidavit of Relationship with a local refugee resettlement agency and undergo a rigorous screening process with a medical examination, in-person interview with the Department of Homeland Security and multiple security checks. In certain cases, if the child's other parent is living with them in the Northern Triangle, they can also be included in this process. The program began accepting applications from qualifying parents on December 1, 2014, with an estimated 1,900 applications received thus far. While this program will help some children reunite with their parents, it does not provide relief to the most vulnerable. The immediate and urgent need to flee after receiving threats or enduring violence makes waiting for this lengthy process a luxury many cannot afford. Children fleeing violence need protection, regardless of whether or not they have a parent living in the United States with legal status. The United States has a responsibility to provide protection for vulnerable children who cannot take part in the CAM/AOR program, including those who make the journey to the United States on their own. The migration of families and individuals who make the journey to the United States to seek protections is completely legal under U.S.[5] and international[6] law.

However, the United States has provided increased assistance and training to military and police forces in Mexico and the Northern Triangle in order to prevent individuals from reaching the United States. From October 2014 to April 2015, Mexico detained and deported nearly 100,000 Central Americans.[7] Individuals intercepted in Mexico do not receive proper screenings for protection concerns, and a large percentage of those deported to their home countries are in fact eligible for international protection,[8] making their deportation *refoulement*, or unsafe return, which is illegal under international, U.S. and Mexican law.[9] That the United States has not only been complicit in this, but in fact has encouraged it, is incredibly troubling, unlawful, and sets a dangerous precedent in terms of territorial access and the protection of vulnerable populations. CWS encourages all Members of Congress to prioritize the protection of children who are in danger and seeking safety. This includes affirming the need for rigorous asylum processes both in the United States and in Mexico to ensure that vulnerable individuals are not returned back into harm's way. Real solutions must address the root causes of migration, rather than escalating enforcement and preventing individuals from seeking safety. Migration will continue so long as the region is plagued by corruption, human rights abuses by local authorities, the militarization of police, high impunity rates, and weak institutions. CWS is committed to working with the Senate, House, and Obama Administration to address these very real issues so that children can in the Northern Triangle are able to grow and thrive without having to flee their homes.

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[1] UNHCR "Children on the Run," July 9th 2014. http://www.unhcrwashington.org/sites/default/files/1_UAC_Children on the Run_Full Report.pdf
[2] UNHCR "Children on the Run", July 9, 2014. www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf
[3] The Convention on the Rights of the Child, Articles 2, 3, 6 and 22. www.ohchr.org/en/professionalinterest/pages/crc.aspx
The Universal Declaration of Human Rights, Article 14. www.un.org/en/documents/udhr/index.shtml#a14
United Nations General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII). www.refworld.org/docid/3b00f05a2c.html
United Nations High Commissioner for Refugees, A Framework for the Protection of Children www.unhcr.org/50f6d0b9.html and United Nations High Commissioner for Refugees, Convention and Protocol Relating to the Status of Refugees. www.unhcr.org/3b66c2aa10.html
[4] U.S. Code Title 22: Foreign Relations and Intercourse, Chapter 78: Trafficking Victims Protection; and U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. http://uscode.house.gov
[5] U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. http://uscode.house.gov
[6] "Universal Declaration of Human Rights, Article 14. <www.un.org/en/documents/udhr/index.shtml#a14>; United Nations General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII). <www.refworld.org/docid/3b00f05a2c.html>; United Nations High Commissioner for Refugees, Convention and Protocol Relating to the Status of Refugees. <www.unhcr.org/3b66c2aa10.html>; and United Nations High Commissioner for Refugees, Note on Non-Refoulement, 23 August 1977. <www.unhcr.org/3ae68fd10.html>.
[7] Washington Office on Latin America "Mexico Now Detains More Central American Migrants than the United States" <www.wola.org/news/mexico_now_detains_more_central_american_migrants_than_the_united_states>; and The Mexican Secretariat of the Interior, "Boletin mensual de estadísticas migratorias méxico, 2014." <www.wola.org/sites/default/files/Boletin2014_.pdf>.
[8] UNHCR Report "Arrancados de Raíz" <www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9828>.
[9] "Ley de Refugiados y Protección Complementaria" (Law on Refugees and Complementary Protection), UNHCR. <www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2010/8150> and "Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama," RefWorld. <www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b36ec>.

Statement for the Record- Senate Homeland Security and Government Affairs Committee
"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"
Evangelical Lutheran Church in America
July 6, 2015

The Evangelical Lutheran Church in America (ELCA), a church of about 4 million members and 10,000 congregations nationwide, thanks the Senate Homeland Security and Government Affairs Committee for the opportunity to submit this statement for the record. As a church that believes that love for our neighbor is a fundamental reflection of our own identity, we are deeply concerned with the well-being of our brothers and sisters from Central America, while living in the dangerous conditions of their countries of origin, and especially while making the treacherous journey seeking safety in the United States. We urge the United States Congress to responsibly, effectively and compassionately address the immense need for protection of vulnerable children and families leaving their communities in Honduras, El Salvador and Guatemala.

A delegation of ELCA leadership visited companion Lutheran churches in El Salvador, Guatemala and Honduras this past February to learn more about the root causes driving 68,631 children to flee to the United States alone.[1] The reasons that citizens of the Northern Triangle countries flee their communities are varied and interconnected. Children, civil society and government organizations frequently cited violence, poverty and lack of opportunities as the primary reasons so many are forced to flee their communities. Statistics that fail to reflect the complexity of these factors miss a crucial component in understanding and addressing the needs of those who are forced to flee.

Violence targeting young people continues to be a critical factor in the internal and external displacement of children and families. The small region of the Northern Triangle is home to four

[1] Our findings are outlined in our report, Our Communities in Crisis: A faithful look at the root causes of Central American forced displacement and the repatriation of children and families after the Summer of 2014.

of the most violent cities in the world, and San Pedro Sula in Honduras has the unfortunate standing as the world's homicide capital. As one of the safer places in many communities, churches have encountered numerous cases where children and families have been threated and given 24 hours to leave their homes. In the past year, these churches have reported an increase in entire families having to flee due to threats.

Multiple organizations have quantified the crucial need for protection for citizens of El Salvador, Honduras and Guatemala. The United Nations High Commission for Refugees (UNHCR) reported an increase of 1,185 percent in asylum applications from these three countries in the surrounding Central American region, including Mexico. UNHCR Mexico's study, *Arrancados de Raiz*, contrasts similar studies of unaccompanied children completed from 2006-2008 and during and after October 2011, and found that the number of children from Central America traveling alone in need of international protection had more than tripled. These children have the legal right to leave their countries of origin and seek protection. As a nation that has often called upon other countries to protect the most vulnerable, the United States must uphold international and national laws that protect children and families.

Although governmental agencies acknowledge that violence plays a significant part in the forced displacement of children[2], the United States government has continuously praised Mexican and Central American governments for their increased efforts in border security. Most recently, the draft of the State, Foreign Operations and Related Agencies bill released in the House of Representatives ties funding to the decrease of migrants arriving in the U.S. border without addressing their need for protection or funding programs that concentrate on the push factors driving children to flee.

Funding long-term programs that focus on alleviating violence, poverty, and lack of educational and economic opportunities, while addressing the immediate need for protection of many of these children, is the only responsible and effective way to address the forced migration of

[2] In the United States Government Accountability Office February 2015 report, "Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras," officials from the Department of State, the U.S. Agency for International Development, and the Department of Homeland Security stationed in El Salvador, Honduras, and Guatemala cited violence as a main factor driving children to leave their communities.

children from Central America. Stripping trafficking protections in the Trafficking Victims Protection Reauthorization Act (TVPRA), encouraging Central American and Mexican governments to stop children at all costs, and providing funding only for border security efforts, will not decrease the number of children fleeing their communities and attempting to make the treacherous journey to the United States.

The ELCA has already begun funding programs that will address the root causes forcing children to leave their communities while honoring our calling to love our neighbor. But the ELCA's funding must be a part of a public-private enterprise with the U.S. government if the root causes of this wave of forced migration are to be adequately addressed. We urge Congress to invest in migration by addressing root cause humanitarian needs forcing vulnerable people to leave their communities, act as a leader in the protection of Central American children in U.S. policies, and compel Central American and Mexican governments to expand and improve their child protection practices.

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FIRST FOCUS CAMPAIGN FOR CHILDREN
STATEMENT FOR THE RECORD

SENATE HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING:
"THE 2014 HUMANITARIAN CRISIS AT OUR BORDER: A REVIEW OF THE GOVERNMENT'S RESPONSE TO UNACCOMPANIED MINORS ONE YEAR LATER"

JULY 7, 2015

Chairman Johnson, Ranking Member Carper, and Members of the Committee, we thank you for the opportunity to submit this statement regarding the government's response to unaccompanied minors since the crisis in 2014.

The First Focus Campaign for Children is a bipartisan advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. As an organization dedicated to promoting the safety and well-being of all children in the United States, we have been advocating for the government to hold the best interest of the child paramount in all actions regarding unaccompanied children. This includes appropriate screening of children upon apprehension; access to adequate medical and mental health care and other services; safe placement with sponsors in the community or in licensed facilities; and responsible repatriation to home countries that ensures children are returning to safe and stable conditions.

We have been encouraged by several efforts over the past year to address the needs of unaccompanied children. Specifically, we support the efforts by the Office of Refugee Resettlement (ORR) to ensure expedient placement with sponsors; the efforts by the Department of Justice (DOJ) and the Department of Health and Human Services (HHS) to increase access to legal counsel for children through new service and grant programs; the efforts by the Department of Education to provide guidance and financial support to schools serving unaccompanied children; and the new in-country processing initiative which will allow certain minors in Guatemala, Honduras, and El Salvador to file for refugee status within their home countries. However, many of these initiatives fall short of meeting the demand for services among this vulnerable child population. For example, we know that the in-country processing initiative only plans to accept 4,000 applications in FY 2015 and that the applicant pool is limited to children whose parents are already lawfully present in the United States. Given that the number of children who fled to the U.S. was more than 68,000 in 2014, it is clear that the program will only cover a small fraction of the children in need.

We also remain deeply troubled by the lack of adequate attention to address the roots causes of the forced migration in the primary sending countries, including Guatemala, El Salvador, and Honduras. Despite moderate increases in U.S. aid to the sending countries as well as efforts by the governments in the region to address crime and promote prosperity, the violence and instability in the three sending countries remain at record high levels. Honduras, El Salvador, and Guatemala have the highest homicide rates in the world (ranked first, fourth, and fifth respectively), and children continue to be increasingly targeted by gang recruitment and retaliation.[1] We are also concerned with the U.S. government's enforcement-heavy approach

to curb the flow of children and families entering the United States and to speed up the removal process. Despite moderate efforts to help children connect to legal counsel, the Administration has increasingly pushed children through "rocket docket" hearings that leave children with very limited time to prepare their cases. Over the past year we have also seen the disturbing massive expansion of family detention, a practice that was largely ended in 2009 due to the government's own recognition that the practice is inappropriate for children. The government is now holding mothers and children in three family detention centers throughout the country, including the largest family detention center in U.S. history in Dilley, Texas. Administration officials have repeatedly stated that asylum-seeking families are being detained in order to deter other families from making the journey to the U.S. These facilities are ill-equipped to deal with the special needs of traumatized women and children, and research consistently shows that family detention threatens children's health and development and limits critical access to legal counsel.

Finally, while increased enforcement in the region and the Mexico-Guatemala border have been successful in intercepting children en route to the U.S., it is important to note that children are frequently being returned without proper screening. This means that children with valid credible fear claims are being returned to potentially life-threatening situations. Just last week it was reported that a 14-year-old boy named Gredys Alexander Hernández was gunned down in his home in Honduras in the middle of the night.[ii] Two armed men broke down his family's door and shot him twice in the head. Gredys' family told reporters that he had just been deported from the Mexican border two days prior, and after receiving several threats upon being returned to his home he was planning on attempting to make the trek again in two days. His parents also commented that Gredys was a "good boy" who avoided gang activity, and they did not understand why he had been targeted. Unfortunately, Gredys, and so many other kids like him, are not here today to share their story. Gredys can no longer tell us about the constant state of fear he was forced to live in and the daily threats that ultimately drove him to make the long, dangerous trek across three countries to the United States. Gredys is one of the children that officials have "succeeded" in preventing from making it to safety. He's also one of the many children that have slipped through the cracks of poor asylum screening along the southern Mexican border. And if our government's enforcement-heavy strategy remains as it is now, coupled with the continued high rate of violence and instability in the region, then we can expect more tragic stories of children like Gredys losing their lives in a crisis that is far from over.

As Congress looks back on the efforts that have been made to address the humanitarian crisis over the past year, it critical that questions are asked about what goals have truly been achieved. Are children and families any safer now than they were a year ago? Have we succeeded in ensuring that the best interest of every child is being met? Until we are able to answer these questions affirmatively, then there is still much work that needs to be done. The solution to this humanitarian crisis is not to just make the problem go away. The solution is to work with governments in the region to not just stem the flow but to address the complex root causes of the migration and to treat child and family refugees with the full range of protections they deserve. Anything short of that will continue to put thousands of children's lives at risk.

We thank you again for the opportunity to submit this statement for the record. Should there be any questions regarding this statement, please contact Wendy Cervantes, Vice President of Immigration and Child Rights, at wendyc@firstfocus.org.

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[i] United Nations Office on Drugs and Crime (UNODC). *The Global Study on Homicide.* www.unodc.org/gsh/en/data.html
[ii] *El Heraldo.* "Hombres encapuchadas asesinan a un menor de edad." http://www.elheraldo.hn/sucesos/854184-219/hombres-encapuchados-asesinan-a-un-menor-de-edad

FREEDOM NETWORK USA

TO EMPOWER TRAFFICKED AND ENSLAVED PERSONS

Written Statement by Freedom Network USA
The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later.
July 7, 2015
U.S. Senate Committee on Homeland Security & Governmental Affairs

The Freedom Network USA appreciates this opportunity to submit our views for the Senate Homeland Security and Government Affairs Committee hearing entitled: *The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later.* Founded in 2001 and with currently 39 members, the Freedom Network is the largest anti-human trafficking coalition in the country.[1] All our members have experience and expertise working directly with survivors of human trafficking, including unaccompanied minor children who are also victims of trafficking.

The increase of unaccompanied alien children (UACs) seeking refuge in the United States[2] has received national attention; however, instead of increased resources and efforts to protect trafficked and at-risk UACs from harm, U.S. government efforts have largely focused on law enforcement efforts and proposals to roll back protections of UACs. The Freedom Network, based on research and its experiences working directly with trafficking survivors, recommends:

1) The U.S. must recognize and assess the root causes of the trafficking of UACs.
2) The U.S. must continue providing legislative protections for trafficked UACs.
3) Identification and assistance of trafficked UACs requires prioritization of services
4) Protecting trafficked UACs and preventing child trafficking requires prioritizing funding of legal services and robust due process rights

1) The U.S. Must Recognize and Assess the Root Causes of the Trafficking of UACs

Marta's Story: *When she was very young, Marta's parents abandoned her. When Marta was 13 years old, she found herself on the streets in Guatemala with no place to stay. To eat, Marta endured two years of being trafficked for sex. Seeking an escape, Marta decided to travel to the U.S. with the help of a coyote. Marta was apprehended by the Customs and Border Patrol (CBP) near the U.S.-Mexico border. She spent five months in the Officer and Refugee and Resettlement (ORR) custody before being released into the custody of her aunt. In ORR custody, Marta was determined to be a human trafficking survivor and referred to a Freedom Network member, who then assisted Marta in her immigration relief and also provided her ongoing support and services.*

Freedom Network members have seen the increase in the UAC populations correlate with the increase of identified trafficked UACs. The U.S. consistently reiterates its commitment to ending human trafficking and slavery, but in order to do so, the U.S. needs to recognize the root causes of how and why UACs are trafficked into the sex industry and for labor exploitation. Along with researchers, the children themselves report migrating to flee increased violence, poverty, and

trafficking in their countries of origin.[3] For example, as many as 40 percent of UACs that have been apprehended are girls,[4] a proportion that began increasing since 2013, and an increasing number are under the age of 13.[5] As documented in the U.S. Department of State's 2014 Trafficking in Persons Report,[6] children are recruited into the U.S. under false pretenses, and are then placed into exploitative industries, ranging from prostitution to forced labor in factory work, the agricultural sector, begging, street vending, restaurant work, commercial sex, and domestic servitude. UACs are also facing other forms of violence such as sexual assault and kidnapping.[7]

The U.S. government needs to continue addressing these trending trafficked UAC populations, examine what is causing these children to migrate, and determine how to assist this vulnerable demographic without reducing the ability to screen potential victims of human trafficking.

2) <u>The U.S. Must Continue Providing Legislative Protections for Trafficked UACs</u>

Nadine's Story: *After Nadine's parents passed away, she was sent to live with her abusive aunt. Her aunt told her in three months' time when she turned 16 that she would have to go live on her own and support herself. When someone named David promised to help her get a scholarship to go to school in the U.S., she thought it sounded like a great idea. He said they had to fly from Cameroon to the U.S.-Mexico border first before going to the U.S. Instead, she was forced into sex trafficking in Mexico. She escaped the situation to the border, where she was screened by CBP. She was placed into ORR custody and subsequently received social services and legal status from a Freedom Network. She is now a real scholarship recipient and expects to start college in the fall.*

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), a bill with strong bi-partisan support, was passed by Congress in part to explicitly acknowledge the particular susceptibility of UACs to trafficking. Section 235 of the TVPRA 2008 specifically offers two key safeguards. First, it provides <u>protections</u> to UACs who may be victims of trafficking, abuse, neglect, and exploitation. Screening for trafficking of UACs from non-contiguous countries (all other countries besides the contiguous countries of Mexico and Canada) is mandatory to assess past victimization and vulnerability if repatriated to their home country. (If anything, the TVPRA 2008 does not reflect the reality that since 2009, many Mexican UACs, being from a contiguous country, are promptly returned to Mexico without adequate screening for abuse and trafficking.[8]) Second, it seeks to <u>prevent</u> all vulnerable unaccompanied minors from becoming victims of trafficking by allowing access to services, support, and the opportunity to make their case before an immigration judge.

These safeguards help identify and protect children that have been trafficked, and help prevent the trafficking of children who would face dangerous conditions if returned to their countries of origin. However, instead of strengthening the protections for UACs in the TVPRA from the crime of trafficking, several Congressional proposals have opted to scapegoat the TVPRA by engaging in anti-immigrant rhetoric seeking to roll back these TVPRA safeguards.

The Freedom Network strongly believes that to roll back on any of the TVPRA 2008 provisions would likely in result in the increased number of trafficked UACs who will be unable to escape their trafficking, slavery, servitude, or exploitative situation both abroad and in the U.S.

3) Identification and Assistance of Trafficked UACs Requires Prioritization of Services

Freedom Network members have found that most trafficked UACs are not identified as being trafficked at the border by CBP and are facing deportation back to unsafe conditions. The under-identification of trafficked minors is partially due to the environment and manner in which the UACs are screened and interviewed for trafficking. Several Freedom Network members report UAC screening interviews by CBP for trafficking to last a short 10-20 minutes. Early conclusive determination of whether a child has been trafficked can be difficult to obtain because advocates and officials may "encounter child victims at various stages of escaping the trafficking situation and that information may be limited."[9] Furthermore, a 2013 lawsuit filed against CBP documents that many youth and immigrants in detention are shackled, deprived of food, and held in freezing cold cells called "hieleras" (iceboxes).[10] These are not appropriate conditions for authority figures to elicit sensitive information from traumatized minors. Consequently, CBP figures identifying the percentage of trafficked UACs are likely highly inaccurate, and fail to capture the true scope of the problem.

Many Freedom Network members found that most identified trafficked UACs were identified only once they were placed in ORR care, worked with a caseworker, or received legal counsel. Identifying trafficked UACs requires providing them a sense of safety, basic physical needs, and mental health services. Child trafficking victims are even less able than adult victims to self-identify. Minors experience psychological traumatization at a deeper level and therefore may find it even harder than adults to confide in individuals regarding painful and intimate events.[11] Oftentimes, the trust-building process that leads to disclosure takes many meetings over a period of months due to trauma, language barriers, distrust of authorities and lack of knowledge about their legal rights. A trafficked child, compared to the average refugee child, has particular needs and may often take up to a year or more to "settle in" and develop trust.[12]

Many Freedom Network members have also witnessed UACs who are not receiving services be trafficked upon arrival to the U.S. Identifying trafficked UACs should prioritize funding trauma-informed social services, not dedicating disproportionate funding and resources to law enforcement at the border.

Alexandra's Story: *Alexandra lived in Honduras with her grandparents, who were getting older, and a sister with disabilities. Her aunt in the United States asked Alex to come up and live with her. Alex made the journey alone when she was 15 years old. When she finally arrived at her aunt's house, she disclosed experiencing violence and assault during her journey. She is still not able to talk about it. Her aunt promised to send her to school but instead found her cleaning and domestic worker jobs and demanded all of her earnings. At first the aunt told her that she owed $7,000, then $9,000 to her aunt for coming to the U.S., then told her that she would be done paying the debt when she said she was done. She also had to pay her aunt room and board. There was no end in sight. With the help of a Freedom Network member, Alexandra now has immigration status, is working on going back to school, and looking forward to reuniting with her sister.*

4) Protecting Trafficked UACs and Preventing Child Trafficking Requires Prioritizing Funding of Legal Services and Robust Due Process Rights

Pedro's Story: *Pedro, 16 years old, grew up in a border town in Mexico. Pedro was kidnapped by members of the Sinaloa Cartel. He was forced by gunpoint into labor trafficking to work for the cartel and cross into the U.S. When he was caught by CBP, he was simply deported back to Mexico four times. Finally in an ORR shelter far away from the U.S.-Mexico border, he was finally able to confide in a caseworker that he was being forced to work for the cartels. A Freedom Network member assisted him in obtaining immigration status and terminating his deportation proceedings.*

Many Freedom Network members are trained legal advocates, but even they witness many situations where UACs are without legal counsel. Unidentified trafficked UACs, who are traumatized, have limited English proficiency, and are without representation, are particularly susceptible to losing their cases and being deported. Many trafficked UACs also miss their court dates because they do not have legal counsel, transportation to the courthouse, or simply do not know when they are supposed to return to the courthouse. There is the great chance that trafficked UACs, whether identified or not, are more likely to be deported if they cannot obtain legal counsel.

However, the limited resources that have been provided for trafficked UACs are still under attack in Congress. Robust due process rights requires prioritization of funding for legal services for UACs. The Freedom Network appreciates the Senate Appropriations Committee support for the President's FY 2016 request of $60 million for 55 additional immigration judge teams to address serious court backlogs. However, this is insufficient. The Freedom Network is deeply disappointed in Congress' failure to support President Obama's FY 2016 budget request for $50 million for legal representation of UACs and child victims of mistreatment, exploitation, and trafficking in the 2016 Commerce, Justice, Science funding bill. The support of that budget request could have prevented the deportation of trafficked UACs.

Summary of Recommendations

The Freedom Network strongly believes that Congress can continue being a trailblazer in the universal fight against child trafficking. In summary, the Freedom Network recommends:

1. Assess root causes of the trafficking of UACs.
2. Maintain the current language protection for UACs under the TVPRA of 2008.
3. Increase and improve child welfare and trafficking screening at the border.
4. Increase funding in support of TVPRA provisions that provide identification, protection and care for UACs and trafficking survivors, not detention and removal.
5. Ensure due process protections and resource-provision to vulnerable populations.
6. Provide all UACs and potential trafficked minors with appointed legal counsel.
7. Support and maintain immigration policies that protect children.

The Freedom Network looks forward to working with members of the committee to take steps to strengthen protection for trafficked UACs.

[1] Members of the Freedom Network USA can be found at Freedom Network USA, "Current Members," available at http://freedomnetworkusa.org/membership/current-members.

[2] In a letter to Congress, the White House asked for "additional authority to exercise discretion in processing the return and removal of unaccompanied minor children from non-contiguous countries like Guatemala, Honduras, and El Salvador." *See* White House, Office of the Press Secretary, "Emergency Supplemental Request to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley Areas of the Southwest Border," July 8, 2014, http://www.whitehouse.gov/the-press-office/2014/07/08/fact-sheet-emergency-supplemental-request-address-increase-child-and-adu.

[3] *See* Wong, Tom K., "Statistical Analysis Shows that Violence, Not Deferred Action, Is Behind the Surge of Unaccompanied Children Crossing the Border," Center for American Progress, July 8, 2014, http://www.americanprogress.org/issues/immigration/news/2014/07/08/93370/statistical-analysis-shows-that-violence-not-deferred-action-is-behind-the-surge-of-unaccompanied-children-crossing-the-border/; *see also* United Nations High Commissioner for Refugees, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, March 2014, http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf; *see also* Elizabeth Kennedy, No Childhood Here: Why Central American Children Are Fleeing Their Homes, American Immigration Council, July 1, 2014.

[4] Gamboa, Suzanne, "Royal-Allard Focuses Attention on Girls Arriving on Border," NBC News, July 16, 2014, http://www.nbcnews.com/storyline/immigration-border-crisis/roybal-allard-focuses-attention-girls-arriving-border-n157726.

[5] Park, Haeyoun, "Children at the Border," *New York Times*, July 15, 2014, http://www.nytimes.com/interactive/2014/07/15/us/questions-about-the-border-kids.html?_r=0; Seghetti, Lisa, Alison Siskin, and Ruth Ellen Wasem, "Unaccompanied Alien Children: An Overview," Congressional Research Services, July 28, 2014, http://fas.org/sgp/crs/homesec/R43599.pdf.

[6] United States Department of State, 2014 Trafficking in Persons Report, June 20, 2014, see specifically country narratives for Guatemala (at 189), Honduras, (at 197), El Salvador (at 165) and Mexico (at 271).

[7] United States Department of State, 2014 Trafficking in Persons Report, June 20, 2014, see specifically country narratives for Guatemala (at 189), Honduras, (at 197), El Salvador (at 165) and Mexico (at 271); see also Cavendish, Betsy and Maru Cortazar, "Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors," The Appleseed Foundation, 2011, http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf.

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[9] "Request for Assistance for Child Victims of Human Trafficking, DHS Administration for Children and Families Office of Refugee Resettlement Anti-Trafficking in Persons Division," http://www.acf.hhs.gov/trafficking/about/ATIP_Request_Assistance_Child_Victims_Trafficking.pdf.

[10] American Immigration Council, "National Wave of Complaints Highlights Abuse by U.S. Customs and Border Protection," March 13, 2013.

[11] Clawson, Heather, Nicole Dutch & Megan Cummings, "Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned," National Institute of Justice No. 216547, 2006.

[12] *Care for Trafficked Children*, United States Conference of Catholic Bishops, April 2006.

Unaccompanied Children Reunified with Family:
Ensuring Court Appearance, Fair Proceedings and Protecting Children's Safety

Unaccompanied immigrant and refugee children are—first and foremost—children. Whenever possible they should be safely released to family who are able to care for them pending their immigration proceedings. They are entitled to due process of law, but also deserve the protection and care we would want extended to any child alone in a strange land. This is not only the humane response, but also improves court efficiency and is more cost effective than federal custody. This briefing document sets forth three principles that ensure fair proceedings and protect children's safety: 1) all children should have lawyers to assist them in accessing the legal protections for which they are eligible; 2) all decisions should be made with consideration for the child's best interests and child advocates must be appointed for the most vulnerable children; and 3) funding for post-release services is vital to ensure children's safety, security, and integration in their family setting and their local communities.

All children in adversarial proceedings should have an attorney. Upon release from U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR) custody, the majority of unaccompanied children appear in immigration court without representation because, regardless of age, lawyers are not automatically provided to these children. Children as young as toddlers are often forced to present their legal case before an immigration judge in a formal court room. While the child is unrepresented, the government is represented by an attorney who has been trained specifically in the complex U.S. immigration law. The expedited hearings for unaccompanied children—the so-called "rocket dockets"— that began last fall often do not allow children enough time to find an attorney and prepare for their case. This increases the number of children going through proceedings without an attorney, as well as those who receive removal orders in absentia. Every unaccompanied child should have legal representation in immigration proceedings – if necessary, at government expense.

Child advocates meet a vital need for vulnerable children. Federal law permits the appointment of child advocates—best interests guardians *ad litem*—for child trafficking victims and other vulnerable unaccompanied children.[1] Their role is to advocate for the best interests—safety and well-being, giving due weight to the child's expressed wishes—on issues including placement and permanency. Because immigration law does not require, but does not prohibit, every decision-maker from considering a child's best interests, child advocates play a necessary role. This is particularly true for infants and toddlers who are too young to advise an attorney, or for other children who may lack capacity to make a particular decision.

ORR should provide post-release case management to all children upon release or as the need arises. Post release case management services are services provided by a social worker who meets with the child individually and the family to develop an individualized service plan. These services allow children to successfully transition into their communities by assisting with school enrollment, acculturation, locating medical and therapeutic services, making referrals to area legal services, and navigate new family settings and other individual needs. Not all initial placements are successful or safe

[1] 8 U.S.C. § 1232(c)(6)

for the child (just as occurs in the domestic child welfare system). Thus, some entity must take responsibility for monitoring children's safety post-release.

Appearance Rates of Unaccompanied Children in Immigration Court

The majority of children do appear for their first immigration court hearing.[2] **In fact, the single, strongest indicator that a child will appear for an immigration court hearing is if an attorney represents that child.** Representation also improves the process for judges and government attorneys, who are able to communicate directly with another attorney, rather than a child.

- In the first half of fiscal year 2015, **99.88% of represented unaccompanied children** appeared for their immigration court case.
- In fiscal year 2014, **99.3% of represented unaccompanied children** appeared for their immigration court case.

Appearance Rates for Unaccompanied Children in Immigration Court

Case Type	Fiscal Year 2014	Fiscal Year 2015 *(through March)*
Unaccompanied Children with Legal Representation	10,544	1,664
Number Who Appeared	10,473	1,662
Percentage Overall	**99.33%**	**99.88%**
Unaccompanied Children Pro Se	11,049	4,542
Number Who Appeared	7,401	4,055
Percentage Overall	**67.0%**	**90.0%**

"Juvenile Deportation Proceedings Data Tool," *Syracuse University's Transactional Records Access Clearinghouse (TRAC)*, http://trac.syr.edu/phptools/immigration/juvenile/.

Most Children Are Forced to Appear Without a Lawyer

In the past few years, representation rates of unaccompanied children reached all-time lows.

- Before 2012, most unaccompanied children were represented—an average of **62%** during the years of **2009 through 2011**.[3]
- This steadily decreased from 2012 through 2014, with all-time lows in representation in **March 2014 (16%)** and **April 2014 (15%)** that coincided with the sharp increase in arrivals of children seeking protection in the spring and summer of 2014.
- In the fall of 2014, representation rates gradually increased. However, in cases filed in fiscal year **2015 through March, 62%** of unaccompanied children in immigration court **were unrepresented.** Of **released children**, the figure is even higher—**67% went unrepresented.**[4]

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[2] On April 29, 2015, in the Senate Homeland Security and Government Affairs Committee budget hearing, Senator McCain in questioning Secretary Johnson, stated that only 10-20 percent of unaccompanied minors appearing for scheduled immigration hearings.

[3] Syracuse University's Transactional Records Access Clearinghouse (TRAC) "Immigration Court Cases Involving Unaccompanied Juveniles, Filed by Month," *available at,* http://trac.syr.edu/immigration/reports/371/include/timeseriesG.html

[4] Current as of May 15, 2015, available at: http://trac.syr.edu/phptools/immigration/juvenile/.

In other words, the vast majority of unaccompanied children now stand alone in immigration court, to respond to questions from judges and government attorneys, and to assert their defense to deportation.

Appearing Without Lawyers Denies Children Protection for Which They Are Eligible

A majority of recently-arrived unaccompanied children are eligible for legal protection that would allow them to lawfully remain in the United States.[5] Yet they cannot access these protections without an attorney to represent them in court or even to ensure they receive proper notice of their hearings.

- In the last six months of 2014, **94 % of the unaccompanied ordered removed** did not have an attorney.[6]
- Out of 62,363 pending children's cases (October 2013 through January 2015), **7,706 children** were **ordered removed** after they **failed to show up** in court.[7]
- In fiscal year 2014, advocates documented an increase in **problems with children's notices to appear** immigration court hearings. Children received **no notice** of their hearing prior to their hearing or were required to appear at a court far from where they lived. This may have resulted in higher in absentia removal orders.[8] Without attorneys to address these issues, children are at high risk of losing their opportunity to seek protection, and may be returned to harm.

Providing Pro Bono Attorneys for Unaccompanied Children

For many years, nonprofit organizations, law school clinics, pro bono and "low bono" attorneys have stepped up to represent unaccompanied children for free or for at a very low cost. But they cannot meet the needs of all children. Through Justice AmeriCorps, the Department of Justice has increased the number of lawyers available to represent unaccompanied children. The facilitation of pro bono representation through public-private partnerships has also been successful, providing many children nationwide attorneys to represent them in immigration court, leveraging the resources of the private sector.

A robust mix of government-funded and pro bono representation by the private sector is needed to fill the enormous representation gap that currently exists.

Child Advocates Bring the "Best Interests of the Child" Standard to Unaccompanied Children's Cases

Unaccompanied children face complex decisions. They may have experienced traumatic events that they have not yet disclosed to anyone. They may want to attend school, but face tremendous pressure to work. ORR appoints child advocates—experienced attorneys or social workers, supported by bilingual volunteers who meet regularly with the children—to particularly vulnerable children including pregnant or parenting teens, children with physical disabilities or mental health concerns, children who face permanent separation from family. Child Advocates help the children to understand and think through high-stakes decisions; they also advocate with decision makers at HHS, DOJ and DHS on behalf of the children's best interests. Child advocates also make recommendations on the best interests of children who are extremely young (toddlers and infants), children who lack capacity to make a particular decision, or who consider a decision that puts their safety in jeopardy. The Child Advocate's role is to ensure that decision-makers consider the child's best interests—their safety; their expressed interests; and their family integrity, and developmental and liberty interests—when making decisions about them.

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[5] United Nations High Commissioner for Refugees (UNHCR), *Children on the Run* (March 2014).(UNHCR reports 712% increase in asylum applications in the countries neighboring Honduras, El Salvador and Guatemala, namely Mexico, Panama, Costa Rica, Belize and Nicaragua, from 2008-2013).
[6] Kate, Linthicum, "7,000 Ordered Deported Without Going to Court," *L.A. TIMES*, 6 March 2015. http://www.latimes.com/local/california/la-me-children-deported-20150306-story.html#page=2.
[7] *Ibid.*
[8] See a February 9, 2015 sign-on letter detailing this issue, available at: http://lirs.org/wp-content/uploads/2015/06/20150127Advocacyletterreinabsentiachildren-FINAL-2-w-names.pdf

Providing Case Management/Post-Release Services

There are currently 10 post-release and home study organizational providers to ORR (not all providers do both). Only at-risk children with specific child protection detailed under federal law are required to have a home study and receive post-release services.[9] These children receive services for the duration of the court case or until they turn 18. For children who receive post-release services without a home study, they are eligible for services for up to 6 months, which may be extended for exceptional cases. Most children are not provided with post-release services. Additionally, not every service provider employs a model of in-person, case management support within the family's community.

- In fiscal year 2015, an average of **3,300 children** will receive the post-release services required following a home study for at-risk youth. This represents roughly **12%** of the total unaccompanied children projected to be in ORR's care for fiscal year 2015.[10]
- For all other children who do not need a home study, ORR only has capacity to provide services to an estimate of **3,000-7,000 children annually**. This represents roughly **14% to 32%** of children projected to be in ORR's care (who do not receive a home study) for fiscal year 2015.
- Research shows that children who receive case-management style post-release services are more likely to comply with the requirement to appear at all immigration court hearings.[11]
- With post-release services, children benefit from additional information about what to expect in immigration court proceedings, as well as referrals for local legal service providers.
- Post-release services also help connect children to schools, mental health services, medical providers, and other supports, as well as provide cultural orientation to both the child and the parent.

Recommendations

Congress can ensure children's access to due process and protection, while increasing efficiency by:

- Expanding government funding for pro bono legal services and direct representation for children.
- Ensuring that the child's best interests is a primary consideration in all custody and removal proceedings and continue providing Child Advocates to submit best interests recommendations for the most vulnerable children.
- Providing adequate funding to ORR to provide necessary post-release case management services to assist with child protection, community integration, and immigration court appearance after children's release from federal custody.

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[9] See 8 U.S.C. 1232(c)(3)(B)(children with a disability, children who are victims of trafficking or child abuse and neglect, or are at risk thereof upon release to a sponsor).

[10] Data provided by ORR is based on weekly rates of service. Estimates and percentages are based on current rate of arrival statistics from CBP, which just below fiscal year 2013 arrival rates and total placed in fiscal year 2013 with ORR (24,668).

[11] Benjamin J. Roth and Breanne L. Grace, "Post-Release: Study Summary and Policy Recommendations," *University of South Carolina College of Social Work*, available at: http://bit.ly/1cpMtvZ

Written Statement
Wendy Young, President, Kids in Need of Defense
The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later.
July 7, 2015
U.S. Senate Committee on Homeland Security &Governmental Affairs

Kids in Need of Defense (KIND) appreciates this opportunity to submit our views for the Senate Homeland Security and Government Affairs Committee hearing entitled: *The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later.* While the images of children backing up at border patrol stations, which dominated the news last summer, have disappeared the protection challenges these children face have not. Lack of legal representation for unaccompanied children continues to be staggering. Today, the life threatening dangers these refugees face in the Northern Triangle countries of Central America have not diminished.

Founded by UNHCR Special Envoy Angelina Jolie and the Microsoft Corporation, KIND is the leading national organization providing pro bono legal services to children in deportation proceedings, which we do in partnership with more than 270 major law firms, corporations, bar associations, and law schools. Many of the children served by KIND are fleeing violence in their home country and/or are victims of persecution, severe forms of abuse, abandonment, neglect, or trafficking. A recent report by UNHCR found that the majority of these children are at risk of violence in their home countries and that their plight should trigger an international protection response. Numerous other reports have found that increasing violence in Central America is the driving force behind this unprecedented migration.

One year ago, in June 2014, President Obama referred to the unprecedented numbers of children and families fleeing violence in Central America and arriving at the southern border as an "urgent humanitarian situation." However, the Administration's response has largely favored law enforcement over the humanitarian needs of Central American children and families. Over the past year, the U.S. government has detained those who arrive – with most, including children as young as toddlers, lacking access to counsel during deportation proceedings—and pursued policies designed to ensure that future asylum seekers are stopped before they make it to the U.S. border. It doesn't have to be this way. The U.S. can respond to the situation facing these children and address the root causes of violence in Central America while still living up to our countries long history as a nation that welcomes and protects refugees and other vulnerable populations.

This testimony reviews the Administration's response to unaccompanied minors over the past year and suggests a better path forward:

Rolling back protections for refugee children

The starting point for addressing the protection needs of unaccompanied immigrant and refugee children must be the recognition that they are—first and foremost—children. In addition, these children are potential refugees with viable claims to U.S. protection. Under domestic and

international law, the U.S. is required to protect—not punish—anyone expressing a credible fear of return. And yet the government has operated as if these refugees were instead unauthorized migrants who need to be deported as quickly as possible.

Instead of strengthening protection mechanisms and supporting immigration court procedures, the U.S. responded to the arrival of these unaccompanied children in 2014 with efforts to roll back critical safeguards for these children established in the Trafficking Victims Protection Reauthorization Act (TVPRA). TVPRA, a bill with strong bi-partisan support, provided basic due process protections to unaccompanied children from non-contiguous countries. The proposed changes, if enacted, would have quickly returned children to their home countries without a full screening to hear their claims and determine if they would face harm if sent back. While these proposals did not become law, there have been recent efforts by several members of Congress to introduce legislation in 2015 that seeks to roll back the existing procedural protections in TVPRA.

Fast track hearings and deportations for children

Our nation's immigration court system is adversarial, meaning that in deportation proceedings, a trained government attorney typically argues for the removal of the person in question. And yet, the majority of unaccompanied children in these proceedings do not have attorneys in immigration court. The Administration has dedicated additional resources to support legal representation. But it is not nearly enough. Syracuse University has found that almost 70 percent of unaccompanied children are going through deportation proceedings unrepresented by counsel. KIND has in recent months seen children as young as three years old appear before an immigration judge without an attorney. These children are alone in a foreign country, unable to speak the language, victims of abuse and trauma, and yet are forced to seek protection before a judge with a DHS trial attorney experienced in immigration law fighting for their removal. The statistics show that children without attorneys are far more likely to be ordered deported, regardless of the merits of their case or the dangers to which they would return. Syracuse University has found that nine out of ten children without attorneys are ordered deported. Conversely, children with attorneys are five times more likely to be granted protection.

The Administration continues to prioritize the adjudication of unaccompanied children's cases without giving children adequate time to find attorneys or prepare their cases. A directive to the immigration courts mandates that the first hearing occur within 21 days. Children have inadvertently missed their court dates because notices arrived late, giving them very little time to find a way to travel to the courthouse, or notices have not arrived at all. Some courts have expanded their implementation of the directive and are requiring the child to come in for a second hearing within weeks, regardless of whether the child has found a lawyer to help him or her. Meanwhile, even the limited federal resources that have been made available to support legal representation of unaccompanied children are under attack in Congress. KIND is deeply disappointed that Congress failed to support the President's FY 2016 budget request for $50 million for legal representation of unaccompanied children and child victims of mistreatment, exploitation, and trafficking in the 2016 Commerce, Justice, Science funding bill.

It is also important to recognize that the government does not have to do this alone. There has been an extraordinary response from the private sector legal community. KIND has trained over

10,000 lawyers in the past six years to provide pro bono representation to unaccompanied children in their immigration proceedings. The Administration and Congress could do far more to support this model nationwide, which not only is the humanitarian thing to do, it is also a strategic leveraging of private sector resources to help render the system more efficient and effective.

Legal representation is not the only challenge. Immigration courts have historically been grossly underfunded, resulting in huge case backlogs and a breakdown in justice. Congress has supported additional immigration judge teams to help address the historic backlogs in the immigration court system that pre-date the significant increase in the number of children arriving in the U.S. KIND applauds the Senate Appropriations Committee support for the President's FY 2016 request of $60 million for 55 additional immigration judge teams—a significant step forward toward in addressing the backlogs and helping the system run more effectively and efficiently which we hope will survive the appropriations process.

No plan to address the root causes

The treacherous cycle of child migration will not end unless the root causes of their flight are addressed. Children who are returned to the same situation that they fled will likely try to re-migrate if they still feel danger and lack of stability in their communities. In order to make real gains in addressing the root causes of child migration, it is vital to look at programs that work to protect and offer opportunities for these children so they feel they can remain safely and sustainably in their communities. While the Administration requested $1 billion for Central America, essential assistance to a region that the U.S. has long neglected, Congress has not yet acted on this request. It is important that significant portions of this funding support development and humanitarian projects that protect children and families, rather than exclusively prioritizing security and law enforcement. Until these issues are addressed in the sending countries, unaccompanied children and families will continue to seek protection in neighboring countries and in the United States.

Externalizing border security at the cost of protection

While the number of unaccompanied children arriving at our borders this year has decreased, the situation in the home countries has not changed. Children continue to flee the Northern Triangle countries of Guatemala, Honduras, and El Salvador in record numbers. However, fewer are arriving at the U.S. border because they are being intercepted along the way. In particular there has been sharp spike in the number of deportations of Central Americans from Mexico in the last year. The deportations stem from the U.S.-driven *Southern Border Plan* to stop Central American migrants before they reach the U.S. border. Data from Mexico's National Immigration Institute show:

- During the first four months of 2015, there has been a 79 percent increase in the deportation of Central Americans entering Mexico over the same period last year.
- 51,565 immigrants from Honduras, Guatemala and El Salvador were deported between January and April of this year, up from 28,736 during the same time in 2014. Deportation of Guatemalans rose 124%, followed by Salvadorans at 79% and Hondurans at 40%.

- In 2014, more than 24,000 women were deported from Mexico, double the number from 2013. The rise in child detentions was even sharper; with an increase of 230 percent to just over 23,000.The Southern Border Plan prevented 9,661 Honduran and 7,973 Guatemalan children from reaching the US border. Mexican authorities also apprehended nearly 11,000 unaccompanied children, of which 1,853 were aged 11 or younger.

A better way forward

Solutions exist to deal with unaccompanied children and families fleeing violence in Central America in a humane and protective way. The U.S. has a long and proud tradition of welcoming refugees and this legacy must be preserved. The first step is to recognize the challenge at hand: This is about children who are alone and at risk.

To address the needs of refugee children, the U.S. must:

- Maintain and support the international refugee protection framework, by recognizing that many of these children and families are potential refugees, and treating them as such.
- Properly identify and allow each person to tell his or her story to an immigration judge.
- Provide access to attorneys, meaningfully facilitate pro bono representation of these children by the private sector, and end the use of rocket dockets.
- Fully fund and resource the U.S. immigration courts to ensure that claims can be heard in a fair and timely manner.
- Prioritize efforts for long-term development and protection in foreign assistance to the region that will stem the tide of violence and help ensure the safety of children and families at home.
- Address current humanitarian needs by ensuring that any foreign assistance to governments in the region that includes support for, or references, border enforcement, be conditioned on adequate screening for asylum claims and full implementation of these governments' shared obligations under the Refugee Convention.
- Develop and implement a reintegration program in Central America to ensure that children returning can do so safely and in a way that is sustainable.

The U.S. Congress has a unique and important role in the response to the increased number of children seeking protection in the United States. Specifically, Congress should be providing robust oversight to the agencies charged with the care and custody of unaccompanied children to make sure these children are housed in safe and appropriate facilities and conditions while they are in federal custody. In addition, Congress should be appropriating funds to, and monitoring the Justice Department to guarantee all immigration claims are fairly and timely adjudicated and these children are provided with pro bono or government funded counsel if they cannot afford counsel. Finally, Congress should ensure that children are safely and quickly released to their families while awaiting their immigration process.

KIND looks forward to working with members of the committee to take steps to strengthen protection for unaccompanied children and advance policies that will promote consideration of their best interests.

STATEMENT FOR THE RECORD

On

"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

Senate Committee on Homeland Security & Governmental Affairs

By Lutheran Immigration and Refugee Service (LIRS) and Women's Refugee Commission (WRC)

July 07, 2015

Lutheran Immigration and Refugee Services (LIRS)[1] and Women's Refugee Commission (WRC)[2] appreciate the opportunity to submit this statement for the record. Our organizations have long advocated for the protection of unaccompanied children, refugees, asylum-seekers and trafficking victims. We urge the U.S. Congress to uphold our country's proud history as a nation of welcome and protection for vulnerable newcomers escaping violence and oppression. Border security, rule of law and humane protection of vulnerable persons are not exclusive. It is possible to both protect our borders and national security while upholding our longstanding traditions and leadership as a nation that upholds human rights and protection values. There are ways to improve upon our treatment of unaccompanied children and families by expanding both child protection services and due process that will increase efficiency and reduce cost.

The number of unaccompanied children and families from Central America seeking refuge both in other regional countries as well in the United States has risen significantly since 2012 with a particularly sharp rise in 2014. In Fiscal Year (FY) 2014, the number of unaccompanied children who fled without a parent to the United States' borders rose from 38,833 in FY 2013 to 68,631. Children fled their home countries, mostly from Guatemala, El Salvador, and Honduras, to escape violence by armed criminal actors, gender-based violence, forced gang recruitment, domestic abuse, human trafficking, family reunification and poverty. The number of children apprehended while traveling with family members increased at a similar rate, underscoring the seriousness of the life-threatening dangers faced by those in the Northern Triangle.

Just over one year ago, in June 2014, President Obama referred to the unprecedented numbers of children and families fleeing violence in Central America and arriving at the southern border as an "urgent humanitarian situation." However, the Administration's response has been anything but

[1] Lutheran Immigration and Refugee Service (LIRS) is the national organization established by Lutheran churches in the United States to serve uprooted people. LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

[2] The Women's Refugee Commission's mission is to improve the lives and protect the rights of women, children and youth displaced by conflict and crisis. We research their needs, identify solutions and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice.

humanitarian. Instead, over the past year, the U.S. government has detained families who arrive, and forced them to have their claims for asylum heard in prison-like detention facilities. They have used expedited processing to remove mothers and children from the country as quickly as possible—with most, including children as young as toddlers, lacking access to counsel during deportation proceedings—and pursued policies designed to strip away protection and ensure that future asylum seekers are stopped before they make it to the U.S. border. For child refugees travelling alone, they proposed expedited hearings and stated key trafficking prevention provisions were hindering their ability to remove children fast enough.

It does not have to be this way: the U.S. can respond to the situation facing these children and families and address the root causes of violence in Central America while still living up to our nation's long history as a nation that welcomes and protects refugees and other vulnerable populations.

Protection of Refugees and Vulnerable populations:

Today, the life threatening dangers these refugees face in the Northern Triangle countries of Central America have not diminished. Notably, the U.S. in not the only country to which families and children are fleeing in search of protection. The United Nations High Commissioner for Refugees (UNHCR) documents that asylum applications in the Central American region and Mexico have increased by 1,185 percent between 2008 and 2014. This indicates the single biggest driving factor of migration in the Northern Triangle countries is—a fear of harm. Many of the children and families choosing to come to the U.S. do so because they have family connections here in the U.S. to provide support as they undergo the legal process for requesting asylum from the violence and persecution they face in their home countries.

While the dangers in Central America have not changed, what has, is access to protection.

The current response of the U.S. government to this situation has been a refusal to accept these children and families for what they are: potential refugees with viable claims to U.S. protection. Under domestic and international law, the U.S. is required to protect—not punish—anyone expressing a credible fear of return. Protection also falls squarely in line with U.S. values. The government's own statistics show that 88 percent of recently detained mothers and children in family detention centers who are going through the credible fear process have been found by U.S. officials to be bona fide asylum seekers. And yet the government has operated as if these refugees were instead unauthorized migrants who need to be deported as quickly as possible.

The dangers these children have faced in their home countries are illustrated by the following examples:

- 9 year old Rosa and 12 year old Juan came from the same village in Honduras. They reported that a gang running in their neighborhood was known to kidnap children, kill them, and sell their organs on the black market. The gang was also known to kidnap

children, cut them open, put drugs in their bodies, sew them back up, and use the bodies as containers to traffic drugs. Both children reported their teachers in Honduras would warn the students about this gang and instructed children to interact with nobody during their walks to and from school. Both children reported they knew children from the neighborhood that had been kidnapped and never seen again.

- Carlos, a 13 year old boy from El Salvador, fled to the U.S. after witnessing his mother's brutal murder. Four gunmen broke into Carlos's home and shot Carlos's mother right in front of him. The gunmen where never caught, which lead to the child and family feeling afraid in their community. The child suffered from severe trauma because of this event. Due to this, his family in El Salvador decided to send him to live with a relative in the U.S. where he would not be in danger of his life.

The United States has historically been a leader in refugee protection issues. However, in response to last year's unprecedented numbers of children and families arriving at the southern border, the Administration and many in Congress responded by treating the increase as a matter of border security. Instead of release to family members and the community, thousands of children arriving with parents seeking protection have been detained in newly built, remote Immigration and Customs Enforcement (ICE) family detention facilities located far from life-saving legal services. At the same time, in summer 2014 the Administration and many in Congress sought unsuccessfully to roll back crucial protection mechanisms in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). LIRS and WRC believe it is imperative to maintain and restore access to justice and protection in our policies and laws toward UACs fleeing persecution.

Trafficking Victims Protection Reauthorization Act of 2008 Saves Children's Lives

Our organizations support safeguarding the protections in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). This bi-partisan legislation aimed to fulfill our U.S. and international legal obligations towards refugees and asylum-seekers, to protect children from trafficking and to ensure appropriate and humane care that takes into account children's best interests. Many unaccompanied migrant children who have survived trafficking are afraid to come forward or may not understand that they were victimized and need protective services. They are often unaware of the illegality of the abuse or that laws and services exist to protect them. The TVPRA's intent was to better identify trafficking survivors, disrupt cross-border trafficking, provide services to children while in the custody of the Department of Health and Human Services in the Office of Refugee Resettlement (ORR), identify those children in need of protection and safely reunify them with family as they pursue their legal relief claim in immigration court.

When unaccompanied children are first encountered at border, they are processed and then screened for protections under our immigration laws by Customs and Border Protection (CBP). Unlike families or adults who express a fear of return, who must be interviewed by U.S. Citizenship and Immigration Services (USCIS) Asylum Division, these children are never screened for a credible fear

or other legal relief by USCIS. For unaccompanied children from Mexico, a screening by CBP is their only chance at access to protection. Numerous studies have shown these screenings are inadequate and DHS is not complying with the Congressional mandate. The limited screening by agents who lack the proper training in asylum, trafficking, child welfare, trauma, abuse, and sexual assault means that many children will be returned to dangerous situations.[3] For children from non-contiguous countries, their transfer from CBP to the child welfare agency ORR is a significant child protection measure as it is often the first time a child feels safe enough to reveal the life threatening situations they faced in their home country. This measure is also consistent with state child welfare laws and best practices developed by states to protect children at risk of neglect and abuse. All children, regardless of country of origin, deserve to be adequately screened for protection concerns and treated with compassion and care.

To illustrate the importance of ORR in screening children in safe environment, here are two examples from LIRS:

- A young girl named Maria was kidnapped by a local gang and raped daily in her home country in Central America. She managed to escape and fled to the United States. Maria did not reveal what had happened to her until she was interviewed in ORR custody by a social worker trained to interview children. CBP custody and processing limitations did not provide an environment in which Maria felt safe to divulge what she went through.
- Jesus, a 3 year old boy, was sent by his family to the U.S. for his safety after his family had received threats of harm against Jesus. Jesus's family in his home country had witnessed the torture and beheading of another toddler in their community by gangs as a punishment for not cooperating. Jesus arriving alone at a CBP station would be unable to express the fear of persecution without ORR reaching out to family to discover the reason for his flight.

The TVPRA also provides for minimum due process protections for unaccompanied children. Unaccompanied children may be eligible for various forms of immigration relief, including asylum or Special Immigrant Juvenile status. Recognizing the special vulnerabilities of children and the immense difficulty of arguing an asylum case in immigration court, the TVPRA also directed that any unaccompanied child identified as seeking asylum have their case transferred to the jurisdiction of the U.S. Citizenship and Immigration Services (USCIS) Asylum Division in order to first present their asylum case to specially trained adjudicators in a non-adversarial setting.[4] In the last year, only a

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[3] *See e.g.* Confidential Report UNHCR Regional Office Washington, D.C. for the United States and Caribbean, " Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border (June 2014). See also Betsy Cavendish & Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Appleseed (2011) ("Children at the Border").

[4] This is the same setting as adults or children submitting affirmative asylum applications from within the United States. Like those who apply affirmatively, when those who are not in status in the U.S. are denied asylum by a USCIS adjudicator, they are referred to the immigration court for removal proceedings, where they may present an asylum claim as a defense from removal.

fraction of unaccompanied children have applied for asylum, and many of those cases are still pending before USCIS. Lower asylum rates, may be an indicator of the continued lack of legal representation among unaccompanied children.

Despite key child protections in the TVPRA, there is still no legislation to require children have access to legal representation at government expense. Because of this lack of due process protection, children of all ages—even toddlers are put in the unconscionable position of arguing a case for immigration relief. In the last six months of 2014, 94 percent of those unaccompanied ordered removed did not have an attorney.[5] This illustrates how impossible it is for a child to secure relief without representation. In 2014, at the height of the influx, the representation rates reached all-time lows of only 15 percent of children represented in April. In 2015 the current rate of representation is still at a low of 38 percent of children. This failure in access to due process only increases court inefficiencies as documented by the Executive Office of Immigration Review (EOIR) and the National Association of Immigration Judges (NAIJ).[6]

Even with low representation rates among unaccompanied children, they still appear to their immigration hearings at high rates: 90 percent in Fiscal Year 2015. With representation the number is well over 99 percent appearance rate for Fiscal Year 2015.

Children Reunified with Family and In Removal Proceedings

CBP aims to transfer children to ORR within 24 hours in order to free their resources to focus on other law enforcement priorities. The children are then placed in ORR placements according to their level of risk and protection need: secure juvenile detention facilities, medium secure facilities, shelters and foster care for children of tender age or pregnant girls. Of the children placed, roughly about 85 percent are reunified with their families for the duration of their removal hearings. Upon release, some children receive home studies and post-release services for the duration of their court case, limited post-release services, release with a safety plan, or just straight release. Evidenced-based research shows that children who receive case-management style post-release services are more likely to comply with the requirement to appear at all immigration court hearings.[7] Through post-release services children benefit from additional information about what to expect in immigration court proceedings, as well as referrals for local legal service providers. In addition to legal orientation, post-release services also help connect children to schools, mental health services, medical providers, and other supports, as well as provide cultural orientation to both the child and the parent.

Currently only a small percentage of unaccompanied children receive post-release social services. In fiscal year 2015, an average of 3,300 children will receive the post-release services required for particular vulnerable children by the TVPRA following a home study. This represents roughly 12%

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[5] See Rogers, David. "Child migrants without lawyers pay a high price." *Politico.* April 27, 2015.

[6] *See e.g.,* NAIJ Letter to Senate Committee Staff, "Special Concerns Relating to Juveniles in Immigration Courts," (July 22, 2014).

[7] Benjamin J. Roth and Breanne L. Grace, "Post-Release: Study Summary and Policy Recommendations," *University of South Carolina College of Social Work*, available at: http://bit.ly/1cpMtvZ.

of the total unaccompanied children projected to be in ORR's care for fiscal year 2015. For all other children who do not need a home study, ORR only has capacity to provide services to an estimated 3,000-7,000 children annually. This represents roughly 14% to 32% of children projected to be in ORR's care (who do not receive a home study) for fiscal year 2015.[8]

The following case example illustrates how these services assist children:

> Maricel a 15 year old female minor was reunified with her sister in January 2014. The minor left her home country to escape ongoing community violence. While in home country, Maricel was kidnapped and raped by a local gang. In order to find protection and safety she traveled with her older sister to the US. During the journey, Maricel and her sister were taken by unknown persons and held for three (3) days. Her sponsor paid $200.00 US and the minor was released. When she was finally reunified with her older sister in Maryland she notified her local worker that she was 7 months pregnant. The local worker connected her with medical and mental health resources and got her involved in a prenatal care program in her local community. Maricel responded well to the resources and gave birth to a healthy young daughter.
>
> With the assistance of her sponsor, she has grown into an engaged and loving mother. Her sponsor is assisting with financial resources while the minor continues her education. In addition, Maricel has been very active securing a lawyer and working on her asylum case. Her lawyer indicated that she has a strong claim for legal relief and they are hopeful she will find the safety and protection she has been seeking in the near future.

Detention as a Deterrent to Refugees, a Failed Policy

Despite having ended large-scale family detention in 2009 due to public pressure and a lawsuit, and after a review of the detention system overall, the Administration announced in June 2014 that it would expand the detention of parents arriving with children as a deterrent for further migration. Family detention capacity in the U.S. has now expanded by roughly 3,000 percent.[9] Asylum seeking women and children are held often without bond, in remote facilities, with limited access to attorneys. In addition to initially converting a training facility in Artesia, New Mexico that it later closed, the Administration has plans to double capacity at the existing family facility in Berks County, PA, converted the Karnes County facility in Texas to house families (with plans to double its capacity), and has built the largest immigration detention center in the country: the 2,400-bed facility in Dilley, TX. The latter facilities were built in remote locations, far away from the public and public oversight.

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[8] Data provided by ORR is based on weekly rates of service. Estimates and percentages are based on current rate of arrival statistics from CBP, which just below fiscal year 2013 arrival rates and total placed in fiscal year 2013 with ORR (24,668).

[9] For a more comprehensive look at current family detention practices, see "The Detention of Immigrant Families." http://immigrantjustice.org/sites/immigrantjustice.org/files/FamilyDetentionBackgrounder_June2015.pdf

Numerous reports have documented that family detention in any form is inhumane and damaging to children's health and development. Detention breaks down family structures, creates and exacerbates irreparable trauma for children and their parents, and their inability to access attorneys inhibits access to due process and the ability to make their asylum case.[10] Furthermore, detention as a deterrent is a violation of international and U.S. law, and is not an effective deterrent for refugees, as evidenced by regional asylum application statistics. Families are still coming even though they know they may be detained for an indefinite period of time because they fear for their and their children's lives.

In addition, detaining families is extremely costly—$343 per person per day as per the President's fiscal year 2016 budget—and unnecessary, as existing alternative to detention programs have been proven to be effective, and cost only $5.50 per day.

Increased Number of Children Denied Protection In Mexico

While the number of unaccompanied children and families arriving at our borders this year has decreased, the situation in the home countries has not changed. Migrants continue to flee the Northern Triangle countries of Guatemala, Honduras, and El Salvador in record numbers in search of protection outside of their home countries. However, fewer are arriving at the U.S. border because they are being intercepted along the way. The U.S. government has financially and politically supported Mexico and Central American governments to seal their borders to prevent migrants, even refugees, from traveling north.

As the number of apprehensions on the southern U.S. border has decreased, the number of apprehensions and deportations at the southern border of Mexico has increased proportionately. These children and families are being apprehended at Mexico's southern border and returned in increasing numbers, without the screening required under both international and Mexican law to determine if they have potential international protection claims, and are at risk if they are returned.[11] As a result, thousands of children are prevented from accessing protection and are being returned to potentially life-threatening situations. These interdiction efforts by Mexico and the United States violate the cornerstone principle of international refugee protection- *non-refoulement*- the obligation of a State to ensure from returning a refugee to territories where her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or

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[10] A recent complaint filed by American Immigration Lawyers Association, Women's Refugee Commission, and American Immigration Council reiterated that family detention either creates or exacerbates trauma for the asylum-seeking families detained there. See: https://womensrefugeecommission.org/news/press-releases-and-statements/2278-crd-complaint-june-2015

[11] "The cost of Stemming the Tide: How Immigration Practices in Southern Mexico Limin Migratn Children's Access to International Protection." Georgetown Law Human Rights Institute Fact-Finding Protect, April, 2015

political opinion.[12] In other words, the Administration has not dealt with these issues, it has simply pushed the problem south, where Americans cannot see it. These actions are a violation of the framework that was created and agreed to by the international community to protect those who are fleeing their countries to save their lives.

Most critically, it puts children's lives at risk. For example, just last week on June 30th, a teenage boy of 15 was returned to Honduras from Mexico. He had fled Honduras seeking protection because he feared the gangs in his home town who had threatened him. Upon repatriation, he stated he was planning on just leaving again because he was still afraid. In the middle of the night after his return to his home by the Honduran child protection agency, two hooded men entered his home and shot him to death.[13]

We have a responsibility to ensure that everyone, especially the most vulnerable, has access to due process and the protections they deserve. The United States is an international leader in welcoming refugees fleeing persecution and violence and we must uphold this status by implementing humane and just treatment of vulnerable children seeking protection in our nation.

The U.S. Congress has a unique and important role in the response to the increased number of children seeking protection in the United States. Specifically, Congress should be providing robust oversight to the agencies charged with the care and custody of unaccompanied children to make sure these children are housed in safe and appropriate facilities and conditions while they are in federal custody. In addition, Congress should be appropriating funds to, and monitoring the Justice Department to guarantee all immigration claims are fairly and timely adjudicated and these children are provided with pro bono or government funded counsel if they cannot afford counsel. Congress should support ORR by providing adequate funding to provide necessary post-release case management services to assist with child protection, community integration, and immigration court appearance after children's release from federal custody. Finally, we must ensure that U.S. policies strengthen and do not undermine access to protection in the region.

We must remain steadfast in our commitment to protecting vulnerable migrants and remember migrant children are *children* first and foremost.

The cost of detaining and denying protection is high— both financially and in terms on human life and the erosion of our core values. Solutions exist to deal with unaccompanied children and families

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[12] U.N. HIGH COMMISSIONER FOR REFUGEES (UNHCR), ADVISORY OPINION ON THE EXTRATERRITORIAL APPLICATION OF NON-REFOULEMENT OBLIGATIONS UNDER THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL 12 (2007), *available at* http://www.unhcr.org/4d9486929.html; *Id.* at ¶ 43 ("It is UNHCR's position, therefore, that a State is bound by its obligation under Article 33(1) of the 1951 Convention not to return refugees to a risk of persecution wherever it exercises effective jurisdiction. As with *non-refoulement* obligations under international human rights law, the decisive criterion is not whether such persons are on the State's territory, but rather, whether they come within the effective control and authority of that State.").

[13] "Hombres encapuchados asesinana a un menor de edad," (El Heraldo.Hn June 30, 2015), available at: http://www.elheraldo.hn/sucesos/854184-219/hombres-encapuchados-asesinan-a-un-menor-de-edad

fleeing violence in Central America in a humane and protective way. The U.S. has a long and proud tradition of welcoming refugees and the Obama Administration and Congress must not destroy this legacy. The first step is to recognize the challenge at hand: this is about refugees.

Recommendations from Lutheran Immigration and Refugee Service and the Women's Refugee Commission to address the needs of refugees, the U.S. must:

- Ensure that migrants seeking international protection are able to seek protection when arriving at U.S. territory by implementing improved screening procedures at Customs and Border Protection facilities.
- When arriving at the U.S. borders, properly identify and allow each person to tell his or her story to a judge or asylum officer.
- Provide access to attorneys, and meaningfully facilitate pro bono representation of these children by the private sector, and end the use of rocket dockets
- End family detention, and use low cost, effective alternatives when deemed necessary.
- Expand case management style of alternatives to detention that are evidence based, humane, and more cost effective.
- Fully fund and resource the U.S. immigration courts and U.S. Citizenship and Immigration Services to ensure that claims can be heard in a fair and timely manner.

Further recommendations from the Women's Refugee Commission:

- Maintain and support the international refugee protection framework, by recognizing that many of these children and families are potential refugees, and treating them as such.
- Prioritize efforts for long-term development and protection in foreign assistance to the region that will stem the tide of violence and help ensure the safety of children and families at home.
- Address current humanitarian needs by ensuring that any foreign assistance to governments in the region that includes support for, or references, border enforcement, be conditioned on adequate screening for asylum claims and full implementation of these governments' shared obligations under the Refugee Convention.
- Develop and implement a reintegration program in Central America to ensure that children returning can do so safely and in a way that is sustainable.

For more information:

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Statement for the Record

U.S. Senate Homeland Security & Governmental Affairs Committee

"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

Founded in 1982, the National Immigration Forum (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.

Introduction

The National Immigration Forum (the Forum) thanks the Committee for the opportunity to provide its views on the federal government's response to the unaccompanied alien children (UAC) crossing the Southern border last year. In looking back at the reactions to the influx of UAC over the past year, the federal government's response leaves much to be desired: the Obama Administration reacted in a heavy handed way bringing back dehumanizing, ineffective and costly family detention and Congress reacted with partisan proposals and gridlock rather than providing needed solutions. The situation faced by the UAC was a challenging and heart-breaking example of our broken immigration system. Congress should have taken the lead in providing the affected agencies with needed funding and resources to address this humanitarian crisis as well as addressing root causes in Central America. Instead, the House of Representatives attempted to promote faster deportations above all other considerations in a misguided attempt to deter undocumented immigrants from trying to come to the U.S., including rolling back crucial due process protections in the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) that protect at-risk refugees and asylees.

We must find a long term solution to UAC coming from Central America seeking refuge in our country, including addressing the root causes in Honduras, El Salvador and Guatemala that created their need to flee their country. Finding a solution to UAC coming from Central America will ensure the safety of these children as well as ensure that our nation's laws are respected. Around the world we are seeing a surge of refugees attempting to make it to safe havens, including individuals flee the Middle East and Africa for Europe. Around the world countries are debating how to respond to this growing crisis with many looking to the United States as an example. The United States has been looked to as a world leader and moral beacon. Unfortunately, the federal government's response to the UAC influx this past year did not live up to this ideal.

The Forum believes a critical part of the solution to the humanitarian issue is legislation to reform our broken immigration system, which includes border security, as well as an earned path to citizenship for those currently residing in the U.S. The current immigration system is supporting a lucrative business for cartels and other criminal organizations rather than

protecting our communities. The lack of legal avenues for family members to be reunited with their loved ones in the U.S. is leading immigrants to the hands of criminal organizations.

Background:

In recent years, increasing numbers of Central American UAC have fled extreme poverty and violence,[1] leading to marked increases in the number of UAC arriving at the southwest border. In FY2014, there were a total of 68,631 UAC apprehensions along the southwest border by Customs and Border Patrol (CBP);[2] this is almost twice as many UAC who arrived in all of FY2012. In response to this crisis the administration asked for additional funding and additional authority to deport some of the unaccompanied children and families more quickly. This year, partly due to stepped up enforcement by Mexico, the number of unaccompanied children crossing the Southern border is down over 50 percent with under 23,000 children crossing so far this year.[3] By comparison, Mexico has apprehended 92,829 Central Americans (UACs and families) from October to April 2015, the United States detained 70,226 "other than Mexican" migrants.[4]

The Trafficking Victims Protection Reauthorization Act Safeguards Children:

The desire by many to change our laws to lessen protections and deport individuals faster showed a fundamental misunderstanding of the situation. The current influx of UAC is not due to a lack of enforcement at our border, but rather, it is because the antiquated immigration system is not set up to deal with the unexpected influx of women and children seeking refuge and the increasingly violent and deteriorating situation in Central America.

The TVPRA was passed with strong bipartisan support, and signed into law by President George W. Bush in 2008. The bill protects victims of human trafficking and specifies protections for unaccompanied children. TVPRA provides important protections for migrant children, and is consistent with America's strong tradition of protecting and caring for the most vulnerable.

Proposals to weaken the TVPRA to expedite the removal of the children, calling for Central American children to be treated in the same manner of those from Canada and Mexico were misguided. Proposals to change the TVPRA so that Central American children be screened in 48 hours, similar to the screening children from Mexico and Canada receive, were inadequate.[5] Expediting the screening process of these children will result in more victims going unidentified, leading many to be sent back to unstable, dangerous situations. Honduras, Guatemala, and El Salvador are unsafe countries with spiraling crime and gang activity and some of the highest murder rates in the world.[6] Gangs, drug cartels and militias will prey upon hundreds, if not thousands of children who are improperly returned to Central America before they are given the

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[1] Women's Refugee Commission. "Forced from Home: the Lost Boys and Girls of Central America" Oct. 2012; and UNHCR "Children on the Run – Unaccompanied children leaving Central America and Mexico and the Need for International Protection."

[2] FY2014 (Oct. 1, 2013 – Sept 30, 2014): U.S. Department of Homeland Security, U.S. Border Patrol, Juvenile and Adult apprehensions. http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014

[3] FY2015 (Oct. 1, 2014 – June 30, 2015): U.S. Department of Homeland Security, U.S. Border Patrol, Juvenile and Adult apprehensions http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children. Mexico takes lead to stem migrant wave, deports more Central Americans than the United States, US News, June 18, 2015, available at; http://www.usnews.com/news/world/articles/2015/06/18/mexico-deports-more-central-americans-than-the-united-states.

[4] Id.

[5] Id.

[6] United Nations Office on Drugs and Crime: http://www.unodc.org/gsh/

chance to obtain the humanitarian relief which our laws provide for. This would have endangered children,[7] the safety of our communities, and further strain our local and federal law enforcement efforts to combat human trafficking and criminal activity. The TVPRA needs to be strengthened so that Mexican and Canadian children receive appropriate screening to ensure they are not being trafficked.

Family Detention:

In response to last year's influx of unaccompanied children and their families along the Southwest border, the administration elected to put thousands of young mothers and their children into family detention. This policy was intended, in part, to deter others from attempting to enter the United States, a rationale a federal court has found to be impermissible under federal law.[8] In *RILR v. Johnson*, the court issued a preliminary injunction prohibiting DHS from "detaining class members for the purpose of deterring future immigration to the United States and from considering deterrence of such immigration as a factor in [its] custody determinations."[9]

Families seeking refuge should be treated humanely, not subjected to family detention. Family detention is inherently troubling – conditions present in family detention centers are detrimental to the mental health and physical well-being of women and children, especially to those that have been victims of violence and abuse in their home countries. Many of these mothers and children have legitimate asylum claims, yet lack adequate access to representation or reasonable bond.

In particular, ICE opened a large detention facility in Dilley, Texas which will eventually have 2,400 beds. According to President Obama's FY2016 budget, family detention beds will cost just under $342 per bed per day.[10] The Dilley facility alone could cost upwards of $300 million every year. Alternatives to detention that cost a fraction of that amount – between 17 cents and $17.00 per person per day – exist for these mothers and children, and are a superior option to those who pose no flight or public safety risk.

In recent months, DHS and ICE have taken steps to improve family detention, issuing guidance in May to increase oversight of family detention facilities and make improvements to existing facilities.[11] In June, DHS Secretary Jeh Johnson went further, announcing "substantial changes" to family detention practices, including offering reasonable bond to families who fear persecution in their home countries, conducting credible fear and reasonable fear interviews within an equitable timeframe and ensuring access to counsel.[12]

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[7] "In 2008 President Bush signed the Trafficking Victims Protection Reauthorization Act. The law provided legal and humanitarian protections to unaccompanied children crossing into the United States from countries outside of Mexico and Canada. The original intent was to prevent the death of young innocent lives. As Harris County Sheriff I agree with President Bush that protecting all innocent lives should be our concern, and that's why protecting all lives remains my No. 1 priority today. This is also why I have made fighting human trafficking a priority of mine, because we must be ever vigilant and mindful of the dangerous people who will exploit children for profit or to gain access to our country." Sheriff Adrian Garcia (Harris Conntry, TX), BBB Press Release: Law Enforcement Leaders Respond to Situation at the Border. 6/17/2014. http://bbbimmigration.org/press/press_post/law-enforcement-leaders-respond-to-situation-at-border

[8] https://www.aclu.org/sites/default/files/assets/rilr_advisory_final.pdf

[9] https://www.aclu.org/sites/default/files/assets/order_0.pdf

[10] http://www.dhs.gov/dhs-budget

[11] http://www.ice.gov/news/releases/ice-announces-enhanced-oversight-family-residential-centers

[12] http://www.nytimes.com/2015/06/25/us/us-to-reduce-long-stays-for-families-at-immigration-centers.html?_r=2

While these changes, if fully implemented, represent a step in the right direction, the National Immigration Forum continues to believe that family detention is inherently costly and unworkable and should ultimately be phased out in its entirety.

Conclusion

The federal government response to UAC this past year was troubling. Congress should take the lead in providing the affected agencies with needed funding and resources to address this situation humanely. However, in addressing these challenges, officials should not make the mistake of taking rash steps that threaten UAC and families. Promoting faster deportations above all other considerations, including rolling back crucial due process protections that protect at-risk refugees and asylees, is not the solution. A functioning immigration system should be one part of the long term solution to this problem. Structured properly, reform of the immigration system could lessen the number of UAC entering the U.S. illegally and could allow the authorities to determine, in a timely way, which of them are eligible to remain in the U.S. and which are not. In addition, immigration reform could provide protections to this particularly vulnerable population from organized crime and trafficking as well as allow law enforcement and border officials to focus on the true criminal and terrorist threats rather than expending excessive resources on UAC fleeing violence.

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center

Senate Committee on Homeland Security and Governmental Affairs
Hearing on "The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

Chairman Ron Johnson, Ranking Member Thomas Carper, and members of the Homeland Security and Governmental Affairs Committee:

Heartland Alliance's National Immigrant Justice Center (NIJC) appreciates the opportunity to submit testimony for the Senate Committee on Homeland Security and Governmental Affairs hearing on the U.S. government's response to unaccompanied immigrant children. As a non-governmental organization (NGO) dedicated to safeguarding noncitizens' due process rights, NIJC is committed to ensuring meaningful access to legal protections for unaccompanied immigrant children. NIJC is unique among immigrant advocacy groups in that our advocacy and our impact litigation are informed by our direct representation of approximately 10,000 immigrants annually, including unaccompanied immigrant children. NIJC provides Know Your Rights presentations and legal screenings to children detained in Chicago-area shelters for unaccompanied children. In addition, NIJC represents hundreds of unaccompanied children before the Chicago Immigration Court through its own attorneys and a network of *pro bono* attorneys. We hear first-hand the reasons why children have fled their home countries and see the barriers they experience as they pursue legal protections in the United States. Based on NIJC's thirty years of experience representing and counseling unaccompanied immigrant children, below are three recommendations:

BACKGROUND

Children fleeing extreme violence in Central America warrant U.S. protection.

Most unaccompanied children apprehended at the border are from El Salvador, Guatemala, and Honduras. Several reports[1] have established that the majority of unaccompanied children flee these three countries due to pervasive violence, persecution, and abuse. Although family members' residence in the United States may play a role in a child's decision to flee to the United States rather than another country, family reunification is rarely the sole reason for a child's migration. Rather, most unaccompanied children are forced to flee their home countries in the Northern Triangle of

[1] *See e.g.*, Kids in Need of Defense (KIND)/Center for Gender and Refugee Studies (CGRS), *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, available at: http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf; U.S. Conference of Catholic Bishops (USCCB), *Mission to Central America: The Flight of Unaccompanied Children to the United States*, 2014, available at: http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf; Women's Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America*, 2012, available at: http://womensrefugeecommission.org/forced-from-home-press-kit.

Central America because they are increasingly targeted for violence by criminal gangs, drug cartels, and even members of their own families and communities. In Honduras, a boy born today has a one-in-nine chance of being murdered.[2] El Salvador and Guatemala have the highest child murder rates in the world.[3] This uptick in violence, combined with the lack of an effective government response, has forced many children to flee for their lives. One of those children is Oscar (pseudonym):

> *When Oscar was only 13 years old, a gang in Guatemala approached him and his friends and ordered them to join the gang. When Oscar and several of the boys refused, the gang murdered one of Oscar's friends in front of him and threatened to kill Oscar. After Oscar reported what he had witnessed to the police, the gang began stalking Oscar. The gang found him even after he and his family tried to relocate to another town for their safety. At that point, Oscar's family told him he had to leave the country. Oscar fled to the United States because his father already lived here. He filed for asylum in 2014, but his asylum case remains pending. Today, Oscar continues to have nightmares about the murder of his friend.*

The United States is not the only country experiencing a dramatic increase in asylum seekers from Central America due to this violence. Together, Mexico, Panama, Nicaragua, Costa Rica, and Belize reported a 1,185 percent increase in the number of asylum applications filed by individuals from El Salvador, Guatemala, and Honduras from 2008 to 2014.[4] These numbers demonstrate that the current crisis is a regional problem caused by push factors in the Northern Triangle.

I. Congress and the U.S. Government Should Maintain Due Process Protections For Unaccompanied Children under the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

Based on our experience, it is clear that many unaccompanied children flee life-threatening violence in their home countries and are in desperate need of protection. It takes time for children to recover from their arduous journeys to the United States and develop trust with attorneys and government officials to whom they are asked to reveal past trauma and share fears of being sent home. We recommend that Congress and the U.S. government maintain due process protections provided to unaccompanied children under the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008,[5] such as placement in full removal proceedings before an immigration judge (rather than expedited removal) and the placement of all children's asylum cases with an Asylum Office prior to a hearing in immigration court. In addition, Congress must provide legal counsel to all children and vulnerable populations in removal proceedings. Legal screenings and adjudications for children must proceed at a careful and deliberate pace – not a hasty one – and only with the assistance of counsel can many available protections become accessible.

U.S. treatment of unaccompanied children is guided in significant part by the TVPRA, which unanimously passed Congress in response to years of insufficient screenings of unaccompanied children at the border that resulted in the return of vulnerable children to situations of violence,

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[2] Frances Robles, "Fleeing Gangs, Children Head to U.S. Border," *New York Times*, July 9, 2014, http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?_r=1.
[3] UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children*, Sept. 2014, http://files.unicef.org/publications/files/Hidden_in_plain_sight_statistical_analysis_EN_3_Sept_2014.pdf, p. 36.
[4] United Nations High Commissioner for Refugees (UNHCR), http://unhcrwashington.org/children.
5 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), P.L. 110- 457 (Dec. 23, 2008).

abuse, and persecution.[6] The TVPRA provides critical protections and child-sensitive procedures for immigrant children and child refugees that should be bolstered, not eliminated. Specifically, the TVPRA requires that all unaccompanied children from non-contiguous countries be placed in removal proceedings before an immigration court rather than subjected to a hurried screening and repatriation process at the border. This due process protection is critical to ensure that children who have been or fear being trafficked, abused, tortured, and/or persecuted are not summarily removed to places where they face serious harm.

In addition, the TVPRA grants initial jurisdiction over unaccompanied children's asylum claims to the U.S. Citizenship and Immigration Services (USCIS) Asylum Office. This allows children to present their asylum claims in a non-adversarial setting before an asylum officer who is specially trained on interviewing children and to deal with survivors of trauma. As a result, children are better able to fully and accurately reveal the nature of their asylum claims. The act of first vetting children's asylum claims through the Asylum Office also generates efficiencies for the backlogged immigration court system by resolving some asylum cases outside of the courtroom.

NIJC sees first-hand the benefits of the TVPRA through our direct representation of unaccompanied children. In our experience, young survivors of violence and trauma often find it very difficult to recount the details necessary to demonstrate their need for asylum. For instance, NIJC client Carlie (pseudonym) was initially unable to disclose that she had been sexually abused:

> *Carlie came to the United States with her sister Esperanza after experiencing severe sexual trauma in Honduras. The sisters were only 12 and 13 years old, respectively, when their uncle first raped and beat them. He threatened to kill them and their siblings if they told anyone. After Carlie and Esperanza told their grandmother what happened, she reported the crime to the police, but their uncle was never arrested or charged with any crime. The sisters' grandfather was angry at them for accusing his nephew of rape and he beat the girls. Carlie and Esperanza ultimately fled to the United States and began working with NIJC to prepare their asylum claims. Initially, the sisters were unable to discuss what had happened to them and at times were in denial about the past abuse they had experienced, so their NIJC attorney relied on testimony from the girls' older brother to shed light on the extent of the persecution. Because of the TVPRA, the girls were able to present their asylum claim in a non-adversarial interview with a USCIS asylum officer rather than being subjected to harsh cross examination in court or being forced to offer intimate details of their sexual abuse to a judge in the formal and intimidating setting of a courtroom. Through the Asylum Office process, Carlie and Esperanza felt more comfortable articulating their asylum claims and were granted asylum in January 2015.*

Adversarial court proceedings can re-traumatize child victims of violence and trauma who are eligible for asylum under U.S. law, and create insurmountable obstacles that the children and their family members oftentimes cannot overcome. It is imperative that the United States maintain and strengthen immigration procedures created to protect the unique vulnerabilities of children and ensure they are able to fully articulate their past traumatic experiences as they seek safety in the United States.

II. Children who Articulate a Well-Founded Fear of Persecution Should be Granted Asylum and Not Face Delays in the Immigration Court

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[6] Betsy Cavendish & Maru Cortazar, *Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors*, Appleseed, 2011, http://appleseednetwork.org/wp-content/uploads/2012/05/Children_At_The_Border1.pdf.

Although an Asylum Office interview is more child-friendly than an adversarial proceeding before an immigration judge, both adjudicators too frequently interpret U.S. asylum law in a way that is prejudicial to children who have fled gang-based violence in Central America, refusing to view these children's claims through the same lens as they view the claim of an aid worker in Colombia who opposed the Revolutionary Armed Forces of Colombia (FARC) or a teenager in Sierra Leone who refused to become a child soldier. As a result, the Asylum Office has declined to grant asylum to children fleeing gang recruitment in Central America despite significant past persecution and a high likelihood that the child will continue to be severely harmed or killed if the child is deported. NIJC client Javier (pseudonym) is one of many boys who have fled gang recruitment in Central America:

> *Javier, a devout evangelical Christian, attended church every day growing up in Honduras. When the gangs began trying to recruit him, his refusal to join was rooted in his religious faith. He fled to the United States after a gang shot him in the back and left him for dead after he refused to join the gang and tried to run away from them. Despite a strong asylum application, forensic evidence of his gunshot wounds, and clear, consistent testimony, the Asylum Office declined to grant Javier asylum because they determined that the harm he suffered and feared was not on account of a protected ground. Instead the Asylum Office referred his case back to the immigration judge where he must renew his asylum application in court. Due to the immigration court backlog, he is not likely to have a hearing on the merits of his asylum claim for another year or two.*

Where a child has suffered or fears persecution because of a characteristic that the child should not be required to change, the asylum office should grant asylum rather than needlessly referring the child back to the immigration court. These referrals traumatize children and their families, strain the resources of legal service providers who are over-extended due to the lack of appointed counsel for immigrant children, and clog up the already over-burdened immigration court system.

III. Provide Government-Appointed Counsel to All Unaccompanied Children.

Unaccompanied children—like all immigrants—have no right to government-appointed counsel. Despite efforts to increase representation of unaccompanied children through the creation of the justice AmeriCorps program and through the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), many children are still in need of legal counsel to help them navigate the complex immigration system and ensure their due process rights are protected.

Without an attorney, it is virtually impossible for a child to articulate a viable claim to asylum. Children cannot begin to understand, in a foreign language no less, what protections the U.S. government offers or how to successfully articulate a claim for protection. But there are strong efficiency arguments for providing counsel; legal representation is the best possible way to ensure that an unaccompanied child understands the immigration process and appears for court. In the first half of fiscal year 2015, 99.88 percent of represented unaccompanied children appeared for their immigration court case.[7] Unfortunately, without government provided counsel, only 67 percent of unaccompanied children during that same time period were able to access and retain legal counsel.[8]

Children's ability to comply with immigration court obligations, particularly without an attorney, is directly related to the notice the child receives about the time and location of his or her next hearing. The process for providing notice was infinitely complicated when, in response to the influx of

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[7] "Juvenile Deportation Proceedings Data Tool," *Syracuse University's Transactional Records Access Clearinghouse (TRAC)*, http://trac.syr.edu/phptools/immigration/juvenile/.
[8] Id.

unaccompanied children in 2014, the Executive Office for Immigration Review (EOIR) began to expedite children's cases. EOIR frequently failed to provide timely notice to children regarding the rescheduling of their court appearances.[9] In some cases, children would receive notice to appear in court hundreds of miles from their residence with only a few days' notice.

While some children have been forced to find a way to travel long distances for a court hearing with very little notice, other children have been left in legal limbo as their immigration court proceedings were not initiated for months (or in some cases years) after they were apprehended at the border. Until removal proceedings are initiated, these children cannot access the immigration court system to change their address or file for a change of venue and so may have no way to receive their hearing notice if they move before proceedings are finally initiated. Moreover, once removal proceedings are initiated, children must attend their hearing or risk being ordered removed *in absentia*, no matter how far away the location of the court, how little notice is provided, or how long it has been since the child was apprehended at the border.

Where a child receives an *in absentia* removal order due to a lack of notice of the hearing, counsel is needed to rectify an improperly issued *in absentia* removal order. One of those children is NIJC's client, Andrew (pseudonym):

> *Andrew came to the United States from Honduras in 2014. His sister, Jessica (pseudonym), fled to the United States after a gang kidnapped and drugged her and two classmates and attempted to traffic them into prostitution. Jessica and her classmates managed to escape, but after they reported the kidnapping to the police, the gang began targeting Jessica and eventually gang-raped her. Afterwards, Jessica fled to the United States to find safety and reunite with her mother. Jessica left her younger brother Andrew behind and soon the gang began threatening to kill Andrew in his sister's place. Andrew soon fled to the United States for safety as well. Both Jessica and Andrew have sought asylum in the United States and their cases remain pending with the Asylum Office. While Jessica's immigration court case has moved forward smoothly, Andrew's immigration court removal proceedings were not initiated until nearly one year after he was apprehended at the border. Although Andrew updated his address with the immigration court, he never received notice of his hearing and was ordered removed* in absentia. *His* pro bono *attorney immediately filed a Motion to Reopen, which was granted.*

Without legal counsel, Andrew may not have been able to re-open his case and would have been at grave risk of deportation to serious harm.

IV. Conclusion

As a nation committed to human rights and due process, we must ensure that child asylum seekers are treated humanely and receive robust access to legal protections. Any attempt to roll back the TVPRA by subjecting children to expedited removal, eliminating Asylum Office jurisdiction over children's cases or otherwise hastening the legal process would undermine our international and domestic obligations not to return children to countries where they will suffer persecution or torture. To ensure children have full and effective access to due process, the U.S. government and Congress must uphold protections provided to children under the TVPRA. In addition, Congress must provide counsel to all children in removal proceedings. Access to counsel is critical to ensure

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[9] Kate Linthicum, "7,000 Children ordered deported without going to court," *L.A. Times*, March 6, 2015, http://www.latimes.com/local/california/la-me-children-deported-20150306-story.html#page=1.

the due process rights of children are protected in the complex immigration system and increases the efficiency of an already overburdened immigration court system.

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Safe Passage Project Statement to the Senate Homeland Security and Governmental Affairs Committee Concerning Special Immigrant Juvenile Status (SIJS) for Unaccompanied Minors

July 7, 2015

Safe Passage Project, a non-profit corporation housed at New York Law School, provides training, resources, and mentoring to volunteer attorneys representing unaccompanied children in Immigration Court in New York City. In 2014, our volunteer attorneys assisted over 500 children. We write to reiterate the importance of Special Immigrant Juvenile Status (SIJS) to the U.S. system of legal protections for unaccompanied immigrant children. For vulnerable children, SIJS is crucial to their safety, protection, and ability to live with basic dignity.

Special Immigrant Juvenile Status (SIJS), a bifurcated federal and state system of child welfare protection, safeguards vulnerable immigrant youth who have been abused, abandoned, or neglected by one or both of their parents. To qualify for SIJS, a young person has to be declared dependent on a U.S. state court which determines that reunification with her offending parent(s) is not possible and that it is not in her best interests to return to her home country.[1] Without the state court's involvement, a young person is not able to petition for SIJS immigration relief to the proper federal immigration agency (United States Citizenship and Immigration Services, USCIS).

Enacted into law in 1990, SIJS was strengthened and expanded by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008),[2] passed with unanimous consent in the Senate and signed into law by then President George W. Bush.[3] TVPRA 2008 clarified that young people need have been abused, abandoned, or neglected by one or both parents to qualify for SIJS protection. This change allowed for young people, like Safe Passage clients J and M, to receive immigration status in the United States through SIJS.

After his parents' separation, J's mother emigrated to the United States. J's father prostituted him- beginning when J was just 6 years old- to earn additional income for his cocaine habit. As a teenager, J fled from his native Mexico to the United States to reunite with his mother, who then obtained sole custody over him in a U.S. state court which also made the requisite factual findings enabling him to apply for SIJS.

[1] 8 U.S.C. § 1101(a)(27)(J).
[2] Pub. L. No. 110-457, § 235(d), 122 Stat. 5044 (2008).
[3] http://www.ice.gov/news/releases/president-bush-signs-william-wilberforce-trafficking-victims-protection (last accessed March 1, 2015).

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M, a 14 year old girl, lived with her mother and father in San Pedro Sula, Honduras. M's father physically abused her pregnant mother, causing her to miscarry. He threatened to kill both M and her mother if they sought help. He denied M as his daughter and refused to provide her with financial or emotional support, despite living in the same household. M fled to the United States to find safety in the care of her maternal aunt. With assistance from a pro bono attorney, M was able to have her maternal aunt appointed as her legal guardian and obtain a state court order that enabled her to apply to USCIS for SIJS.

SIJS allowed these young people to obtain protection in the United States, to remain with a loving, caring caretaker, and to gain permanency, stability, and safety. Without protection from SIJS, J might have been deported to Mexico and forced to live again with his abusive father. M might have been returned to the streets of one of the world's most dangerous cities. Proposed changes to SIJS eligibility would exclude children like J from protection because only one of his parents abused, abandoned, or neglected him.

SIJS is among the most under-utilized of immigration remedies,[4] with less than 4,000 petitions having been filed in Fiscal Year 2013. It is procedurally complex as Congress has delegated responsibility to state courts to make individual determinations for each youth's care and custody before a petition can be filed for immigration relief. State courts typically hold multiple hearings, take testimony under oath, submit the proposed guardian and other adults in the household to background checks, and order a Child Protective Services worker to visit the household to ensure it will be safe for the child to reside. Moreover, state courts have deep expertise in evaluating the best interests of children and making assessments about whether children have been abused, neglected, or abandoned.

Further, SIJS does not allow a young recipient to petition for lawful immigration status for either of her parents, even the non-offending parent. It is not a "loophole" for parents to enter the United States. Nor does SIJS attract migrants to the United States. In our experience at Safe Passage Project, no young person has known about the existence of SIJS prior to working with us.

Removing SIJS protection for young people like J and M would take them away from the only safety they have ever known- their caretaker's support and protection in the United States- and return them to abusive parents or a life on the streets in their home countries. For vulnerable children like J and M, SIJS is crucial to their safety, protection, and ability to live with basic dignity.

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[4] USCIS Number of I-360 Petitions filed with classification of SIJS, Fiscal Years 2010-2013: http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I-360FY2013.pdf (last accessed March 1, 2015).

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July 9, 2015

Mr. Chairman, Members of the Senate Committee on Homeland Security and Government Affairs, thank you for the opportunity to submit a statement on today's hearing on "The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later."

As the UN Refugee Agency, the United Nations High Commissioner for Refugees (UNHCR) has particular expertise in the area of protecting children displaced by violence and conflict. UNHCR recognizes the challenges facing the United States and other countries in the region as a result of the recent large displacement of people from the Northern Triangle region of Central America. We offer the following three points to inform the review of the U.S. government's response to the unaccompanied children seeking safe-haven in the U.S. and guidance on the opportunities for current and future actions.

- Unaccompanied children fleeing violence in Central America constitute a new refugee flow meriting protection from the U.S. government under both domestic and international law. Children's exposure to neglect, exploitation and sexual and other forms of violence and abuse is much greater in situations of forced displacement due to their dependence on adults to survive, their vulnerability to physical and psychological trauma, and their needs that must be met to ensure normal growth and development.[1]

- While the U.S. government has taken certain positive steps to address the needs of these refugee children, significant gaps remain in its response to protect this vulnerable population.

- The influx of refugees from Central America continues; therefore the time is now for the U.S. to strengthen its national and regional response to this refugee crisis.

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on December 14, 1950 by the United Nations General Assembly.[2] UNHCR, as the UN Refugee Agency, is mandated to lead and co-ordinate international action to protect and find solutions for refugees around the world. As part of this mandate, UNHCR works with government adjudicators and policy makers to support their efforts to prevent *refoulement*, or the unlawful return of a person to a place where she fears for her life and freedom. With more than 60 years' experience in refugee protection, UNHCR brings

[1] UNHCR, Framework for the Protection of Children (2012), p. 11, *available at* http://www.unhcr.org/50f6cf0b9.html (citing UNHCR, Age, Gender and Diversity Policy (2011)).
[2] UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), at: http://www.unhcr.org/refworld/docid/3ae6b3628.html. UN General Assembly, Protocol Relating to the Status of Refugees, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: http://www.unhcr.org/refworld/docid/3ae6b3ae4.html. Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, whereas the 1951 Convention relating to the Status of Refugees ("the 1951 Convention") and its 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol") oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR's duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). UNHCR's supervisory responsibility extends to all States Parties to either instrument, including the United States (U.S.).

extensive expertise in the area of child asylum-seekers, and thus has a particular interest in the issue at hand during this hearing.

About half of the world's refugees are children, and they are particularly vulnerable in situations of forced displacement as documented by UNHCR in crises across the globe. In situations of violence and conflict, children are both indirect and direct targets because of their age.[3] Refugee girls are also more likely than boys to be the subjects of neglect and abuse, including sexual abuse, assault and exploitation.[4] Unaccompanied children are the most vulnerable, as they have no adult who is legally recognized to be responsible for their care.[5] As a result, protecting children requires exceptional efforts.[6]

Unaccompanied children fleeing from violence and abuse in Central America form a refugee flow and thus merit protection from the U.S. government under both domestic and international law.

The news reports, statistics, and stories coming from the unaccompanied children themselves compose a clear refugee narrative of the recent influx of unaccompanied children arriving at the borders of the U.S. and other countries in the region. Fleeing situations of extreme violence and persecution, refugee children need and have a right to certain fundamental protections.

As documented in our March 2014 report, *Children on the Run*, in-depth, child-sensitive interviews with 404 unaccompanied children from the Northern Triangle and Mexico revealed that a stunning 58% had left due to violence and abuse. [7] The children told us that threats and direct acts of violence, without the possibility of protection from the authorities, are primary new drivers forcing children from the Northern Triangle to leave their homes in search of safety. They shared stories of violence, threats, intimidation and abuse – experiences that, like for so many children in situations of widespread violence and conflict, they should never have to face. Significantly, only one child out of the 404 interviewed mentioned that the possibility of immigration reform was a factor in his decision to come to the U.S.[8] The uncontrolled and widespread violence in Central America has caused children to face risks of sexual violence and forced recruitment into situations of sex and labor trafficking and into gangs, as well as retaliatory violence for failure to satisfy extortion demands.[9] Girls are often sexually assaulted by gang members and forced into sexual

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[3] For instance, armed groups and sometimes military attempt to recruit children. " UNHCR,UNHCR Policy on Refugee Children, para. 13, 6 August 1993, EC/SCP/82, *available at*, http://www.refworld.org/docid/3f9e6a534.html.

[4] *Id.*, para. 12.

[5] *Id.*, para. 14.

[6] *Id.*, para. 11 ("They are physically and psychologically less able than adults to provide for their own needs or to protect themselves from harm. Consequently, they must rely on the care and protection of adults").

[7] UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection, 13 March 2014, *available at* http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

[8] *Id.*, p. 9. The interviews were conducted in the summer of 2013, in the midst of the surge of unaccompanied children arriving to the U.S. and other countries in the region and over one year after the Department of Homeland Security's announcement introducing the Deferred Action for Childhood Arrivals (DACA) program.

[9] In Honduras the youth murder rate surged over the first 5 months of 2014, rising from an average of 70 children and youth killed per a month in 2010-2013 to an average of 90 children. http://www.laprensa.hn/sucesos/policiales/647527-96/reportan-muerte-violentade-270-hondure%C3%B1os-menores-de-23-a%C3%B1os. May 2014 saw the heaviest death toll for children and youth with 102 murdered that month. http://hoy.com.do/mas-de-100-menores-de-23-anos-fueron-asesinados-en-honduras-en-mayo/.

servitude. Boys are beaten, tortured or killed if they refuse to join gangs or try to leave after joining. Many children are unable to go to school or leave their homes.

Current reports on the situation in Central America reflect that the violence is continuing unabated, indicating that large numbers of unaccompanied children will continue to arrive from the region to seek protection in the U.S. and other neighboring countries. El Salvador, Honduras, and Guatemala have some of the highest rates of violence in the world, outside conflict zones. In El Salvador, Guatemala and Honduras, women and girls are targets of epidemic levels of gender-specific violence.[10] [11] In addition, the region is plagued by police corruption and has a 95% impunity rate for homicides.[12]

The U.S. government itself has recognized the compelling humanitarian and refugee characterization of the population of unaccompanied children arriving at its borders. Indeed, according to statistics from the U.S. government, since October 2014, an initial 47% of unaccompanied children who have applied for asylum in the United States have been granted refugee status with an additional 36% of the unaccompanied children claimants referred to immigration court for a final decision on their asylum applications, [13] echoing UNHCR's findings of strong international protection needs among this population. Furthermore, unaccompanied children only represent roughly half of the total number of children fleeing the Northern Triangle of Central America for the U.S. The other children are arriving accompanied by a parent and 88% of those children and parents admitted to the "credible fear process" from the same region have been found to have legitimate claims to asylum and protection against torture.[14]

Some of the child-murders in Honduras in May were particularly barbaric, shocking a nation that has grown numb in some ways in the face of pervasive violence. http://www.oas.org/en/iachr/media_center/PReleases/2014/056.asp. On May 4, in Limon, Honduras, a gang broke into the home of a family that had refused to cooperate with their demands and murdered four children ages 2 to 13, hacking their bodies with knives. A day earlier, in San Pedro Sula (http://latino.foxnews.com/latino/news/2014/05/02/gangs-suspected-in-killingskids-in-honduras/), the tortured bodies of two children were found in the La Pradera neighborhood. http://www.proceso.hn/2014/05/03/Reportajes/Reclutamiento.de.grupos/85941.html.

[10] Hastings, Deborah, *In Central America, Women 'Killed with Impunity' Just because They're Women*, 10 January 2014, New York Daily News, *available at* http://www.nydailynews.com/news/world/femicide-rise-central-america-article-1.1552233.

[11] *See* Arce, Alberto, El Salvador's Gangs Target Women and Girls, 6 November 2014, The Houston Chronicle, *available at* http://www.houstonchronicle.com/news/nation-world/world/article/El-Salvador-s-gangs-target-women-and-girls-5876883.php#/0;
Gurney, Kyra, Report Details How El Salvador Gangs Use Rape as Weapon, 7 November 2014, Insight Crime, *available at* http://www.insightcrime.org/news-briefs/el-salvador-gangs-rape-sexual-violence-femicides.

[12] Chavez, Suchit, Avalos, Jessica, The Northern Triangle: Countries that Don't Cry for Their Dead, April 2014, Insight Crime, *available at* http://www.insightcrime.org/news-analysis/the-northern-triangle-the-countries-that-dont-cry-for-their-dead.

[13] USCIS Asylum Division, USCIS Refugees, Asylum and Parole System, MPA and PRL Report, *available at:* http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-RACQMPAP-FY15-_Q2.pdf

[14] USCIS Asylum Division, Family Facilities Reasonable Fear, accessed on 2 July 2015, *available at* http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-familiy-facilities-FY2015Q2.pdf.

While the U.S. government has taken certain positive steps to address the needs of these refugee children, significant gaps remain in its response to protect this vulnerable population.

As a global leader in refugee protection, the United States has long led by example in encouraging other countries in the region and around the world to develop and strengthen their own protection systems. As the United States addresses the increase in unaccompanied children and families crossing the southern border, a crucial element to that response is ensuring that they are treated with dignity and respect and that their specific needs as refugees are met. The solution to the spike in unaccompanied children and families is not to make seeking protection more difficult, but rather to ensure fair and equal access to asylum while also addressing the root causes pushing children from their homes.

UNHCR welcomes the positive and important steps taken by the U.S. government to strengthen the protection system for unaccompanied children fleeing violence in Central America. In light of the pressure put on every component of the U.S.' child protection system at the height of the surge during the summer of 2014, UNHCR recognizes the U.S. government's efforts across multiple agencies to mount an emergency response to what it deemed a "humanitarian situation", which increased its capacity to receive the high numbers of arriving unaccompanied children.

The U.S. government has also taken action to address one of the main barriers to unaccompanied children's ability to access protection by increasing the availability of free legal representation. Children are entitled to legal representation in order to seek protection in the U.S., but alone and without the means to pay for help, an unaccompanied child is extremely disadvantaged and is often unable to access the various forms of legal relief. Seventy percent of unaccompanied children who arrive to the U.S. do not have anyone to represent them in immigration court and "children without representation are five times more likely to be deported back to danger."[15] To address this barrier to protection, the U.S. government has allocated funding to two initiatives to provide free legal representation to unaccompanied children.[16] While far from sufficient to ensure all unaccompanied children are represented, such funding is an important step which also alleviates the long backlogs in the immigration courts as cases can be handled more expeditiously with counsel.

Finally, UNHCR welcomes greater interest and investments to address the region's interlocking security, governance and economic challenges."[17] Without investment to promote gainful opportunities within a safe environment in the countries of origin, children and families will continue to flee.

Despite these positive steps, significant gaps remain in the U.S. response to the unaccompanied children arriving at our borders seeking safety. Seeking asylum is not a

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[15] KIND, 68,000 Children Arrived Alone in the United States in 2014, accessed on 1 July 2015, *available at* https://supportkind.org/wp-content/uploads/2015/04/Advocacy-KIND-Factsheet-4.24.2015.pdf.

[16] Corporation for National & Community Service, Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors, 6 June 2014, *available at* http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cncs-announce-new-partnership-enhance; Daniel Kowalski, Advance Copy of ORR Notice Providing $9M for Direct Legal Representation of UACs, 1 October 2014, *available at* http://www.lexisnexis.com/legalnewsroom/immigration/b/outsidenews/archive/2014/10/01/advance-copy-of-orr-notice-providing-9m-for-direct-legal-representation-of-uacs.aspx.

[17] Joseph Biden, Joe Biden: A Plan for Central America, New York Times, Jan. 29, 2015, http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?_r=1

crime, nor is it a prohibited act. In contrast, the right to seek asylum is a protected right reflected in U.S. law. Policies and practices must not aim to deter those fleeing persecution from seeking safety and protection as such efforts are contrary to both the letter and the spirit of the 1951 Refugee Convention and its 1967 Protocol as well as other international human rights instruments. Furthermore, UNHCR and others have long noted that the evidence demonstrates that such deterrence efforts are neither a lawful nor effective measure in decreasing irregular migration or in discouraging asylum seekers from leaving their countries of origin.[18] However, evidence does exist showing the detrimental impact of detention on asylum-seekers' well-being, an impact felt particularly strongly by children.[19]

The influx of refugees from Central America continues, therefore the time is now for the U.S. to strengthen its national and regional response to this refugee crisis.

We urge the U.S. government to cooperate with its regional partners and UNHCR in extending protection to people fleeing violence, especially unaccompanied children.

This is a regional crisis that requires regional cooperation. According to data from 2008 to 2014, there has been a 1,185% increase in asylum applications filed in Belize, Costa Rica, Mexico, Nicaragua, and Panama by individuals originating from El Salvador, Guatemala, and Honduras.[20] UNHCR hopes that the U.S. will employ its regional leadership role to encourage identification, screening and access to asylum in every country where displaced Central Americans are seeking refuge.[21] UNHCR remains ready to support more U.S. investment in domestic and regional enforcement structures prioritize the right of individuals to seek asylum and uphold the principle of *non-refoulement*.

Specifically, UNHCR calls for regional cooperation to:

- Enhance child protection systems in source and transit countries;
- Reinforce asylum systems in countries of transit and of asylum so that those with credible fears are identified;
- Identify solutions that are in the best interests of children; and
- Collaborate on violence prevention, citizen security and unaccompanied children issues with relevant agencies in source and transit countries.

The protections in the TVPRA should be maintained.

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) is an important tool to address the needs of unaccompanied children arriving to the U.S. border, and its protections should be maintained. UNHCR commends the provisions of the TVPRA which ensure unaccompanied children have access to child-appropriate reception procedures, safe placement in the least restrictive setting in the child's best interests, and non-adversarial

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[18] UN High Commissioner for Refugees (UNHCR), Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants, p. 1, April 2011, PPLA/2011/01.Rev.1, available at: http://www.refworld.org/docid/4dc935fd2.html.

[19] *See, e.g.*, Robiant, Hassan and Katona, Mental health implications of detaining asylum seekers: systematic review, British Journal of
Psychiatry, August 2008, *available at* http://bjp.rcpsych.org/content/194/4/306.long.

[20] UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 2 July 2015, *available at* http://popstats.unhcr.org/en/asylum_seekers.

[21] The importance of proper screening and identification of individuals fleeing violence has recently been emphasized by the report of a 14 year-old boy who was murdered in his home two days after being deported from Mexico to Honduras. Ultiman a Contratista y a Menor de Edad, TIEMPO, 29 June 2015, *available at* http://tiempo.hn/sucesos/item/37949-ultiman-a-contratista-y-a-menor-de-edad.

asylum adjudication system.[22] At a time when children arriving to the United States are fleeing horrific violence in their home countries, the simplified child-appropriate procedures required by the TVPRA are more necessary than ever.

The U.S. should develop child-appropriate responses and safeguard the best interests of each and every child in its custody.

While the U.S. government has focused resources on border security, a concurrent investment in strengthening the protection mechanisms for arriving child asylum seekers has not been made. As many children fleeing from Central America have often suffered significant trauma,[23] border officials must receive the training necessary to communicate effectively and appropriately with these vulnerable children and child welfare experts must be incorporated into the U.S.' reception and screening processes for all children.

The best interest of the child should always be considered when determining protections for the children fleeing violence in Central America. This is especially true for unaccompanied children, who are particularly vulnerable without a trusted person to advocate for their interests. Children should be recognized as a vulnerable group and treated accordingly. The rights of children to seek protection must be respected and solutions should promote their interests in enjoying a safe and productive future.

Conclusion

The increase in arrivals of Central American asylum-seekers along the southern border – in particular families and unaccompanied children - has no doubt placed great pressure on the U.S.' long-standing commitment to protecting those who seek safe haven. Understanding what has propelled these children and families from their homes, providing appropriate reception conditions and ensuring protection for those who cannot return home is fundamental to meeting U.S. obligations under both domestic and international law to protect refugees and other vulnerable persons. The conditions the children are fleeing are the problem, not the children themselves. UNHCR stands ready to support the U.S. and other countries in the region in providing protection to children and families on the run.

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[22] It is important to note that these provisions do not provide the same guarantees to unaccompanied children arriving from contiguous countries. UNHCR calls on the U.S. government to ensure the same safeguards enjoyed by children from non-contiguous countries are available to children arriving from Mexico and Canada.
[23] UNHCR, *Uprooted: Arrancados de Raiz,* Executive Summary, *available at* http://mhpss.net/?get=235/Uprooted_One-pager.pdf.

Statement for the Record of the U.S. Committee for Refugees and Immigrants
Submitted to the Senate Committee on Homeland Security and Governmental Affairs
"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"
July 07, 2015

The U.S. Committee for Refugees and Immigrants (USCRI), an international non-profit organization, submits this statement to the Senate Committee. For over 100 years USCRI has helped shape our nation's history. Our mission is to address the needs and rights of persons in forced or voluntary migration worldwide by advancing fair and humane public policy, facilitating and providing direct professional services, and promoting the full participation of migrants in community life. USCRI has been serving unaccompanied immigrant children since 2005 and have seen the impact of the government's response to last year's humanitarian crisis and have the following recommendations:

1. Accelerate Processing for Central-American Minors Program (CAM)
2. Give Children a Reason to Stay
3. Counsel for Children
4. Introduce Hope for Families
5. Forgive the Children

Accelerate Processing for Central-American Minors Program (CAM)
We are grateful for the creation of the CAM program which allows applicants to apply for refugee status in their home country. Over 2,000 applications have been submitted to the Department of State, Office of Population, Refugees, and Migration but we are concerned that eight months after the announcement of the program not a single child has actually been resettled in the U.S. The U.S. government made assurances that the children would be processed quickly in order to ensure their protection. We urge the Committee to monitor the progress of this program.

Give Children a Reason to Stay
A comprehensive strategy is needed to address the humanitarian crisis. It must include the development of programs in the Northern Triangle countries that will help children who are repatriated or likely to migrant. The programs must help children get an education, prepare for employment and address the issues of physical security and emotional well-being. In the U.S., USCRI helps unaccompanied immigrant children with in-home social services and linkages to education, legal, health, and mental health providers. We have seen firsthand the benefits of providing children comprehensive services and due to our strong belief in the effectiveness of our model, USCRI will provide repatriated children follow-up services through our regional office in San Salvador.

Counsel for Children
It is essential that children facing immigration court proceedings be afforded legal representation, to ensure they have the opportunity to tell their story to the immigration court. Children who have counsel

are more likely to express the threats they face and get the protection they need. Congress has recognized in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) the vulnerability of children and our responsibility as a nation to protect them. USCRI's Immigrant Children's Legal Program has worked throughout the U.S. to provide unaccompanied immigrant children pro bono legal representation in their immigration proceedings. USCRI also provides child advocates while their case is pending. While USCRI is proud to provide these services, we are also painfully aware that most children are not able to obtain an attorneys to represent them.

Introduce Hope for Families

Through legislation Congress should allow parents or legal guardians from El Salvador or Honduras who reside legally in the U.S. under Temporary Protected Status (TPS) to apply for their minor children to legally be reunited with them in the U.S. Currently TPS does not allow for this. Another way to create hope for families is through a Regulated Entry Procedure (REP) for 10,000 unaccompanied immigrant children per year per country from Honduras, El Salvador, and Guatemala. The Central American children would enter the U.S. legally through a regulated system managed and processed by the U.S. Government. The U.S. instituted a similar "lottery" program in Cuba and the hope of "winning" has kept Cubans from hazarding the ocean journey for the last 34 years.

Forgive the Children

Congress should grant Children's Protected Status (CPS) to all unaccompanied children who have already been brought into custody as of a certain cut-off date. This would avoid long legal procedures and judicial and enforcement costs, so resources can be focused on helping the children become assets to our communities. We also propose that the adjudication system be reformed by taking children out of the adversarial immigration court process and substituting a process similar to the Asylum Officer Corps. This "Children's Corps" would screen children for potential legal relief, grant status under the law, and refer children to immigration courts for deportation proceedings if they have no form of legal relief. This would change the initial immigration process from one that is adversarial to one that is administrated by USCIS. It could also help ensure that staff is trained in child-sensitive interview techniques and best interest determination standards to provide protection for children.

The U.S. is a worldwide leader in refugee protection and we must continue this tradition by protecting some of the most vulnerable people, children.

Thank you.

For questions please contact Stacie Blake, Director of Government and Community Relations at sblake@uscridc.org or Esmeralda Lopez, Advocacy Officer at elopez@uscridc.org

SENATE HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE
JULY 7, 2015

BY THE YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

For more than 10 years, the Young Center for Immigrant Children's Rights has advocated for a fair and just system for considering the claims of unaccompanied children who arrive in the United States—specifically, that every decision maker consider each child's best interests before rendering a decision. Our current immigration laws provide very limited, but important protections for children. Our laws do not prevent the deportation of children to unsafe situations if those children fail to carry *their* burden in adversarial, immigration proceedings to prove their eligibility for an immigration benefit. Nor do our laws provide all of the basic protections that have been deemed necessary to ensure fair proceedings for children in our domestic courts. The Young Center appreciates this opportunity to submit our views for the Senate Homeland Security and Government Affairs Committee hearing entitled: *The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later.*

The Young Center for Immigrant Children's Rights at the University of Chicago

Pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the Young Center has been appointed by the Department of Health and Human Services to serve as independent child advocate for more than 1,000 child trafficking victims and vulnerable unaccompanied children. The role of the Child Advocate is to advocate for the best interests of individual children. Through its policy work, the Young Center stands for the creation of a dedicated juvenile immigrant justice system that ensures the safety and well-being of every child.

Unaccompanied immigrant children who have arrived in increasing numbers in the last few years are fleeing armed criminal violence often caused by gangs or drug cartels and horrific abuse at home.[1] These children are primarily fleeing from El Salvador, Guatemala, and Honduras, where murder rates mirror those of conflict zones. They are not coming just to the United States—other Central American countries have witnessed dramatic increases in children and adults seeking refuge.[2] Indeed, the United Nations High Commissioner for Refugees recently concluded that at least fifty-eight percent of unaccompanied children arriving from these countries were forcibly displaced and potentially in need of

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[1] U.N. HIGH COMM'R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 32 (2014) [hereinafter CHILDREN ON THE RUN], http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf. *See also* WOMEN'S REFUGEE COMMISSION, FORCED FROM HOME: THE LOST BOYS AND GIRLS OF CENTRAL AMERICA 1 (2012) (noting that unaccompanied minors are subject not only to violent gang attacks, but also face targeting by police who mistakenly assume that they are gang-affiliated; additionally girls in particular "face gender-based violence, as rape becomes increasingly a tool of control.").

[2] *Id.* at 15. In combination, Mexico, Panama, Nicaragua, Costa Rica and Belize have documented a 432% increase in the number of asylum applications submitted by people from Honduras, Guatemala and El Salvador.

international protection.[3] These children and adults are not journeying to the United States; they are fleeing their countries of origin.

As a result of the violence in the triangle countries, children often arrive with a history of trauma. Our experience at the Young Center has been that children who have experienced trauma, and who are separated from their parent or traditional caregiver, often do not open up immediately. They need time in an appropriate setting to talk about why they came to the United States. Just as in our domestic child welfare system, they need to be interviewed by individuals with expertise and training in child welfare and development. And above all, they need a careful analysis of their safety, their desires, and their rights to family integrity, to liberty, and to develop before decisions are made on their behalf.

Existing Procedural Protections for Unaccompanied Children

In 2008, Congress overwhelming passed the William Wilberforce Trafficking Victims Protection Act (TVPRA), a law that recognizes that children are different, that child-sensitive procedures provide a more accurate understanding of a child's eligibility for relief from deportation than an expedited interview conducted at the border. Through the TVPRA, Congress expressed its intent to ensure fair, measured consideration of children's claims before returning them to their countries of origins.

Pursuant to the TVPRA, unaccompanied minors from noncontiguous states are placed in removal proceedings, a long-standing immigration enforcement mechanism. Simultaneously, these children are transferred to facilities run by the Office of Refugee Resettlement where they are allowed to meet with social workers and attorneys experienced in working with children. In addition, and pursuant to the TVPRA, the Department of Health and Human Services (HHS) appoints independent child advocates, such as those at the Young Center, for particularly vulnerable unaccompanied children in the Rio Grande Valley, Chicago, Houston, New York/New Jersey and the Washington, D.C. area; their role is to meet with the children, learn their stories, and advocate for their best interests.

Yet, over the last year there have been attempts by both the Administration and members of Congress to eliminate these important procedural protections for unaccompanied minors. While not of these proposals have become law we are concerned that there will increased efforts to roll back the few protections established by TVPRA.

Child Advocates Meet a Vital Need for Vulnerable Children

The TVPRA authorizes the appointment of child advocates—best interests guardians ad litem—for child trafficking victims and other vulnerable unaccompanied children. Their role is to advocate for the best interests—safety and well-being, giving due weight to the

[3] CHILDREN ON RUN, *supra* note 1, at 25.

child's expressed wishes—on issues including placement and the child's return to home country.

Young Center Child Advocates use a cost-effective model that leverages both linguistically-competent volunteer and staff resources in order to meet weekly with particularly vulnerable children, learn their stories, gather information from stakeholders, accompany children to court proceedings, and ultimately to prepare best interests recommendations for decision makers. Young Center Child Advocates have been asked to submit best interests recommendations to Office of Refugee Resettlement officials, to EOIR immigration judges and to DHS officials including asylum officers and trial attorneys within the Office of Chief Counsel.

Child Advocates play a necessary role for infants and toddlers who are too young to advise an attorney, or for other children who may lack capacity to make a particular decision—such as a trafficking victim who wishes to return to her trafficker, after testifying against him as a material witness in a criminal court. Yet, only a tiny minority of these children receive this service. It is important that Congress continues to provide resources to ensure the most vulnerable children have a Child Advocate appointed to his or her case.

Bringing the "Best Interests of the Child" Standard to Unaccompanied Children's Cases

Unaccompanied children face complex decisions. They may have experienced traumatic events that they have not yet disclosed to anyone. They may want to attend school, but may face tremendous pressure to work. Child advocates—often bilingual, bicultural volunteers supervised by experienced attorneys or social workers—can help children to understand and think through these decisions. Just as importantly, child advocates can ensure that decision-makers consider the child's best interests—their safety, expressed interests, family integrity, and developmental and liberty interests—when making decisions about them.

The Young Center for Immigrant Children's Rights looks forward to working with members of the Committee to ensure that these vulnerable children are provided the necessary resources, support and protection to promote their best interests and well-being.

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BEST INTERESTS OF THE CHILD STANDARD:
Bringing Common Sense to Immigration Decisions

by

Jennifer Nagda, JD and **Maria Woltjen, JD**,
Young Center for Immigrant Children at the University of Chicago

Many Americans are now aware that unaccompanied children from Honduras, Guatemala, El Salvador, and Mexico are coming to the United States through the Mexico–U.S. border. Given the political firestorm, many also know that immigration officials have the authority to decide whether those children may remain in the United States or be sent back. What most Americans likely do not know is there is no requirement that immigration authorities should consider the children's best interests—specifically, the children's safety and well-being—in making these decisions. Border patrol agents do not have to consider best interests when returning a vulnerable child to Mexico. Immigration judges do not have to consider best interests when deciding whether to deport a child. Immigration officials who adjudicate visa applications do not have to consider best interests when deciding whether to grant a visa to a child trafficking survivor. Immigration and Customs Enforcement (ICE) attorneys who prosecute cases against children and arrange for their repatriation do not have to consider whether their decision may place a child directly in harm's way or permanently separate the child from a parent.

Not surprisingly, the absence of a best-interests standard for children in our immigration law has led to absurd results. Consider the following:

- At the age of 11, Julia fled to the United States to escape a home in which her caregiver (her grandmother) had been sexually assaulted by a police officer and where Julia was a witness to the event. Julia's hope was to find safety with her mother in the United States. After more than six months in a locked "shelter," where she had just a weekly, 10-minute phone call with her mother, Julia unexpectedly told her lawyer she wanted to quit fighting her case and ask the judge whether she could go back to Honduras. Julia was so devastated at being prevented from being with her mother that she had decided she would rather return to a family member who could not protect her from danger, rather than remain so close to, but separated from, her mother. Until that moment, Julia's attorney had been preparing a petition for asylum. The lawyer knew that when Julia went to court and asked for permission to go back to her country, the judge would have no obligation to ask any questions about whether Julia would be safe or who would care for her in her home country. Julia's mother would have no role at the hearing. Even if Julia's mother called the court asking to be present telephonically, the court would have no obligation to speak to Julia's mother or include her in the proceedings before deciding whether to repatriate Julia. Because Julia's attorney was obligated to tell the court Julia's expressed interests (her desire to return), there was no one to advise the court of the risks of return to Julia's safety and well-being.

- Baby Ana, just 13 months old, was discovered when a smuggler was caught bringing her into the United States. Ana's mother had been killed only weeks before. Prior to that, Ana had been raised by her mother and her maternal grandparents, who desperately wished for Ana's return to their country. Despite Ana's age and the fact that she was still preverbal, the Department of Homeland Security (DHS) decided to charge Ana with entering the United States without permission and require her to appear in immigration court to defend against these charges. For Ana to be reunified with her family—her grandparents in her home country—the request would have to be made by Ana, through an attorney she would have to retain, in formal immigration-removal proceedings. This procedure was certainly not in her best interests nor in the interests of government efficiency, given the many additional immigration court officials now involved in her case.

When children like Julia and Ana become the subject of federal immigration proceedings and decision making, what standards should inform the decisions? How do we ensure a fair and just adjudication of a child's request for a visa or asylum? How can we ensure that the recommendation of the child

advocate—appointed to identify and advocate for the child's best interest—is not colored by subjective beliefs? How do we ensure that the child advocate's determination does not ignore the child's wishes or disregard the child's culture or the family's wishes for the child? Is it possible to establish the appropriate weight an immigration judge or other immigration authority should give to a recommendation about a child's best interests?

The answers to these questions are to be found in universally accepted law and policy—that consideration of best interests is both necessary and possible. There is a process and set of standards for gauging the best interests of the child. Moreover, these procedural and substantive protections can be applied for all children subject to immigration removal without undermining the decision-making authority of immigration officials. Finally, this can be done in a manner that ensures the child's voice and rights are heard and upheld and that weeds out bias and paternalism.

Surprise 1: *Clearly Articulated Standards for Assessing "Best Interests"*

The "best interests of the child" standard is a hallmark of U.S. child protection laws. The laws of all 50 states require consideration of a child's best interests in any decision "about a child's custody or other critical life issues."[1] This standard is also a foundational principle of international guidelines governing the treatment of children—in particular, the Convention on the Rights of the Child (CRC).[2] At this moment, only two countries—the United States and Somaliahave failed to ratify the CRC.[3]

Best interests is a term of art; there is no exact definition. The term encompasses both a substantive right—the child's right to have his or her best interests considered in any decision about him or her—and procedural protections to ensure that there is "an evaluation of the possible impact" of decisions upon a child or group of children.[4] The factors entering into the determination of *best interests* vary case by case. Nevertheless, certain factors—safety, well-being, permanency—appear consistently in statutes, case law, regulations, and policies defining best interests. In 2013, the Committee on the Rights of the Child articulated seven specific elements for assessing a child's best interests:[5]

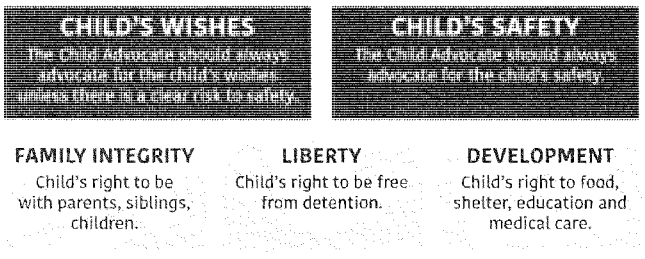
1. The child's views
2. The child's identity
3. Preservation of the family environment and maintaining relations
4. The care, protection, and safety of the child
5. A situation of vulnerability
6. The child's right to health
7. The child's right to education

The Young Center for Immigrant Children's Rights has worked for more than a decade to distill these criteria into a meaningful framework for considering the best interests of unaccompanied children facing deportation. Under the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA),[6] the Secretary of Health and Human Services has the authority to appoint independent child advocates—the equivalent of a best interests guardian *ad litem*—for unaccompanied children charged with being in the United States without permission. By way of context, these children are charged with breaking the law, placed in adversarial immigration court proceedings, and (at least

temporarily) detained and separated from their families. The Young Center served as the model for this statutory provision and remains the only organization providing child advocate services to unaccompanied children at this time. The independent child advocate's role is to identify and advocate for the best interests of child trafficking victims and other vulnerable immigrant children. Consistent with the CRC and most domestic statutes, child advocates assess children's best interests by applying the framework shown in Figure 1.

Figure 1.

Child advocate paradigm for assessing best interests



Source: Young Center for Immigrant Children's Rights © 2014

Child's Wishes. The Young Center has adopted a child's rights–driven model based on the CRC, in which a child's wishes *must* be considered, giving due regard to the child's age and maturity.[7] There is no age threshold below which children cannot express their wishes: the center has worked with toddlers who could express their desire to be with a particular parent or caregiver.

Immigrant children in removal proceedings are treated much like defendants in the criminal system. They are charged with violating immigration laws. As such, their desires—often the right to live permanently in the United States—cannot trump U.S. laws and regulations. However, their wishes are not only relevant to the adjudication of their cases but also should be a *primary consideration* when deciding whether a child is permitted to remain in the United States or is ordered deported. We have no doubt that the best way to ensure that a child's voice is heard is to ensure that the child is represented by qualified counsel with experience representing children, provided at government expense if the children or their family are unable to retain counsel on their own. A "federal defender" model of representation for children who do not receive pro bono or nongovernmental organization (NGO)–based attorneys would ensure that every child has an attorney to advise the child of his or her rights; prepare applications for relief or request discretionary action on the child's behalf; or if the lawyer did not believe the child could make a claim under the law, ensure that the child could express his or her wishes directly to the judge, who would determine whether the child could proceed.

Safety. The Young Center will only make a recommendation that contradicts a child's expressed wishes when the child has stated a desire that endangers his or her safety or well-being; and even then, we will only do so after convening a panel of independent, interdisciplinary experts who participate

on a "best interests determination" (BID) panel, described in more detail below. Safety includes "the right of the child to protection against all forms of physical or mental violence, injury or abuse, sexual harassment, . . . as well as protection against sexual, economic, and other exploitation, drugs, labor, armed conflict, etc."[8] Although safety is a relevant factor for some forms of immigration relief, a child's lack of safety in home country is not, standing alone, a basis for remaining permanently in the United States. Our country routinely deports children to unsafe situations.

Family Integrity. Family integrity is a central component of a child's best interests.[9] The CRC recognizes the family as the "natural environment for the growth and well-being of all its members and particularly children"[10] and insists that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."[11] For years, the Young Center has relied on these principles—and corresponding principles in U.S. child welfare laws—to advocate for the release of children from detention to parents and other family members determined to be safe sponsors. In recent years, the federal government explicitly recognized the potential for immigration enforcement to disrupt families and threaten parents' constitutional rights to the care and custody of their children, though in the context of parents facing deportation.[12]

Nevertheless, there is no such policy when it comes to children facing prolonged or permanent separation from a parent *when the child* is the subject of immigration proceedings.

Liberty. A child's right to liberty[13] is particularly relevant for unaccompanied children who are apprehended by immigration authorities and then transferred to the custody of the Department of Health and Human Services. Under a 1997 settlement decree, unaccompanied childten may be released from detention to the care and custody of a parent, family member, or other sponsor during the pendency of their proceedings.[14]

Periods of detention prior to a child's release—when a child is not free to leave and during which the government compiles a custodial file that can be used against the child in adversarial court proceedings—must be recognized as detention. There are few foster homes for children awaiting family reunification. Detention in locked facilities is potentially traumatic, even when that time is used to provide information about legal rights or other services or to identify a safe placement for the child. Holding children in highly restrictive detention, separated from family, while their cases are adjudicated thus runs afoul of two central tenants of a child's best interests—the child's right to be raised by family and the child's right to liberty. The practice of detaining families—particularly mothers with young children—also violates a child's liberty rights and poses risks to the child's safety, health, and development.

Development. In a system that generally treats children as adults-in-miniature, Young Center child advocates have advocated that decisions be made in light of a child's right to development considering the particular needs, vulnerabilities, and strengths of each child. The right to develop includes the right to health and education and may be best understood as *well-being*, which "in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety."[15] The Committee on the Rights of the Child defines this need as one of "protection and care"[16] and "expects States to interpret development as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological, and social development."[17]

Surprise 2: *Application of the Best Interests Standard Is Consistent with the Goal of Fair and Just Adjudication*

With few exceptions, our immigration laws do not require consideration of a child's best interests.[18] Incorporating a best interests standard as a primary consideration in all decisions and assigning judges dedicated to children's immigration court dockets would not only ensure the fair and just adjudication of children's cases (from decisions made at the moment of the child's apprehension through the determination of where the child will reside permanently), but would also reduce some of the burdens on our immigration system and ensure that decisions about children are made by judges and officials with particular expertise in children's cases.

> "Every child has an individual story. The best interests of the child standard ... requires that each child's story be known and understood before immigration authorities make decisions that could put the child in harm's way. Such individualized inquiries are the hallmark of fairness and due process."

For example, 13-month-old Ana was charged and placed in removal proceedings by DHS authorities who first found and brought her into custody. Removal proceedings are formal, adversarial proceedings, which take place before a judge and where there is an attorney representing the government. Once placed in removal proceedings, children, like adults, must make a formal request of the judge for the right to remain in the United States or to withdraw their application for entry. And children, like adults, do not have a right to government-appointed counsel when they appear in immigration court.

If DHS had a policy and procedure for considering the best interests of children in *all* decisions, the agency might have decided not to formally charge Ana until more could be learned about her family. This would have eliminated the expense of convening multiple immigration court proceedings—each of which required the presence of an immigration judge, a DHS attorney, a court clerk, and a court reporter—so that the immigration judge could eventually entertain the fiction that Ana was "withdrawing her application for admission."

Immigration courts (part of the U.S. Department of Justice, a separate federal agency) also lack a framework for considering best interests, which in Ana's case would have required consideration of her right to grow up with her family. In our current system, Ana's grandparents, despite being appointed her legal guardians in their country of origin, were denied any role in their granddaughter's immigration case, which may have deprived the court of valuable information—such as their appointment as her legal guardians and their willingness and ability to provide her with a safe home in their country. In this case, a Young Center independent child advocate, appointed under TVPRA, was able to provide this information to nonprofit attorneys who stepped in to represent Ana free of charge, as well as to the court—but only after the court exercised its discretion to consider and give weight to our best interests recommendation, a procedure not yet statutorily required under current immigration law.

In 11-year-old Julia's case, her attorney requested a Young Center child advocate because the attorney feared for Julia's safety in Honduras. The attorney had been preparing an asylum application based on Julia's fear of persecution by police and others. If Julia insisted on requesting voluntary departure (a way of returning to her country, without penalty), her attorney knew that the request was likely to be granted. The absence of a best interests standard in the immigration courts and within

the agency (DHS) responsible for returning children meant that the immigration judge *might* ask Julia a few questions about the person(s) to whom she'd be returning but that neither the judge nor the government attorneys prosecuting the case against her would ask questions such as, "Where are your parents?" "Will you be safe if you go back?" "Will you be able to go to school when you return?" "Did anyone try to hurt you before you left?" No questions would be asked of the family in home country, such as: "Are you able to care for this child?" "Do you want to care for this child?" "Can your family raise another child?" "Who lives in the home?" The answers to those questions would have revealed that Julia faced persecution in her country, making her eligible to apply for asylum and possibly other visas that would lead to lawful permanent status in the United States. The inquiry also would have revealed that there was no adult in Julia's country able to care for her or protect her from harm.

Not all children have a viable claim under U.S. law to remain permanently in the United States, but every child has an individual story. The best interests of the child standard, which is inherently individualized, requires that each child's story be known and understood before immigration authorities make decisions that could put the child in harm's way. Such individualized inquiries are the hallmark of fairness and due process, which are stated goals of our immigration courts.[20]

> "The role of the child advocate is to ensure that the child's voice is heard and considered and that relevant evidence about the child's safety and well-being is provided to all immigration authorities with the ability to make decisions about the child."

Surprise 3: *Best Interests Recommendations Can Be Child Driven, Child's Rights Oriented, and Valuable for Federal Immigration Authorities*

Establishing and implementing a best interests standard, in which the decision maker considers the child's safety, wishes, separation, or reunification with family, liberty, and ability to grow and develop would not require a radical departure from our immigration laws, nor would it upend our immigration system such that every child in immigration proceedings would be permitted to remain permanently in the United States. Under U.S. law, immigration decisions are discretionary. Even when a child or adult establishes that she or he satisfies the criteria for asylum, the government is not obligated to grant petition for asylum.[21] Rather, immigration judges, asylum officers and other officials with the power to issue visas retain the discretion to grant or deny requests for relief from removal.

Requiring a judge, asylum officer, or immigration official to consider a child's best interests does not strip that official of the discretion to weigh all of the facts. An immigration judge in a jurisdiction that lacks a child advocate program once explained that when he makes a decision about a child's case, he wants to have as much information as possible. Immigration judges know the legal standards for establishing a claim and can determine how to weigh the information in front of them. The judge we spoke with expressed a clear preference for receiving all relevant information about a child's decision to leave his or her country, particularly information about the child's safety.[22]

Adversarial proceedings presume a worthy adversary. Every effort must be made to ensure that the expressed wishes of children—who are still developing, maturing, and learning to communicate and put their life experiences in context[23]—are heard. A best interests of the child standard requires that

immigration authorities take special care to elicit the child's opinion and give that opinion due weight in accordance with the child's age and maturity (while also considering the child's safety, family integrity, liberty, and ability to develop).

When a child's desires do not endanger his or her safety or well-being, the role of the child advocate is to ensure that the child's voice is heard and considered and that relevant evidence about the child's safety and well-being is provided to all immigration authorities with the ability to make decisions about the child. However, in particularly challenging cases—such as when the child's wishes put him or her in harm's way, or when the child lacks capacity to express an opinion, or when the child faces long-term or permanent separation from a parent—the Young Center convenes BID panels to guide its recommendations[24] regarding the child's best interests.

BID Recommendations. The Young Center's BID panels are modeled on a procedure developed by the UN High Commissioner for Refugees.[25] The BID panels comprise a group of diverse experts who are unrelated to the case and whose expertise allows them to apply the best interest framework to the specific facts of a child's case. A typical BID panel includes an immigration attorney, an expert in domestic child welfare law, someone from the child's country of origin, and a subject matter expert (for example, an expert in domestic violence or in labor trafficking), as well as the child advocate and the BID panel supervisor. After reviewing the facts of the case, BID panelists ask questions of the child advocate and then work to reach consensus on what is in the child's best interests or determine what additional information would be needed to make a recommendation. The BID panel's recommendations are incorporated into the final recommendation (again, a recommendation as opposed to a final decision) of the child advocate.

The BID panel provides the child with procedural protection against the risk that a well-intentioned lawyer, social worker, or volunteer, acting alone, may allow his or her bias to cloud a best interests recommendation. The BID process also protects against paternalistic recommendations of the "for their own good" variety.

Most important, "an adult's judgment of a child's best interests cannot override the obligation to respect the child's rights under the Convention."[26] This concern for preventing the substitution of an adult's judgment for the child's expressed interests is grounded in both international law and domestic child welfare law. Thus, a child advocate's best interests recommendation is formulated in consideration of where the child feels safe, as opposed to where the child advocate believes the child will be safe.[27]

The Young Center's BID panels are designed to bring as much expertise as possible to the best interests recommendation process. In some ways, they reflect the domestic child welfare model in which a guardian *ad litem* gathers information from everyone connected to the child and is entitled to have access to all of the information about the child's case. Outside of immigration law, the best interests standard is such a well-accepted principle that during the 2008 debates over comprehensive immigration reform, three senators took to the Senate Floor to express their dismay over the absence of a best interests standard in immigration law and their disappointment that such a provision would be considered controversial.[28] Nevertheless, there remain critics of incorporating a best interests standard into immigration law.

Concerns. In particular, children's attorneys are concerned that best interests may be used to trump the child's expressed interests. But this should not be the case if a child-rights best interests framework, such as the one applied by the Young Center and required by the CRC, is applied. Even when a child advocate's ultimate recommendation contradicts the child's expressed interests (for example, in cases in which a child requests a decision that puts her or him in harm's way), the child advocate has an obligation to identify the child's desires and ensure those desires are heard. Moreover, the child advocate

is subject to cross-examination by the child or the child's attorney, as well as by the immigration judge and the trial attorney in immigration court proceedings. At the Young Center, our first endeavor on behalf of a child's best interests is often to ensure that the child has an attorney to represent him or her.

Government officials have expressed concern that considering children's best interests will open the floodgates to children's claims to remain in the United States. Principles of due process require that all children have an opportunity to tell their story, to explain what they were seeking when she came to the United States, and why they wish to stay or why they now wish to return. The best interests standard would require *consideration* of children's best interests in making that decision. It would not prohibit immigration judges, asylum officers, U.S. Customs Border Protection or U.S. Citizenship and Immigration Services officials from considering other important factors—for example, safety to the community or national security concerns. Those and many other factors would continue to be incorporated into the decision-making process. Understanding the difference between best interests as a *primary* consideration and best interests as the *sole* consideration should alleviate the fears of both attorneys and enforcement authorities.

"This is precisely what child welfare and human rights principles call upon us, as a country, to do—to protect children."

In addition, without change to the forms of relief available to children—which are limited primarily to asylum, U visas, T visas, special immigrant juvenile status, and occasional Violence Against Women Act claims—consideration of the child's best interests will not change the bases under which children can gain permanent status. It may help tip the scales in cases where an adjudicator finds that the child has established his or her eligibility for relief but is on the fence about whether to exercise discretion in the child's favor. It may also result in more discretionary actions by enforcement authorities, who may choose not to charge a child with removability or may agree to close a child's immigration case. Yet this is precisely what child welfare and human rights principles call upon us, as a country, to do—to protect children. If a discretionary grant of asylum or the termination of a child's immigration case ensures that the child does not face harm at a moment when he or she is still growing and developing and is in the care of a parent or guardian, then we've applied the best interests principle for which it was designed—to ensure the safety and well-being of children.

Conclusion

Ultimately, both Ana and Julia reunified with their families—Ana, to her grandparents in her country of origin; and Julia, to her mother in the United States, where she applied for and was granted asylum. Both decisions were made after an independent child advocate submitted a best interests recommendation—in Ana's case, to an immigration judge; and in Julia's case, to the agency responsible for deciding whether she could be released to her mother and later to the asylum officer adjudicating her claim. In both cases, the immigration authorities considered the best interests recommendation in making their decisions—even though there is no explicit best interests standard in the immigration law as it presently exists. It is not terribly difficult to imagine an immigration system in which every child has the opportunity to have his or her best interests considered, particularly when authorities are making decisions that could result in permanent separation from family, banishment, or returning the child to a dangerous environment. Consideration of the best interests of the child in immigration deportation proceedings makes sense. It requires asking questions, gathering information, and then balancing that information with other equities in the case. In other words, a process of fair adjudication.

The authors thank their colleague Elizabeth Frankel for her collaboration in developing the ideas in this paper and University of Chicago Law School students Gary DeTurck and Xuanzhong Wang for their research assistance.

Jennifer Nagda is the Policy Director for the Young Center for Immigrant Children's Rights at the University of Chicago Law School and Maria Woltjen is a Lecturer in Law and serves as the Director of the Young Center for Immigrant Children's Rights.

Notes

1. Child Welfare Information Gateway, Children's Bureau, U.S. Department of Health and Human Services, "Determining the Best Interests of the Child," 2013, https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf; see also B. A. Carr, "Incorporating a 'Best Interests of the Child' Approach into Immigration Law and Procedure," Yale Human Rights and Development Law Journal 12 (2008): 120, 124 (identifying the "best interests of the child" as a "common legal standard for cases that involve children") (citation omitted).
2. United Nations Convention on the Rights of the Child (CRC), G.A. Res. 44/25, art. 3, Annex, U.N. Doc. A/44/736, 1577 U.N.T.S. 3 (November 20, 1989).
3. L. Blanchfield, "The United Nations Convention on the Rights of the Child," Congressional Research Service, April 1, 2013, 1, http://fas.org/sgp/crs/misc/R40484.pdf; D. B. Thronson, "Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law," Ohio State Law Journal 63 (2002): 979, 988.
4. United Nations Committee on the Rights of the Children, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para.1), ¶6, U.N. Doc. CRC/C/GC/14 (May 2013), http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf ("the child's best interests is a threefold concept . . . (a) A substantive right . . . (b) A fundamental, interpretative legal principle . . . (c) A rule of procedure").
5. Ibid. ¶¶48–79.
6. 8 U.S.C. §1232(c)(6).
7. CRC, supra note 3, art. 12; see also Committee on the Rights of the Children, supra note 5, 53.
8. Committee on the Rights of the Children, supra note 5, 73.
9. CRC, supra note 3, arts. 5, 7, 8, 9.
10. Ibid. Preamble.
11. Ibid. art. 9.
12. See, for example, U.S. Immigration and Customs Enforcement, 11064.1: "Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities," August 23, 2013, 2, http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf (recognizing the "fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law").

13. CRC, supra note 3, art. 37(b) ("The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." [emphasis added]).
14. Flores v. Reno, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997), http://aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf.
15. Committee on the Rights of the Children, supra note 5, ¶71.
16. Ibid.
17. Ibid. ¶4, n.2 (internal quotations and citation omitted).
18. See Carr, supra note 1, at 123 ("The failure of immigration law and procedure to incorporate a 'best interests of the child' approach ignores a successful means of protecting children that is common both internationally and domestically."). The Immigration and Nationality Act (INA) references the "best interests" of children subject to its intricate provisions only a few times. The Department of Health and Human Services is required to place unaccompanied children "in the least restrictive setting that is in the best interest of the child" (8 U.S.C. § 1232(c)(2)). In 2008, the TVPRA amended the INA to permit the appointment of independent child advocates, who must be provided "access to materials necessary to effectively advocate for the best interest of the child" (8 U.S.C. § 1232(c)(6)). The TVPRA also permits support for "best interest determinations" for certain unaccompanied children, "to identify child trafficking victims and to assist in their safe integration, reintegration, and resettlement" (William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 104(1)(B), 22 U.S.C. § 7105(a)(1)(F)). The term also appears in the definition of a special immigrant juvenile (8 U.S.C. §1101(a)(27)(J)(i–ii)), requiring, among other things, a determination that it is not in a child's best interests to return to his or her country of residence.
19. Executive Office for Immigration Review (EOIR), Department of Justice, "About the Office: Goals," accessed July 25, 2014, http://www.justice.gov/eoir/orginfo.htm ("EOIR's primary mission is to adjudicate immigration cases in a careful and timely manner . . . while ensuring the standards of due process and fair treatment for all parties involved").
20. E. Frankel, "Detention and Deportation with Inadequate Due Process," Duke Forum for Law and Social Change 3 (2011): 63, 92 (stating that all forms of immigration relief are considered a "benefit" and not a right and that a judge may always exercise discretion and deny that benefit, even if a child makes a showing that he or she qualifies for one).
21. Notes on file with authors.
22. See A. I. Schoenholtz, "Developing the Substantive Best Interests of Child Migrants: A Call for Action," Valparaiso University Law Review 46 (2012): 991, 999–1000 (recognizing child migrants as "developing beings, both cognitively and biologically" and acknowledging general agreement "that children are evolving beings").
23. It is important to note that the Young Center uses the BID process to develop a recommendation and not a determination (or decision).
24. Office of the United Nations High Commissioner for Refugees, "UNHCR Guidelines on Determining the Best Interests of the Child," May 2008, http://www.unhcr.org/4566b16b2.pdf.
25. Committee on the Rights of the Children, supra note 5, at ¶4 (internal quotations and citation omitted).

26. See, for example, 705 ILCS 405/1-3 (requiring consideration of the child's sense of attachments as part of any best interests determination, and defining attachments as "where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued")).
27. 159 Cong. Rec. S4667, S4669 (daily ed. June 19, 2013) (Senators Mary Landrieu (D-LA) and Harry Reid (D-NE) discussing amendments to the Border Security, Economic Opportunity, and Immigration Modernization Act and expressing disbelief that inclusion of a "best interest" standard could be controversial); 159 Cong. Rec. S4736 (daily ed. June 20, 2013) (Senator Patrick Leahy (D-VT) urging his colleagues to vote on a proposed "best interest" amendment to immigration reforms).

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

December 18, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find the response to questions for the record arising from the appearance of Juan P. Osuna, Director of the Executive Office for Immigration Review, before the United States Senate Committee on Homeland Security and Governmental Affairs on July 7, 2015, at the hearing entitled "The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later." We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable Thomas R. Carper
Ranking Member

From Senator Joni Ernst:

In your written testimony, you noted that last summer, EOIR realigned its adjudicative priorities and refocused its immigration court resources to address the cases of those who have crossed our southern border primarily on or after May 1, 2014. To accommodate this shift in priorities, some immigrants have had their immigration hearings postponed – in some cases for more than four years from now. Please address the impact EOIR's reprioritization might have on those immigrants, state and local governments, and relevant non-profit organizations.

Response:

As indicated in Director Osuna's written statement, EOIR realigned its adjudicative priorities and refocused its immigration court resources to address the cases of those who crossed our southern border primarily on or after May 1, 2014. EOIR prioritized the adjudication of cases of recent border crossers that fall into the following four groups as DHS identifies them: (1) unaccompanied children; (2) families in detention; (3) families released on "alternatives to detention" (ATD); and (4) detained cases of recent border crossers. These four priority groups were added to EOIR's longstanding priority consisting of aliens detained by ICE, comprised mostly of criminal aliens. EOIR is processing these cases as quickly as possible. As anticipated when EOIR announced these priorities, use of limited agency resources in this manner has resulted in pushing non-detained, non-priority cases further into the future. In some immigration courts, the volume of priority cases has been such that the judges in those courts are working almost exclusively on priority cases.

EOIR has a long-standing policy of rescheduling non-priority cases when a priority case requires additional docket time, hence EOIR's announcement in February 2015 that it is rescheduling some non-priority, non-detained hearings for November 29, 2019. Most of these cases, however, will receive other dates, either earlier or later, as docket times become available in the relevant immigration court. EOIR continuously monitors the effects of its prioritization strategy and the agency's placement of available resources to, among other objectives, look for ways to ease the backlog of cases while providing those charged with removal with an opportunity to be heard.

The immigration courts do not have enough immigration judges to quickly process EOIR's pending caseload, which further extends the adjudication timeframe for non-priority cases. At the end of fiscal year 2010, EOIR had 262,681 pending cases, and at the end of FY 2015, EOIR had 456,510 pending cases. EOIR's immigration judge corps, once at a high of 272 immigration judges in December 2010, is currently at 250. Funding constraints that resulted in a hiring freeze beginning in January 2011 had a negative and worsening impact upon EOIR's core mission, and increased the number of cases pending adjudication and extending court dockets further into the future. At present, EOIR is working towards hiring staff in newly funded and pre-existing vacant positions. In order to appropriately manage the incoming and pending caseload, EOIR needs a sustained commitment from Congress to support the President's request for EOIR resources. As EOIR's pending caseload continues to rise, the agency needs the ability to be flexible in its hiring processes, permitting an increase in staffing when needed, and consistently accounting for natural attrition of the immigration judge corps and other support staff.

Regarding the impact of these adjudicative priorities on immigrants with non-priority cases, prolonged adjudication times means corresponding periods of legal indeterminacy for these individuals, whether the eventual outcome of their case is an order of removal or grant of relief. EOIR does not have a way to track state, local, and NGO resources and would defer to those bodies regarding any direct impact the reprioritization may have had so far, or may have in the future. EOIR recognizes that prolonged adjudication times for non-priority cases may impact state and local governments and non-profit organizations' resources that interact with individuals who remain in their communities without legal

status for long periods of time. The realignment may also impact relevant non-profit organizations as they may have longstanding representation commitments to certain immigrants whose cases are awaiting adjudication.

Senate Committee on Homeland Security and Governmental Affairs
Questions for the Record
HHS Witness: Mark Greenberg

"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

Question #1:

In your written testimony, you stated: "For the great majority of children who are released to sponsors, HHS does not provide ongoing post-release services; rather, those services are limited to children for whom there had been a home study, and to a limited number of other children who have been determined to have mental health or other needs and who could benefit from ongoing assistance from a social welfare agency." Please provide additional detail on the limited post-release services that are provided by HHS. Please address what kinds of services are provided, how HHS determines when to provide such services, how those services are delivered, and how much is spent on those services.

Response #1:

Based on the laws and regulations that govern Unaccompanied Children (UC) Program, the Office of Refugee Resettlement (ORR) provides post release services to children/sponsors for whom a home study was conducted and to children with mental health or other needs who could benefit from ongoing assistance.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 sets forth requirements with respect to post-release services for unaccompanied children. The TVPRA requires HHS to provide follow-up services (described in ORR regulations and policies as "post-release services") to any child released to a sponsor if a home study was conducted for that case. ORR is required, under the TVPRA, 8 U.S.C. 1232(c)(3)(B), to perform a home study to determine that a prospective sponsor's home is safe when:

1. the child is a victim of a severe form of trafficking in persons;
2. the child is a special needs child with a disability (as defined in 42 U.S.C. § 12102);
3. the child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or
4. the proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.

The TVPRA also requires ORR to determine whether a home study is necessary in other cases due to the circumstances of the specific case. Beginning July 27, 2015, ORR requires a mandatory home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or has previously sponsored a child and is seeking to sponsor

additional children. While ORR conducted home studies prior to July 27, 2015 in many such cases, ORR changed its policies to mandate home studies in these situations to provide greater assurance that children were placed in appropriate settings where they would be well cared for while their immigration case proceeds. Additionally, effective July 1, 2015, ORR has introduced a pilot program to assess the implementation of home studies for all children ages 12 and under being released to non-relative or distantly related sponsors.

The TVPRA also authorizes ORR to provide post-release services in cases involving children with "mental health or other needs who could benefit from ongoing assistance from a social welfare agency."

Through a separate pilot program effective July 1, 2015, ORR is assessing the provision of post-release services to all children released to a non-relative or distantly related sponsor, and to recently released children who have contacted the ORR Help Line for assistance and are either no longer living with their sponsor or are having serious conflict with their sponsor. On May 15, 2015, ORR broadened the responsibilities of its National Call Center to establish a Help Line for children and sponsors to call for assistance with safety-related concerns and other needs. As part of the release process, all children and sponsors are provided with information about this service, and children are provided a wallet card with the Help Line phone number.

To promote the safety and well-being of children, post-release services are provided by nine ORR grantees. In FY15, ORR obligated a total of $16.7M for post-release services and home studies. As of June 30, 2015, 6,073 unaccompanied children and their sponsors have received post-release services in FY 2015.

Services begin upon release of the child to the sponsor or when post-release services are later assigned due to a Help Line call. ORR has provided guidance to service providers about the types of post-release services that may be provided. In addition, ORR specifies requirements for duration of services and frequency of contact with the unaccompanied child and his/her sponsor.

For those children receiving post-release services immediately upon release, the post-release service provider is required to establish telephone contact with the sponsor within 24 hours of release to ensure that the minor is safe and well, and to schedule the initial home visit, which should occur within 14 days of the child's release. During the first visit, the provider conducts an assessment of the child's initial adjustment to the placement, identifies special needs, and explores sources of additional support. A post-release service provider is expected to meet with the child at least three times during the first six-month period following release to the sponsor. Post-release services may be conducted through a combination of home visits, telephone contacts, written correspondence, community referrals, provision of psycho-educational materials, and linking the family or child to support groups.

Post-release workers are expected to assist the child with successful integration into the home and community by providing referrals to help the child locate legal representation, verifying school enrollment, obtaining legal guardianship, and connecting with medical, mental health, and social services. Some of the post-release providers also encourage community support by engaging in outreach to educate community stakeholders about the needs of unaccompanied children and their sponsors.

In addition, post-release workers are expected to keep track of unaccompanied children's scheduled immigration court dates and encourage the unaccompanied child's attendance. The post-release worker is also expected to remind the sponsor to notify the Department of Homeland Security (DHS) and the Department of Justice (DOJ) upon any change of address.

If at any time the post-release provider has concerns about the safety and well-being of the child, the worker is required to make a report to the state or local child welfare agency, ORR, and, if appropriate, law enforcement. The worker is expected to cooperate in any investigation and to advocate on the child's behalf, which may lead to the child welfare agency subsequently removing the child from the sponsor and placing him or her into state or county custody.

Question #2:

Does HHS undertake any efforts to ensure that an unaccompanied minor placed with a sponsor attends their immigration hearings? If not, are there measures that HHS or another government agency could put into place to help ensure that unaccompanied minors released to sponsors are attending their immigration hearings?

Response #2:

Before ORR releases a child to a sponsor, the sponsor must agree to ensure the child will attend immigration proceedings and report to U.S. Immigrations and Customs Enforcement for removal if subject to a removal or voluntary departure order. The sponsor must also agree to notify the DOJ Executive Office for Immigration Review's (EOIR) immigration court or Board of Immigration Appeals within five days of any change of address or phone number of the minor, and to notify U.S. Citizenship and Immigration Services within ten days of any change of address. In addition, the sponsor must agree to attend a legal orientation program provided by EOIR if it is available in the community where the sponsor resides. After release, it is the responsibility of the sponsor to ensure the child's presence at all future proceedings before DHS and DOJ. If the child fails to do so, there can be serious legal consequences, including the issuance of a removal order in absentia.

As part of ongoing coordination with our interagency partner agencies, HHS notifies DHS of the name and address of the sponsor both prior to and after the child is released to the sponsor. In cases where the child is in the Government's custody for 60 days or more, HHS also informs EOIR's Office of Legal Assistance Program staff of the name and current address of the sponsor at the time a child is placed with a sponsor.

ORR does not have any legal authority over the sponsor after the agency releases a child, and does not have further legal authority to compel a sponsor to ensure that a child attends his or her hearing. However, the provision of legal representation to UC released from ORR custody is likely to increase the probability that children attend hearings. Under the TVPRA, 8 U.S.C. 1232(c)(5), HHS is required to ensure "to the greatest extent practicable" that unaccompanied

children have counsel, and required to the "greatest extent practicable… to make every effort" to utilize the services of pro bono counsel (consistent with separate statutory provisions stating that the Government is not required to pay for such legal representation 8 U.S.C. 1362) To increase the efficiency of the immigration court system for these children, ORR funds legal services for unaccompanied children in ORR's care and post-release. ORR supports *pro bono* representation, and funds legal representation for children in ORR's long-term foster care program; for children in care seeking voluntary departure, imminently facing an order of removal, or otherwise without reunification options; and for a limited number of children following their release from care.

For those children receiving post-release services, post-release workers monitor and encourage the unaccompanied child's attendance at all immigration court proceedings. The post-release worker is also expected to remind the sponsor to notify DHS upon any change of address.

Post-Hearing Questions for the Record
Submitted to Mr. Joseph E. Langlois
From Senator Joni Ernst

"The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

Question#:	1
Topic:	asylum
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Joni Ernst
Committee:	HOMELAND SECURITY (SENATE)

Question: In your written testimony, you stated that 69% of the unaccompanied minors applying for asylum in Fiscal Year 2014 did so more than 300 days after their arrival in the United States. Furthermore, you stated that if USCIS - which has the initial jurisdiction over their asylum applications - denies a request for asylum, the case is sent back to an immigration judge for a de novo hearing on the claim. As this process can take a significant amount of time and resources, are there any opportunities to streamline this process that would continue to protect against the wrongful repatriation of children and comply with the United States' international obligations?

Response: As stated in the question, most unaccompanied children who apply for asylum do so more than 300 days after their arrival in the United States. This time period contributes significantly to the length of the overall process. Unaccompanied children often need time to prepare their asylum applications, a circumstance that Congress recognized by specifying in the Trafficking Victims Protection Reauthorization Act of 2008 that the one-year filing deadline for asylum applications does not apply to unaccompanied children.

Once an unaccompanied child files an asylum application with USCIS, USCIS prioritizes the scheduling of his or her interview. If USCIS does not grant asylum, USCIS transfers the case back to the immigration judge so that removal proceedings can continue and the child can apply for asylum before the immigration judge. The opportunity to apply before the immigration judge with the benefit of the record developed in the non-adversarial process before a USCIS asylum officer is an important aspect of Congress's choice to give USCIS initial jurisdiction over the asylum claims of unaccompanied children.

Supporting efforts to facilitate access to counsel early in the process may help streamline the overall process. More than 90 percent of unaccompanied children are represented

Question#:	1
Topic:	asylum
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Joni Ernst
Committee:	HOMELAND SECURITY (SENATE)

when they file asylum applications with USCIS. USCIS has seen that the presence of a representative can increase efficiencies for applicants in the asylum process. However, initially securing a representative often takes time.

After representation is secured, there may still be factors that prolong the process. For example, representatives have relayed that it can take two or three meetings with a child before the child opens up to the representative about the asylum claim, thereby increasing the time it takes to prepare the application. In addition, many *pro bono* attorneys serving as representatives to unaccompanied children are new to asylum law and procedures and take additional time to prepare their asylum applications. In order to assist, several of the USCIS Asylum Offices have conducted training sessions for *pro bono* attorneys to provide an overview of asylum law and procedures with respect to unaccompanied children. Supporting similar efforts to equip representatives of unaccompanied children may result both in more effective representation and greater efficiencies in the overall process.

Post-Hearing Questions for the Record
Submitted to Mr. Philip T. Miller and Mr. Joseph E. Langlois
From Senator Rob Portman

"The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

Question#:	2
Topic:	UACs 1
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: In a statement made on July 10, 2014, and with the message repeated thereafter, Secretary Johnson said that "our message is clear to those who try to illegally cross our borders: you will be sent back home... Those who cross our border illegally must know there is no safe passage, and no free pass; within the confines of our laws, our values, and our resources, they will be sent back to their home countries." I have seen varying numbers in reports on the number of UACs apprehended and the number of UAC removals since 2009. What are the most accurate numbers DHS can provide on the number of UAC apprehensions and removals by country of citizenship since 2009? Do you believe the number of removals is satisfactory?

Response: Please see the below chart for unaccompanied children apprehensions and removals by country of citizenship since 2009.

U.S. Border Patrol Nationwide Unaccompanied Alien Children Apprehensions by Citizenship FY2009 - FY2015TD through June
Data includes Deportable Aliens Only
Data Source: EID (Unofficial) FY10-FY14 as of End of Year Dates; FY09, FY15TD as of 7/27/15

Country	FY09	FY10	FY11	FY12	FY13	FY14	FY15 YTD
ALBANIA	-	-	1	1	20	20	1
ARGENTINA	-	-	-	-	-	1	-
ARMENIA	1	-	-	-	-	-	-
BAHAMAS	-	1	-	1	-	1	2
BANGLADESH	-	-	1	-	3	7	9
BELIZE	2	1	3	4	3	21	1
BOLIVIA	1	-	-	-	1	1	1
BRAZIL	14	18	1	5	7	7	19

Question#:	2
Topic:	UACs 1
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

CAMEROON	3	-	-	-	-	-	-
CANADA	10	9	11	12	5	5	2
CHILE	4	-	-	-	-	-	1
CHINA, PEOPLES REPUBLIC OF	24	45	15	16	29	101	32
COLOMBIA	9	3	2	2	1	3	2
COSTA RICA	2	2	1	5	1	4	-
CUBA	8	3	7	2	2	6	-
DEM REP OF THE CONGO	1	-	-	-	-	-	-
DOMINICAN REPUBLIC	5	16	3	7	7	6	1
ECUADOR	124	216	117	200	451	676	184
EL SALVADOR	1,220	1,907	1,394	3,314	5,990	16,405	5,482
ERITREA	2	1	-	-	-	-	-
GUATEMALA	1,117	1,501	1,567	3,835	8,068	17,068	9,352
GUYANA	-	2	-	-	-	-	-
HAITI	3	5	3	2	15	30	7
HONDURAS	968	1,023	977	2,997	6,747	18,253	3,152
INDIA	1	71	143	23	76	70	71
INDONESIA	1	-	-	-	-	-	-
IRELAND	-	-	-	-	-	-	1
ISRAEL	1	-	-	-	-	-	-
JAMAICA	-	1	-	-	-	1	-
KOREA	-	-	-	-	1	-	-
LIBERIA	1	-	-	-	-	-	-
LIBYA	1	-	-	-	-	-	-
MACEDONIA	1	-	-	-	-	-	-
MALI	-	-	1	-	-	-	-
MEXICO	16,115	13,727	11,773	13,974	17,240	15,651	8,311
MOROCCO	-	-	-	-	-	1	-
NEPAL	-	2	1	-	3	1	4
NEW ZEALAND	-	1	-	-	-	-	-
NICARAGUA	18	35	14	43	97	213	63
NIGERIA	-	-	-	-	1	-	-
PAKISTAN	-	-	1	-	-	-	-
PANAMA	-	-	1	-	-	-	-
PERU	7	19	13	15	40	58	13
PHILIPPINES	1	-	-	-	-	-	-
PORTUGAL	-	-	-	-	1	-	-
ROMANIA	1	7	11	16	18	19	9
RUSSIA	-	-	1	-	1	-	-
RWANDA	-	-	-	-	1	-	-
SIERRA LEONE	1	-	-	-	-	-	-
SOUTH AFRICA	-	2	1	-	-	-	-

Question#:	2
Topic:	UACs 1
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

SRI LANKA	-	2	1	2	-	-	1
SYRIA	-	-	-	-	-	1	-
TAIWAN	-	-	-	-	1	-	-
TANZANIA	-	-	-	1	-	-	-
TRINIDAD AND TOBAGO	-	1	-	-	1	-	-
TURKEY	-	1	-	1	1	-	-
UKRAINE	1	-	-	-	-	-	-
UNITED KINGDOM	-	-	1	-	-	-	-
UNKNOWN	1	-	2	3	1	1	1
UZBEKISTAN	1	-	-	-	-	-	-
VENEZUELA	1	-	-	-	-	-	-
Nationwide Total	**19,671**	**18,622**	**16,067**	**24,481**	**38,833**	**68,631**	**26,722**

U.S. Immigration and Customs Enforcement Nationwide Unaccompanied Alien Children Removals by Citizenship FY 2009- FY 2015 YTD through June 20, 2015

Unaccompanied Children Removals by Country of Citizenship

Country	FY09	FY10	FY11	FY12	FY13	FY14	FY15 YTD, as of 6/20/15
BAHAMAS	-	1	-	-	-	1	1
BARBADOS	-	1	-	-	-	-	-
BELIZE	-	-	-	1	-	-	-
BERMUDA	-	-	-	-	2	-	-
BOLIVIA	-	-	1	-	-	-	-
BRAZIL	6	4	7	6	5	3	3
CANADA	-	1	3	1	-	-	1
CAYMAN ISLANDS	-	-	1	-	-	-	-
CHILE	1	-	-	-	-	-	-
CHINA, PEOPLES REPUBLIC OF	1	1	-	-	1	1	3
COLOMBIA	-	3	2	3	-	-	2
COSTA RICA	2	1	-	-	-	1	-
DOMINICA	-	1	-	-	-	-	-
DOMINICAN REPUBLIC	-	-	1	4	3	2	1

Question#:	2
Topic:	UACs 1
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

ECUADOR	11	7	15	11	11	16	8
EL SALVADOR	96	117	136	136	159	190	120
FINLAND	1	-	-	-	-	-	-
GERMANY	2	1	3	-	-	-	-
GUATEMALA	534	520	515	626	661	686	387
GUINEA	-	1	-	-	-	-	-
HAITI	-	-	-	1	1	-	1
HONDURAS	352	326	297	430	461	503	301
INDIA	-	2	1	-	-	-	-
ISRAEL	-	-	-	-	1	-	-
JAMAICA	-	-	1	1	-	-	-
KENYA	-	-	-	2	1	-	-
KOREA	-	-	1	-	-	-	-
LATVIA	-	-	-	-	-	1	-
MACEDONIA	-	1	-	-	-	-	-
MEXICO	350	690	696	574	548	484	655
MICRONESIA, FEDERATED STATES OF	-	-	-	-	-	1	-
MONGOLIA	1	-	-	-	-	-	-
NICARAGUA	3	6	5	6	3	4	3
PAKISTAN	-	-	-	-	-	1	-
PANAMA	-	-	2	-	-	-	-
PERU	1	2	1	2	2	3	2
PORTUGAL	-	-	-	-	-	1	-
ROMANIA	-	-	-	-	6	1	3
RUSSIA	-	-	3	-	-	-	-
SAUDI ARABIA	-	1	-	-	-	-	-
SIERRA LEONE	-	-	1	-	-	-	-
SOUTH AFRICA	-	-	-	-	-	1	-
SPAIN	-	-	-	2	-	1	-
SRI LANKA	-	-	-	2	-	-	-
ST. KITTS-NEVIS	-	-	-	-	1	-	-
THAILAND	-	1	-	-	-	-	-
TRINIDAD AND TOBAGO	-	-	1	-	-	-	-
UNITED KINGDOM	-	2	-	1	1	-	1

Question#:	2
Topic:	UACs 1
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

VENEZUELA	-	-	2	-	1	-	-
Total	**1,361**	**1,690**	**1,695**	**1,809**	**1,868**	**1,901**	**1,492**

Question#:	3 & 4
Topic:	UACs 2
Hearing:	The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What percentage of apprehended UACs since 2009 have been removed?

Response: Since the beginning of fiscal year 2009 through June 20, 2015, U.S. Immigration and Customs Enforcement (ICE) booked-in 128,861 unaccompanied children and removed 11,816 unaccompanied children. These figures only represent those unaccompanied children returned to their home country by ICE and do not include Mexican or Canadian minors who were allowed to withdraw their application for admission and return to their home country by U.S. Customs and Border Protection in accordance with – 8 U.S. C. § 1232(a)(2). Also, the unaccompanied children removed were not necessarily the same unaccompanied children as were booked-in during the time period above, so a per se percentage would not necessarily be an accurate reflection of the results of those particular cases. This is due to a myriad of factors that affect the relationship between book-ins and removal numbers such as contiguous country returns, and other possible outcomes, such as case continuances, case closures, failures to appear for immigration proceedings, removals of unaccompanied children during the affected time period who were booked-in prior to 2009, etc.

Question: Are there additional resources or authorities required to make the removal process more efficient?

Response: DHS continues to work with the Department of Justice's Executive Office for Immigration Review (EOIR) to prioritize the cases of recent border crosser unaccompanied children. We support the President's 2016 Budget for EOIR, which proposes to increase the number of immigration judges and provide legal representation to unaccompanied children to improve efficiencies and reduce the backlog of cases in the immigration court system.

SECURING THE BORDER: UNDERSTANDING THREATS AND STRATEGIES FOR THE MARITIME BORDER

WEDNESDAY, JULY 15, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order. I guess we will start before Senator Carper arrives. He should be arriving shortly.

I want to welcome the witnesses coming here this morning, taking the time, for your thoughtful testimony. I am looking forward to hearing it and giving Committee Members an opportunity to ask questions.

This is our eighth hearing on basically the security of our border of the United States, a top priority of the Federal Government. Following this hearing, and prior to our August recess, our Committee is planning on issuing a report, an interim report, laying out all the components of our border, and the extent that we have it secure and the extent that we have not secured it. And I think our first hearing it was pretty clear by the testimony we received that our border is not secure.

This hearing is going to be centered on our maritime borders, and to just kind of put things into perspective, a lot of our hearings have obviously concentrated on what is easily and readily acknowledged as our No. 1 problem, the southwest border, which is about 2,000 miles long. And in terms of the extent of the problem, we have had about 480,000 interdictions in fiscal year (FY) 2014. That number is down for various reasons, but 480,000 interdictions.

Our Northern Border is more than twice that length, 5,225 miles long, and we had a little over 3,000 interdictions. And, of course, our maritime border is enormous in comparison, about 95,000 miles, and we have had about 7,500 interdictions.

So it is an enormous task. We are concerned, obviously, about drug smuggling, potential international terrorists, crime, those

types of issues that the representatives that are testifying here today from the Coast Guard and from the Office of Air and Marine (OAM), which are components of the Homeland Security Department, as well as another individual from the Homeland Security Department will be here to discuss.

So, again, this is from my standpoint an important hearing, kind of wraps up the different components that we wanted to explore in our eight-hearing series on the border.

I do ask unanimous consent that my written statement be entered into the record, and Senator Carper is always so kind as to grant that or not object. And, without objection, so ordered.

With that, I will turn it over to our Ranking Member, Senator Tom Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. To our witnesses, good to see you. Some of you have been here not long ago. We are going to have to start paying on a per diem basis or something if you keep coming back like this. But we are grateful to all of you.

Just in reviewing on the train coming down today, not just reading your statements but also just reading your backgrounds, we are just so fortunate to have people with your pedigree, your record of service. Some of you are pretty smart. They schooled you. I am impressed. But thank you for all of that and for being here today. Mr. Chairman, thanks for pulling this together for this hearing.

Today we take note of an important but often overlooked aspect of our homeland security: our Nation's maritime borders.

The United States has more than, I think, 95,000 miles of shoreline. Most of that is not in Delaware. The oceans, rivers, and lakes bordering the United States are both natural barriers and super highways. My home State of Delaware has about 350 miles of shoreline. It is also home to the Port of Wilmington, Delaware, which ranks as the Nation's leading gateway for imports of fresh fruits, bananas, and juice concentrate. If you ate a banana this morning, there is a good chance it came through the Port of Wilmington. So maritime activity is serious business for us in Delaware, and I know for many others on this Committee it is a serious matter for our country.

But the same waters that facilitate so much legitimate travel and trade can also be a pathway, as we know, for many illegal activities. For example, we know that drug traffickers, human smugglers, and counterfeiters all take advantage of the difficulty in securing our maritime borders.

Maintaining "situational" or "domain" awareness of our country's vast maritime borders is extremely challenging. I do not need to tell you that. And trying to actually disrupt or intercept threats that approach by water can be even more daunting.

But, thankfully, we have many Federal employees—servants, if you will—who dedicate their lives to stopping these threats from entering our country by water. Just last week, I had the pleasure of meeting several dozen of these fine people at the Coast Guard station at Indian River Inlet near Rehoboth Beach in Delaware.

I am so proud of the work there led by Captain Ben Cooper, and among the troops that he leads is Petty Officer Greenwell whom I

talked about on the Senate floor a couple of weeks ago, and the rest of men and women at Indian River Inlet are doing important work, saving a lot of lives, protecting people and property. Day and night, Captain Cooper and his team patrol our busy coasts in Delaware and along the Atlantic and are always ready to provide assistance should there ever be an emergency. So we thank you for all that you do for the people of our State and for our country, as well as our guests.

The Department of Homeland Security (dhs) has a unique and a leading role in maritime border security. It is home to the U.S. Coast Guard, home of the Office of Air and Marine within Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE), which conducts investigations to disrupt trafficking and other threats. These agencies or their predecessors have been protecting our shores since the founding of our Nation. We are fortunate to have leaders from each of these agencies here today to talk with us about the important work that they do.

It is my hope that we can learn more about a few key issues here today. First, we need to understand the current state of our maritime border security. I would also like for our witnesses to talk about what a secure maritime border actually looks like to them. Next, we need to develop a better understanding of the top threats in the maritime environment and how they are evolving.

As we have tightened up security on our southern land border, for example, traffickers and smugglers are seeking out other paths in the Caribbean or the Pacific coast. We need to be ready to combat this trend as we continue to "squeeze the balloon" along our Nation's borders. Given the vastness of our maritime borders, it is important that there is close coordination among agencies, as well as good cooperation with our trusted international partners.

Finally, I hope to hear today from each of our witnesses about the equipment and resources available to you and to your colleagues to ensure our maritime border security. For instance, I know that you often rely on air surveillance—I know personally because I was down there flying in one of your P–3's not long ago—to direct where vessels should go to disrupt criminal activity. Yet too many times, we have assets up in the air without the right kind of technology or surveillance packages. That is not good. That is not helpful. This also hampers our efforts on our land borders while wasting a lot of taxpayers' money, and we need to be smarter than that.

That is enough from me. We are anxious to hear from all of you and have a good conversation. Thank you all.

Chairman JOHNSON. Thank you, Senator Carper.

I have been made aware that there will be one vote at 10:30, so we will keep the hearing going and hopefully Committee Members can cooperate with each other in terms of sticking around to ask questions to keep the hearing going.

It is the tradition of this Committee to swear in witnesses, so if you will all stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Admiral BROWN. I do.

Mr. ALLES. I do.

Mr. EDGE. I do.

Chairman JOHNSON. Please be seated.

Our first witness is Rear Admiral Peter Brown. Admiral Brown is the Assistant Commandant for Response Policy for the U.S. Coast Guard. He has served multiple tours of duty at sea. He has also served as the Chief of Response for the Seventh Coast Guard District and Chief of Staff for Coast Guard Atlantic Area. Rear Admiral Brown oversees the development of strategic response doctrine and policy guidance for all Coast Guard forces. Admiral Brown.

TESTIMONY OF REAR ADMIRAL PETER J. BROWN,[1] ASSISTANT COMMANDANT FOR RESPONSE POLICY, U.S. COAST GUARD

Admiral BROWN. Good morning, Chairman Johnson, Ranking Member Carper, and other Members of the Committee. I am honored to be here today to discuss the Coast Guard's role in securing our Nation's borders. I thank you for your strong support of the Coast Guard and our men and women in uniform.

It is also a pleasure to be here with two of our most important partners in maritime border security: Customs and Border Protection and U.S. Immigration and Customs Enforcement.

The Coast Guard's success is due in no part to the partnerships that we have with these two organizations, and I would personally like to thank both Executive Director Edge and Assistant Commissioner Alles for their ongoing support and leadership.

My complete statement has been provided to the Committee, and I would ask that it be entered into the record.

Mr. Chairman, maintaining border security while facilitating lawful travel and trade is a fundamental national security interest, requiring comprehensive, coordinated efforts across many departments and agencies and, in particular, the Department of Homeland Security (DHS). As members of the Committee are aware, over 90 percent of global trade travels through maritime conveyances, making the safety and security of our maritime borders both an economic and national security imperative.

The Coast Guard conducts operations every day to protect, prevent, and respond to a broad range of maritime border security threats, including illicit trafficking of narcotics and people by organized criminal networks, undocumented migration, the exploitation of our natural resources, potential terrorist activities, and the disruption of maritime commerce. So our strategy is to secure the borders in a layered defense, one that engages with foreign partners and takes action far from U.S. shores where threats to security and national sovereignty emanate. Our strategy focuses on exerting our unique authorities and capabilities in the maritime domain before those threats land in our ports, on our beaches, or at our borders.

Overseas, the Coast Guard assesses foreign port security and the antiterrorism measures of international trading partners through the International Port Security Program. These activities aim to ensure that cargo bound for the United States meets all United States and international security standards. Additionally, in coordination with Customs and Border Protection, we receive and screen

[1] The prepared statement of Rear Admiral Brown appears in the Appendix on page 1446.

notices of arrival for both cargo and personnel long before commercial vessels arrive in the United States. We have liaison and attache officers posted at multiple embassies overseas and facilitate action across the full spectrum of maritime governance.

Closer to shore, using our major cutters, maritime patrol aircraft, armed helicopters, and law enforcement detachments, we deploy assets to intercept those threats where they are most vulnerable: at sea. Along with our national security cutters, the Coast Guard's essential effort to recapitalize its fleet through the Offshore Patrol Cutter Acquisition Project will ensure that the Coast Guard is capable of projecting vital law enforcement presence on the high seas, in the 200-mile U.S. Exclusive Economic Zone, in our customs waters, and in our territorial seas for decades to come.

The Coast Guard is the only U.S. Government component that has at all times both defense and law enforcement authority and is able to make inquiries, examinations, inspections, searches, seizures, and arrests for violation of U.S. laws both on the high seas and in U.S. waters. By maintaining that overt presence offshore and in the littoral region, the Coast Guard has interdicted more than 2,600 undocumented migrants this year alone and deterred many more from taking to the sea in dangerously overcrowded and unseaworthy vessels.

Likewise, just this past June, the Coast Guard conducted 22 maritime interdictions, supported by CBP and others, that resulted in the detention of more than 60 suspects and removed more than 14 metric tons of pure uncut cocaine. In one case, our new national security cutter Stratton, using onboard sensors and law enforcement intelligence gained from other interdictions, located and seized a semi-submersible vessel with 2.8 metric tons of cocaine in the Pacific Ocean. This product was ultimately destined for the United States and would have left a trail of corruption, instability, and death as it moved through Central America and Mexico.

Through a single month of interdictions, the Coast Guard denied criminal networks more than $480 million in wholesale drug proceeds and profits. Cases such as these that result in the detection and prosecution of traffickers generate additional actionable intelligence and fuel our cycle of success. Over the last decade, law enforcement intelligence gained from Coast Guard interdictions contributed to the arrest and extradition of nearly 75 percent of all drug kingpins who were extradited to the United States.

Successfully patrolling and enforcing the maritime border requires a strategic outlook, tactical execution, and Department of Homeland Security unity of effort. Along the Southern Border, the Coast Guard operates within a new DHS Southern Border and Approaches Campaign Plan. The three task forces set up under the Campaign Plan—Joint Task Forces East, West, and Investigations—operate cooperatively to maintain effective border security, and Coast Guard Vice Admiral Dean Lee is the Director for the Joint Task Force East.

In addition, the Commandant, Admiral Zukunft, has signed the Coast Guard Western Hemisphere Strategy that outlines three priorities: combating networks, securing borders, and safeguarding commerce.

Thank you, sir.

Chairman JOHNSON. Thank you, Admiral.

Our next witness is Randolph D. Alles—"Tex," I guess you call him? I like that name. Mr. Alles is the Assistant Commissioner for the Office of Air and Marine with the U.S. Customs and Border Protection in the Department of Homeland Security. Office of Air and Marine is the world's largest aviation maritime law enforcement organization. Before joining OAM, Mr. Alles served in the U.S. Marine Corps for 35 years, retiring in 2011 as a Major General. Mr. Alles.

TESTIMONY OF RANDOLPH D. ALLES,[1] ASSISTANT COMMISSIONER, OFFICE OF AIR AND MARINE, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. ALLES. Thank you very much, sir. Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, it is an honor to appear before you today and also with my Homeland Security Investigations (HSI) cohorts and also Coast Guard, who we work with extensively daily.

The threat in the maritime environment is dynamic. Smugglers continually adjust their tactics in order to counter our latest efforts to apprehend them. Increasingly, smugglers exploit normal traffic patterns to conceal their intent, often mimicking a legitimate recreational or commercial voyage. Small vessels in particular are ideal conveyances for this tactic because they operate in a largely unregulated environment, while providing ample opportunity for concealing people or cargo.

OAM thrives by being extremely efficient and adaptive. Our unique authorities and specialized capabilities enable us to bridge border environments and jurisdictions, providing important continuity to investigations. OAM's marine interdiction agents have a singular law enforcement mission. They are empowered particularly to take necessary action, including conducting searches and participating in investigations, obtaining and serving warrants, making arrests of U.S. citizens, and also seizures of property.

Our agents undergo intense training in maritime tactics in order to swiftly and safely interdict smuggling threats and mitigate the dangers of prolonged pursuits. Additionally, they are experts in interview technique and are well versed in applicable laws.

OAM agents, sometimes in plain clothes or undercover, routinely collaborate with investigative partners on covert surveillance and enforcement operations in the maritime domain. This capability is essential to combating a threat that thrives on concealment in legitimate traffic.

OAM's specialized fleet of vessels, particularly our next-generation coastal interceptors, are built from the hull up for interdiction. These high-performance vessels enable our targets to respond quickly and effectively to incursions and to our territorial waters. With a limited number of agents and assets, OAM has a substantial impact in efforts to protect our Nation's border. OAM efforts have resulted in the seizure of significant quantities of contraband and disrupted considerable illicit activity before it reaches our

[1] The prepared statement of Mr. Alles appears in the Appendix on page 1452.

shores. In fiscal year 2014, OAM efforts resulted in nearly 5,000 arrests of subjects, 80,000 apprehensions, and the seizures of nearly 800 weapons, $148 million in currency, and more than 1 million pounds of illegal drugs.

Ultimately, maritime security requires a unity of effort. No single entity has the capability or capacity to address all aspects of maritime security. Information sharing and strong partnerships are critical to understanding and addressing maritime threats. We frequently participate in joint operations with a variety of Federal partners, including the U.S. Coast Guard, and work very closely with multiple investigative components, especially U.S. Immigration and Customs Enforcement.

The recently implemented Southern Border and Approaches Campaign, mentioned by Admiral Brown, leverages the various roles, responsibilities, and capabilities of multiple DHS agencies to comprehensively address border and maritime threats. OAM has been extensively involved in the planning of this effort on the Joint Task Force East, directed by Admiral Lee, the Deputy, is an OAM employee, Mr. Merton Cox.

Moving forward, we will continue to work with our partners to enhance our detection, investigation, and interdiction capabilities to address emerging threats and adapt to changing conditions in the maritime domain. We will fully network our fleet and operational centers to share critical information in real time.

OAM is an integral part of the Department's border security mission. We blend specialized interdiction capabilities, skilled investigations, a modern domain awareness network, and seamlessly apply them across multiple environments and jurisdictions. In doing so, we add a critical layer of cohesion and coordination to maritime border security that no other agency provides.

Chairman Johnson, Ranking Member Carper, distinguished Members of the Committee, thank you for this opportunity to speak, and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Alles.

Our final witness is Mr. Peter Edge. Mr. Edge is the Executive Associate Director of Homeland Security Investigations (HSI), for the U.S. Immigration and Customs Enforcement at the Department of Homeland Security. Prior to this position, Mr. Edge served as Deputy Executive Associate Director and before that as the Special Agent in Charge in the HSI Newark office. He has also served as Director of the Office of Congressional Relations at ICE headquarters and as Acting Deputy Special Agent in Charge of the New York HSI office. Mr. Edge.

TESTIMONY OF PETER T. EDGE,[1] EXECUTIVE ASSOCIATE DIRECTOR, HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. EDGE. Thank you very much, Chairman Johnson and Ranking Member Carper and distinguished Members. It is a great opportunity to be here today, and I would like to discuss ICE's efforts to improve security along the maritime border of the United States. As you know, we work closely with CBP and the Coast Guard to target Transnational Criminal Organizations (TCO). Today, I will highlight our enforcement activities, operational challenges, and successes in the maritime environment.

As interdiction efforts along the U.S.-Mexico land border increase, drug and human smuggling organizations have expanded their operations to include maritime routes where they attempt to evade detection by concealing contraband in sea freight, as well as in commercial fishing vessels. As a result of increased Coast Guard and CBP patrols, smuggling organizations are utilizing wooden fishing panga boats to travel further out to sea and up the California coast, to circumvent interdiction efforts.

As a part of our ongoing efforts to identify, disrupt, and dismantle transnational criminal organizations, in 2005 we created the Border Enforcement Security Task Force (BEST). This initiative promotes cooperation and coordination with Federal, State, local, tribal, and international law enforcement authorities. Currently, we operate 37 BEST units across 16 States and Puerto Rico, 19 of which maintain maritime units.

The individual BESTs, located in maritime environments, face unique challenges along the shoreline because of the surrounding geography. For instance, since its establishment this past April, our newest BEST in Houma, Louisiana, has afforded us the opportunity to be more robustly engaged in the drug-trafficking organizations who are exploiting emerging Caribbean ports for maritime smuggling along the Gulf Coast. This smuggling is done via containerized cargo, commercial vessels, crew members smuggling drugs, and non-commercial fishing and sailing vessels.

A notable success from the Newark BEST involves our creation of a carjacking task force in response to the dramatic increase in luxury vehicles being violently carjacked in New Jersey. These vehicles are then smuggled in containers from the Ports of Newark and Elizabeth to West African countries, and they are used there to fund illicit transnational criminal activity. The BEST investigations resulted in 29 arrests and the recovery of approximately 180 stolen vehicles worth more than $10 million.

Along the Gulf Coast, the Houston BEST focuses on maritime threats from Central and South America through its Mexico Corridor Initiative. This initiative leverages law enforcement and the Department of Defense (DOD) resources. The BEST tracked a commercial freighter vessel from the Dominican Republic that traveled to Puerto Rico via Venezuela. To interdict this vessel, the Houston BEST worked with our office in Puerto Rico and with CBP's Office of Air and Marine to yield several arrests and seize nearly 2,800

[1] The prepared statement of Mr. Edge appears in the Appendix on page 1462.

kilograms of cocaine. The Coast Guard made an additional 11 arrests, and the freighter was seized by the U.S. Government.

In San Diego, the BEST has been successful in combating criminal organizations smuggling drugs and people from Mexico into the United States along the coastline of Southern California. The BEST is part of the Southwest Border High Intensity Drug Trafficking Area and leads a complex investigation targeting a large-scale maritime smuggling organization operating out of Baja California. Since its initiation in 2012, the investigation has resulted in significant enforcement outcomes across judicial districts. During the last fiscal year, the operation yielded over 30 interdictions and 95 arrests, as well as the seizure of 81,000 pounds of marijuana and 30 pounds of methamphetamine.

A high-impact example of our maritime efforts outside of the BEST program is the Joint Operation Panama Express. This is a U.S. interagency strike force with significant HSI participation that identifies and interdicts multi-ton quantities of cocaine transported in the international maritime environments from South America through Central America and the Caribbean on to the United States. We play a critical role in Panama Express through our investigative authorities and our ability to leverage interagency resources.

Along with the successes that we are achieving in the BESTs, we have also been designated as the executive agent for the Joint Task Force for Investigations that you heard about from my colleagues, and hopefully, we will be able to discuss more of that today.

These investigative operations in the maritime environments are compelling examples of how the agency and the Department applies a "whole of Government" approach to targeting criminal organizations and preventing them from perpetuating their adverse impacts on U.S. border security. We remain dedicated to this cause and this mission, and we look forward to working with the Committee to effect some positive change in this area. We appreciate your support and the opportunity to be here today.

Thank you.

Chairman JOHNSON. Thank you, Mr. Edge. I will start the questioning I think with you. You mentioned transnational criminal organizations. I would like to get some sense of the percentage of your attention or the percentage of the activity devoted to the different types of crimes—in other words, drug smuggling, human trafficking, potential terrorist activity, the combination of the drug cartels with trans-criminal organizations, with potential Islamic terror groups like Hezbollah.

Can you give this Committee some sense of the proportion of the threats and the proportion of your time and efforts trying to combat those various components?

Mr. EDGE. Certainly, Mr. Chairman. First and foremost, our investigative efforts are, again, based on our foundation as a border security agency. So we start there, and we enforce a multitude of violations that affect our Nation's national security. So, for drug smuggling, of course, drugs have, traditionally, always come across our Nation's borders, and with our coordination with our counterparts at Customs and Border Protection and the Coast Guard, this

is one of our primary missions, to keep that contraband out of this country.

Chairman JOHNSON. But, again, is that 50 percent of your time and effort, 50 percent of the crimes being committed? Is it 90 percent? I realize there is no set percentage, but I just want to get some sort of sense of that.

Mr. EDGE. Well, because we do keep copious information on our hours spent on our investigative activities, I would venture to say that a little under 30 percent of our time is spent in the area of narcotics interdiction and drug-smuggling investigations. Whether through a task force, we participate in a High Intensity Drug Trafficking Area Task Force (HIDTA), or through our BEST activity, we are continually working on a lot of drug cases.

Chairman JOHNSON. OK. So fill in the other 70 percent.

Mr. EDGE. The other 70 percent includes child exploitation, or counterproliferation investigations. Our responsibility is also to enforce the export control laws of the United States, so we find ourselves in a lot of different areas. In addition there is our immigration portfolio, which includes document and benefit fraud, and identity theft.

Chairman JOHNSON. Mr. Alles, can you answer that question for your agency?

Mr. ALLES. I cannot give specific percentages. I would have to go back and look at my——

Chairman JOHNSON. A general sense is kind of what I am looking for here.

Mr. ALLES. I would say it is probably in the—I would estimate in the 40-percent range, if you talk about drug interdictions. On the TCO side, a primary focus in JTF–West is on these transnational criminal organizations, so that is a major effort in terms of taking down those networks. But I cannot give you a percentage of the time on that versus what they are just doing on regular border work.

Chairman JOHNSON. And, again, so 40 percent drugs. Describe the activities of the trans-criminal organizations.

Mr. ALLES. Well, from our standpoint, we are supporting ICE in their investigations on TCOs, or we are actually interdicting drugs in the transit zone or coming across the border. So when I give you that 40 percent, I am looking at the hours expended on my aviation side actually that is going toward those kinds of efforts.

Chairman JOHNSON. What I am trying to get at here is certainly when we came down and visited your site and were down in the Rio Grande Valley, the more we investigate this through our hearings, we are hearing the drug cartels combining with trans-criminal organizations, potentially a nexus with Islamic terror organizations like Hezbollah. I am trying to get some sort of sense specifically what is happening.

Mr. Edge, maybe you are the best one to answer that question. Can you give us some sense of what is happening?

Mr. EDGE. Well, what we find is that in all the areas that we are responsible for investigating, there ultimately is one motivation, and that is financial. The bad guys around the world want to make money to support these illicit activities that take place all over the world. We have found that through an export control in-

vestigation, for example, the investigation that I mentioned out of north New Jersey where the vehicles were being stolen and exported; that money ultimately can be used—we have found in several investigations—for illicit activities that fund terrorist activity.

Chairman JOHNSON. Is there a money-laundering aspect to the vehicle smuggling?

Mr. EDGE. Yes, sir.

Chairman JOHNSON. Can you describe that? Because I have had it described to me, and it is kind of hard to follow.

Mr. EDGE. Well, as far as the money-laundering aspect of this, and with all the violations that we enforce, there is a money-laundering aspect. We conduct these long-term financial investigations into that aspect by assessing the assets that the organization owns and has, and we try to follow the money through the various accounts. Depending on the nature of the crime, last summer when there was the UAC crisis that was down there at the border, we find ourselves in the situation where we were combating that by following the money. The funds that were being used to support those smuggling efforts, the human smuggling efforts on the southwest border, we were able to identify those accounts and seize that money, working very closely——

Chairman JOHNSON. Can you give us some sense of the dollar volume of, just the transnational criminal organizations? What is the dollar value of the drug trade, of their activities? Can you give us some sort of sense there? Are we talking tens of billions, hundreds of billions of dollars?

Mr. EDGE. I cannot give you an exact assessment, but it is in the billions of dollars. No matter what discipline or violation that we are enforcing, whether it is intellectual property theft or any of these other violations, such as human smuggling, there are funds that are used and received to support those activities and to increase the activities into other areas.

Chairman JOHNSON. General McCaffrey in testimony before this Committee estimated—and it has not been disputed yet—that we were only interdicting on the southwest border somewhere between 5 to 10 percent of illegal drugs coming into this country. That is through the southwest border. A lot of your activities involve interdicting drugs through the maritime borders. Is it a similar type percentage? Are we only by your estimates interdicting 5 to 10 percent of drugs? Mr. Alles.

Mr. ALLES. I cannot provide an estimate on the percentage of interdictions, I mean the stuff that we do not interdict. So last year our office interdicted $14 billion in drugs, street value on the drugs. By trying to estimate what that is of the total of the United States is—again, we do not know what we miss.

Chairman JOHNSON. Do you have a sense that we are interdicting a high percentage or a very low percentage?

Mr. ALLES. I mean, I would sense that, we are not getting over 50 percent. I just do not know, to be honest.

Chairman JOHNSON. Admiral, do you have any input on that?

Admiral BROWN. Yes, sir. The estimate that we have a national target of reducing about 40 percent of the cocaine supply approaching the United States. That is the nationally set target. It has been

a graduated target. It is 36 percent this year. It is moving up toward 40 percent.

Over the past several years, we have averaged between about 11 and 18 percent in terms of maritime interdictions of the known drug flow toward the United States. One of the challenges of that, as was mentioned earlier with regard to maritime domain awareness, is this is illicit activity that is trying to be concealed for detection. So our confidence in what we call the denominator of that, the actual flow, is somewhat limited, but based on best estimates of the intelligence community (IC) and the law enforcement community, in the maritime we interdict in the range of 11 to 18 percent. For the Coast Guard it has been about 450 metric tons over the past 5 years.

Chairman JOHNSON. Again, so that just underscores really how unsecure our borders truly are. When we are talking about 5 to 10 percent drug interdiction on the southwest border, 11 to 18 percent maritime—again, I am not being critical, but I am just laying out that reality. It is a really sad and frightening reality. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you, Chairman.

I wanted to ask each of you, I know during your testimony you talked about seeing cocaine and to some extent marijuana being smuggled through our maritime borders. In New Hampshire, we have a tremendous heroin epidemic, and previously I have heard from officials testifying before this Committee that the heroin is coming over on the land border, on the Southern Border. And so I was just curious if you are seeing any heroin coming over the maritime borders. And if not, why? And could you help me understand how these different trafficking routes work as we want to increase our ability to interdict a drug that, frankly, is killing so many people in this country? In my home State of New Hampshire, we have people dying every day on this, unfortunately, and it is too cheap. Whoever is best to answer that.

Mr. ALLES. I will take a whack at it here. I think, as you noted, Senator, the primary flow is across the land borders. So CBP has seen an increase in the amount of heroin interdicted through our ports of entry (POE), so that is a prime concern as the heroin flows coming out of Mexico through our ports of entry.

Just as an example, another problem that we have is we have a lot of aircraft each year that fly up to the border, and they land and they drop off drugs. This is a typical load of an aircraft that was interdicted in Mexico off of CBP information. It had 389 kilos of meth, 79 kilos of cocaine, 79 kilos of white heroin, 1.5 kilos of black tar heroin. So there is definitely a high flow of the heroin, more so than we have seen in years past. It is a problem that we are working against.

Senator AYOTTE. I am sorry. Go ahead, Admiral.

Admiral BROWN. Yes, Senator. I would add that in the maritime domain, we have seen relatively small quantities of heroin, typically mixed in with loads of cocaine. For example, just about a month or so ago, we had an interdiction of a bulk quantity of cocaine, several hundred kilos, off the coast of Central America, and

embedded within one of those cocaine packages was approximately 10 kilograms of heroin. We have also seen that on the Caribbean side, again, in relatively small quantities. But as Mr. Alles mentioned, the vast majority of heroin that comes into the United States does so across the land border, not a maritime border. But our Intelligence Community remains alert to instances of heroin trafficking in the maritime, and to the extent that we can, we interdict those when we know they are coming.

Mr. EDGE. Senator, if I may, I certainly concur with my colleagues, but also what we have seen with our investigative portfolio, is very similar to what they have seen. Most of the heroin is coming across the land border and the southwest border. But, of course, there is heroin that does come into the interior via commercial aircraft, and then that heroin is then transported to other parts in the Northeast and the Midwest.

It is a growing problem, and it is a problem that we see at the Ports of Entry where it is, in fact, commingled with other shipments. You might have a shipment of legitimate goods that might have heroin inserted inside them through containerized cargo, and that is where our BESTs have been very effective.

Over the past couple of years, we have seen a lot of commingled shipments, and the number of commingled shipments at our ports of entry are increasing.

Senator AYOTTE. And to address this, I have also spoken with General Kelly, the Commander of Southern Command, about this issue as well and coordinating with—because he has real concerns that this network also can be used for terrorist activity, as you have discussed with the Chairman.

What is it that you need to increase interdiction? Is it more planes, more people? What do we need to understand? Because we have a terrorism threat, we have the drug threat, all of which is bad for our country.

Mr. EDGE. Senator, I think we have done an effective job, and we can always do better, of course, but we have coordinated our efforts both from the investigative perspective and the operational perspective, and also through the sharing of intelligence information. At the Department of Homeland Security, the National Targeting Center, which is at CBP, is a place that all this information is vetted and reviewed, and that has been a great source for our investigative efforts as well. We have joined CBP in our efforts in assessing that information that we get from all around the world, not just domestically, so we can use our resources smarter.

Senator AYOTTE. So, Director Edge, I think all of us have been really shocked about what happened in San Francisco, and I would like to ask from the perspective of ICE, obviously you have a big piece of the job in enforcing our Nation's immigration laws. And I want to ask you about the existence of sanctuary cities and what your view is on that, and whether it frustrates the mission of ICE to have these cities who obviously we saw in the San Francisco situation where there was not cooperation between the city and obviously the Federal immigration authorities, and it has been really shocking to all of us to see that this beautiful young woman was murdered.

Mr. EDGE. I certainly agree that what happened in San Francisco is a terrible tragedy, and at ICE, we are attempting to work very closely with our law enforcement partners to ensure that circumstances like this will not happen again. And from the investigative side of ICE and Homeland Security Investigations, what we do very well is we work very closely with our State and local counterparts. We try to not only conduct our investigative efforts into areas that affect public safety, like our community shield gang operation where we are arresting and infiltrating gang activity around the country looking to arrest those foreign-born gang members who are committing violence and truly affecting public safety.

So one of the things that we will continue to do is work closely with our State and local counterparts and encourage them to work with us, so hopefully something like this will not happen again.

Senator AYOTTE. Well, let me just ask you, if your State and local counterparts as a policy matter will not work with you, doesn't it make your job more difficult?

Mr. EDGE. It would make our job more difficult, but from an investigative perspective, we usually get great cooperation from our State and local counterparts.

Senator AYOTTE. Well, it seems to me that if your State and local counterparts will not cooperate with Homeland Security when it comes to a situation like we saw in San Francisco, obviously there is real danger to the public on this. So I hope this is something that we take up in this Committee as well further, Mr. Chairman.

Thank you.

Chairman JOHNSON. Thank you, Senator Ayotte.

Before we go to, I guess, Senator Carper, Chairman McCain has got some time constraints. We are going to let Senator McCain ask a question.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Mr. Edge, you really did not answer the question. The fact is that this guy was arrested and deported five times, and the sanctuary city—your order to detain was not honored by the sheriff of San Francisco. So if you call that "great cooperation," fine. The rest of us do not.

And on the issue, by the way, of the drugs coming into the United States, General Kelly said that he watches the drugs come in because of sequestration he does not have the capability to interdict. And so if you think you are doing a great job, General Kelly certainly does not agree with that because he does not have the assets to interdict.

I have one question. What do you know about the published reports that Mexico has refused our offer to help in apprehending Mr. Guzman.

Mr. EDGE. Senator, certainly I have heard those published reports, and we stand ready to——

Senator MCCAIN. But do you know if it is true or not that the Mexican Government has refused our offer to provide assistance in tracking down Chapo?

Mr. EDGE. No, I do not.

Senator MCCAIN. You do not know anything about it?

Mr. EDGE. We have an office in Mexico City, and they are working very closely with——

Senator MCCAIN. Well, I would think that it would come to a higher level than our office in Mexico City, Mr. Edge. Thank you.

Mr. EDGE. Yes, sir.

Chairman JOHNSON. Senator Carper.

Senator CARPER. Gentlemen, again, welcome and thanks for your testimony and your responses to our questions.

I want to just go down the line—Admiral Brown, I will ask you first of all—and each of you give us two things that we can do to help the folks who with you, for you, be more effective in your work. Two things, each of you. And briefly.

Admiral BROWN. I will try to be brief, Senator. The first one is support for the recapitalization of our offshore patrol fleet, specifically the offshore patrol cutter acquisition. And kind of following up on Senator Ayotte's question before, what would it take for us to be more effective, our effectiveness in our maritime interdiction role is based really on three things:

Information, actionable intelligence. That is generated primarily through General Kelly's command, U.S. Southern Command (SOUTHCOM), and their Joint Interagency Task Force South (JIATF–S).

Aviation. We need fixed-wing air support to locate the targets that JIATF points us to. That is a combination of CBP aircraft, Coast Guard aircraft, and partner nation aircraft.

And then we need ships on station, and our long-range cutters, our high-endurance cutters, medium-endurance cutters, and the new national security cutter. And the future OPC equipped with a helicopter flight deck, an airborne use-of-force helicopter, multiple pursuit boats, and a seasoned Coast Guard crew and boarding teams are the most effective package in interdicting these threats, whether drug-trafficking threats, migrant-trafficking threats, or whether those criminal pathways are ultimately used for terrorism.

Senator CARPER. OK, good. When you look at the President's budget request for 2016 as it pertains to each of these areas, and you look at what the Appropriations Committees have reported out in terms of funding for those priorities, how do they match up?

Admiral BROWN. We are still examining the marks between the Senate and the House on the——

Senator CARPER. Just stay with the Senate. Just stay with the Senate, if you will. How does the Senate—how have the appropriators done with respect to these priorities? And how do they match up with the President's request, the 2016 budget?

Admiral BROWN. We believe there is sufficient appropriations to continue with our acquisition program of record to recapitalize the fleet. Obviously if we had more, we could do better, but they are sufficient to recapitalize on our program of record which will give us 8 national security cutters, 25 offshore patrol cutters, and 58 fast response cutters for coastal operations.

Senator CARPER. I read somewhere—and I think it was in your testimony—that we have funded one particular class of boat, maybe it is the national security cutter, but your real need was, I think, maybe the offshore cutters. Is that correct?

Admiral BROWN. That is correct. Our program of record is for the eight national security cutters that are already budgeted for and the offshore patrol cutter that is currently in preliminary design, and that acquisition will stretch out over a number of years into the future as our current medium-endurance cutters approach, some of them have exceeded, and all of them will ultimately exceed 50 years in service before they are retired as these new cutters replace them.

Senator CARPER. All right. Thank you.

General Alles.

Mr. ALLES. Thank you, sir. Two items you asked for——

Senator CARPER. Two items, please.

Mr. ALLES. On the procurement side, the multi-role enforcement aircraft——

Senator CARPER. I am sorry. Say this again more slowly.

Mr. ALLES. Multi-role enforcement aircraft is a procurement we need to continue. That is in the budget both in yours, the House's, and the President's request. That is an aircraft that does maritime patrol near shore. So it is not going to work down the transit zone with the Coast Guard, but does work with the Coast Guard and our assets in the customs waters of the United States.

Senator CARPER. What kind of surveillance packages do they include?

Mr. ALLES. It includes basically a radar package and an EO/IR eyeball on the aircraft, so it can do maritime surveillance and interdiction.

Senator CARPER. How does it compare with, say, what you have on your P–3s?

Mr. ALLES. It is shorter range. The radar is shorter range——

Senator CARPER. In terms of the surveillance capabilities, just compare it for us.

Mr. ALLES. Yes. The surveillance radar is less range.

Senator CARPER. Compare it with the surveillance capability of the P–3.

Mr. ALLES. I mean, the P–3, the dome version reaches out several hundred miles, and this thing is probably going to go 30, 40 miles. So it is a much more limited package, but we are using it in a different environment, too. So that is one item.

Senator CARPER. OK.

Mr. ALLES. The second item is our coastal interceptor of vessel. We just awarded the contract for that. We have a program of 50. Currently we can probably buy out about 22 of those, so that is going to be a long-term need for us in terms of getting that budgeted, into both the President's budget and the appropriations budgets, also.

Senator CARPER. OK, good. Thanks. Mr. Edge.

Mr. EDGE. Thank you, Senator Carper. From our perspective, our biggest resource is our human resource, and for our Border Enforcement Security Task Forces that we have around the country, we would like to make sure that they continue to be fully funded, and that our State and locals will be collocated with us as well as fully trained in the Federal law that they are going to assist us in enforcing. That is the first thing.

The second thing is to have hearings like this and to continue the dialogue on these issues is of significant importance to us to be able to do our job and enlist your support in the work that we are trying to do.

Senator CARPER. All right. In a trip that the Chairman and I and some others, I think Ben Sasse, took down to the border maybe 6 months ago, one of the things that we heard about was looking at South Texas, the Rio Grande Valley, the ability to put into the water boats on a fairly regular basis as opposed to—what is it?—about 100 miles, they had maybe one place where you could put in a boat to do surveillance along the border. And the need was for some more shallow-bottom boats. And just talk to us about that. You do not think about it in terms of securing our borders. You do not think much about how often do you have boat ramps. Well, it turns out that was an issue. And the other one was in a lot of places, the Rio Grande was pretty shallow, and some of the boats we were on could not go into those areas.

Mr. ALLES. So, sir, we use a series of different boats to work the Rio Grande. One is our SAFE boat, 22-foot SAFE boats. Those work in the deeper water of the Rio Grande. We have air boats that can work in basically almost no water at all. And then we are currently procuring a riverine shallow draft vessel which can work in 4 inches of water. That procurement is in process, and much like the Coastal Interceptor Vessels (CIV), we are going to have some struggles in buying out the objective we want. But those would help the Border Patrol in terms of those areas, those shallow-water areas.

Senator CARPER. OK. Thanks.

The other thing I want, let us talk a little bit about intelligence. You guys are really intelligent, but talk to us about the availability and the quality of intelligence that we are getting to enable us to do our interdiction work, please. Admiral, do you want to lead us off?

Admiral BROWN. Certainly. As I mentioned earlier, the Joint Interagency Task Force South, a DOD command under the leadership of General Kelly and his SOUTHCOM command, has the lawful responsibility for detecting and monitoring illicit traffic coming toward the United States. They do that using both national intelligence means and law enforcement intelligence from not only other complements of DHS but also the Department of Justice (DOJ) and numerous foreign partners. We have terrific foreign cooperation down there that alerts JIATF South to literally thousands of drug movements toward the United States every year.

However, as we talked about, we are resource constrained in terms of aviation and surface ships so that only roughly 35 to 40 percent of those targets, of those potential targets actually become active targets searched for with aircraft.

So the intelligence systems work very well. They do a great job of fusing national level intelligence with law enforcement intelligence, and we have multiple partnerships to keep that happening.

Senator CARPER. All right. Just very briefly, Mr. Alles.

Mr. ALLES. Sir, one struggle down there in the transit zone is the reduction in DOD assets. When we apprehend the people ourselves, we get a lot of intelligence out of those people we have appre-

hended. So that has been a downturn for us with less presence from the Department of Defense down there. That has hurt us. Overall, most of what we do down there is directed assets.

I would just say also two other important parts that we work with ICE on really is, on the investigative side, they provide us intelligence in investigations so our assets know where to go, and then also in the source information they buy from criminal sources. Those are all critical elements to us.

Senator CARPER. OK. Mr. Edge.

Mr. EDGE. And for us, certainly working with our counterparts in the Department of Homeland Security is a key and critical part of our intelligence-gathering process and sharing with our counterparts at DOD. So, we find ourselves in situations where we are working very closely with all the COCOMs around the world, in addition to our law enforcement colleagues. And the different centers that we have set up within DHS have been successful in hashing out that information.

Senator CARPER. All right. Thanks. Thank you all.

OPENING STATEMENT OF SENATOR ERNST

Chairman JOHNSON. Senator Ernst.

Senator ERNST. Thank you, Mr. Chairman. Thank you, gentlemen, for appearing before this Committee today. I appreciate the testimony.

Senator Ayotte talked about the illegal drug trafficking across the borders, whether it is maritime or across our land borders. And in that discussion, you did mention meth is a growing problem, and we have seen that all across the United States. It is a big problem in my home State of Iowa.

Unfortunately, I think it does present a unique challenge for you because often the precursors for methamphetamine are legal substances that have legitimate uses, so I think that would be very difficult to police some of that. But talk about some of the challenges that you might see with methamphetamine, whether you are seeing the finished product coming over the borders, whether it is a challenge with the precursors, and maybe how you deal with that issue. And all of you are welcome to answer.

Admiral BROWN. I think if I may, Senator, I will tackle the precursors issue. We have talked a lot about the Joint Interagency Task Force South, which is focused in the Western Hemisphere, looking primarily at cocaine production coming from South America toward the United States. DOD also has a Joint Interagency Task Force West, based in Hawaii and looking westward toward Asia, the source of many of these precursor chemicals. One of their primary duties is to track those precursors as they approach Central America. It used to mostly be Mexico, now it is mostly Guatemala. And so they do a reasonably effective job of tracking those precursors. Mexico has clamped down substantially on precursor chemicals coming through that country. Now they are going to Guatemala.

So as part of the Southern Border and Approaches Campaign Plan and part of the wider Central America strategy for the entirety of the Federal Government, we are looking to, with multiple partners, improve the governance across Guatemala and the other

countries in Central America so they can improve their own port security and do a better job of clamping down both on precursor chemicals and on production.

Senator ERNST. That is good to hear. General Alles.

Mr. ALLES. I think on the precursor side for us at CBP it focuses at the National Targeting Center for cargo. So they are trying to interdict these precursors before they enter the United States. Typically, they are manifested as something else on the cargo shipment, so their job is to sort out what is actually in the container and what is legal and illegal before it comes in.

Then there is also the cross-border flow, which we have seen more meth coming across the border. Again, a lot of this is not only dependent on what we do at the ports of entry, but how we work with HSI in terms of focusing our enforcement efforts.

Senator ERNST. Very good. Mr. Edge.

Mr. EDGE. Thank you, Senator. One of the things that we have seen with the production of precursors, we have 63 foreign offices, including Central and South America, where we have transnational criminal investigative units that have local law enforcement officers that work very closely with our special agents who are in-country. They have been a great source of our ability to identify the production plants for the precursor chemicals. Then we share that information with the intelligence community in the States and with our DHS counterparts in an attempt to be able to identify those shipments when they are coming across the border. So that is one thing that we see.

Also, during the course of our investigative efforts, especially in the Midwest and that part of the country, we have had several long-term investigations that have resulted in agents coming across the meth production labs. And one of the biggest problems that we see is that those chemicals are quite deadly. So we have agents who are in these situations spontaneously who find themselves—who could be seriously injured.

So we are trying to do our due diligence from the perspective of taking care of our agents to make sure that they have the equipment, they have the knowledge base, and they know how to handle themselves in these various situations. And it is an increasingly large problem that we find ourselves in.

Senator ERNST. Yes, it is. I appreciate that very much.

Of course, Cuba has been in the news a lot lately with normalization of relations there, but I would like to ask about the U.S.-Cuba immigration accord. I understand that with this policy informally known as the "wet-foot, dry-foot policy," it allows any Cubans that actually reach American soil to stay in the United States and after one year they can apply for legal status and become eligible for an immigrant visa, they can apply for permanent residence, and then ultimately U.S. citizenship. However, those Cubans that do not reach American soil, if they are interdicted at sea, they are interviewed and then sent back to Cuba.

I would like you to just confirm if this is, in fact, the current U.S. policy, and then also if you would give your opinion of that, if you believe that it does increase the activity of Cubans trying to immigrate to the United States through this policy.

Admiral BROWN. OK. Thank you for that question, Senator. In talking about the Migration Accords, the Migration Accord or agreement that we have with Cuba dates back to the mass migrations of the mid-1990s. So since the 1994–95 timeframe, we have had agreement that allows for the direct repatriation of Cuban migrants who are interdicted at sea and are then screened to ensure that they are not going to be subject to persecution or torture upon potential return to Cuba. We then have a well-facilitated repatriation mechanism by which Coast Guard cutters go into a particular Cuban port, repatriate those migrants to the custody of the Ministry of the Interior.

I had the opportunity from 1998 to 2000 to serve as the Coast Guard's essentially liaison officer to the Cuban Border Guard. And since 2000, we have had somebody permanently stationed at the U.S. Interests Section in Havana to help facilitate that part of the relationship, and it is a very professional working relationship that we have with the Cuban Border Guard. And as relationships change with Cuba, we see that potentially being an avenue for continued cooperation in other matters of law enforcement and security.

Senator ERNST. OK. Do you think that that encourages very unsafe immigration to the United States? It seems that most of those that are trying to come from Cuba are often in vessels that would not be worthy of going to sea.

Admiral BROWN. We would say with all forms of illicit migration and unsafe migration by sea, they are often driven by, if not the policy itself, the perception of the policy, which is often exploited by criminal migrant smugglers who charge people money on the dream that they will arrive in the United States.

Senator ERNST. OK. Is there any additional input from the members of the panel?

Mr. ALLES. I think his statement about the desire to reach here and the danger associated with it does not just apply to Cubans. It applies to all that try to approach our maritime borders in a lot of these vessels that are typically very dangerous and not very seaworthy.

Mr. EDGE. And, Senator, from our perspective, with our investigative portfolio—and we do run into circumstances where there are migration issues and there are large volumes of them—we usually call our colleagues at the Coast Guard to assist us.

Senator ERNST. Very good. Thank you, gentlemen, very much.

Thank you, Chairman Johnson.

Chairman JOHNSON. Senator Peters.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Thank you, Mr. Chairman, and thank you to our witnesses for your testimony this morning.

The issue of maritime border security is important to me in my State of Michigan. We are blessed with the second longest coastline of any State in the Union, second only to Alaska, and a significant portion of that is the border with Canada. So certainly if we are thinking about maritime security, we need to be thinking about the Great Lakes as well.

I want to take this little different tack and kind of discuss some new potential threats coming up and how you are going to react to it. There have been a number of reports from the White House, and the Department of Defense, the national intelligence community, the Department of Homeland Security all talking about some of the national security implications of climate change. We are actually seeing some changes in the Great Lakes that I think warrant some thought, and that is the ice cover that we are seeing. National Oceanic and Atmospheric Administration (NOAA) has been tracking what has been very significant ice cover these last two seasons. In fact, last year, 92.5 percent of the lakes were covered by ice, particularly Lakes Huron, Erie, and Superior. The NOAA folks, although the data is still preliminary, are thinking this might be a long-term trend as a result of the melting polar ice cap. You will see colder weather coming in the Great Lakes, so we may have complete freezing of the Great Lakes for future years as well. And that can make it easier for folks to cross the border as well.

In fact, earlier this year the Coast Guard intercepted a man who was attempting to walk across Lake St. Clair, which was fully frozen, on his way to Canada to cross the border using the ice.

The 2012 Northern Border Counternarcotics Strategy acknowledged also the use of all-terrain vehicles and snowmobiles to smuggle drugs in the Great Lakes region. So if there is a possible way for folks to smuggle, they are going to take it, and then criminals will attempt to cross the Great Lakes. I do not think there is any—on ice is no different. So I am just curious as to what assets the Coast Guard and DHS may have to monitor people who are using small vehicles, or even walking, attempting to enter the United States now that there is in a sense an ice bridge across perhaps a very long border with Canada.

Admiral BROWN. Thank you for that question, Senator. I think I will tackle the ice-breaking piece of it first and then the security aspects.

With regard to ice breaking, we have seen record winters, particularly the winter of 2014, and a cooperative agreement between the U.S. Coast Guard and the Canadian Coast Guard provided ice breaker coverage to the extent that the United States, we are not prepared to provide on our own. We have a number of 140-foot ice-breaking tugs as well as our 225-foot buoy tenders as well as the Coast Guard cutter Mackinaw, our only heavy ice breaker on the Great Lakes.

Canada has a little bit more capacity and works with us very cooperatively on ice breaking to keep the shipping channels open as long as possible, and we foresee that relationship continuing in the future. We also have an in-service vessel sustainment program to upgrade the 140-foot ice-breaking tugs to continue them in service for an extended period of time. So we think that from an ice-breaking standpoint, we have sufficient capacity on the Great Lakes for the foreseeable future for most winters, with help from the Canadians in the heaviest periods.

With regard to the security relationship, we have a great working relationship with Canadians both from an intelligence and operations perspective. The Coast Guard has a ship rider agreement with the Royal Canadian Mounted Police that cross-deputizes offi-

cers of the two services to ride on each other's vessels so the border cannot be used as an escape route essentially for someone who is conducting some type of nefarious activity. We also have an intelligence relationship with Canada that allows us to share information both about the border itself and about other threats.

And the last point I want to make about Canada is that they also recognize that border threats do not emanate right at their border with the United States. Many of them come from farther away. So the government of Canada, through the Canadian Navy, provides Canadian naval ships that assist us with Coast Guard boarding teams on board to interdict drugs as far away as the coast of South America. So they have been terrific partners in all ways.

Senator PETERS. Does the fact that you have an ice bridge now through miles and miles of border—do you need additional assets for that? Do you look at that differently? How do you react to the situation where people can take a snowmobile across many miles of border?

Admiral BROWN. We work that primarily in conjunction with Border Patrol, and I would leave that to Mr. Alles.

Senator PETERS. OK.

Mr. ALLES. Yes, so from our standpoint, sir, in the winter when it freezes over, we are talking about the utilization of more emphasis on the frozen areas of the lake via snowmobiles, increased patrols. Our marine interdiction agents who obviously cannot use their boats in those conditions are pulled off the water and participate in those operations.

If the flows were considered serious enough, we could look at using technology like the Vehicle and Dismount Exploitation Radar (VADER) to actually patrol the lake. That is the radar technology that detects walkers. It is employed in our UAV asset. Right now it is used exclusively on the Southern Border, but that is a possibility up there. There is a technology to address it.

But those are the main ways they address those cross-border flows in the winter. It is a problem when the lakes freeze over.

Senator PETERS. Mr. Edge.

Mr. EDGE. Senator, from the investigative perspective, we have one Northern Border BEST in your jurisdiction, in Detroit, and three others across the rest of the Northern Border. And one of the things that we find is that the partnerships are very strong, both with our foreign counterparts as well as our domestic counterparts, and we are able to share the intelligence information that we get with our counterparts at CBP and Coast Guard.

So hopefully in the future we will be able to see the program grow along the Northern Border, because we certainly recognize that there is a significant problem with smuggling, with the use of snowmobiles and skis and the like. So we look forward to communicating with you in the future.

Senator PETERS. Good. Well, I appreciate that.

Commissioner Alles, you mentioned some of the radar assets as well, and according to the Office of Drug Control Policy's latest Northern Border Counternarcotics Strategy Report, they claim that radar coverage of the Great Lakes region is far from complete, which could allow certainly low-flying aircraft to move drugs. But then you also talked about walkers and other folks along that area.

So the report called for action to enhance some of our air and maritime efforts, particularly when it came to radar assets.

Where are we on that? How do you view that? Is there anything we need to do?

Mr. ALLES. So currently there are no active sites on the lake. On Lake Erie, there are three radar sites that are being permitted and installed. I do not have the exact locations, but I understand they are on the eastern end of the lake.

Also, as we continue to procure the multi-role enforcement aircraft, which is a maritime patrol aircraft, that provides you more radar density. We will eventually base those on the northern tier—not currently. We do not have enough density to do that, but that is the objective of the program eventually.

Senator PETERS. Great. Thank you so much.

OPENING STATEMENT OF SENATOR LANKFORD

Chairman JOHNSON. Senator Lankford.

Senator LANKFORD. Gentlemen, thank you for being here. Let us talk a little bit about the movement of narcotics through the gulf and the Caribbean area and then coming up the budget the Pacific side as well, all the way up the coast. We talked a little bit about the assets that you have requested, what you have, and the process. This number keeps sticking with me, Admiral Brown, that you had mentioned before, between 11 and 18 percent of known narcotics that we are able to actually do interdiction on.

So just to clarify, that is, we have intelligence, we are aware that we at least have a high suspicion that this particular vessel is carrying some sort of illegal drugs, between 11 and 18 percent of those that we know about we are actually able to interdict.

Admiral BROWN. OK. It is slightly different than that, Senator. The 11 to 18 percent is of the estimated flow, total drug flow toward the United States, we interdict—by weight, we reduce that supply by about 11 to 18 percent with a national target of 36 percent, going up to 40.

With regard to individual events about which we have known intelligence, JIATF South and SOUTHCOM estimate that they can only target about 37 percent of those events, but that overall, once they locate a vessel or actual—the Coast Guard's kind of interdiction performance, once a vessel has been sighted as a target, our interdiction performance is between 85 and 90 percent. So it really is a matter of turning the known intelligence into a sighting or a detection that we can then target with the vessel, with the ship-helicopter-boarding team combination.

Senator LANKFORD. OK. So what does it take to get that done? Let us talk about the dynamics of this. If we are targeting that number, somewhere around 70 percent then of what we think is there we are not interdicting, what will it take to get that number up?

Admiral BROWN. I would say that as a government, aviation, long—persistent surveillance, whether it is in the form of fixed-wing aviation, national assets, unmanned systems, persistent surveillance that can be targeted until a very thinly populated fleet of surface vessels can get there.

Senator LANKFORD. So we are talking about we are aware of it leaving, but we are not able to track it the whole way, and at some point in the vast ocean or the gulf we are losing it.

Admiral BROWN. Correct. And when you mention the vast ocean, just in the eastern Pacific alone, the area that we are talking about is an area equivalent to the continental United States that may be patrolled by three to four ships at a time.

Senator LANKFORD. Right.

Admiral BROWN. All of which have to refuel somewhere on the east coast, notionally speaking. And I mentioned earlier, in addition to the information, much of which we have, the aviation, much of which we do not have, and the ships on station, right now the Coast Guard is significantly challenged by our ability to keep our older ships, our 30-to 50-year-old medium-endurance cutters on station. Last week alone, while we projected to have seven ships on station in the Caribbean and the Florida Straits, we actually only had two because five of them had mission-limiting casualties. And so the recapitalization of our offshore patrol cutter fleet becomes to us the linchpin of success for decades to come.

Senator LANKFORD. OK. So when does that get turned around, when we go from two ships back to seven?

Admiral BROWN. Well, thanks to some great efforts by our logistic system, those ships are back up and operating. But, again, we missed almost a week on station for many of them, and that time on station cannot be regained.

Senator LANKFORD. So the aircraft, what is the most efficient delivery system there? What is the best asset for us that? Is that an unmanned? Is that manned? I know they have different missions and different capabilities. But when you look at trying to dramatically increase the number of aircraft that are there, actually tracking what we think is moving narcotics, what is the most efficient way to get that done?

Admiral BROWN. I think perhaps Mr. Alles could comment on that more effectively based on his experience in aviation?

Mr. ALLES. Yes, I think right now the manned aircraft is more effective because of the limitations on employing the Unmanned Aircraft System (UAS) in the airspace. So we are eventually moving down to put a sense-and-avoid system on our Predator aircraft UAS system. With that we can fly more liberally in international airspace. Right now we have restrictions on flying outside of air cover. So actually it is your manned aircraft.

But the other part I think we ought to get to is you are kind of asking the question of how do I secure a maritime border, and to me that is really five components: It is maritime domain awareness that we are talking about. It is law enforcement information, because merely having coverage does not tell me if a vessel is legitimate or he is doing illegitimate activities. So I need information from investigations. I have to have response capability, which he mentioned about in terms of the cutters. For me it is in terms of coastal interceptors. I have to have unity of effort because I do not have all the information at CBP. The Coast Guard does not have it. Not even ICE has all of it. It has to be a combined effort, Federal, State, local. And then, finally the small-vessel accountability piece we have not really talked about, but we have 12 to 15 million

small vessels in the United States, and they basically are unregulated in that regard. So whether they are doing legitimate or illegitimate activity is very hard to know, and so the accountability of those vessels for us is a major challenge.

The fact that we do not have any kind of device on those vessels like an AIS system that is your beacon system that goes on your larger, 300-ton and up vessels, is a substantial challenge for us. But that is a regulatory issue that we cannot really address. It would require action by the Congress.

Senator LANKFORD. Right. So initially what I am looking for were the gaps. When we have intelligence that tells us we have some sort of vehicle and it is suspected to be carrying narcotics and we are not able to interdict that, that is the first warning sign to say of those five you listed, we are missing one, at least one, where there is a gap in there. The worst-case scenario for us and for you in law enforcement is to say I suspect there is illegal activity going on and I can do nothing about it.

So, to me, the first step is let us find out what is missing in that gap. Let us try to fill that gap, because we have a long-term strategic issue on that.

When you mentioned the unmanned aerial systems as well, your hesitation is that is not a platform we can use because of the regulatory status? Because of what?

Mr. ALLES. Because of the regulatory status to operate in international airspace without its own ability to sense and avoid aircraft. It needs that to comply with International Civil Aviation Organization (ICAO) rules. That is the issue for the platform.

Senator LANKFORD. OK. Are we unifying our other fixed-wing aircraft to make sure we are getting efficiency? There is an issue that has happened in the past with having multiple different types of aircraft, because then you have multiple maintenance folks, you have multiple parts, replacement, if one goes down, it is harder to be able to fix it.

Mr. ALLES. Well, I think the direction we are going there, both for the Department of Homeland Security—we have constructed a joint operation requirements document for maritime patrol aircraft that addresses the mission system on the airplane. So our main issue there is we want to get our airplanes linked together so they can pass information between themselves and operations center, like our air and marine operations center, or Coast Guard sectors, and we are moving in that direction with this joint operation requirements document. I think that is definitely——

Senator LANKFORD. OK. Mr. Chairman, may I have the luxury of having one more question? I need to ask about Cuba and follow up on what Senator Ernst was talking about as well. What are you seeing as far as the rise and the fall of the number of individuals coming from Cuba trying to come into the United States? I saw some written statements about some numbers there. I would like to know where we are currently today or as soon as we can.

Admiral BROWN. In the maritime domain, the number of Cuban migrants that have attempted to come to the United States has upticked over the past 2 years, fiscal years 2014 and 2015, as compared with the 5 years prior. But, still, that level remains below kind of our 10-year historical average.

So we perceived a slight uptick shortly after the announcement of change in relationships. As I mentioned earlier, we think that the perception of U.S. policy or potential change in U.S. policy is often a driver of migration and often fueled by migrant-smuggling organizations that profit from that uncertainty.

Senator LANKFORD. So has that number gone back down or has it stayed high?

Admiral BROWN. That number has since gone back down on a month-to-month basis compared to what we saw in December and January. And, again, it is back down to historical norms now.

Senator LANKFORD. OK. Thank you.

Chairman JOHNSON. Senator Lankford, let me just enter something into the record, some facts on that. Between December 1 and December 16, 2014, the Coast Guard interdicted about 80 Cubans. On the 17, President Obama announced the new U.S. policy toward Cuba. Between December 17 and December 31, 2014, the Coast Guard interdicted 419 Cubans, a 423-percent increase.

To address this, the Coast Guard deployed direct repatriation immediately and began sending those interdicted in the waterways back to Cuba. As a result, Cuban interdictions fell to 254 from January 1, 2015, and, according to this have now returned to more normal levels. Is that basically correct?

Admiral BROWN. That is accurate, sir. Normally, in the winter months the flow trails off, so those numbers were fairly high. The numbers now month to month are about 300, which, for the summertime, is about normal and certainly well within the normal range. And I would add that this perception of policy issue, as Mr. Alles said before, applies not only to Cuban migrants but to Haitian migrants as well. A few years ago, we saw a significant spike in Haitian migrants trying to go from the Dominican Republic toward Puerto Rico. We were then able to come up with a policy solution to that of expedited removal of Haitians who had landed in Puerto Rico or the islands of the pass between Dominican Republic and Puerto Rico, and we were able to get a lid on that.

So it is a combination of policy, operations, but also public messaging in addition to the additional operations effort that we made.

Chairman JOHNSON. So bottom line, U.S. policy creates direct incentives and disincentives for illegal immigration.

Admiral BROWN. Correct. And as I mentioned before, smuggling organizations absolutely exploit uncertainty or perceived changes in policy to profit from people's desire to get to the United States.

Chairman JOHNSON. OK. Senator Carper.

Senator CARPER. A couple years ago, my family took off between Christmas and New Year's Day, and we went on a cruise out of Florida into the Caribbean, and the first morning—we left at night, and the first morning out, about 8 in the morning, I said to my wife, we were in our cabin, and I said, "I do not feel like we are moving." And she said, "Go back to sleep."

Anyway, I went out on this little balcony on our cabin, and I went out there, and the Caribbean was just glass, just like glass. And I said, "I do not think we are moving."

And then the captain of the ship came on the P.A., and he said, "We are not moving." And what we had stumbled across out there in the night was a boat with Cubans trying to make it to the

United States. And it was Christmas morning, and literally we stayed with them. We had already been with them for 3 or 4 hours. They had been out to sea for a week or two. And we stayed with them. A couple of people were in bad shape. We brought them in, fed them, gave them water, and attended to their medical needs. We stayed with them for another 6 hours, and it made us late on our cruise to get to these different islands we were supposed to go to. Nobody ever complained. We literally stayed there as humanitarians on Christmas morning. I thought it was pretty extraordinary.

And then the Coast Guard arrived, and they took charge, and we headed out. And they took those folks back to Cuba. There were no kids on the boat. There were no unaccompanied minors. And my guess is that most of the folks we find at sea that are trying to make the trek by boat from Cuba to the States, my guess is there are not a lot of unaccompanied minors.

What we deal with, as you know, certainly as Mr. Alles knows, what we deal with on the Southern Border is a lot of unaccompanied minors, a lot of families with kids. We just do not see that sort of thing coming in from Cuba. It will be interesting to watch what happens in the months ahead as we move toward more normalized relations.

I want to follow up a little bit on James' question, and he was talking about drones. In the old days, Mr. Alles, I spent a lot of my life on Navy P–3 aircraft, maritime patrol aircraft, and we were pretty good at tracking Soviet nuclear submarines when we had good intelligence. If we actually knew what part of the ocean to go to and search, we were pretty good at finding those guys. It helped having sonobuoys that worked and were efficient and highly sensitive. It helped to have a crew on board who knew how to run the equipment. They have really sophisticated surveillance equipment. It helps to have maintainers of the aircraft so we could actually fly and not have to board our flights.

But when you think about those different components—good intelligence, aircraft that have the kind of surveillance equipment needed, folks that are trained to operate that equipment, folks that are able to maintain that equipment, and to keep the airplanes flying—when you think about those components and you think about, for example, drones or these other shorter-range maritime patrol aircraft, Mr. Alles, how do those factors weigh in with respect to whether it be the drones or the—what are they called, the shorter-range aircraft, maritime patrol?

Mr. ALLES. The multi-role enforcement aircraft.

Senator CARPER. There you go. Is there a designation, something 8? What is it? S–8? I do not know.

Mr. ALLES. No, sir. It is a Twin Beech, is what it is. A Beech 350 I think it is.

Senator CARPER. OK.

Mr. ALLES. Is what the aircraft actually is.

Senator CARPER. Talk about those components as they apply to these aircraft, the drones and these aircraft.

Mr. ALLES. Well, I think you have highlighted the key component of this thing. Each aircraft has its kind of space it operates best in. The drone gives me long endurance. It does not have quite the

radar range that some of my P–3s have. I should be specific here because some of the P–3s have the long-range apps radar on board, and the rest of them, six of them have the SeaVue, which is the shorter-range radar, the same as the Guardian UAV does. But the critical part really here, as has been mentioned by the Admiral and also by Pete over here, is really the intelligence. So how do I know where to put the aircraft so it can actually find the vessel? So in JIATF South, that is the model. The aircraft does not go out there unless we have information on what he is looking for.

Now, without the aircraft, we will never find the vessel. He will go to his destination and deliver his drugs. But without the information, the aircraft will patrol for hours and likely find nothing.

So I would say that same model applies if you think about U.S. coastal lines, too, is we need that kind of information, that kind of law enforcement intelligence that allows us to put our aircraft in the right places to patrol and actually find these vessels as they are coming inbound. So that is a key part.

And then each airplane—the Multi-Role Enforcement Aircraft (MEA), our Dash 8 is also a maritime patrol aircraft, longer range, and the Guardian UAV, and then also finally the P–3—has its particular element it operates in based on the performance characteristics of the airplane and the radar it has on board.

Senator CARPER. OK. Thank you.

Another one for Admiral Brown and probably Mr. Alles as well. Let me just go back to the unmanned aerial systems for a second. General Alles and Admiral Brown, can you talk a little bit with us about your use of drones in the maritime—you talked a little bit about it, but, Admiral Brown, how effective are they in spotting traffickers, other kinds of illegal activities?

Admiral BROWN. Thank you for that question, Senator. We have had some successes in partnership with CBP on using unmanned aerial systems for interdictions. I recall a very good case off of Puerto Rico where a maritime patrol aircraft first spotted a suspect vessel, then handed it off to an unmanned aerial system that maintained surveillance until a Coast Guard cutter was able to get on scene and do the interdiction. So we have had successes with that.

The Coast Guard, in addition to the partnership program with CBP on the Guardian, has also two other unmanned aerial system programs. One is a shipboard UAS program. We have kind of had some fits and starts on that. Some of them, as you have mentioned, Senator, are more people-intensive than we first would have anticipated. In fact, I think within DOD they have actually changed terms from "unmanned" to "remotely piloted" to put emphasis on the fact that there is still a pilot, just not on board the asset.

And then we are also working on small, essentially hand-launched unmanned aerial systems for closer-range surveillance and for a variety of applications. Right now we are testing them in the Arctic for ice breaking, to find leads in the ice and other environmental concerns. So we have multiple programs, all of them in some nascent stage, but we have had some successes.

Senator CARPER. Good. Thanks.

Mr. Alles, let me ask a quick follow up. The Chairman and I have been sitting here before with the Inspector General (IG) I think from DHS and talking to us about drones and saying they

are not as effective, we are not getting our money's worth out of the drones. We heard about a report maybe 3, 4, 5 months ago from the Inspector General, and just give us an update. I know there has been work underway to try to address the concerns raised by the Inspector General. How are we doing?

Mr. ALLES. Yes, sir. So some of the concerns he addressed are underway in terms of addressing those. They address the concept of operations (CONOPS) we had that needed to be updated and is currently being updated. We talked about the flying hours of the program. We have a disagreement on that. We are shooting to get into the 6,000-to 9,000-hour range. We are going to update the CONOPS so they cannot draw a false inference from that CONOPS on how many hours we want to fly that. So that should correct that.

In terms of the actual effectiveness of the drone, I will just give you an example. For this year it is now responsible for $561 million of contraband seizures, and the year is not over yet. So I think in terms of flying hours compared to what it costs to operate it, it is giving us a tremendous return on investment. So I would disagree with the assessment that the drone does not produce for us, as we talked about earlier when you all came down to Corpus Christi, I think it was in January. But same opinion there. It is still being verified even this year with the numbers it has produced so far in fiscal year 2015.

Senator CARPER. Just keep in mind, as we figure out how to fund 2016, if there are things that we need to be doing to support whether it is pilots, whether it is maintenance, to make—I want to make sure—we spent all this money on drones. We want to make sure we are getting our money's worth, and if there is some component that is missing, that we need to be mindful of, please let us know.

A last question, if I could. We are interested in root causes. The Chairman and I are very much interested in root causes. I think the root cause of a lot of what we talked about here today is our insatiable appetite for illegal drugs. That is really the root cause, and it is a hard one to solve. So what we do instead is we address symptoms of those problems.

The Chairman and I may be heading down to Honduras, Guatemala, and El Salvador sometime in a couple of months, I hope, and I think with that in mind, Mr. Edge, at some point in your testimony you talked about a joint operation that led to the convictions and extraditions of, I think, one or two major players in the transnational criminal network. I think it was in Honduras, and I think you stated that the extraditions had an effect on the flow of cocaine in Honduras. Could you expand on that just briefly and talk about the impact the extraditions have had on our relationship with Honduras, please?

Mr. EDGE. Certainly, Senator. The relationship with Honduras has actually been very good lately as a result of the extraditions. The extraditions certainly sent a wave of concern among those who are involved in the criminal organizations down there, and also working very closely with our transnational criminal investigative units that are in that region of the world. We have several, and I think you have been to Panama and have visited there. But that

region has been a focus of investigative activity that was certainly enhanced last summer with the unaccompanied children problem that we witnessed.

But the relationship is strong, and we certainly anticipate that it will get better in the coming months.

Senator CARPER. All right. My time has long since expired. I notice we have not started our vote yet, Mr. Chairman. Could I just follow up on this root cause thing.

Chairman JOHNSON. Sure. I was going to as well.

Senator CARPER. OK. Thank you very much.

Let me just ask each of you to take one minute, please, to talk about how we, the Chairman and myself and our Committee especially, can engage more effectively and our country engage more effectively in the Northern Triangle region? Please, just take a minute on that. Admiral.

Admiral BROWN. Thank you, Senator. As I mentioned earlier, there is a Central America strategy now developed out of the National Security Council staff, and Vice President Biden is the one who——

Senator CARPER. And I am pleased to see that it has been funded by the appropriators—not to the full extent, but I think generously.

Admiral BROWN. And I think that is terrific, sir. There are three key aspects to that strategy. They include security, governance, and prosperity. And I think the Coast Guard has a role to play, particularly in security and governance, but leading to prosperity. We talked a little bit earlier about precursor chemicals in Guatemala. So shipping out of Central America toward Wilmington, for example, with bananas and juice concentrates could be an important part of their economy if they had a relief from the pressure of corruption and the corrosive effect of cocaine traffic moving through Central America. So I think the appropriations for funding that strategy are a key component of moving forward there, and from a Coast Guard perspective, we want to put more people in the embassies in the country teams to improve our performance in all three aspects: security, governance, and prosperity.

Senator CARPER. Thanks so much.

Mr. Alles, please?

Mr. ALLES. I think on the Northern Triangle side, our big contribution we can make from my office is continue to fund detachments down there to help in their law enforcement work. So we funded a detachment down to El Salvador this year, which also worked in Guatemala, and that was the Predator UAV that helped them on some of their law enforcement operations. So I think that is helpful in terms of doing the security aspect we talked about as the element of this strategy, and then other elements of national power need to come into play because, clearly, the economy is a big factor on why people migrate out of those countries.

Senator CARPER. Thanks, Mr. Alles.

Mr. EDGE. Senator, one of the things that we need to do in HSI is make sure we keep allocating the appropriate resources to that part of the world. We want to make sure that we fully staff our offices in that area of the world, so we can continue to collaborate with our foreign counterparts, and that we also maintain connectivity to our domestic offices in the States through this

whole joint task force model because that is very important for us to build investigative efforts and also share some of the information that we can with our counterparts in that Northern Triangle region. It is going to be critical to our success to identify the threats before they make it to our shores.

Senator CARPER. All right. Thank you all. Thank you very much for your testimony today and your good work.

Chairman JOHNSON. Thank you, Senator Carper.

Again, I think in the course of these hearings, I think we have both come to the realization and agreement that the root cause really is our insatiable demand for drugs, the root cause of our unsecure border.

In evaluating that, though, I think you have to really take a look at the history, and you have to kind of piece the puzzle together. So I wonder if any of our witnesses are willing to really speak to how that all came about. We have an insatiable demand for drugs, which obviously helped the growth of these—the creation and growth of the drug cartels. Drug cartels are businesses, so they are smuggling drugs, and most businesses look to expand their product lines, and that expands into human trafficking, sex trafficking. You are moving humans across the border. Well, let us take a look at illegal immigrants. Let us use them as a diversion for our drug trafficking.

Can anybody speak to how those cartels have if not completely destroyed, certainly done great harm to the public institutions of Central American nations? Can anybody kind of speak to the history of that and what the current State is, which is, as pretty relevant as well? Director Edge.

Mr. EDGE. Sure thing, Mr. Chairman. One of the things that we have seen through our investigative efforts—and, again, the foundation here is our investigations—the demand for drugs has resulted in an insatiable demand for money. And the financial aspect that I mentioned earlier, where we have a financial component to all of our investigations that we conduct, no matter what discipline they are in, there is a demand to make a profit. And that profit certainly is inherent in a need for these cartels to survive, to make more money, to commit corruption in those countries, and that is a big part of it. And that has become part of the culture in those countries.

So one of the things that we try to do is, I think, the best course of action that we have taken, to enhance our international footprint, to communicate more effectively with our foreign counterparts at the law enforcement level, and that has yielded some pretty significant results. We have actually gotten an extradition out of a country that we otherwise would not have.

So it is things like that that we have to continue to do to really, perhaps, see some progress and, perhaps, see the flow stem a little bit in addition to all-of-government effort to reduce the demand for the product.

Chairman JOHNSON. Commissioner Alles, you look like you want to chime in.

Mr. ALLES. I was just going to make a comment, as he did. It is the issue of corruption and how that basically erodes government institutions, and also the ability to do business. I am sure, as you

recognize, if you are bidding on a contract and you have to bribe them to get the contract, I mean, that is, fraught with all kinds of problems and just undermines the institution. So I see that as a major problem for, not only in Central America but in Mexico, too.

Chairman JOHNSON. Can you give me a sense of the progression or degradation of those institutions? Are they worse than 10 years ago? Are they getting better than 10 years ago? Admiral Brown, do you have any information on that?

Admiral BROWN. I would say, sir, that the closest analog might be Colombia in the late 1980s and early 1990s, and perhaps Central America is in about that condition now, but with a combination——

Chairman JOHNSON. Which is not good.

Admiral BROWN. Which is not good, but also not hopeless. With a combination of significant national effort by the Government of Colombia and the people of Colombia, as well as a relatively small investment from the United States of people and money and time and resources, Colombia has reduced its murder rate, substantially increased its Gross Domestic Product (GDP), and reestablished the rule of law almost over the entirety of the country, with the exception——

Chairman JOHNSON. That took extraordinary leadership, right?

Admiral BROWN. It absolutely did.

Chairman JOHNSON. Unfortunately, leadership—when I say "extraordinary," I mean it does not exist very often.

Admiral BROWN. Right, sir. And so the goal of the Central America strategy is to try to address at the same time the security concerns, the governance, the rule of law, and the institutions there, as well as improving the prosperity so that there is no longer the roots of corruption and also the pressure on people to move out of Central America so that they can rebuild their own countries and economies.

Chairman JOHNSON. OK. I will give each of you an opportunity to just make a closing comment, something that, if we have not asked a question, you just want to get off your chest. But I do want to go back to the incentives and disincentives of our own policy, and I want to go back—because you spoke earlier about the problem we had in fiscal year 2013 and 2014 in Haiti. I want to get the numbers on the record. By the end of fiscal year 2013, 1,760 Haitian migrants had attempted to enter the United States through the Mona Passage, as compared to 39 Haitians in fiscal year 2012. So it went from 39 to 1,760.

And then basically we decided to enact a policy that immediately repatriated those Haitians, correct? Can you describe, first of all, exactly what we did?

Admiral BROWN. What had happened, sir, was following the earthquake in Haiti in 2010, we had stopped removal of Haitians. And I have to different between repatriation—in the Coast Guard we use repatriation, maritime repatriation, migrants who are interdicted at sea who return to their country of origin or departure—from removal, which is the process after a migrant has landed in the United States.

Chairman JOHNSON. Correct. But, again, repatriation is immediate, and it is noticed immediately.

Admiral BROWN. So we never stopped post-Haiti earthquake the maritime repatriation process. Thankfully, that continued to work, and there was no increase in migration from Haiti in 2010 subsequent to the earthquake.

However, the expedited removal of Haitians who were already in the United States was stopped at that time and was not resumed. And by 2013, migrant-smuggling organizations in the Dominican Republic began to take advantage of that by bringing Haitians already in the Dominican Republic to uninhabited islands that are U.S. territory between Puerto Rico and the Dominican Republic.

Chairman JOHNSON. So, again, because I really want to get this straight. So U.S. policy, we stopped expedited removal or repatriation back to Haiti, so the reality of the situation was that if you were Haitian and you got in the United States, you felt you had a pretty good chance of staying.

Admiral BROWN. Correct.

Chairman JOHNSON. And as a result, we saw a pretty good spike—nothing like we saw with the unaccompanied children, but we saw a pretty good spike of Haitians trying to come to this country illegally.

Admiral BROWN. Right, accompanied by a spike in deaths and injuries of migrants who were attempting to make that cross.

Chairman JOHNSON. A pretty dangerous journey.

Admiral BROWN. Correct.

Chairman JOHNSON. Which is not a very humanitarian thing for us to incentivized people to take a dangerous journey to lose their life.

Admiral BROWN. So we did a couple things. First, working with the Government of the Dominican Republic, we asked them to increase their shore-side enforcement to try to stop this traffic from taking place. And within the U.S. Government, we were able to within our Department and with interagency partners—State, Justice, and others—we were able to reinstitute the policy of expedited removal, and ICE enforcement and removal operations began removing migrants who had recently arrived in Puerto Rico or those uninhabited islands, and very quickly, once that became public knowledge, the traffic across that vector essentially dried up.

Chairman JOHNSON. My note here says that after the first removal, the maritime flow in the Mona Passage decreased by 80 percent.

Admiral BROWN. Correct.

Chairman JOHNSON. OK. I just wanted to get that on the record.

Again, I would like to offer each of you gentlemen an opportunity to make a closing comment. We will start with you, Admiral Brown.

Admiral BROWN. Thank you, Senator, for the opportunity to speak before the Committee today, and I will just reemphasize that for us in the Coast Guard, the most important aspect of us being able to maintain maritime border security for decades to come is going to be the recapitalization of the cutter fleet through the Offshore Patrol Cutter Program. So your continued support for that will help us out greatly in accomplishing not only drug interdiction but all the other missions to which we are appointed.

Chairman JOHNSON. Thank you, Admiral. Commissioner Alles.

Mr. ALLES. Sir, I think the key point I want to make here is the importance of having unity of effort across the Department. The JTFs are doing that for us. Each of our organizations brings unique capabilities to the problem set that we are talking about. They are not redundant capabilities per se. So I think it is important that we continue to have a high degree of unity of effort, and I think that is a good path that we are currently on.

Chairman JOHNSON. Thank you. Director Edge.

Mr. EDGE. Thank you very much, Mr. Chairman. Thank you for the opportunity to engage in this dialogue today. I certainly appreciate you and the Ranking Member, Senator Carper, taking the time to have this hearing. And as my colleague Mr. Alles just indicated, it is critical that for ICE and the DHS to collaborate and to coordinate our efforts in an attempt to leverage our resources and have this dialogue with you so that we can continue to do that in the future and that we can all have visibility into all that is taking place out there in an attempt to protect our country—or secure our borders.

Chairman JOHNSON. Thank you.

Mr. EDGE. Thank you.

Chairman JOHNSON. I am sure Senator Carper would like to join me in thanking all of you, all three of you, for your service to this Nation, for your testimony, and for taking the time to appear here today.

With that, the hearing record will remain open for 15 days, until July 30 at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:39 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
"Securing the Border: Understanding Threats and Strategies for the Maritime Border"
July 15, 2015

As submitted for the record:

Today marks the eighth hearing this committee has held on border security since we began exploring this issue in early March. Over the course of the last several months, we have examined transnational crime on our southwest border, vulnerabilities on the northern border, and technology and infrastructure solutions at our ports of entry. Today, the committee seeks to understand the challenges facing our longest U.S. border: the U.S. maritime border.

The United States coastline, which includes the Atlantic, Caribbean, Pacific and Great Lakes coasts, measures over 95,000 miles long—one of the longest coastlines in the world. Across these coastlines migrants from Cuba, the Dominican Republic, and Haiti seek to illegally enter the U.S., often forced into overcrowded boats with unsafe and unsanitary conditions. Transnational criminal organizations also transport drugs—marijuana on the west coast and cocaine on the east coast—into the U.S. via the maritime border.

Terrorism is also a continuing threat across our maritime borders. In 2012, the Department of Homeland Security released its Northern Border Strategy, which in part focused on the vulnerabilities in the Great Lakes region. The report cautioned that these shared waterways provided a conduit for potential exploitation. In particular, the ability of small vessels to traverse the Great Lakes and blend in with commercial trade and recreational boaters creates a challenging enforcement environment. As a Wisconsinite, I can attest to this observation firsthand.

Despite these threats, as compared to the southwest border, the U.S. has very little domain awareness across our maritime border. And of the threats of which we do become aware, the U.S. Coast Guard is only able to respond to approximately 30 percent. This means that, similar to our southwest border, along which we are only interdicting 5 to 10 percent of the drugs smuggled across, a large amount of drugs are coming across our maritime border undetected.

Multiple government agencies are tasked with ensuring that U.S. coastlines remain protected from these various threats. These agencies include the U.S. Coast Guard (USCG), the U.S. Customs and Border Protection (CBP) Office of Air and Marine (OAM), and U.S. Immigration and Customs Enforcement (ICE). Today representatives from these agencies will testify to the threats at our maritime border and the strategies they have deployed to secure our coastlines.

I thank the witnesses for their willingness to provide these important insights and I look forward to their testimony.

Statement of Ranking Member Thomas R. Carper
"Securing the Border: Understanding Threats and Strategies for the Maritime Border"
July 15, 2015

As prepared for delivery:

Thank you, Mr. Chairman, for holding this hearing. And thanks to our witnesses, as well, for joining us. Today, we take note of an important but often overlooked aspect of our homeland security – our nation's maritime borders.

The United States has more than 95,000 miles of shoreline. The oceans, rivers, and lakes bordering the United States are both natural barriers and super highways. My home state of Delaware alone has over 350 miles of shoreline. It is also home to the Port of Wilmington, which ranks as the nation's leading gateway for imports of fresh fruit, bananas, and juice concentrate. So maritime activity is serious business for us in Delaware. And I know it is for many others on this Committee, as well.

But the same waters that facilitate so much legitimate travel and trade can also be a pathway for many illegal activities. For example, we know that drug traffickers, human smugglers, and counterfeiters all take advantage of the difficulty in securing our maritime borders.

Maintaining 'situational' or 'domain' awareness of our country's vast maritime borders is extremely challenging. Trying to actually disrupt or intercept threats that approach by water can be even more daunting.

Thankfully, we have many federal workers who dedicate their lives to stopping threats from entering our country by water. Just last week, I had the pleasure of meeting several dozen of these fine people at the Coast Guard station at Indian River Inlet near Rehoboth Beach in Delaware.

I am so proud of the work that Captain Cooper, Petty Officer Greenwell, and the rest of men and women at Indian River Inlet are doing. Day and night, Captain Cooper and his team patrol our busy coasts in Delaware and along the Atlantic and are 'always ready' to provide assistance should there ever be an emergency. Thank you for all that you do for the people of our state and for our country, as well as for our guests.

The Department of Homeland Security has a unique and leading role in maritime border security. It is home to the U.S. Coast Guard, the Office of Air and Marine within Customs and Border Protection, and Immigration and Customs Enforcement, which conducts investigations to disrupt trafficking and other threats. These agencies or their predecessors have been protecting our shores since the founding of our nation. We are fortunate to have leaders from each of these agencies here today to talk with us about the important work they do.

"It is my hope that we can learn more about a few key issues here today. First, we need to understand the current state of our maritime border security. I'd also like for our witnesses to talk

about what a secure maritime border looks like to them. Next, we need to develop a better understanding of the top threats in the maritime environment and how they are evolving.

As we have tightened up security on our southern land border, for example, traffickers and smugglers are seeking out other paths in the Caribbean or the Pacific coast. We need to be ready to combat this trend, as we continue to 'squeeze the balloon' along our land borders. Given the vastness of our maritime borders, it's important that there is close coordination among agencies, as well as good cooperation with our trusted international partners.

Finally, I hope to hear today from each of our witnesses about the equipment and resources available to you and your colleagues to ensure our maritime border security. For instance, I know that you often rely on air surveillance to direct where vessels should go to disrupt criminal activity. Yet too many times, we have assets up in the air without the right kind of technology or surveillance packages. This also hampers our efforts on our land borders while wasting a lot of taxpayers' dollars. We need to be smarter than that.

Thanks again to all of our witnesses for being with us today to discuss these important issues. I look forward to your testimony.

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TESTIMONY OF
REAR ADMIRAL PETER J. BROWN
ASSISTANT COMMANDANT FOR RESPONSE POLICY

ON
"MARITIME SUPPORT TO BORDER SECURITY"

BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE

JULY 15, 2015

Introduction

Good morning Mr. Chairman and distinguished Members of the committee. I am honored to be here today to discuss the Coast Guard's role in maritime support to border security.

The U.S. maritime domain is vast and challenging in its scope and diversity and is not limited to the nation's shorelines. It encompasses the expanse of our ports and coastal waters, our Territorial Sea, Contiguous Zone, and our Exclusive Economic Zone (EEZ), out to 200 nautical miles from shore. Coast Guard law enforcement authority reaches even farther when you consider the extended continental shelf, partner nation agreements, and the Coast Guard's authorities on the high seas. A component of the Department of Homeland Security (DHS), the Coast Guard is at all times an armed force, a Federal law enforcement agency, a humanitarian service, a regulatory agency, and a member of the Intelligence Community. Over 75 percent of U.S. international trade by weight travels through maritime conveyance, making the safety and security of our maritime borders an economic and national security imperative. Each day we respond to a growing list of maritime border security issues, including the trafficking of narcotics, people, and other illicit goods by Transnational Organized Crime networks (TOCs), undocumented migration, illegal exploitation of our natural resources, potential terrorist activities, and the disruption of maritime commerce. Securing our maritime borders requires a layered, multi-faceted approach of authorities, capabilities, competencies and partnerships; the Coast Guard is uniquely positioned to cover this broad range of maritime border security requirements. The Coast Guard provides maritime support to border security by confronting threats in a layered approach, as far from our borders as possible.

Layered Security

Through a layered approach, the Coast Guard effectively pushes our border security measures well beyond our shoreline and EEZ by fostering strategic relationships with partner nations to detect, deter, and counter threats as early and as far from U.S. shores as possible. The Coast Guard enforces U.S. immigration laws and international conventions against human smuggling through at-sea interdiction and rapid repatriation of undocumented migrants attempting to reach

the United States unlawfully. The Coast Guard maintains a constant law enforcement presence at-sea to deter undocumented migrants and transnational human smugglers and to detect and interdict them far from the U.S. border. The Coast Guard accomplishes this mission in conjunction with other Federal, state and local agencies, including Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and the Departments of State and Justice. Between October 1, 2014 and June 30, 2015, the Coast Guard interdicted 2,259 illegal migrants attempting to enter the United States. While the Coast Guard leads the interdiction mission on the high seas, partnerships with CBP and ICE are critical for successful shore-side interdiction operations.

In September 2014, the Coast Guard released its Western Hemisphere Strategy that identifies three priorities for the maritime domain: Combating Networks, Securing Borders, and Safeguarding Commerce. To meet these priorities, the Strategy emphasizes the importance of a robust offshore cutter presence, which is supported by fixed wing maritime patrol aircraft, Airborne Use of Force (AUF) helicopters, and sophisticated intelligence and communications capabilities; an ideal maritime interdiction capability. To implement the Strategy, the Coast Guard has dedicated additional assets to Transit Zone interdiction operations, and invested in the people and platforms necessary to effectively target TOC networks.

With broad authorities and an extensive array of agreements and arrangements with nearly every coastal state in the Western Hemisphere, the Coast Guard leads maritime interdiction efforts against TOC networks. Our major cutters, AUF-equipped helicopters, and maritime patrol aircraft possess the offshore capabilities necessary to operate on the high seas where TOC networks are largely unchallenged by regional partners, and where those networks are most vulnerable to enforcement action by the United States. Over the last five years, Coast Guard cutters and aircraft have removed from the high seas more than 450 metric tons of cocaine, with a wholesale value of nearly $15 billion. Our annual seizures at sea amount to more than three times the quantity of cocaine seized at our borders and within the United States combined. These interdictions, removals and seizures, combined with timely investigation and prosecution efforts, drive the interdiction continuum known as "The Cycle of Success."

In the cycle of success, maritime interdictions, often cued by intelligence from ongoing investigations, lead to a deeper understanding of the organizational aspects of illicit activity. As evidence is collected and case packages developed, information is shared and analyzed, new intelligence leads are pursued, and linkages within the criminal networks are discovered. When done well, this process will result in tactically actionable intelligence that can be exploited to disrupt criminal networks and further propel the cycle of success. From 2002 to 2011, intelligence gained from Coast Guard interdictions contributed to the arrest and extradition of nearly 75 percent of all Colombian Consolidated Priority Organizational Targets, or drug kingpins. Just last month, one of our new National Security Cutters, USCGC STRATTON, using a robust on board sensor package and intelligence gained from other interdictions, located and seized a semi-submersible vessel with 2.8 metric tons of cocaine. Intelligence cueing is often very successful - for instance, 90 percent of the Coast Guard's interdictions in 2014 were cued by intelligence. However, current surface and aviation fleet capacity only allows the Coast Guard to respond to approximately one-third of actionable intelligence.

To sustain and improve on these operational successes, the Coast Guard needs to re-capitalize its patrol boats and major cutters. The Coast Guard continues to replace legacy 110-ft Patrol Boats with more capable Fast Response Cutters. Additionally, as steady progress continues on the acquisition of eight National Security Cutters, the Coast Guard's highest priority is now acquisition of 25 Offshore Patrol Cutters (OPCs). The OPC will be the backbone of Coast Guard offshore presence and the manifestation of Coast Guard authorities, and will replace 30-50 year old Medium Endurance Cutters that are operating well beyond their service lives. These assets are essential to interdicting drug smugglers and undocumented migrants at sea, as well as rescuing mariners, enforcing fisheries laws, responding to disasters, and protecting our ports.

International Partnerships

The Coast Guard's success in maritime border security relies on robust joint, interagency, and international partnerships to conduct drug interdiction throughout the Western Hemisphere. To more effectively counter maritime threats in the offshore region and throughout the Western Hemisphere, the Coast Guard maintains more than 40 maritime bilateral law enforcement agreements and arrangements with partner nations. These agreements and arrangements facilitate coordination of operations and the forward deployment of boats, cutters, aircraft, and personnel to deter and counter threats as close to their origin as possible, and enable real time communications between Coast Guard and Partner Nation operations centers.

In coordination with Joint Interagency Task Force South (JIATF-S), the Coast Guard works closely with partner nations in Central and South America, taking full advantage of their capabilities and local knowledge to improve maritime governance in littoral regions that are being exploited by TOC networks. As part of this effort, we leverage the availability of U.S. Navy and Allied Nation vessels to enhance presence and expand interdiction opportunities by embarking specially trained Coast Guard Law Enforcement Detachments (LEDETs) with the requisite law enforcement authority; we currently have these agreements and arrangements with the U.S. Navy, Canada, the Netherlands, the United Kingdom and Belgium. Recently, we began negotiations with Spain to reach a similar arrangement.

To foster international cooperation and build partner capacity, Coast Guard personnel are posted at several embassies throughout the world. These individuals develop strategic relationships with partner nation maritime forces that facilitate real-time operations coordination, maritime security cooperation, confirmation of vessel registry, waivers of jurisdiction, repatriation of undocumented migrants, and disposition of seized vessels, contraband, and detained crews. Equally important, they provide subject matter expertise and advice for the Country Team to assist the Ambassador in carrying out a comprehensive and coherent U.S. Government foreign policy, and to address maritime threats at their source.

Since 2007, the Coast Guard has sponsored semi-annual Multilateral Maritime Counter Drug Summits for Central and South America countries, and in 2014 initiated an annual Multilateral Maritime Interdiction and Prosecution Summit for Central and Eastern Caribbean countries. Combined, these summits involve more than 300 maritime law enforcement and prosecutorial officials in over 60 international agencies from some 35 countries. Topics range from maritime interdiction to prosecution and criminal investigations, the combination of which is improving regional success in all aspects of the interdiction continuum.

In February 2015, the Coast Guard launched its first ever Support to Interdiction and Prosecution (CG-SIP) Team in Panama. This initiative involves a three person team consisting of one Coast Guard Interdiction Specialist and two Coast Guard Investigative Service Special Agents. These personnel work alongside their Panamanian counterparts, filling critical gaps in our interdiction and engagement activities in the Central American drug transit zone, and bolstering awareness and information sharing well beyond our physical borders.

International Port Assessments and Vessel Screening

The Coast Guard conducts foreign port assessments and leverages the International Maritime Organization's (IMO) International Ship and Port Facility Security (ISPS) Code to assess effectiveness of security and antiterrorism measures in foreign ports. Through the International Port Security Program, the Coast Guard performs overseas port assessments to determine the effectiveness of security and antiterrorism measures exhibited by foreign trading partners.

Since the inception of the ISPS Program in 2004, Coast Guard personnel have visited more than 150 countries and approximately 1,200 port facilities. These countries generally receive biennial assessments to verify compliance with the ISPS Code and U.S. maritime security regulations, as appropriate. Vessels arriving in foreign ports that are not compliant with ISPS Code standards are required to take additional security precautions while in those ports. They may also be boarded by the Coast Guard before being allowed entry to U.S. ports, and in some cases may be refused entry to the United States.

In U.S. ports, the Coast Guard Captain of the Port (COTP) is designated as the Federal Maritime Security Coordinator (FMSC). In this role, COTPs lead the nation's 43 Area Maritime Security Committees (AMSC) and oversee the development, regular review, and annual exercise of their respective Area Maritime Security Plans. AMSCs assist and advise the FMSC in the development, review, and implementation of a coordination and communication framework to identify risks and vulnerabilities in and around ports. Additionally, AMSCs coordinate resources to prevent, protect against, respond to, and recover from Transportation Security Incidents. AMSCs have developed strong working partnerships between all levels of government and private industry stakeholders.

The Coast Guard screens ships, crews, and passengers for all vessels required to submit an Advance Notice of Arrival (ANOA) prior to entering a U.S. port. Complementary screening efforts occur at the national and tactical levels. At the tactical level, each of the Coast Guard's Area Commanders receives support from a Maritime Intelligence Fusion Center (MIFC), which screens the commercial vessels operating within their areas of responsibility for unique indicators, as well as providing additional screening for vessels that submit an ANOA. The MIFCs focus on screening characteristics associated with the vessels itself, such as ownership, ownership associations, cargo, and previous activity. Coast Guard vessel screening results are disseminated to the appropriate DHS Maritime Interagency Operations Center, Coast Guard Sector Command Centers, local intelligence staffs, CBP, and other interagency partners through Regional Coordinating Mechanisms to evaluate and take action on any potential risks.

At the national level, the Intelligence Coordination Center's Coastwatch Branch, which is co-located with CBP at the National Targeting Center, screens crew and passenger information. Additionally, through the Coast Guard's partnership with CBP, we have expanded access to counter-terrorism, law enforcement, and immigration databases and this integration has led to greater information sharing and more effective security operations. In 2014, Coastwatch screened approximately 124,000 ANOAs and 32.7 million crew and passenger records. The Coast Guard also supports the CBP Container Security Initiative to ensure that all United States-bound maritime shipping containers posing a potential risk are identified and inspected prior to being placed on vessels. This initiative encourages better interagency cooperation and risk management through information sharing.

The Coast Guard has already established several Interagency Operations Centers (IOCs) to provide a capability that enhances the ability of multi-agency operational coalitions to better plan, coordinate and execute missions to support and enhance maritime safety, security, and economic resilience. Today, the Coast Guard, CBP and other agencies share workspace and coordinate operations directly at IOCs in the ports of Charleston, Puget Sound, San Diego, and Jacksonville, which have improved the efficiency and effectiveness of maritime security operations.

Southern Border

Along the Southwest Border, DHS partners work together to keep communities safe from border-related violence and crime, and to weaken TOC Networks. The DHS Southern Border and Approaches Campaign Plan (SBACP) enhances Departmental flexibility by enabling the shifting and massing of DHS assets as needed along the southern border. The SBACP provides for unified operations across air, land, and maritime domains to better counter threats in the source zone, along legal and illegal pathways, and through networks, to the United States. The most significant new element of the Campaign Plan is the establishment of three new DHS Joint Task Forces: Joint Task Force East (JTF-E) (mainly maritime with land responsibilities in the U.S. Southeast); Joint Task Force West (JTF-W) (mainly land in the U.S. Southwest with maritime responsibilities close off the coasts of Texas and Southern California), and Joint Task Force-Investigations (JTF-I) (to coordinate the DHS investigations capabilities to support the Campaign Objectives). These three task forces operate cooperatively to maintain effective border security. To address the myriad maritime border security challenges DHS faces extending from our shores to the source of the threats, the Coast Guard, with strong support of our CBP and ICE partners, leads JTF-E. We are also an integral part of JTF-W and JTF-I, providing some 50 personnel for their support, intelligence, operations, planning, and special programs sections.

To further address maritime threats and to improve security along the Southwest Border of the United States, the Coast Guard and U.S. Northern Command (NORTHCOM) work with the Mexican Navy (SEMAR) and the Mexican Secretariat for Communications and Transportation (SCT). In particular, SEMAR and SCT are increasing their engagement with the Coast Guard through training, exercises, coordinated operations, and intelligence and information sharing. Furthermore, the North American Maritime Security Initiative provides an operational relationship between SEMAR, NORTHCOM, Canadian Forces, and the Coast Guard built upon standard procedures for communications, training, and operations.

A recent example of strong interagency cooperation is the effort to counter drug and migrant smuggling threats in the waters off Southern California. The Coast Guard, in partnership with other Federal, state and local agencies, has increased our levels of effort for the standing Operation BAJA TEMPESTAD. This joint operation brings additional resources to the fight against TOCs, including flight deck-equipped cutters with airborne and surface use-of-force capability; increased Coast Guard and CBP maritime patrol aircraft flights; additional non-compliant vessel use-of-force endgame capabilities from our shore based boats; and enhanced intelligence collection, analysis and dissemination. Through this operation, our joint forces have been responsible for the seizure of 125,292 pounds of marijuana and 259 kilograms of methamphetamines in Fiscal Year 2014.

Northern Border

The Coast Guard has joined with CBP/USBP, ICE/Homeland Security Investigations, Royal Canadian Mounted Police (RCMP), and the Canada Border Security Agency to strengthen border security between Canada and the United States through a variety of operational programs based upon the U.S.-Canada Beyond the Border Initiative. One of the most visible cooperative initiatives is the Integrated Cross Border Maritime Law Enforcement Ship Rider Program.

This Agreement provides a legal mechanism for the cross-designation of United States and Canadian law enforcement officers, who are empowered to enforce the laws of both countries along the shared maritime border. There are 207 Shiprider-trained and cross-designated officers available to conduct operations (101 U.S. Coast Guard and 106 Canadian officers from RCMP, Windsor Police Service, Niagara Regional Police Service, and Ontario Provincial Police). Since its inception in 2012, Coast Guard and RCMP officers have conducted more than 3,000 hours of regular patrols and over 600 boardings on U.S. and Canadian vessels; an effort that previously could not be undertaken due to lack of jurisdictional authorities.

Conclusion

The Coast Guard's layered maritime border security strategy addresses the broad range of offshore and coastal threats that have the potential to impact our national security and economic prosperity. From our efforts to push out our maritime border and strengthen our international and domestic partnerships, to our investments in cutter, boat and aircraft recapitalization, the Coast Guard continues to improve maritime border security while facilitating the safe flow of legitimate commerce.

Thank you for the opportunity to testify today, and thank you for your continued support of the U.S. Coast Guard. I would be pleased to answer your questions.

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TESTIMONY OF

RANDOLPH D. ALLES
Assistant Commissioner
Office of Air and Marine

U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

United States Senate
Committee on Homeland Security and Governmental Affairs

ON

"Securing the Border: Understanding Threats and Strategies for the Maritime Border"

July 15, 2015
Washington, DC

Introduction

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, it is a pleasure to appear before you today to discuss U.S. Customs and Border Protection (CBP) Office of Air and Marine (OAM) efforts to secure our Nation's maritime borders. OAM is a federal law enforcement organization dedicated to serving and protecting the American people.

As America's frontline border agency, CBP is responsible for securing America's borders against threats while facilitating the lawful flow of people and goods entering the United States. OAM is a critical component of CBP's border security mission and the Department of Homeland Security's (DHS) risk-based and multi-layered approach to homeland security. We apply advanced aeronautical and maritime capabilities and employ our unique skill sets to protect our Nation's borders and preserve America's security interests.

OAM's mission falls into four broad categories that reflect our core competencies: Interdiction, Investigation, Domain Awareness, and Contingencies and National Taskings. These competencies are interdependent and complementary and leverage our expertise in the air and maritime environments. We prioritize the development of this organizational expertise throughout our recruitment and training, material acquisitions and program development, and we tailor our law enforcement capabilities and assets to our specialized mission.

A relatively small organization, OAM thrives by being extremely efficient and adaptive. Additionally OAM leverages its capabilities by empowering its operational units to forge crucial partnerships.

In the maritime environment, we operate effectively with a variety of federal, state and local partners, including frequent joint operations with the United States Coast Guard (USCG) and the United States Navy. Through our integration with CBP, as well as our legacy history with U.S. Customs, we enjoy a close working relationship with other investigative components within DHS, particularly U.S. Immigration and Customs Enforcement (ICE). These relationships, coupled with our broad authorities, allow OAM to follow cases wherever they lead – from the air, to the sea and on to land, or from an investigative lead to an interdiction at sea. We also frequently cooperate directly with foreign governments. In this way, OAM lends critical capabilities and cohesion to an array of border security and maritime law enforcement efforts.

One example of these efforts is a recent operation conducted by OAM Marine Interdiction Agents (MIAs) based in Fort Lauderdale, Florida. After boarding and searching a sailing vessel arriving from the Bahamas, the team discovered approximately 220 pounds of cocaine concealed in a bilge area. The agents elected to pursue the investigation further, and asked the suspect if he would facilitate a "controlled delivery," – a ruse whereby a smuggling suspect agrees to deliver the contraband as planned, but under observation by law enforcement. The suspect agreed, and the agents contacted their partners on the local Border Enforcement Security Task Force (BEST) to help coordinate the delivery. OAM and other BEST agents completed the delivery successfully, resulting in the arrests of two suspects and the seizure of the cocaine, one sailboat, one truck, and $1650 in cash. The exploitation of the initial seizure was only possible due to the authorities and expertise of the OAM agents, and close working relationships with other investigators.

Our greatest resources are the sound judgment and experience of our agents, who average 17 years of law enforcement experience with OAM. Over 60 percent of these sworn agents are veterans of the Armed Services, and many have prior experience in law enforcement. All agents receive intensive training in applicable law, use of force, investigative techniques, Spanish language, and more upon entrance into service. Soon after, they undergo additional advanced training in tactics and the safe operation of vessels and aircraft. All agents are empowered to apply the full range of their legal authorities when conducting interdictions or investigations, in strict accordance with the law. This high level of training and experience allows us to empower our agents to make critical, real-time decisions on-scene, allowing for an informed, rapid response to exigent scenarios.

OAM is uniquely positioned – organizationally, via broad enforcement authorities and jurisdiction, and with unequaled specialized training, equipment, and domain awareness capability – to protect America's security interests beyond the nation's border in source and transit zones, between ports of entry, in our coastal waters, and within the nation's interior.

A Secure Maritime Border

Thousands of vessels enter or operate in U.S. territorial sea daily. Though the vast majority do so for purposes of recreation or legitimate commerce, a small percentage engage in smuggling and other illegal activity. Apprehending these smugglers can be daunting, as many mimic legitimate traffic while others elude detection altogether.

This challenge is similar to one faced by the United States in the 1970s and 1980s, as air smugglers exploited known gaps in offshore radar coverage to deliver narcotics, often by air-drop or by "popping up" inside U.S. airspace and emulating a domestic flight. The United States response in those situations included increasing air domain awareness by deploying and linking additional air surveillance radars, and increasing its coordinated response capability via air interceptors and other assets. With increased awareness and response, U.S. Customs was able to leverage a highly regulated air environment to identify evasive or non-compliant aircraft and target them for enforcement. The result was an unprecedented state of air security that persists today, with OAM maintaining air domain awareness via the functionality at the Air and Marine Operations Center (AMOC) and an air intercept capability in its present-day fleet.

A secure *maritime* border presents additional challenges. Unlike air traffic, small vessels[1] inbound to the United States are generally not required to announce their arrivals in advance, nor are they required to make their initial landing at a designated port of entry. Additionally, small vessels have no requirement to continually broadcast their position via transponder.[2] Therefore,

[1] "Small vessels" are characterized as any watercraft, regardless of method of propulsion, less than 300 gross tons. Small vessels can include commercial fishing vessels, recreational boats and yachts, towing vessels, uninspected passenger vessels, or any other commercial vessels involved in foreign or U.S. voyages. DHS, Small Vessel Security Implementation Plan Report to the Public, January, 2001, page 1. http://www.dhs.gov/xlibrary/assets/dhs-uscg-small-vessel-security-strategy-report-to-public-012011.pdf.

[2] While the Maritime Transportation Security Act of 2002 (MTSA) and the International Convention for the Safety of Life at Sea (SOLAS) require many commercial, passenger, and commercial fishing vessels to operate with an Automatic Identification System (AIS), a tracking system to, among other things, increase maritime awareness, the requirement does not cover many small vessels.

many of the tools used to sort legitimate air traffic from the illegitimate are not available in the maritime environment.

A secure maritime border is one where there is an effective understanding of the maritime domain, with awareness of traffic moving in or toward U.S. waters, and the ability to infer intent and interdict as necessary. Achieving this state requires:

- **Maritime Domain Awareness** – Detection capability in the form of fixed and mobile sensors, an effective distribution network, and current information that facilitates evaluation and decision-making, such as track history and projected movements.

- **Law Enforcement Information** – Knowledge of criminal intent or practices typically gained through law enforcement activity, such as case information, confidential human sources, undercover work, covert surveillance, classified intelligence, etc.

- **Response Capability and Capacity** – The ability to interdict quickly and effectively in the maritime domain. This is a function of personnel, equipment, training and expertise.

- **Unity of Effort** – The various attributes of maritime security and law enforcement agencies are complimentary by design. No single entity has the capability or capacity to address all aspects of maritime security. Unfettered information sharing is critical to understanding the nature of maritime threats. Effective coordination must occur across organizational and jurisdictional lines.

- **Small Vessel Accountability** – Increased accountability of small vessel arrivals from foreign countries and transmission of position via beacon or transponder while underway. This will dramatically improve maritime domain awareness and result in non-compliant vessels self-selecting for further investigation.

OAM believes that a secure maritime border is achievable. We are focusing our strategic planning efforts to this end, with emphasis on domain awareness, investigations, enhanced interdiction capabilities and a networked approach to coordination with our partners.

OAM Overview

Prior to the establishment of DHS, the assets and personnel that comprise OAM were distributed between multiple legacy agencies, including the U.S. Customs Service and the U.S. Border Patrol. Under DHS, these resources were consolidated and integrated into CBP to realize greater operational effectiveness and efficiencies in executing the new homeland security mission. Today, OAM operates in accordance with the Secretary's Unity of Effort memorandum, with goals aligned to those delineated in the DHS 2014-2018 Strategic Plan, the DHS Southern Border and Approaches Campaign and CBP's Vision and Strategy 2020.

One immediate benefit gained through the merger was consolidated aircraft maintenance. OAM integrated maintenance and logistics for its aircraft under a single contract to provide standard support across locations, improve accountability and aircraft safety, and ensure common configurations.

OAM operations are divided into three regions: the Southwest Region, the Northern Region, and the Southeast Region. Each region is split into Air and Marine Branches, and then further divided into Air and/or Marine Units. OAM also operates two unique operational entities: National Air Security Operations (NASO) and AMOC. NASO, operating out of six centers nationwide, coordinates operational activities, long-range planning and project oversight for the P-3 Long Range Tracker aircraft and unmanned aircraft system (UAS) programs. AMOC is a state-of-the-art law enforcement operations coordination and domain awareness center that conducts air and marine surveillance operations and fuses numerous sources of intelligence.

OAM's 1,272 law enforcement personnel operate 257 aircraft, 283 vessels,[3] and a sophisticated domain awareness network across the United States. These assets provide critical aerial and maritime surveillance, interdiction, and operational capability in support of OAM's maritime border security mission. OAM continues to modernize its fleet and sensor systems to enhance our operational performance in diverse marine environments and increase our ability to adapt to the challenges of securing the maritime border and approaches to the United States.

OAM Law Enforcement Authorities

An integral part of CBP's border security mission, OAM agents are credentialed law enforcement officers with a broad range of authorities that enable them to transcend land, air, and sea domains and jurisdictions, providing a critical layer of continuity in enforcement efforts. First and foremost, OAM agents are sworn federal law enforcement agents. They are authorized to carry firearms, obtain and serve warrants, subpoenas and summons, make arrests for any offense committed in their presence and make felony arrests without warrant.[4]

Within the "customs waters"[5] of the United States, or at any place within the United States, OAM agents may board a vessel for the purpose of enforcing customs law, and to use all necessary force to compel compliance.[6] Additionally, OAM enforces laws on any American vessel on the high seas,[7] and vessels subject to U.S. jurisdiction under the *Maritime Drug Law Enforcement Act*[8] which concerns the trafficking of controlled substances aboard vessels in extraterritorial waters. These authorities enable OAM to extend our zone of security surrounding our maritime border and littorals of the United States.

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[3] OAM owns and maintains CBP's 283 vessels, including riverine vessels that are operated by the U.S. Border Patrol.

[4] See 19 U.S. Code § 1589a

[5] See 19 U.S. Code § 1401

[6] See 19 U.S. Code § 1581

[7] See 19 CFR 162.3

[8] See Title 46, 46 U.S. Code § 70501-70502 "vessel subject to the jurisdiction of the United States" includes - a vessel without nationality; a vessel assimilated to a vessel without nationality under paragraph (2) of article 6 of the 1958 Convention on the High Seas; a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States; a vessel in the customs waters of the United States; a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States; and a vessel in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999 that - is entering the United States; has departed the United States; or is a hovering vessel as defined in section 401 of the Tariff Act of 1930.

In their capacity as CBP law enforcement agents, OAM agents also enforce immigration laws in the territorial sea, on land, and in the air. Agents within OAM have the same broad immigration authority[9] as the U.S. Border Patrol; however, OAM is in the unique position to enforce this authority in the maritime environment. Similar to other investigative agencies, our agents recruit confidential sources, develop criminal cases, support prosecutors and testify in court in addition to their enforcement actions in the air, land and maritime domains.

This combination of authorities enables OAM to conduct successful investigations in the maritime domain.

Maritime Assets and Capabilities

OAM's unique maritime law enforcement mission requires the use of marine assets and capabilities – including fixed- and rotary-wing aircraft, as well as patrol and interdiction vessels and a sophisticated domain awareness network across the United States. OAM's maritime assets are tailored to the conditions of the threat environment in which we operate, and equipped with the capabilities required to interdict illicit smuggling attempts of drugs and undocumented aliens.

Often, there is little time to interdict inbound suspect vessels, and OAM has honed its maritime border security response capability around rapid and effective interception, pursuit, and interdiction of these craft. OAM employs high speed Coastal Interceptor Vessels (CIV) that are specifically designed and engineered with the speed, maneuverability, integrity and endurance to intercept and engage a variety of suspect non-compliant vessels in offshore waters, as well as the Great Lakes on the northern border.

Our vessels are manned by highly trained and experienced OAM crews authorized to deploy any required use of force, including warning shots and disabling fire to stop fleeing vessels. Over the last decade, OAM has evolved to counter the egregious threat of non-compliant vessels. OAM has developed capabilities to disable non-compliant vessels and to bring dangerous pursuits to a conclusion and prevent these vessels from reaching our shores. Since 2003, OAM has engaged in 123 cases involving marine warning and/or disabling rounds, and three cases involving air to vessel warning and disabling rounds.

OAM often works in partnership with ICE-HSI, the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI) conducting covert operations in the maritime border environment; utilizing unmarked and undercover vessels when situations dictate that the surveillance of drug loads or transnational criminal organization (TCO) activity can yield larger seizures as a part of ongoing investigations. Some of these covert missions involve OAM agents facilitating controlled deliveries with partner agencies through the utilization of undercover vessels and the incorporation of undercover or plainclothes agents. OAM has a number of unmarked vessels typical to local traffic, which are used for this purpose.

OAM specializes in the installation of covert trackers aboard suspect vessels and often conducts these covert missions under hours of darkness using plainclothes or undercover tactics.

[9] See Title 8, Aliens and Nationality

Additionally, OAM periodically augments vessel crews from investigative partner agencies when a specific vessel certification coupled with investigative authority and experience is needed when operating these assets. OAM develops and retains confidential human sources in the maritime environment, which have been instrumental in effecting significant seizures.

Although OAM routinely makes seizures through maritime border patrols, the majority of arrests and seizures are the result of actionable information or detection by aircraft. CBP's P-3 Long Range Tracker and Airborne Early Warning aircraft are multirole high endurance aircraft capable of performing border security mission sets in the air and maritime environments. Equipped with a multitude of highly sophisticated communications equipment, radar and imagery sensors, operated by highly trained professional sworn law enforcement agents and officers, the P-3 is accredited with the interdiction of 122,427 pounds of cocaine and 5,918 flight hours within the Western Hemisphere Transit Zones in Fiscal Year (FY) 2014, which equated to 20.7 pounds of narcotics interdicted per flight hour.

The integration of unmanned aircraft systems (UAS) have provided critical enhancements to OAM's air, land, and maritime border domain awareness and capabilities. UAS provide high-endurance intelligence, surveillance, and reconnaissance of land borders, inland waters, littoral waters, and high seas with multiple advanced sensor arrays. The use of UAS in the maritime environment has increased OAM's ability to effectively detect, monitor, and track both personnel and conveyances involved in illegal activity.

Another important maritime security asset is the DHC-8 Maritime Patrol Aircraft (MPA). It is a medium-range airplane that bridges the gap between the strategic P-3 and UAS, and smaller aircraft operating in the littoral waters. It is outfitted specifically for maritime patrol with state-of-the art sensors and systems. The DHC-8 has provided game-changing detection capability in the Caribbean, Florida and the Gulf of Mexico.

CBP's aerial surveillance capabilities in the maritime environment have been enhanced through recent investments and deployments of a Multi-Role Enforcement Aircraft (MEA). The MEA provides OAM a replacement for several of its older maritime patrol aircraft, enhancing OAM's ability to maintain domain awareness of the U.S. littorals and coastline. Additionally, the multi-role function of the aircraft provides OAM agents the ability to continue investigations seamlessly into the interior of the United States, landing at small remote airports to interdict suspected air smugglers. OAM's Tethered Aerostat Radar System (TARS)[10] is an effective surveillance asset providing radar detection and monitoring of low-altitude aircraft and surface vessels along the U.S.-Mexico border, the Florida Straits, and a portion of the Caribbean. With eight aerostat sites – six along the Southwest border, one in the Florida Keys, and one in Puerto Rico – the TARS elevated sensor mitigates the effect of the curvature of the earth and terrain-masking limitations associated with ground-based radars, greatly increasing long-range radar detection capabilities. The eight TARS sites represent approximately two percent of the total radars integrated by OAM, yet they account for over 50 percent of all suspect target detections.

Perhaps the most important advancements come in the area of data integration and exploitation. Downlink technology, paired with the BigPipe system, allows OAM to provide video feed and

[10] CBP assumed responsibility of TARS from the U.S. Air Force in 2013, but the aerostat surveillance system had been used by the Department of Defense since 1978.

situational awareness in real-time. In addition, the Minotaur mission integration system will allow multiple aircraft and vessels to share networked information, providing a never before seen level of air, land, and sea domain awareness.

A vital component of DHS's domain awareness capabilities, the AMOC integrates multiple sensor technologies and sources of information to provide comprehensive domain awareness in support of CBP's border security mission. Utilizing extensive law enforcement and intelligence databases and communication networks, AMOC's operational system, the Air and Marine Operations Surveillance System (AMOSS), provides a single display that is capable of processing up to 700 individual sensor feeds and tracking over 50,000 individual targets simultaneously.

AMOC coordinates with the Department of Defense (DoD), Federal Aviation Administration (FAA), the North American Aerospace Defense Command (NORAD), and international law enforcement partners in the governments of Mexico (GoM), Canada, and the Bahamas, to detect, identify, track and support interdiction of suspect aviation and maritime activity in the approaches to U.S. borders, at the borders, and within the interior of the United States. This relationship, enhanced through the deployment of shared surveillance technology has allowed GoM to focus aviation and maritime enforcement efforts to better combat transnational criminal organization (TCO) operations in Northern Mexico and the contiguous U.S./Mexico border. For example, this past January, officers working at the AMOC detected a suspicious aircraft travelling north towards the United States. AMOC subsequently alerted GoM, via the AMOSS, of the activity, and both the Mexican Federal Police (PF) and Air Force (SEDENA) responded to investigate. The abandoned aircraft was located by Mexican officials a short time later, where 27 bags containing approximately 389 kilos methamphetamine, 79 kilos of cocaine, 79 kilos of white heroin, and 1.5 kilos of black tar heroin were discovered and seized.

Operational Coordination

Secretary Johnson's Unity of Effort initiative has put in place new and strengthened management processes to enable more effective DHS component operations. In addition, DHS-wide border and maritime security activities are being strategically guided by the new Southern Border and Approaches Campaign. Aimed at leveraging the range of unique Department roles, responsibilities, and capabilities, the Campaign enhances our operational approach to working together in a more unified way to address comprehensive threat environments. OAM has been extensively involved in the planning and development of all Joint Task Forces, particularly Joint Task Force – East (JTF-E), where OAM holds the Deputy Director position. Working closely with the USCG, ICE and others, we have played a key role in developing the Concept of Operations, the DHS Force Management plan and led the critical Mission Analysis planning efforts, which are all vital to meet the objectives outlined in the SBACP. OAM will continue to invest in and fully support the Joint Task Forces and looks forward to playing a key role in the unity of effort outlined by the Secretary in the SBACP.

In 2011, the CBP Commissioner, the USCG Commandant and ICE Assistant Secretary signed the cross-component Maritime Operations Coordination (MOC) plan. The plan addresses the unique nature of the maritime environment and sets forth a layered, DHS-wide approach to homeland security issues within the maritime domain, ensuring integrated planning, information

sharing, and increased response capability in each area of responsibility. In accordance with the MOC plan, OAM has been a key stakeholder in the implementation of the Regional Coordinating Mechanism (RECOM). Through this mechanism, OAM coordinates maritime operational activities through integrated planning, information sharing and intelligence integration.

OAM agents participate in ICE HSI-led BEST task forces across the nation. This practice has multiple benefits. OAM agents provide maritime law enforcement expertise and ready access to OAM assets and capabilities. In turn, information shared through the BEST refines OAM operations and enables more targeted enforcement. OAM recently became a member of the BEST in San Juan, Puerto Rico. Working in conjunction with the San Juan BEST, OAM operations have yielded 24 arrests, 1,453 pounds of narcotics and $948,953 in currency over the current fiscal year.

CBP OAM is the largest aviation contributor to the Joint Interagency Task Force South (JIATF-S), and is an integral part to their aviation capability and success to counter illicit trafficking within the maritime environment. P-3s patrol in a 42 million square mile area that includes more than 41 nations, the Pacific and Atlantic Oceans, Gulf of Mexico, Caribbean Sea, and maritime approaches to the United States.

Joint Technology Development

OAM has identified Domain Awareness as a core competency and an essential element of a secure border. To that end, we will fully-network our fleet and centers to share critical information in real time. We are pursuing that vision through joint efforts with technological partners.

OAM is engaged with the USCG and DoD to identify and deploy technologies that expand overall maritime domain awareness and integrates information and sensor data throughout DoD and DHS. AMOC has begun to integrate data from airborne DOD assets and seeks to expand further into the maritime domain. With the support of DHS S&T and the USCG Research and Development Center, prototype technologies such as the Integrated Maritime Domain Enterprise have been deployed to the AMOC, USCG Sectors San Diego and Los Angeles/Long Beach, and are currently under evaluation. This network is being developed to manage and coherently integrate maritime sensors and data sources, such as Minotaur and the Coastal Surveillance System, into a user defined operating picture, which can be then shared between stakeholders.

OAM works closely with the Science & Technology Directorate (S&T) to identify and develop technology to improve our maritime surveillance and detection capabilities, including low-flying aircraft detection and tracking systems and data integration/data fusion capabilities. Currently under development is Coalition Tactical Awareness and Response (CTAR), a space-based system which can be used tactically against maritime threats. OAM is also working with the Domestic Nuclear Detection Office (DNDO) to develop and field radiological and nuclear (R/N) detection and nuclear forensics systems. For example, DNDO and OAM are collaborating in the development of technology to detect R/N threats aboard small vessels.

Indicators of Success

OAM efforts have resulted in the seizure of significant quantities of contraband, and disrupted considerable illicit activity before it reaches our shores.

In FY 2014, OAM conducted 90,739 flight hours and 42,859 underway hours, resulting in the arrest of 4,725 suspects, the apprehension of more than 79,672 illegal migrants, the seizure of 763 weapons, $147,805,097 in currency, and the interdiction of more than 1,155,815 pounds of illegal drugs, including 155,143 pounds of cocaine.

OAM recognizes the need for relevant, verifiable performance measures that point towards outcomes as well as output, and has initiated an effort to develop them. This is a new process for us. We have engaged a federally-funded research and development center to assist in developing metrics particular to domain awareness. We plan to refine a methodology for developing such measures, and apply it to operations across our organization.

Conclusion

Chairman Johnson, Ranking Member Carper, and members of the Committee, thank you for this opportunity to testify today. OAM is a critical component of CBP's border security mission. Our highly trained agents, together with our authorities, specialized assets, and tactics comprise a well-rounded, experienced and established law enforcement organization, fully engaged in protecting the United States' maritime borders from threats to the homeland.

I look forward to answering any questions you may have at this time.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

PETER T. EDGE
EXECUTIVE ASSOCIATE DIRECTOR
HOMELAND SECURITY INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"SECURING THE BORDER:
UNDERSTANDING THREATS AND STRATEGIES FOR THE MARITIME BORDER"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Wednesday, July 15, 2015

342 Dirksen Senate Office Building

Introduction

Chairman Johnson, Ranking Member Carper, and distinguished members:

Thank you for the opportunity to appear before you today to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to improve security along the maritime border of the United States.

As the largest investigative agency within the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI) leverages its broad statutory authority to support border enforcement by working in close coordination with U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG) in a unified effort with our U.S. interagency partners to target transnational criminal organizations (TCOs). Today, I would like to highlight HSI's enforcement activities and successes in the maritime environment, the unique smuggling methods used by TCOs, and operational challenges that we encounter.

Overview of Maritime Smuggling Methods

TCOs and individuals continuously seek to smuggle illicit merchandise through America's international borders. In the maritime border environment, they attempt to evade detection by concealing contraband in sea freight or in commercial fishing vessels. As a result of the sheer volume of international vessels entering U.S. seaports daily, law enforcement agencies face challenges in detecting smuggling concealment methods and targeting freight that is being moved through sophisticated facilitation schemes.

In addition, as federal, state, local, and tribal agencies augment their interdiction efforts along the U.S./Mexico land border, drug and human smuggling organizations are increasingly

shifting their operations to maritime routes as an alternative to land routes in order to transport contraband into the United States.

To illustrate, Mexican smuggling organizations have a history of utilizing various methods to enter the United States via maritime routes. One notable scheme is their use of small wooden fishing vessels, which are known as pangas. Pangas are simple in nature, with no inside floor, no cockpit, and no extraneous markings. However, they are efficient, cost effective, have superior handling, and are difficult to detect and often travel at night in order to avoid detection. As a result of increased patrols by CBP and the USCG, as well as a coordinated law enforcement response to this threat, these smuggling organizations have identified routes further out to sea and travel further north up the California coast (as far north as the San Francisco Bay Area) to circumvent interdiction efforts and to maintain their illicit smuggling operations.

Border Enforcement Security Task Force

ICE created the Border Enforcement Security Task Force (BEST) to identify, investigate, disrupt, and dismantle existing and emerging TCOs and other criminal organizations posing significant threats to border security. The BEST program seeks to promote cooperation and coordination across the lines between federal, state, local, and tribal investigations, and close the gap with international partners in investigating complex TCOs in an effort to diminish vulnerabilities exploited by these organizations in the past. Currently, HSI has 37 BEST units located across 16 states and Puerto Rico and, of these, 19 maintain maritime units.

To facilitate these cooperative networks, ICE designates customs authority to partner agencies. ICE is authorized to designate customs officer authority under Section 1401 of Title 19 of the U.S. Code to other federal, state, local, and foreign law enforcement officers. This

designation is often referred to as "cross-designation" because the designated law enforcement officers are already empowered with the authorities granted by their home agency. Cross-designation enhances the ability of BEST agents and officers to investigate a wide range of complex criminal cases.

In order to minimize threats, the BEST program focuses on three key areas: investigations, interdiction, and intelligence. First, BESTs apply a risk-based approach to identify targets for disruption and dismantling. Targets identified as posing the most significant risk to border security, public safety, and national security are prioritized accordingly. Likewise, BESTs combine and leverage intelligence and interdiction successes in a comprehensive approach to investigate, disrupt, and dismantle TCOs involved in border related crime. These activities culminate with the proactive use of actionable intelligence and investigative leads by BESTs to target, intercept, and disrupt the illicit actions of TCOs attempting to exploit border security vulnerabilities.

BESTs offer diverse methods to combat TCOs, and many serve several specialized missions targeting illicit cross-border tunnels, maritime smuggling (contraband and human) through the use of modified fishing vessels (pangas), and illegal international flights using ultralight aircraft for smuggling narcotics. Likewise, BEST investigations also extend beyond the physical border. These units investigate cases of money laundering and financial crimes, the violation of intellectual property rights, identity and benefit fraud, child exploitation, and sex trafficking.

Co-location is another crucial aspect to the success of the BEST program. It enables all members of a BEST to work side-by-side on a daily basis under HSI supervision in a single

location. BEST members working in the same workspace promotes maximum cohesion and collaboration.

Created in 2005, the BEST program has provided a proven and flexible platform for DHS to investigate and target TCOs attempting to exploit perceived vulnerabilities at our nation's borders. BEST units differ from other task forces due to the BEST units' proximity to the borders and the program's focus on cross-border criminal activity. Congress codified the establishment of the program by passing the Jaime Zapata Border Enforcement Security Task Force Act, which was signed into law by President Obama in December 2012.

HSI Maritime Operation and Landscape Challenges

HSI has been designated as the executive agent for developing the DHS Joint Task Force Investigations (JTF-I), and other DHS components are supporting this joint, integrated task force focused on common goals and objectives to secure the southern border and approaches, including the maritime border. JTF-I has the responsibility of identifying top tier criminal investigations and to support JTF-East and JTF-West.

The success of the JTF-I and the BESTs in these diverse environments depends upon the level of cooperation among HSI and our federal, state, local, and foreign partners in consolidating resources and leveraging unique international maritime authorities in combating TCOs. An example of this effort is the high-impact operation called Joint Operation Panama Express (PANEX). PANEX is a U.S. interagency strike force with significant HSI participation that is charged with identifying, targeting, and interdicting multi-ton quantities of cocaine being transported in the international maritime environments from South America through Central America and/or the Caribbean and into the United States.

PANEX is split into two separate task forces, one focusing on the Caribbean and one on the Pacific: PANEX N (Western Caribbean) and PANEX S (Eastern Pacific). HSI plays a critical role in the success of PANEX through its investigative authorities and augmentation of interagency resources in both the domestic and foreign arenas. HSI, the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI) share investigative responsibilities for these international maritime interdictions. However, these agencies also rely heavily on the resources and analytical support of the USCG, CBP, Department of Defense (DoD), Intelligence Community, and multiple state and local partners in order to achieve success. In Fiscal Year (FY) 2014, PANEX was responsible for the interdiction of upwards of 36 tons of cocaine and more than 100 arrests of maritime facilitators and coordinators responsible for these shipments. Also, in FY 2014, PANEX dismantled three drug trafficking organizations and disrupted over 100 illicit activities of criminal organizations.

Another example of this effort is HSI Miami's Operation Bay Islands. Operation Bay Islands was initiated in July 2009 to target Honduran-based maritime transportation coordinators responsible for the movement of hundreds of tons of cocaine annually into Honduras for distribution to various Mexican cartels. Over the past six years, HSI led joint efforts with its federal, state, local, and foreign partners, and leveraged DoD and Intelligence Community capabilities, to completely dismantle one of the largest illicit maritime transportation networks operating in Central America. This HSI operation contributed to the arrests, indictment, and subsequent extradition of two Honduran nationals, the first Honduran nationals to be extradited from Honduras to the United States, since Honduras amended its constitution.

The cases were facilitated by four USCG maritime drug interdictions that helped build the cases. Since these charges and significant seizures of assets were effected, U.S. authorities

have witnessed a significant decrease in maritime cocaine movement into Honduras. This operation is a great example of HSI applying a whole of government approach to targeting TCOs at the source of the problem and preventing them from continued adverse impact on U.S. border security.

The individual BESTs located in maritime environments face unique challenges along the shoreline because of the surrounding geography. The following three BEST locations exemplify some of these maritime geographical challenges faced by these units.

Louisiana hosts two maritime BEST locations: New Orleans and Houma. Established in April 2015, the Houma BEST operates in a remote environment along the open coast of the Gulf of Mexico, and covers approximately 250 miles of uninhabited Gulf Coast sea border. Access to land is gained through six major waterways consistently traversed by large commercial vessels. These expansive, remote terrestrial areas and open major waterways are conducive environments for TCOs to smuggle illegal merchandise.

Within the BEST Houma area of responsibility, the Port of Morgan City has the second-highest number of vessel entries of any port in the nation due to the oilfield industry and its off-shore operations. Vessel entries into the Port of Morgan City increased over 11 percent from 4,561 in FY 2013 to 5,083 in FY 2014. Helicopter flights into the Port of Morgan City from off-shore oil platforms also increased over 45 percent, from 4,837 entries in FY 2013 to 7,052 entries in FY 2014.

The Louisiana Offshore Oil Port (LOOP) is located in Lafourche Parish, with its docking station 18 miles off the coast of Grand Isle, Louisiana. The LOOP alone is responsible for the delivery of as much as 18 percent of the nation's oil and is connected by pipeline to 50 percent of

the nation's oil supply. The LOOP is the only port in the United States capable of offloading Ultra Large Crude Carriers and Very Large Crude Carriers.

The establishment of BEST Houma has afforded HSI the opportunity to engage drug trafficking organizations exploiting these emerging Caribbean ports for maritime smuggling activity within the Gulf Coast. Modes of maritime transportation used to smuggle narcotics include containerized cargo, commercial vessels, crewmembers smuggling drugs, non-commercial fishing, and sailing vessels. BEST Houma is observing a dramatic increase in the use of fraudulent travel documents by aliens within the oilfield community.

In Virginia, the Hampton Roads BEST monitors facilities in Norfolk and Newport News. Hampton Roads is the third-largest container port along the Atlantic coast and seventh busiest in the United States. A majority of the commercial traffic in Hampton Roads is centered on four major seaport container terminals. Containerized traffic is expected to increase not only from the Panama Canal expansion project but also from the Heartland Corridor project, which will increase containerized rail traffic between the East Coast and the Midwest. The area also has a very large military presence, including the world's largest naval base. The port also has two cruise ship terminals that are increasing in passenger volume. TCO activity in the Port of Hampton Roads area of responsibility has included intellectual property enforcement seizures of counterfeit goods originating in China, illicit export of weapons destined to Africa, and stolen vehicles shipped to Eastern Europe, Africa, and the Middle East.

Lastly, the Port of Charleston is also a major transportation hub and is home to Charleston BEST. The top trading regions with the port are Europe, Asia, and Latin America, with Europe and Asia as the top markets. In all, 150 nations are served by 30 ocean carriers out of the Port of Charleston. There are also numerous privately-owned terminals in the Charleston

area providing services for the steel, petroleum, and paper industries. The Port of Charleston also supports cruise passenger traffic that has seen an infrastructure enhancement to support additional cruise traffic and passengers. The port is a major cargo facility for the U.S. military with an out-load operations site located in North Charleston, and is ranked one of the top strategic ports in the U.S. for military cargo movement.

Successful BEST Maritime Cases

Partnerships with our international law enforcement partners are vital to identifying, disrupting, and dismantling TCOs. HSI strives to coordinate with our global counterparts beyond our border. Such collaborative relationships are demonstrated through these notable case examples.

The Newark BEST established a federally-led carjacking task force in response to the dramatic increase in luxury vehicles being violently carjacked in New Jersey, then smuggled through the Ports of Newark and Elizabeth, New Jersey to various West African countries to fund illicit TCO activity. BEST special agents and task force officers (TFOs) arrested 29 defendants following the dismantling of a major international carjacking and stolen vehicle trafficking ring. The ring procured luxury cars that were either stolen or violently taken through carjacking in New Jersey and New York and shipped the cars in containers to West Africa, where they were resold for large profits. Approximately 180 stolen vehicles worth more than $10 million were recovered during Operation Jack in the Box, a 10-month Newark BEST investigation that used multiple investigative techniques.

The Honolulu BEST has a remote area of responsibility – the Hawaiian Island chain – requiring cooperative law enforcement partnerships in order to complete the BEST mission of

identifying, dismantling, and prosecuting criminal organizations. Every partner agency must share the investigative burden equally, and disparate agency priorities must be set aside to serve the unit and its mission as a whole. The Honolulu BEST is pursuing several notable investigations to include narcotics interdiction, export violations, and intellectual property rights, and has provided direct support to many significant state and local cases related to the seaport environment. For instance, the Honolulu BEST received information from the Honolulu Police Department on the recovery of five stolen vehicles with altered and/or removed Vehicle Identification Numbers (VINs). The stolen vehicles had the VINs swapped with salvaged vehicles similar in make and model to avoid law enforcement and regulatory detection.

The Houston BEST maintains the Mexico Corridor Initiative (MCI), which leverages law enforcement and DoD resources. The unit also focuses on TCOs operating in the Caribbean and the maritime threat from Central and South America. In one example, our Houston BEST tracked a commercial freighter vessel from the Dominican Republic that had docked in Venezuela, and then traveled to Puerto Rico. The Houston BEST collaborated with HSI Puerto Rico and CBP's Office of Air and Marine Operations in the Caribbean to intercept a Zodiac boat launched from the ship. This partnership resulted in two arrests and the seizure of 1,774 kilograms of cocaine. That same ship launched a second boat, resulting in an additional seizure of 1,056 kilograms of cocaine and several arrests. The USCG made an additional 11 arrests and the freighter was eventually seized by the U.S. Government.

The Los Angeles BEST represents a true "task force" model, where each agency supports the team effort by bringing their combined resources to the table. This task force's success is largely due to the unit's philosophy that all agencies share the credit equally and that all the partner agencies' priorities are the priorities of the Los Angeles BEST. The unit has investigated

several notable cases in the areas of narcotics and human smuggling, gun trafficking, and export violations, and has provided direct support to many significant state and local cases related to the seaport including murders, gang violence, and cargo theft investigations. The Los Angeles BEST is quickly becoming the model of how to combat the growing trend of maritime drug and human smuggling via pangas and private recreational crafts along the Mexico-California coast.

Co-located with the BEST is the Los Angeles/Long Beach Regional Intelligence Group, which coordinates directly with BEST special agents and TFOs. In FY 2014, a Los Angeles BEST-led Organized Crime Drug Enforcement Task Force (OCDETF) investigation resulted in the interdiction of a panga piloted by two Mexican nationals while the USCG patrolled the Southern California Coast. The panga contained bulk marijuana weighing approximately 2,560 pounds, cell phones, a satellite radio, and a maritime radio. The special agents seized all of these materials, and the subjects were charged with violations of maritime and narcotics laws.

Similarly, the San Diego BEST Marine Task Force (MTF) has been successful in combatting TCOs exploiting the openness of the Southern California Coastline to smuggle drugs and people from Mexico into the United States. The San Diego BEST MTF is a vital component of the San Diego Regional Coordinating Mechanism and provides tactical intelligence to patrol and interdiction assets. It also responds to and investigates all maritime smuggling events. San Diego BEST MTF is the lead agency of one OCDETF investigation. The unit itself is an initiative of the Southwest Border High Intensity Drug Trafficking Area (HIDTA) – California Region, so all narcotics investigations are HIDTA-related. In a joint San Diego BEST and OCDETF investigation dubbed Operation Baja Maelstrom, HSI targeted a large-scale maritime smuggling organization operating out of Baja California, Mexico. The BEST special agents and TFOs learned that the organization planned to land along the coast of California between San

Diego and San Francisco. Since its initiation in 2012, Operation Baja Maelstrom has resulted in a significant increase in interdictions spanning multiple judicial districts. In FY 2014 alone, the operation yielded over 30 interdictions and 95 arrests, as well as the seizure of 81,000 pounds of marijuana and 30 pounds of crystal methamphetamine.

These are just a few of the successful operations involving our maritime BESTs.

Conclusion

HSI investigative and intelligence personnel are working tirelessly in coordination with DHS and our interagency counterparts to identify, disrupt, and dismantle TCOs that subvert the rule of law, violate our immigration and customs laws, destabilize our communities, and threaten national security. We commit substantial resources to secure not just the northern and southern borders, but our maritime borders as well. Our considerable efforts, in coordination with our partners at CBP and the USCG, are part of our comprehensive strategy known as the Southern Border and Approaches Campaign Plan, which focuses on securing the nation's borders, dismantling the infrastructure supporting cross-border criminal activity, and identifying and seizing the illicit criminal profits.

BESTs are continuing to identify and disrupt TCO activity and dismantle these organizations cell by cell. This success stems from the partner agencies acting as a force multiplier, with all of their resources, which have allowed BESTs to engage and more effectively target criminal activity perpetrated by TCOs. BEST special agents and TFOs continue to present successful criminal investigations for prosecution at the federal and state levels.

We are dedicated and committed to this mission, and we look forward to continuing to work with this Committee on these efforts. Thank you again for the opportunity to appear before you today.

I would be pleased to answer any questions.

Post-Hearing Questions for the Record
Submitted to Randolph Alles
From Senator Thomas R. Carper

"Securing the Border: Understanding Threats and Strategies for the Maritime Border"
July 15, 2015

Question: The Committee understands that the CBP Office of Air and Marine has several different overtime compensation systems; the two main systems being Administratively Uncontrolled Overtime (AUO) and Law Enforcement Availability Pay (LEAP). Please tell us what affect the different overtime systems have on Office of Air and Marine personnel and operations. Additionally, does the Office of Air and Marine have a preferred overtime compensation structure?

Response: CBP's Office of Air and Marine has disparate pay systems within its law enforcement officer (LEO) ranks. Currently within OAM, LEAP is only available to OAM LEOs who are CBP Air Interdiction Agents. Under 5 U.S.C. 5545a(i), such agents who are law enforcement officers are deemed to be criminal investigators under the LEAP law. The other OAM LEOs, including CBP Marine Interdiction Agents and Aviation Enforcement Agents, are compensated under AUO. The rules pertaining to the administration and payment of AUO are dramatically different from the rules pertaining to LEAP. For example:

- LEAP is fixed at 25 percent of basic pay while AUO can vary from 0 to 25 percent.
- Covered employees have a general right to receive LEAP, while AUO pay is discretionary on the part of the employing agency.
- AUO eligibility is restricted to employees holding positions in which hours of duty cannot be controlled administratively, and which require a substantial amount of unscheduled overtime work with the employee responsible for recognizing the need to remain on duty without supervision.
- AUO recipients who are nonexempt under the Fair Labor Standards Act (FLSA) receive an additional half rate for unscheduled (irregular) overtime hours while LEAP recipients are not covered by the FLSA.
- For LEAP recipients the first two overtime hours on a regular workday are treated as if they are unscheduled overtime hours covered by LEAP, even if the work was actually regularly scheduled.

These differences mean that OAM LEOs who are AUO compensated work side by side with LEAP-compensated LEO's, but get paid differently. This situation has led to inefficiencies and inequities and can be problematic in managing operations. This disparity also directly negatively impacts OAM from effectively planning and executing current and future operations and limits operational flexibility, creating additional costs to the taxpayer.

Question#:	1
Topic:	AUO
Hearing:	Securing the Border: Understanding Threats and Strategies for the Maritime Border
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

OAM operates under a 24 hour, 7 days a week response capability. In order to provide this response capability, OAM LEOs need the flexibility to coordinate, direct, and lead enforcement operations that require substantial flexibility in operational scheduling. Because each overtime system having varying requirements, to include tracking and reporting, they must be budgeted for, tracked, and reported differently; there can be an operational impact to the mission if, due to budget constraints, overtime is not authorized and the aircraft is required to return to base for a crew change. If all personnel involved in the mission were being compensated for unscheduled duty under LEAP, this would eliminate the possibility of having to break the continuity of the operation as all personnel could remain engaged for the duration of the operation without concern of exceeding overtime budget limitations (since no FLSA overtime pay is payable to LEAP recipients).

LEAP would be the preferred overtime compensation structure for all OAM LEOs. Implementing LEAP for all OAM LEOs would enhance CBP operational efficiencies and monetary savings by enabling managers to more effectively schedule operational missions within budget requirements; reduce the time currently required for administration of AUO; eliminate Fair Labor Standards Act (FLSA) overtime; and provide a single and equitable form of overtime compensation for all LEOs within OAM. A conversion from AUO to LEAP will establish a uniform system of compensation for the unique work conditions and substantial hours commonly required of OAM Agents.

Post-Hearing Questions for the Record
Submitted to Randolph Alles
From Senator Claire McCaskill

"Securing the Border: Understanding Threats and Strategies for the Maritime Border"
July 15, 2015

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=1098915&tabid=

Question: When the Department of Homeland Security was created, research and development spending was supposed to be consolidated within the Office of Science and Technology. Yet GAO found that millions of dollars in R&D funding was still being spent by DHS components.

How much is the Office of Air and Marine at CBP spending on R&D?

Please provide a list of current R&D projects, including any projects with any of the national labs.

Response: The Office of Air and Marine spends no funding on R&D.

Question#:	3
Topic:	CBP programs
Hearing:	Securing the Border: Understanding Threats and Strategies for the Maritime Border
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: GAO recently looked at 7 CBP programs, and 4 of them had no department-approved baseline: including the Strategic Air and Marine Programs within your office. Without an approved baseline, it is impossible to measure whether a program is on track to meet its expected costs. Furthermore, none of these programs have passed operational testing by DHS's Operational Test and Evaluation Office and none of them were programs for which acquisition documentation requirements were waived pursuant to former Undersecretary for Management's May 9, 2013 Memorandum.

Who authorized spending for these this programs without department-approved baselines?

Response: The original Strategic Air and Marine Plan (StAMP) started in 2006 and had an approved acquisition program baseline in 2007. Two DHS acquisition decision memoranda were issued for the program in 2008 and 2009. All of OAMs aircraft and marine vessel acquisitions underwent Operations, Test, and Evaluation (OT&E) in accordance with the governing directives at the time. Please note that the StAMP was initiated years prior to the approval of DHS Directive 102 (October 2010). The StAMP officially ends in the second quarter of 2016, and DHS has held three Acquisition Review Boards to determine the path forward on the procurements that will still be in progress when it ends. Actions included updates to life cycle cost estimates in the form of independent cost estimates or the Multi-role Enforcement Aircraft (MEA) and Black Hawk Helicopter, as well as an independent cost estimate for all aircraft in sustainment. OAM is currently updating a host of documents and assessments to include a MEA Capability Analyisis Report and Operational Requirement Documents and program baseline documents for the MEA and UH-60 aircraft. The documentation also includes an assessment prepare for the end of the StAMP and the recommended continuation of the MEA and Black Hawk efforts.

Post-Hearing Questions for the Record
Submitted to Randolph Alles
From Senator Rob Portman

"Securing the Border: Understanding Threats and Strategies for the Maritime Border"
July 15, 2015

Question: In your testimony, you state that a secure maritime border presents challenges. You reference attaining maritime domain awareness as uniquely challenging as many of the tools used to sort legitimate air traffic from the illegitimate are not available in the maritime environment. What tools are needed to sort legitimate maritime traffic from the illegitimate?

Response: Current successes in detecting and tracking threats in the air domain can be directly attributed to a combination of sensor coverage – obtained from Tethered Aerostat Radar Systems (TARS), Federal Aviation Administration radars, on aircraft transponders, and Department of Defense sensors – used in combination with law enforcement and intelligence information. Completely replicating this capability across the maritime enterprise would be extremely costly to the government and the maritime industry and time consuming to fully implement.

Although a number of steps have been taken to have better understanding of large commercial vessels and their cargo, including onboard automatic identification systems and notice of arrival information requirements, sorting the legitimate maritime traffic from vessels with illicit purposes present challenges in the maritime environment. Much of the continental U.S. shoreline, river, and harbor entrances, particularly at the smaller port facilities, lack sufficient persistent surveillance coverage to detect, track, sort, and support interdiction of suspect vessels of interest by either law enforcement or defense assets. Those areas that do possess sensor coverage are not completely networked at the national level, which creates potential additional vulnerabilities in our ability to detect multiple, simultaneous, geographically dispersed threats or incidents.

The CBP Office of Air and Marine (OAM) has partnered with the Department of Homeland Security Science and Technology Directorate and the United States Coast Guard (USCG), in the development of a prototype maritime security information distribution network that will provide the Operator enhanced situational awareness and decision-making tools to better allocate resources in a cluttered maritime environment. Called the Integrated Maritime Domain Enterprise-Coastal Surveillance System (IMDE-CSS), this network integrates existing coastal maritime sensors, new land and maritime sensors, promising commercial space-based remote sensors, and analytic decision and support tools to assist the Operator, determine intent, and if necessary, operationally interdict quickly and effectively. IMDE-CSS will allow Operators to identify and share maritime threat information in a tactically-relevant manner to support intelligence-driven, joint operations across the Homeland Security Enterprise between Components and the

Question#:	4
Topic:	Secure Maritime Border
Hearing:	Securing the Border: Understanding Threats and Strategies for the Maritime Border
Primary:	Senator Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Joint Task Force. New detection/tracking capabilities can be networked into CBP's Air and Marine Operations Center, as well as a range of maritime operations centers across the U.S. Government and at state and local levels, as appropriate.

Question: Do you believe changes in law or policy can improve our ability to secure the maritime border?

Response: There are potential changes that could dramatically improve maritime domain awareness and enforcement of U.S. laws. A secure maritime border is one where there is an effective understanding of the maritime domain, with awareness of traffic moving in or toward U.S. waters, and with the ability to infer intent and interdict as necessary. OAM has the responsibility and authority to safeguard the nations maritime borders through the enforcement of violations of law in the customs waters. The ability to enforce laws in the customs waters is contingent on the ability to effectively track and sort vessels. OAM would be happy to work with the committees on ways to increase maritime domain awareness and thereby improve our ability to secure the maritime border.

ALL HANDS ON DECK: WORKING TOGETHER TO END TRAFFICKING AND ABUSE OF PRESCRIPTION OPIOIDS, HEROIN, AND FENTANYL

MONDAY, SEPTEMBER 14, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Manchester, NH

The Committee met, pursuant to notice, at 1:59 p.m., at the New Hampshire Institute of Politics, Manchester, New Hampshire, Hon. Kelly Ayotte, presiding.

Present: Senators Ayotte and Shaheen.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. I would like to welcome everyone here for this hearing, which is part of the Senate Committee on Homeland Security and Governmental Affairs field hearing.

First of all, I would like to thank St. Anselm's for allowing us, Senator Sheehan and I, to use this facility to host this important hearing and thank President Disalvo and all who are here from St. A's for making this possible.

Also, before we begin, I just want to welcome so many of you who are here, who I know are very involved with this issue today. The topic of our hearing is "All Hands On Deck: Working Together to End Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl." And I know that there are many in this audience who have made it their life's work in all aspects of this when it comes to certain substance abuse, addiction, and law enforcement.

So I thank all of you, and I am going to identify some of the leaders we have in the audience. If I miss you, just please know how grateful we are for you to be here.

I know that Mayor Ted Gatsas from the city of Manchester is here. Tim Soucy, the Public Health Director from the city of Manchester and Chris Hickey, Manchester Fire Department Emergency Medical Service (EMS) Officer.

We have Jay Fallon, the Executive Director of New England Health Intensity Drug Trafficking Area (HIDTA) and Chris Stawasz from the American Medical Response (AMR), who is the General Manager for New Hampshire and Maine.

John Delaney, the Drug Enforcement Administration (DEA) Assistant Special Agent in Charge (ASAC), Manchester District Office. Leo Ducey, DEA Resident Agent, Manchester District Office.

A number of our police chiefs are here. Chief Rob Brown of the Goffstown Police Department. We have Chief Rich O'Brien from Goffstown Fire Department, so he's the fire chief. He's also president of the New Hampshire Fire Chiefs. This is an issue that our fire departments are dealing with every day.

Chief Andy Lavoie from the Nashua Police Department. Jim Hardy of the Hillsborough County Sheriff. We also have Chief Jamie Burkush, who is the Manchester fire chief. Chief Bob Cormier of the Tilton Police Department and also the president of the Chiefs Association here in New Hampshire.

And we have many from our treatment community who are here, so thank you all for being here. Among those are Dr. Cheryl Wilkie of the Farnum Center.

I know many of you who are here. I just want to thank those from the treatment and prevention community who are here. I wasn't able to get everyone's names, but know we are grateful for you being here.

We have the Acting U.S. Attorney, Don Feith, here. We have Jack Wozmak, who is the New Hampshire Senior Director for Substance Abuse and Behavioral Health. So, all of you, thank you for being here today.

I am grateful to see so many here to be part of this hearing. We are here to discuss a public health and safety issue that is devastating New Hampshire communities and families: prescription opioid and heroin abuse, and the ever-increasing role of fentanyl in fatal drug overdoses. Solving this crisis is going to require all hands on deck and today's hearing is representative of that approach.

I am very grateful to be here with my colleague, Senator Shaheen. Senator Shaheen is the Ranking Member of the Appropriations Subcommittee on Homeland Security. This is certainly an issue that is very important to our State and she has done very important on work on it, so I am grateful to have you here as well.

This is going to require an all-hands-on-deck approach. That is why that's the name of this hearing. Over the past year and a half, both Senator Shaheen and I have hosted a number of discussions on this issue throughout the State. At each of these roundtables, I have certainly heard from law enforcement, first responders, treatment providers, people in recovery, public health officials, and other community leaders, and certainly all of you here who serve are making the difference.

Today's discussion is going to be a little bit different because this is an official hearing of the Senate Homeland Security and Governmental Affairs Committee, and this will be the official transcript. So our goal is to bring the testimony that we hear today back to Washington so that we can make a difference and so that we can spread this testimony around other members so they can understand the challenges we are facing in New Hampshire. Hopefully we can get some additional policy solutions where we work together from the Federal perspective and grow support for Federal legislation to help, which you are all doing every day.

I want to thank our witnesses who are here today on the first panel. We are going to hear from Manchester Police Chief Nick Willard. He is the chief of our largest city, and certainly they are

seeing this epidemic as such a challenge and they are seeing a grave increase in the number of those addicted to heroin and the law enforcement challenges that flow from that. I had the privilege on Saturday night of doing a ride-along with the Manchester Police Department, and within an hour and a half I saw officers and also the Manchester Fire Department emergency responders go to two heroin overdoses. And those two individuals, by the way, would not have lived but for the response of our first responders at the scene.

I am very grateful as well to have Doug Griffin here today to share his family's experience with heroin addiction. Doug and his wife, Pam, who are here today, and their daughter, Shannon, who is also here today. They tragically lost Courtney—their daughter—to a heroin overdose last year. And since then, they have made it their mission as a family to share her story about addiction, to help others who are struggling, and to prevent similar tragedies. So thank you for being here.

We will also hear from Heidi Moran, who is a clinical administrator for Southeastern New Hampshire Services, who will provide her perspectives and insights as a treatment provider for New Hampshire residents struggling with addiction. She has been working on these issues for several decades. So thank you.

I am also honored to welcome in our second panel three of our Federal witnesses who have traveled here from Washington and will testify after the first panel. I am pleased to welcome the Honorable Michael Botticelli, Director of the Office of National Drug Control Policy (ONDCP), the Honorable R. Gil Kerlikowske, Commissioner of U.S. Customs and Border Protection (CBP), and John Riley, Acting Deputy Administrator of the Drug Enforcement Administration. Each brings a tremendous experience and background, decades of experience, certainly each of them. And we look forward to hearing from them, and we also look forward to their opportunity to hear directly from our New Hampshire witnesses, to bring that perspective back to the work that they do in Washington.

Solving this crisis will take a multi-pronged approach with local, State, and Federal officials working together to identify and pursue effective strategies. There are a number of bipartisan legislative efforts that we have been working on in Washington to support New Hampshire and communities across the country that are facing this public health epidemic. Law enforcement is working tirelessly, as we will hear from the chief, to take these drugs off our streets and to go after the high-level drug dealers. But we can't simply arrest our way out of this problem. I have certainly heard from law enforcement in New Hampshire that key pieces of policy need to confront not only the public safety issue, but we need more prevention efforts, more treatment options, and more support for individuals who are in recovery.

If you look at the statistics in our State, it is staggering. The number of people who overdosed in New Hampshire is alarming. In 2014 there were over 320 fatal drug-related overdoses in our State, up from 193 in 2013. I fear from the numbers I am hearing from throughout our State we are going to see a bigger number this year.

And those numbers, I think it is important to understand, do not reflect the number of lives that have actually been saved using lifesaving drugs like Narcan, which our first responders are administering almost every single day in this State. And if we did not have those lifesaving drugs, I can assure you that those numbers would probably, at a minimum, be tripled in terms of the number of people who would die from a combination of heroin, sometimes a combination of heroin and fentanyl, and, of course, the overuse of prescription drugs.

There is not a corner of our State that is not affected by this issue. From our largest city to our smallest town, we are all seeing this, and, unfortunately, this is not something we can think about as something happening somewhere else or to someone else. This is all of our problem, and this is something that everyone needs to understand. It will hit you or someone you know sooner or later. That is why we need to do something about it and work together on it.

We also know that addiction to prescription pain medications can often become a gateway to heroin use. According to a study from the Substance Abuse and Mental Health Services Administration, approximately four out of five new heroin users previously used nonmedical prescription opioids before using heroin. So that is one reason that we also need to engage our medical community, the pharmaceutical companies, and the Food and Drug Administration (FDA) as we look at the challenges we face on this.

I am hoping that the testimony that we hear today will allow Senator Shaheen and I to bring this testimony to Washington to push for getting legislation passed, legislation like the Comprehensive Addiction and Recovery Act (CARA), which I am proud to support. CARA focuses on prevention; it focuses on support for first responders; it focuses on strengthening prescription drug monitoring programs and launching a prescription opioid and heroin treatment and intervention program.

There are also many other pieces of bipartisan legislation in Washington. What we need to do is get this to the Senate floor and get this legislation passed to give support to everyone in this room and really start working on the Federal level to give you more tools to solve this problem.

We know that there are so many challenges to tackling this epidemic. We know that we do not have enough treatment in this State and that there are some challenges that we are seeing from Federal regulations that I hope that we can work to provide flexibility to our treatment providers so that we can have the maximum number of beds to help people who are addicted and are seeking treatment.

Finally, it is clear to me today why we are here. No one person and no one agency can solve this problem, and we are here to listen and learn about further steps that we can take together to fight this public health epidemic on all fronts.

So I want to thank all of our witnesses for being here today. I look forward to hearing your testimony. And I would like to turn it over to Senator Sheehan for her opening statement and then to our witnesses.

OPENING STATEMENT OF SENATOR SHAHEEN

Senator SHAHEEN. Thank you very much, Senator Ayotte, and thank you for convening this field hearing of the Homeland Security and Government Affairs Committee. We very much appreciate all of the witnesses who are going to be testifying today, and for those of you who have come from Washington, we hope you will hear information that you can take back, that we can work with you to address what we all know is a crisis of heroin and opioid addiction.

Now, as I know everybody in this room understands, this crisis is the most urgent public health and law enforcement challenge that is facing New Hampshire right now. And as we have heard from our law enforcement leaders, the answer is not just in putting people in jail. It is in prevention, treatment, and recovery. And as Senator Ayotte has said so eloquently, it's going to take all of us working together to address this crisis. Individuals cannot do it alone. Families cannot do it alone. Law enforcement cannot do it alone. Public health cannot do it alone. We have to mobilize entire communities and all of our resources at the local, State, and Federal level to address this crisis, because this is literally a life-and-death issue.

Addiction is a chronic illness and it has no permanent cure. People do not find lasting recovery in a clinic. They find lasting recovery in their communities. They need social supports and they need to connect with a positive, healthy, caring community. This is the only way to sustain sobriety over a lifetime.

Now, as Senator Ayotte said, there is a lot of legislation in Washington to address addiction, but the answer is education; it is not incarceration. It is prevention; it is not punishment. It is treatment, recovery, and rehabilitation; it is not just putting addicts in jail. And in addition to the legislation that is pending, we also have to make sure that the resources are there to address this crisis.

As you heard, I sit on the Homeland Security Appropriations Subcommittee, and I am disappointed to have to come back and report that when that subcommittee did its work, when the Appropriations Committee did its work, some of the funding that is going to be critical to addressing this crisis was cut. So that means, in the Senate, we passed a budget that cut Federal substance abuse treatment programs. The Senate's Health and Human Services Appropriations Subcommittee voted to cut funding for substance abuse treatment by nearly $130 million, including a $50 million cut to the Substance Abuse Prevention and Treatment block grant that is so important to New Hampshire. That means we will lose about $200,000 in funding if that goes through, as it passed out of committee.

Now, I think cutting funding is wrong, for two reasons. First of all, it is pennywise and pound foolish, because we will end up paying far more for incarceration and crime, not to mention the countless lives that will be shattered because of this crisis. So we have to do a number of things at all levels of government. Certainly in Washington, I think we have to not only pass the kind of legislation that Senator Ayotte talked about, but we also have to make sure that the funding is there and the resources are there, to actually make sure those pieces of legislation work and that commu-

nities like Manchester, States like New Hampshire can address this crisis in the way that we need to.

So, again, thank you all very much for being here, and thank you to all of our panelists for being willing to tell your stories.

Senator AYOTTE. Thank you, Senator Shaheen.

Now, as part of the protocol and tradition of the Homeland Security and Governmental Affairs Committee, all witnesses that come before the committee are sworn in.

So I would ask that both the first panel and the second panel, if you would stand and raise your right hand so that I can swear you in.

[All panel witnesses sworn.]

Senator AYOTTE. Thank you. Please be seated. I want to thank all of you for being here today. The first witness we will hear from is Chief Nick Willard of the Manchester Police Department (PD). Chief Willard.

TESTIMONY OF CHIEF ENOCH "NICK" WILLARD,[1] MANCHESTER POLICE DEPARTMENT, CITY OF MANCHESTER, NEW HAMPSHIRE

Mr. WILLARD. Thank you, Senators, for having me here today.

I would like to start by thanking people like Doug Griffin who have experienced this tragedy and yet they have the courage to put a face to the epidemic. So I do appreciate the opportunity to sit next to you. It means a lot.

As you know, I am the police chief in the City of Manchester, and I speak for all of law enforcement and probably to a degree our fine men and women in the fire department and the AMR ambulance who are out there saving countless lives. But for their heroic actions day in and day out, saving lives through Narcan, this tragedy would be even worse than what it is now. Manchester PD has confirmed 52 fatal overdoses. Those numbers may be different than what AMR tracks, but those are confirmed through the Medical Examiner's Office, with an addition of over 400 calls for service. So as officers are being needed elsewhere, they are responding to medical emergency calls.

We are now at a point where we are deconflicting through the DEA those very things. So the Senator went on a ride-along, and went to three heroin overdoses. We took that information, gave it to the DEA, and then were able to deconflict some of that information to see if there's a nexus between each of them. And that is how far this has become.

To kind of give you an idea of what we are looking at, we had a shooting in Manchester. We had officers go into an apartment unknown to us previously and we found it to be a drug house. And from that, we did an investigation that led to Lawrence, Massachusetts, and from Lawrence, Massachusetts, directly to Mexico. So now we know that there is a Mexican drug cartel, the Sinaloa drug cartel, that is fueling heroin to the streets of Manchester, New Hampshire. That is alarming. Just last week we shut down three drug houses, all within 100 yards of one another. Two of those drug houses were competing drug dealers, selling out of the same build-

[1] The prepared statement of Mr. Willard appears in the Appendix on page 1525.

ing on different floors, and yet they did so in peace and harmony because there are so many drug users and addicts in the city of Manchester and the surrounding communities that it is a target-rich environment for a drug dealer.

So we need help. We already have partnerships through the DEA, the Federal Bureau of Investigations (FBI), and the Bureau of Alcohol, Tobacco, and Firearms (ATF). However, as I was reflecting on the name for this, All Hands on Deck, on some levels we do that. Chief Burkus from the fire department, Tim Soucy from the health department, and myself have come up with an action plan for 60 days. My task was the enforcements. I have done some high-end prediction enforcement with the New Hampshire State Police. I am going to be doing another initiative through the State Police and the DEA. But it is not enough.

When you say "all hands on deck," I look at the Chicago Strike Force model, the Organized Crime Drug Enforcement Task Force (OCDETF). I think that that would give us an opportunity to bring together all Federal partners, local partners, and not just in Manchester, but statewide. And we talk about those small towns and the communities and the county itself. This would bring the full weight of the Federal Government to bear. It would give us an opportunity to actually have a U.S. attorney in the working group with them at all times, so we can have more aggressive prosecutions. Currently, more often than not, we are actually going to the county level to prosecute our drug cases right now because we are just getting better results. They are taking our cases quicker and we are turning them over quicker.

However, I would prefer to go the Federal route because we get larger sentences. So having somebody from the U.S. Attorney's Office embedded with the officers who are out there fighting the very issue that we are talking about, let us make no bones about it: We are in the throes of human tragedies every day. And Mr. Griffin is going to speak to that.

I believe in the treatment piece. I believe in the education prevention piece, the prevention through education piece. But I am a law man and I believe in enforcement. So every single time a drug addict who would not otherwise commit a crime because they were initially addicted through pain medication, and then they lose their job, and now they are out stealing from vehicles or breaking into houses, every single one of those vehicles is a victim in the city of Manchester. So the opportunity to give these people deferred sentences is not there.

We do not have a drug corps. We need something similar to that in Hillsborough County, because I believe everybody needs to be held accountable. Maybe they are given an opportunity through alternative sentencing, but at the end of the day, they did victimize somebody in order to get themselves in the position that they were in.

So I guess, moving forward, I believe in the partnerships. We are doing it now. I think the OCDETF model, modeled after the strike force in Chicago, would be a huge help moving forward, at least in my view. Because, currently, we are going after the more low level drug dealers that are causing quality-of-life issues within our neighborhoods. So if I have a drug dealer selling drugs out of a

house, they are bringing in unsavory characters, not just from Manchester, but from surrounding towns. Prostitution increases. So people who live there have to wade through prostitutes, other people that would not otherwise be in that neighborhood, and then they steal things coming in and out of that neighborhood.

I have decided we are going to take these drug houses out in real-time, but by focusing our efforts on real-time drug dealers to protect the quality-of-life in Manchester, we kind of missed that kingpin piece that we are talking about. And I think that most of that strike force would be a perfect opportunity to have that piece, but also get that aggressive prosecution that I think we desperately need.

Senator AYOTTE. Thank you. Thank you, Chief Willard.

I would now like to turn to Doug Griffin, who is the father of Courtney Griffin.

And Mr. Griffin, thank you so much for all of your work, and certainly I know that I speak for Senator Shaheen and myself that our hearts are with you and your family while you are here today, as well.

TESTIMONY OF DOUG GRIFFIN,[1] NEWTON, NEW HAMPSHIRE

Mr. GRIFFIN. Thank you very much. Before I start my testimony, I would like to let you know that my testimony is based on the person I was before, not now. During all of Courtney's problem with addiction, we were parents that hid her addiction, so we were in a world that was different than the world we are in now.

So, Courtney's story. She was born very early, about 5 weeks early, and her lungs were not strong enough to breathe.

I have really got to get through this.

So she spent the first 11 days in the Neonatal Intensive Care Unit (NICU) center, and we were really worried then that she would not make it. So, then, when we finally got her home, she was strong and she did well, and she started school.

We lived in Salem, New Hampshire and she went through the first two grades in Salem. She was always a quiet kid, never talked much. Actually, she talked hardly at all. Then, as she entered third grade, we moved to our home in Newton and she started school there. She was a little chubby and the new kid, so she was sort of shunned, and she did not take well to that. So she did not really like school. She was very smart. I could tell, talking to her and playing games with her all the time, that she was really on top of things. School was not hard for her at all, but she just did not want to go, and a lot of mornings she would be crying, saying she did not want to go to school.

She got into middle school and she made a couple of friends, and then things started to turn around for her because she had some friends. Then it was fun to go to school, and the friends would come over to the house and things were good. We thought things were going to go well.

When she was 12, we sent her on the People to People program, where she went to Europe and did five countries in two weeks, and she saw things that most people I know still have not seen. When

[1] The prepared statement of Mr. Griffin appears in the Appendix on page 1531.

she came back, she was like an adult, and she would speak with adults more easily. It was like it changed her life. It changed our lives. And she was such a strong person that we bought her one of those Verizon prepaid phone cards so she could be sure to call home all the time, and she did not call home once. And when she got home, all the parents were thanking us for her letting their kids use the phone card so they could call home, because they missed their parents. Crazy kid.

So when she got to high school, she got her first job, and she was working in fast food at Wendy's here in Haverhill. And, of course, they take the kid that's got the new job and they put them on the crazy hours, so she was working until midnight or later on the weekends. And she did not have a car, so my wife and I were driving her, dropping her off and picking her up. I would sit in the parking lot and wait for her to close every night, because I wanted her to have a job. I wanted her to learn a work ethic.

We gave her a car and we were kind of relieved because we did not have to go get her after work. But the people that come in at that hour of the night at closing time are the people that you would never want your kid to associate with. And, of course, they did not have cars, so they needed a ride, and Courtney ended up giving rides to people that, I would never have had her give a ride to.

Then she started being late coming home, and then her schoolwork started to suffer a little bit, and pills started missing from our house. Not on a big scale. Some things were missing. Money would go missing. But we were not sure whether we misplaced things or—you do not think someone is going to steal from you in your house at first.

So the older she got, she got a little bit more into perk 30s. She was talking—she knew the word. She was talking about perk 30s and using drug words around the house that did not belong in our house. We never had them in our house before, and we were afraid.

When she was getting ready to graduate from high school, she was accepted at the University of Hawaii. Because if you asked Courtney what she wanted to be when she grew up, she always had the same answer. She said "Hawaiian. "

And so I would not let her go, because I was afraid to cut her a check and put her on an airplane for fear that she would just further get into the drug thing. We were afraid at that point. I said, "You are going to have to come work for me for a while, and maybe take some night classes and prove to us that you are ready to go."

And she said, "OK, Dad."

And she came to work for me. And I have a million parts in my inventory and she came in, she sat down, and she was easily able to handle inventory control. She controlled our inventory without an issue. She did our shipping; she did our receiving. That kid was brilliant. We listened to the radio every day, and outside of one door of my office was my daughter running the computer company and outside the other door was my daughter, Shannon, who is here, running the flower shop. So I had everything.

After about six months, she had saved up enough money—thousands from working—because she did not have any bills and did not have anywhere to spend her money and was working all the time. So she went out and got a new car. And on the way home

from the gas station, she ran into the boy who led her to heroin. And from that point on, our lives went straight downhill. And at one point in our house, we found one of these. And as you can imagine, nothing could be worse.

So we started to try to get her treatment. She ended up in Hampstead Hospital where she was for nine days. When she came home, all she came home with was a list of where every drug in the world came from. Then she started disappearing for longer periods of time, and it started to snowball, and a $7,000 necklace went missing and then checks were written out of my company.

And she was still our child, so I did not want to hurt her credit or get her arrested, so we did not tell anybody. We just started to look for help. So we Googled help, and the people that make the most money come up on top, and we just could not get her help. Our insurance company would not cover anything. My wife and I spent 100 hours in emergency rooms, waiting to try to get her admitted. They would keep her for an hour or so. They would release her. Even when the local authorities took her to the hospital, to admit her, they were out three hours later. Would not hold her.

Sorry.

It got to the point where we were frantic because we knew that we were going to get the call. We knew that she was using drugs heavily. I called the Farnum Center in Manchester and spent an hour and a half there going through an interview process where we were told that she would not be allowed to go. And our insurance company let us know that it was not a matter of life or death, so they would not cover the problem.

So we got involved with local authorities who said the only thing you can do is kick her out of your house and cancel her insurance, because if she is homeless, she can get help in Massachusetts. So we kicked her out of the house and canceled her insurance and she moved in with her boyfriend's grandparents. Shortly after that, her boyfriend was arrested and put in jail for a parole violation and she was all alone. Then she totaled her car, and she was further alone. She was just alone in a strange house with strange people.

We know who sold her the heroin. He delivered it to the house that night. And she used it and she died of fentanyl. And the State medical examiner told me that it was a strength of about 80 times stronger than she thought it would be and that she did not feel anything. She would have just drifted away. So, in one day, we lost this.

And just in closing, this weekend, her boyfriend died—in the same house, in the same room, the same bed—and was buried this week.

That's all I have. Thank you .

Senator AYOTTE. Thank you, Mr. Griffin. Unfortunately we hear too many stories of this happening, and just know that all of our prayers are with you and your family.

I would now like to introduce Heidi Moran, who has a very important position providing treatment. I want to thank her for being here today, as she is the clinical administrator for the Southeastern New Hampshire Services in Dover, New Hampshire.

TESTIMONY OF HEIDI MORAN,[1] CLINICAL ADMINISTRATOR, SOUTHEASTERN NEW HAMPSHIRE SERVICES, DOVER, NEW HAMPSHIRE

Ms. MORAN. Thank you.

Senator Ayotte, Senator Shaheen, and distinguished Members of the committee, it is my privilege and honor to address you today on behalf of my agency and all those New Hampshire residents who are struggling with the disease of addiction and would like to access treatment.

Southeastern New Hampshire Services is a private, nonprofit agency dedicated to helping people recover from addictive disorders since 1979. Many clients come from the street or homeless, couch-surfing or living in shelters or tents. We have always been known as the house of hope and the place that would help anyone regardless of their ability to pay.

Prior to 2013, Southeastern had not had to worry about billing or revenue sources. We were provided with our primary budget from the New Hampshire Board of Drug and Alcohol Services block grant, some funding from Federal probation and parole contracts, private pay resources from various DWI programs, and private donations. Our sources for reimbursement have changed and must now look to Medicaid and other insurance providers for payment. Since 2013, the payment structure with the State has changed several times without much notice or assistance. We had a deficit of $85,000 last year and are working at a deficit of at least $100,000 for our current year.

Southeastern was never asked to obtain or required to have the U.S. Department of Health and Human Services (DHHS) licensure or any other accreditation in the past. Since the changes in pay structure became a reality in 2013, we became aware that licensure is a must in order to be able to bill any and all insurance companies for residential services. Some of the obstacles to obtaining licensure have been lack of qualified staff to bill Medicaid and the need for an outside billing agent; lack of information and guidance through the process of applications for insurance companies as well as licensure; working with multiple agencies from town, county, and State, and trying to coordinate meetings and agreements as to what we need to accomplish for compliance; major renovations that need to be done to the building which include but are not limited to installing Americans with Disabilities Act (ADA)-compliant shower rooms, handicapped ramps, elevators, new sprinklers, and more.

Some people say, "Why not just buy another building?" We rent. We do not have the funds to buy, and renovations for compliance would need to be done in any other structure as well. Plus, we are in a location that suits the population we serve by being close to the courts, probation, Strafford County jail, and on the bus route. It has taken all this time to get the necessary agencies together so the architectural plans and safety plan can be completed and approved. We are still waiting for final approvals, and no hammers have swung as of yet.

[1] The prepared statement of Ms. Moran appears in the Appendix on page 1536.

The county is doing all they can to work with us and to help us get the work done. However, we are looking at approximately $500,000 worth of work that we will be responsible for. The county will assume half of all the safety requirement costs. We will have to pay for the other half of safety costs and for all renovations to bring things up to ADA code compliance. If the county were to rent space to anyone else and it were not be used as a residential facility, they would not have the same requirements and codes to meet because the license would not be needed.

Some obstacles for treatment for clients now and in the future include losing beds due to square foot requirements in the residential rooms and an inability to pay for treatment. Just because people are eligible for insurance does not mean that they can access it. I feel unreasonable expectations are placed on many clients who are still sick and suffering, who are without identification, address, or proof of income to back up their application information.

My agency and others in New Hampshire need help. We have not had the guidance, the financial support, or the time to do what needs to be done. New Hampshire cannot afford to lose any beds. We have been working on shoestring for many years to provide quality treatment to the population with the greatest need. We are all passionate about our work and are here to promote change and increase the possibilitity of a life without drugs for those who continue to struggle.

Berkeley Data Analytics Stack (BDAS) has given us through June 30, 2016 to get our license or have all support pulled from our residential programs. That would be a disaster. I have 10 short-term residential and 15 long-term residential beds. Can New Hampshire afford to lose 25 beds? How many kids would die?

We need people in our corner who will help us get done what is needed in order to stay operating. I have cried with clients who have come into treatment scared to death that they won't be able to do it. I assure them that they can as long as they are willing to follow our suggestions and those that they receive from other people in recovery. I have cried with parents who want to fix their children and cannot let go. I have cried at the funerals of those who could not stop. My tears have flowed freely for over 20 years.

I thank you for the opportunity to appear before the committee today and share some of the challenges we are facing in trying to help treat those who are suffering from addiction.

Thank you.

Senator AYOTTE. Thank you, Ms. Moran.

I am now going to ask questions of the witnesses and then Senator Shaheen will have an opportunity to do that.

Chief Willard, I wanted to ask you about the proposal that you had mentioned, the OCDETF strike force that comes from the model in Chicago.

How would that work in New Hampshire? Would it be a working group that would get together regularly and would bring Federal, State, and local authorities together with the U.S. Attorney's Office? And where would you see that centered?

Mr. WILLARD. The way I understand it, given the research that I have done, is the Organized Crime Drug Enforcement Task Force is a single entity made up of Federal, State, and local partners, and

that would include a U.S. attorney full-time on staff. I would envision that they probably have room at the facility in Bedford, and that they would work together all the time.

So it would be other agencies, local agencies committing personnel to it, being funded by the Federal Government. So you would have somebody from Nashua Police Department, Manchester Police Department, Merrimack, and New Hampshire State Police. Essentially, the more bodies, the better, so any agency that can contribute to them. And then you would have a funded position from the U.S. Attorney's Office who would actually be embedded with law enforcement as they are working through these cases.

Senator AYOTTE. So they would be specially designated to this group?

Mr. WILLARD. Correct.

Senator AYOTTE. Terrific.

When you look at the challenges we face, how is the cooperation with Federal agencies?

Mr. WILLARD. It is fantastic. The reason we are staying above completely sinking into the abyss is because of those partnerships.

Now, that case that I talked about, where we took 27 kilos of heroin off the streets through that shooting investigation, was simply because of the partnerships that we had with the DEA, the State Police, Massachusetts State Police, and that type of cross-border cooperation.

Senator AYOTTE. So this would be a more effective way to get everyone together, all working together, with the prosecution embedded?

Mr. WILLARD. Exactly. And all at the same time, everybody sharing the same information, but also everybody bringing in additional resources.

When you have a Task Force Officer (TFO) from the city of Manchester, and you are a Federal agency, we pretty much have all that intel at their feet when it comes to dealing with Manchester. So imagine expanding that to the North Country, from the farthest reaches north to the farthest south.

One thing we do know is that we have a pretty good grasp of where the heroin is coming from. The majority of it is coming from the Mexican cartels. That, in and of itself, should necessitate Federal action to go after the people that are laundering the money, go after the people that are transporting the drugs, and go after the kingpins that are funneling the drugs.

When I met with Mr. Riley this morning and I am looking at a map that I am sure you will see later—when you see what the Mexican drug cartels control of the American landscape, and they are selling their drugs almost with impunity—we are fighting it as best we can, but when you see that map, you realize just how severe of a problem that we have.

On the street level, battling this with the fire department and the ambulances, and my officers going from call to call to call, we can only sustain that so long. We need to take these people off of the street and we need to get the head of the snake. And the only way to do that is through some sort of strike force. And that is why I thought it was an important thing to bring up today.

Senator AYOTTE. Thank you.

Mr. Griffin, you talked about what your insurance company said to you, and I know that Congress, before I got elected to the Senate, passed the Mental Health Parity and Addiction Equity Act to ensure that insurance companies were really making sure that they were treating substance abuse on a level playing field. But it sounded like your insurance company—and, unfortunately, this is the first time I have heard this—decided this was not a matter of life or death. Well, we all know this is a matter of life or death.

So how did you feel when you tried to reach out and you got the runaround and what do you want to make sure that we know in order to help other families who are in the same situation?

Mr. GRIFFIN. It was terrible for us because even if insurance had covered it, there were no beds, anyway.

Ms. AYOTTE. Right.

Mr. GRIFFIN. I mean, everywhere we went, there were either no beds or no insurance.

We did not actually find out how bad it was until the end. I mean, we worked and worked and worked and worked, and then she died. And I deal with—now, I get two or three calls at my house every day, from families all around the country wanting help, and all I can do is steer them to the best possible person I know in the area. That is all I can do. Because as far as I know, if it is someone in New Hampshire—I will talk about New Hampshire, especially—if they have a problem, there are very few opportunities for them to enter recovery.

Senator AYOTTE. Thank you.

Ms. Moran, you talked about some of the challenges in wanting to keep bed space while following some of the regulations. What would you like us to know when it comes to how we could better help make sure that we are supporting more opportunities for treatment and also giving you the flexibility that you need to make sure that we are maximizing, obviously, the resource we do have to create as many beds and support and opportunities for treatment as possible?

Ms. MORAN. Well, as I said, we have lost beds as a result of the compliance requirements. It is a fire and safety issue, which I totally understand, and in no way do we want our residents to be in an unsafe environment.

However, I believe that when some of the compliance codes were written, they were written with nursing homes or other types of facilities in mind. For example, the majority of my rooms are 122 square feet, and by code, it is required that every room is 160 square feet in order to have two beds in a room. And that does not include space that gets taken away by closets and furniture and things like that. I have lost four beds in each of my programs and had to double up offices in order to not lose more, which, puts other stresses on our program.

So, when you look at a grandparent, for example, that is in a nursing home, and Grandma lives in her room, and she has her TV and her recliner and all of her things in her room.

In our facility, people sleep in their room, they get changed in their room, and that is it. They are not allowed to hang out in their rooms. It is very unhealthy for people in early recovery to be iso-

lated and be by themselves, as well as to be housed in a room by themselves. That is dangerous.

We had a situation last winter where somebody overdosed and they were in a room by themselves. Fortunately somebody going down the hallway heard the gurgling and was able to get staff and they were revived by cardiopulmonary resuscitation (CPR). But if that had not been the case, that person probably would not have made it.

So, it is dangerous to not have two people in a room as well as this code issue.

Senator AYOTTE. Thank you.

I would like to turn it over to Senator Shaheen for her questions.

Senator SHAHEEN. Thank you, Senator Ayotte.

Chief Willard, Senator Ayotte and I got to go with you and members of the department this morning to see the neighborhood where some of the recent drug busts have happened and you talked about the challenges facing the police on the street. And one of the things you showed us were some pretty dramatic photos of the people who you brought out of those apartments during those drug busts.

And I wonder, can you talk a little bit about what kind of training there is for officers to handle drug addicts in those situations? Because one of the things that struck me, that you and other members of the force talked about, was that you had not seen a bust where addicts were in as awful a condition as the people who you worked with that night.

So can you talk about the training that officers get and whether it is adequate, whether it needs to be improved upon, and what more we can do to help in that situation?

Mr. WILLARD. I think our training is adequate. We do a lot of training through the DEA on these types of issues. We also do Crisis Intervention Team (CIT) training, and the Manchester Police Department is actually sending two sergeants out to be instructors for CIT. So I think our training is pretty robust.

I think what you saw in those photographs, which I have here if you wanted to put them in the record, is that it was a drug house where the drug dealer would not let you leave. You had to shoot your drugs up while you were there. So we hit it just at the right time and we had 21 people in this two floor apartment.

Again, these are competing drug dealers that are not fighting with each other. And what it tells you is that the addiction pool is large. The reason a lot of people are coming to Manchester to sell drugs is because in New Hampshire, they can get two to three times the profit compared to Lawrence or even New York City, depending on where they are coming from. So it is a target-rich environment is what some of the dealers will tell us during our debriefs, because there is a lot of heroin addicts here, because they can make a lot of money. Those 21 people are a perfect example of that phenomenon.

Now, law enforcement can do what we can to disrupt the supply, which we have. I think we are well over 30 kilos of heroin coming into Manchester that we have taken off of the street. Officers in the Manchester Police Department routinely are making car stops and finding heroin—62 grams, 33 grams, 40 grams. It is astounding to see the numbers. It is so plentiful. It is everywhere. So even

though we are conducting major disruptions in the flow, unless that pool of heroin addicts or fentanyl addicts or now we are seeing crack cocaine is shrunk, we are going to be swimming against the tide. So I am a big advocate for treatment.

Now, how you get funding for treatment and what that looks like—I know that there were changes in the insurance company years ago. And once the insurance company said, "We are no longer going to pay out on detox" or "Now we are not going to treat for addiction," you saw beds in New Hampshire shrink down from well over 600 to nearly nothing today.

So that discussion needs to be with the insurance companies. Can you change the way you do business? Can you now consider or classify detox as something that you can insure? And if you do that, then the beds will increase, because the treatment facility currently cannot put more beds in a facility if the money is not there. I mean, they still have to make money. Even though in their hearts they want to end rediction through recovery—addiction—there is no doubt in my mind. But if there is no money in it, they still have to pay their bills. So there needs to be a way to find, insurance companies or to work with the insurance companies to expand the coverage.

I think, most importantly, when I am talking about shrinking that pool of heroin addicts, we really have to focus on these doctors that are giving out dirty scripts and are putting more and more addicts on our streets. And the worst thing you can probably think of is a doctor who, by the very nature of what he does, is willing to put an unbelievable amount of scripts illicitly on our streets that would actually create more drug addicts. Because as soon as those pills dry up, they are going to go to heroin.

So that is a whole other piece that we need to look at. We need to look at the medical community and what they are going to do to change their pain management protocol, as well as look at the checks and balances to monitor that.

Unfortunately, the State of New Hampshire is well behind the times when it comes to what other States are doing, and we need to make our prescription monitoring program more robust. We have seen some advances, but on a State level, we need a little bit more.

Senator SHAHEEN. Thank you very much.

I certainly agree. We have heard testimony on the importance of how doctors prescribe medication and guidelines. I had a chance to question the Centers for Disease Control (CDC) Director, Tom Frieden, about this issue and he acknowledged that this is one of the real challenges that we face.

And also, we have to make sure that insurance companies appreciate the changes that we have seen in addiction over the years, and that, as Mr. Griffin said so eloquently, that it really is life-threatening.

Mr. Griffin, first of all, I want to thank you and your family for sharing Courtney's story with us. I know that it is not easy and it is really important for people to speak up, so I am so glad that you did.

Mr. GRIFFIN. Trying to get better at it.

Senator SHAHEEN. You were great.

As you said, you have people calling you—I have heard, and I am sure Senator Ayotte has heard, from families who are desperate to know how to respond to family members and to children who are addicted.

Do you have advice that you can give to families who may be in this situation? What would you urge them to do?

Mr. GRIFFIN. Yes. I am about a year into this now and there is a tremendous support community out there that does not have licenses. They are not clinicians; they are people. Our church is amazing. We have a service once a month for addicts and their families, and they come in and they change. I do not know if you have ever seen it happen, but they come in and they are afraid. And parents that have lost kids come in, and they are like me. They are a mess. And, we sit with them, and they come every month. The camaraderie of other people sharing the same experiences, they are helping each other.

There is a lot of little Ma-and-Pa things starting up all over the State to help people out. As a matter of fact, we have started one ourselves. And I refer someone to the person I know who is best at it who is closest to them. And I will take anybody's call any hour of the day.

Senator SHAHEEN. Well, thank you. That is very good advice, the importance of support for families.

Mr. GRIFFIN. Get them into the church. I had not been to church in 40 years. And since my daughter died, I am a huge proponent of the support you can get by going to church.

Senator SHAHEEN. Thank you.

Ms. Moran, you talked about the challenges of providing treatment and facilities for people who need it and how regulations need to be reasonable.

Can you talk about what you are seeing in terms of waiting lists for those beds that you have available and how you could better provide services? Do you have a long waiting list and is it consistent? Does it turn over? What do you see in terms of people waiting for treatment?

Ms. MORAN. As of this morning, I believe I had between six and eight people on my list. And what we do is that when we have somebody call in and do a telephone screen for a bed, once they are screened and we figure that we are an appropriate fit for them, then there are certain things that may be required. We may need them to get a physical. If it is somebody that has a lot of legal involvement, we may ask that they provide us with their legal history. There may be a few things that we need them to do. Or it may be a situation where we say, "Well, we will bring a doctor in-house. If somebody can pay for the physical, we will have the doctor meet them here and have the physical in-house." And, unfortunately, what I found is a lot of the people that get on our waiting list are young. With the heroin epidemic, we have seen a lot of younger people that are abusing heroin to, a great degree, more than ever before. Most of these people are under the age of 30. And today I reviewed a couple of screens before I came here, and I had three people that were 18 and 19 years old. That was not happening a few years ago. They were not even thinking about coming in to treatment at that age.

So, I mean, it is good that they are thinking about that, but a lot of the problem is motivation is being created either because they do not want to go to jail and so they are trying to make things look good for the court or Mom and Dad are going to throw them out if they do not get into treatment, and then getting them to follow through with staying connected to us, calling us, coming in and doing what needs to be done next. We are having a hard time hanging onto them.

As far as getting people into treatment, usually it is within wo weeks. And, it is not that long of a waiting period for somebody who is actually doing the legwork to get into treatment. But, so many of the young ones, they say that they want it and they might want it as they come out of the hospital after having Narcan, but in 10 hours they have forgotten about it and they are back out on the street doing the same thing.

Senator SHAHEEN. Thank you.

Senator Ayotte, can I ask that Chief Willard's—that those photos[1] be introduced to the record.

Senator AYOTTE. Absolutely. I think that will be important.

Thank you, Chief.

Senator SHAHEEN. Thank you.

Well, I want to thank all of you for being here today to present your testimony. And, in fact, we really appreciate your being here and your courage for being here. We consider this an ongoing dialogue here in New Hampshire. And we will have our Federal witnesses come here. I am glad they have had an opportunity to hear from all of you from New Hampshire today.

So thank you for being here and we will call up our second panel.

Thank you.

Panel Members. Thank you.

Senator AYOTTE. I want to thank our second panel of witnesses for being here and for having the opportunity to hear directly from our first panel on the challenges that we are facing in New Hampshire. This is certainly a public health epidemic.

Our first witness is Michael Botticelli, who is the Director of the Office of National Drug Control Policy. Director Botticelli has more than two decades of experience supporting Americans affected by substance abuse disorders.

So Director Botticelli, we appreciate you being here.

[1] The photos introduced by Chief Willard appear in the Appendix on page 1529.

TESTIMONY OF THE HONORABLE MICHAEL P. BOTTICELLI,[1] DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY

Mr. BOTTICELLI. Thank you, Senator Ayotte and Senator Shaheen for the opportunity to be here today to discuss the Administration's response to the epidemic of opioid abuse, particularly the rise in heroin and overdose deaths.

I also want to thank the first panel, and particularly Mr. Griffin, who often at great pain have turned tragedy into action. I think it is important that we carry Courtney's story with us as a reminder of why we do what we do. So thank you very much for sharing that.

During my time as the Director of the Office of National Drug Control Policy, we produced the National Drug Strategy, the Administration's blueprint for drug policy. Our strategy treats our nation's substance use problems as public health problems, not just as criminal justice issues.

And I do have to pause and thank the gentleman to my left, Commissioner Kerlikowske, who was my boss at ONDCP, for setting this Administration's strategy, and I stand on his shoulders in terms of the work that we are doing.

Having led the Bureau of Substance Abuse Services at the Massachusetts Department of Public Health, I am personally familiar with substance use issues in New England. The stark increase in the number of people using heroin in recent years has become a serious public health issue in our country. Overdose deaths involving heroin have increased sharply in recent years. Of the nearly 44,000 drug overdose deaths in 2013, heroin was involved in over 8,200 of those, up from 5,900 in 2012. And in New Hampshire, the rates of opioid analgesic-involved deaths and drug-poisoning deaths involving heroin are above the national average.

As we have heard, communities and law enforcement are struggling with an increased number of overdose deaths, increased heroin use, and increased heroin trafficking. It is important to note that plentiful access of opioid drugs via medical prescribing and easy access to diverted opioids for nonmedical use is feeding our opioid drug use and opioid epidemic. Approximately 18 billion opioid pills were dispensed in 2012, enough to give every American 18 years or older 75 pills to relieve pain.

Even though data indicate over 95 percent of prescription drug users do not initiate heroin use, four out of five newer users to heroin have experience as nonprescription drug users. Given this interrelationship, we must develop a response to heroin use that is part of a response to nonmedical prescription opioid use.

A further complicating factor in addressing this epidemic is law enforcement reporting of heroin that is laced with fentanyl, an opioid drug that we have heard to be estimated at 80 times as potent as morphine and hundreds of times more potent than heroin. Fentanyl can serve as a direct substitute for heroin in opioid-dependent individuals, but its increased potency can result in even more overdoses, particularly in those users who are not experienced.

[1] The prepared statement of Mr. Botticelli appears in the Appendix on page 1544.

ONDCP uses its role as a coordinator of Federal control agencies to bolster support for substance use disorder treatment and overdose prevention. In the Administration released a plan to address the sharp increase in prescription opioid drug misuse. This plan contains action items over four areas: education of prescribers to support safer opioid prescribing, increased prescription drug monitoring programs through State-based prescription drug monitoring programs, proper medication disposal, and law enforcement efforts.

The Administration has also convened an inter-agency heroin task force, cochaired by ONDCP and the Department of Justice (DOJ), to more closely examine heroin issues and to determine what further actions the Federal Government can take. We look forward to their report later this year.

We have seen overdose from prescription opioids leveling off, but, unfortunately, this has been coupled with a dramatic 39 percent increase in heroin-involved drug abuse deaths from 2012 to 2013. To address the overdose death issue, we are working to increase access to naloxone for first responders and individuals close to those with opioid drug use disorders. Hand in hand with this effort are efforts to promote Good Samaritan laws, so witnesses to an overdose will take steps to help save lives. I am pleased that, in New Hampshire, measures to expand naloxone access and to provide Good Samaritan protection was signed into law this summer.

Law enforcement nationwide has risen to the challenge of these increases in opioid use disorders and death. We are working in coordination with members of the public health community. As an example, ONDCP announced earlier this month that we will be providing funds under our High-Intensity Drug Trafficking Area program to develop a heroin response strategy based on a proposal submitted by a coalition of five HIDTAs across 15 States, including the NewEngland HIDTA. The heroin response strategy will foster a collaborative network of public health and public safety partnerships sharing best practices, innovative pilots, information sharing, and identifying new opportunities to leverage resources.

We are also working with our Embassy in Mexico, the DEA, the Department of State, and have engaged with the government of Mexico to initiate actions that they can take to reduce the supply of heroin. But it is also critically important that the medical establishment work with us to meet the challenges of overprescribing of prescription drugs and increasing access to treatment. Primary care and emergency physicians have the opportunity for early intervention and treatment before they become chronic, and it is vital that individuals with opioid use disorders receive evidence-based treatment. Medication-assisted treatment with DEA-approved medications, when combined with behavioral health therapies and recovery supports, have been shown to be the most effective treatment for opioid use disorders.

In July, the United States Department of Health and Human Services (HHS) announced an additional $33 million in funding to States to expand the use of medication-assisted treatment and an additional $100 million in funding to improve and expand substance use services at community health centers. The Administration's fiscal year budget proposal includes $133 million in new

funding to reduce opioid misuse and overdoses, with most of that funding going to efforts at the State level.

In addition to the connection given between injection of opioid drugs and infectious disease transmission, public health strategies are necessary to prevent the spread of infectious disease. The recent HIV and hepatitis C outbreak in Indiana is a stark reminder of how opioid use can spread other diseases, how comprehensive public health measures such as syringe service programs need to be part of our response, and how rural communities with limited treatment capacity may experience additional public health crises.

In conclusion, our administration will continue to work with Congress and our Federal, State, and local partners on the public health and public safety issues resulting from the epidemic of nonmedical prescription opioid use and heroin.

Thank you, and I look forward to your questions.

Senator AYOTTE. Thank you so much, Director Botticelli.

We also are very honored to have Commissioner Gil Kerlikowske here. He is the Commissioner of the U.S. Customs and Border Protection at the U.S. Department of Homeland Security (DHS), and we have to also say Commissioner Kerlikowske is the former director of the Office of National Drug Control Policy.

So Commissioner Kerlikowske, thank you for being here.

TESTIMONY OF THE HONORABLE R. GIL KERLIKOWSKE,[1] COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KERLIKOWSKE. Senator Ayotte and Senator Shaheen, thank you very much.

I was last in New Hampshire in which role to work with the legislature on the prescription drug monitoring program, and I am so glad that that is passed and in place. And thank you for holding the hearing today on what really is an incredibly important, complex, and difficult challenge to the Nation: the increasing trafficking and abuse of heroin and other opioids.

Certainly, as I heard from Mr. Griffin, the abuse of heroin in America continues to take too many lives and to tear too many families apart. As a police officer and police chief for 37 years, I understand the strain that this epidemic also places on local governments and communities across the Nation. I commend you for holding a hearing about working together.

Customs and Border Protection is the one unified border agency. We have a critical role in the effort to keep heroin and other dangerous drugs out of our communities, and we continue to intercept narcotics at the border, all as a key part of addressing this crisis; but interdictions, arrests, and convictions alone, as you have both stated, cannot solve the heroin epidemic.

My efforts focused on prevention and treatment in my earlier role, and we certainly support that now. In conjunction with those things, we have to deter drug trafficking through taking down the transnational organized crime routes, cartels, and other distribution networks. And to do that effectively, we need to better inte-

[1] The prepared statement of Commissioner Kerlikowske appears in the Appendix on page 1568.

grate our efforts and share information. Our vision and strategy in CDP outlines how we plan to enhance our capabilities through more collaboration, more innovation, and better integration to meet the challenge.

Secretary Johnson's Southern Border and Approaches Campaign unifies all of the capabilities of the Department of Homeland Security components to integrate intelligence, law enforcement efforts, and to provide a targeted and effective response to these threats, including drug trafficking. I am pleased to support ONDCP's heroin response strategy as recently announced by Director Botticelli and that fosters a collaborative partnership.

Our seizures of heroin have been increasing over the past several years, and so far this year, we are 32 percent ahead of last year, and that is on top of continuing increases of seizures. Almost all, of course, are along the Southwest border. We interdict heroin in all the modes, air, land, and sea and in both the travel and cargo environments. Interdictions of regulated opioids, such as fentanyl, have also increased. The majority of that, by the way, is seized at our international mail and express consignment shipments.

At the nation's ports of entry, CDP officers use technology, canines, and advanced techniques to spot vehicles modifications and other indicators of smuggling. Between the ports of entry, the border patrol maintains checkpoints and vigilance along the border. The CDP's Office of Air and Marine monitors the complex airway and maritime traffic to identify threats and to interdict contraband. They work with our other agencies, DEA, FBI, ICE, and others, to provide support to them. Because drug traffickers are known to use legitimate modes of travel and transportation, forging partnerships with the private sector is particularly crucial. It is a program that carry your initiative program. We provide training and site surveys for commercial transportation carriers with route systems that are at high risk for drug smuggling.

CDP is committed to keeping drugs from crossing the borders, but we are also very committed to the safety of the public we serve. A million people come into the country through our ports of entry every single day. We have implemented naloxone or Narcan as it was talked about in seven of our ports of entry, given the number of cases in which we have had internal carriers. And, of course, we know that naloxone can reverse the effects of an overdose.

Well, Senators, thank you for holding the hearing. I look forward to answering any questions.

Senator AYOTTE. Thank you so much Commissioner Kerlikowske.

We are also honored to have here today the Acting Deputy Administrator for the U.S. Drug Enforcement Administration, Jack Riley.

Mr. Riley.

TESTIMONY OF JOHN RILEY,[1] ACTING DEPUTY ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE

Mr. RILEY. Senator Ayotte and Senator Shaheen, thank you for the opportunity to spend some time to talk about heroin and DEA's response.

DEA's single mission is enforcing the Controlled Substance Act, and heroin has always been a major focus of our efforts. Sadly, today, 120 Americans will die as a result of drug overdose. Heroin and prescription painkillers cause over half of those fatalities. The abuse of these opioids is of epidemic proportions and is currently the Nation's number-one drug problem. New England's no different. 85 percent of the law enforcement agencies here in New England report heroin prescription drugs as the number-one drug threat.

I have been with DEA almost 30 years, and I have to tell you, I have never seen it this bad. The vast majority of heroin used in the United States is manufactured outside of the country and smuggled across our Southwest border. In recent years, we have seen an increase in poppy cultivation and heroin processing within Mexico. As a result, Mexican heroin is more prevalent on our streets, accounting for almost half of the domestic supply. The role of Mexican organized crime is unprecedented, with Chapo Guzman's brutal Sinaloa cartel dominating the New England market.

Mexican heroin arrives in New England in a number of ways. There are violent gang members and heroin traffickers from New York and Connecticut that have established heroin distribution networks in and around New Hampshire. They operate out of hotel rooms, rental apartments, or obtain the assistance of local addicts. These out-of-state traffickers line their pockets by exploiting the distribution networks to traffic guns and bring violence to your cities and towns.

In addition, home-grown traffickers in New Hampshire are obtaining heroin and heroin laced with fentanyl from local distributors. The growing relationship between Mexican—based drug cartels and domestic street gangs, coupled with what I consider an unlimited supply of illegal guns, has really created the perfect storm for law enforcement. In my opinion, this is the new face of organized crime in America.

The DEA is evolving with this threat by targeting the highest levels of traffickers and the vicious organizations they run. I have personally spent the bulk of my career chasing the man I consider to be the most dangerous heroin dealer in the world, Chapo Guzman. He and his Sinaloa cartel dominate the U.S. heroin market and his organization has reached to the extent of New Hampshire's urban and rural centers. DEA focuses its limited resources on disrupting and dismantling these organizations. That means targeting the intersection between Mexican organized crime and the violent urban gangs distributing the heroin on their behalf. This relationship between these two criminal entities is best described as toxic and dangerous.

[1] The prepared statement of Mr. Riley appears in the Appendix on page 1576.

Heroin can be found now in virtually every part of our country. Sadly, its regional presence is growing. In New Hampshire, heroin overdoses have more than tripled from 2008 to 2013. In 2015 alone, there have been at least 176 deaths involving opioids and over three-quarters of those involved fentanyl.

Today, heroin is far different than it was just five years ago. It is cheaper, higher in purity, and can be smoked or snorted, much like powdered cocaine. And there is no typical heroin addict. This problem transcends demographic and socio-economic lines. Knowing this drug is the source of so much violence and misery is truly what keeps me up at night. I know from experience that the more we do to reduce drug crime, the more we will reduce all violent crime.

While I was a special agent in charge of the Chicago Field Division, we developed a model of cooperation and collaboration that I truly believe is making a difference there and across the country. The Chicago Heroin Strike Force began with the shared belief amongst Federal, State, and local law enforcement, political leaders, community leaders, and prosecutors, that together we could effectively target the violent organizations distributing heroin. This new and innovative approach allows us to work from the street level to prevent violent crime while, at the same time, to pursue the investigations at the highest levels of the cartel leadership, wherever that takes us. We are actively looking to apply this model to DEA divisions across the country.

Just as we cannot separate violence from drugs, we cannot separate controlled prescription drug abuse from heroin. As a result, DEA has established highly effective tactical diversion squads—some 66 in total—that are committed to targeting the critical nexus between diversion, prescription drugs, and heroin.

In addition, we are taking steps to remove unwanted, unneeded, and expired prescription drugs from medicine cabinets. In fact, on September 26, 2015, DEA will host its 10th National Takeback Initiative.

I know, firsthand, these threats are an urgent challenge and a danger to our community and the lives of our citizens. Law enforcement is not the sole answer. Prevention, treatment, education, awareness are critical to our success. Everyone plays a role, from parents, community leaders, educators, faith-based organizations, cultures and athletics, to the medical community.

This is a marathon, not a sprint, but together we can produce the results that you seek and New Englanders demand.

Thank you.

Senator AYOTTE. Thank you, Administrator Riley.

I appreciate all of you for being here and I thank you. I am very glad to hear that DEA is reinstituting the takeback days, and that is a word we all have to get out that we cannot leave these medications in our cabinets.

I wanted to ask all of you to respond. Administrator Riley, you talked about the Chicago model, and all of you heard Chief Willard talk about potentially bringing this OCDETF model here to New Hampshire and then to have the U.S. Attorney and the prosecution piece embedded with obviously a task force that would have a partnership of State, local, and Federal.

So I wanted to get your thoughts on that and what we could do to move that model forward in places where we are seeing this in New Hampshire, so that we could get a better response with us all working together and have the prosecution piece there as well.

Mr. RILEY. I think it is increasingly important that we share information. I will tell you the bad guys really count on law enforcement not talking to each other and not connecting the dots. This particular approach, the strike force idea, really cements relationships across State, Federal, and local lines. You heard the chief say—by the way, the citizens of Manchester are lucky to have a chief like that. He sees it for what it is.

Senator AYOTTE. He is excellent.

Mr. RILEY. He is willing to attack it. He understands the role of treatment and prevention. And I do think the strike force was successful in Chicago because of that same commitment.

Senator AYOTTE. So what would we need to make it happen? What are your thoughts, certainly, Director Botticelli, Commissioner Kerlikowske?

Mr. BOTTICELLI. I think it is a really excellent idea. Part of the design and delivery of the HIDTA program is precisely along those points. So we can follow up with the chief and Jay Fallon from our HIDTA program to talk about what are the opportunities here to replicate that kind of model, to really look at how we go after the criminal organizations, and not the people with addiction, I think that is really important to do.

So the whole intent of actually for our information sharing, our HIDTA money was to support this. So we will follow up with the chief and with our HIDTA program and with other Federal partners to look at what are the opportunities to bring that here.

Mr. KERLIKOWSKE. And should it come to fruition, we would be happy to assign personnel to that OCDETF task force to provide some assistance.

Senator AYOTTE. Great. Thank you, Commissioner. And HIDTA is really important and I appreciate their work here in New Hampshire.

I wanted to ask about the nonmedical use of prescription drugs. And so prescription monitoring programs—Commissioner Kerlikowske, I know you testified in New Hampshire—how important is it that we strengthen those programs? And in addition to that, what should we be doing when it comes to engaging the pharmaceutical companies on this issue such as the physicians and the doctors—the medical community—to try to break this cyclical relationship between the overuse of prescription drugs for nonmedical purposes and substitute with heroin use?

Mr. BOTTICELLI. When you look at the consequence of opioid addiction in the United States, it is a perfect track in terms of looking at the increase in prescriptions. And, I love your chief. But I would add that, while we need to go after bad doctors and over prescribing, this is much more prolific than just bad doctors prescribing. Clearly, we want to target our law enforcement efforts. But we really have to enhance medical education for every prescriber around this issue. States now actually mandate some level of continuing medical education. We at ONDCP continue to support Federal legislation for mandatory prescriber education. As I have

said before, in the midst of an epidemic, I do not think it is too much to ask a medical provider to take some limited medical education to do that.

Clearly, State boards play a huge role in terms of looking at both prescribing guidelines as well as scrutiny of physicians who might be overprescribing. Prescription monitoring programs play a key role, because we know that many people who start developing an addiction go from one doctor to another. So these programs need to be strong, they need to be real time, but they also need to be easily accessed by physicians. So it is not enough that we have these databases, we also have to make sure that prescribers are using them.

So, again, this is a multi-prong issue, but dealing with both prescribing and providing good information to prescribers is particularly important.

Senator AYOTTE. Commissioner Kerlikowske and Administrator Riley, you talked about heroin coming over the Southern Border and the drug cartels that are really at the forefront of this.

What more can we do? Senator Shaheen and I both also serve on the Armed Services Committee, and we have heard from the Southern Commander, General Kelly, as well, about his concern from a military perspective of what potentially can be brought over the border.

How is the cooperation with the Mexican government? What more can we do to—obviously, for those who are really driving and leading the cartels—to better stop them, and do we need to engage the Mexican government further on this?

Mr. KERLIKOWSKE. I have worked with two administrations, President Calderon and the cooperation is very good. We have invested a lot of money in training with Mexico. They have just put together a force of over 5,000 highly trained individuals. We have invested in 10 sites on the border so that we have joint communication, so that our border control on one side of the border can talk directly through an encrypted system to Mexican officials, rather than making multiple ways of communication.

So the cooperation can be very good. I think there is one area where we should look, and that is eradication. When President Calderon took on the cartels—courageously, in my opinion—he used the military, and the military had also been involved in eradicating poppy and marijuana. As he moved them into more of a law enforcement role, I believe their eradication numbers have decreased. I think in a classified briefing you probably get information on the amount of poppy that is being grown and produced in Mexico. Eradication is not the sole answer, but it needs to be part of the method.

Mr. RILEY. I used to be charge of a DEA office along the border about 10 years ago, and I can tell you that we did not share a lot of information 10 years ago because it never went where we wanted it to go.

We have vastly improved our ability to operate. Our agents now work side-by-side with Mexican law enforcement and military daily, so that relationship has improved. Our ability to extradite key traffickers has improved. Those, I think, are the cornerstones of how we are going to turn the tide. But it is really crucial for us

to share information. There are investigations going on now where they share information with us that actually affects the streets of U.S. cities. So it is both ways.

Now, is there room for improvement? Absolutely. But we are going to strive to continue that dialogue, because I think, in the long run, that is going to be the most effective strategy.

Senator AYOTTE. Thank you. Senator Shaheen.

Senator SHAHEEN. Thank you, Senator.

Commissioner Kerlikowske, I had the opportunity to visit the Southern Border back in March with Senator Hoeven, who was the chair of the Homeland Security Appropriations subcommittee. We saw some very impressive work down there by CBP. We were in Laredo and saw a pickup truck that was stopped and there was a drug-sniffing dog who went around that pickup and clearly found something in the gas tank. It was fascinating to watch those efforts. We visited some of the stations where technology was being used to X-ray trucks and other vehicles, so we could see what people were looking for in terms of those interdiction efforts. We also heard, as you have said, Mr. Riley, from briefings, the cooperative work that is going on now, not just between us and Mexico, but also among the various local law enforcement agencies all along the border.

People are working together.

They are following that integrated model you talked about, Commissioner.

But one of the things that we also heard, and as Senator Ayotte talked about, General Kelly, who heads the Southern Command, talked to us when he was talking about border issues about the challenges that they have faced because of cutbacks from sequestration, those automatic cuts that went into effect. Southern Command was probably hit harder than any of our commands within the military and the impact that that it had on their ability to interdict drugs.

Do you see an impact from that cutback by South Command (SOUTHCOM), in terms of what they can do with interdiction?

And can you also speak to what you see as the challenges if sequestration goes back into effect at the end of this fiscal year, October 1? What is that going to mean for our ability to interdict those drugs and what impact is that going to have here in New Hampshire?

Mr. KERLIKOWSKE. You certainly have the right witness in General Kelly, and my time with General Fraser before him and my time with Admiral Stavridis when I came in.

So you have an absolute model in Key West, Florida called the Joint Interagency Task Force South. It is from the Coast Guard to the military to every Federal law enforcement agency, and when you go into that facility, you cannot tell what badge or what uniform anybody is wearing. There is one mission and it is the most unified concept. It has been well written about. They are tremendous at targeting, because random patrol in a police department produces random results. That is why this reduction in crime over the last 10 years, I think is the result of putting police in the right locations at the right times.

That is the same with the drug trafficking issues. And as we see things like semi-submersibles and others, our ability to random patrol, whether with RP–3s or the Navy, et cetera, random patrol is not going to produce anything. It is intelligence and it is targeting.

Here is the difficulty—and I think you know this very well and that is, it is like when I was a police chief in Seattle. If you called and said, "They are robbing the 7-Eleven," and I said, "Gee, I am really sorry. I do not have anybody to send." And that is exactly the situation that Giana South and others are in. They target information and they have no resources to send to interdict that. That happens far too often. And I would say that those resources are necessary, and I think as Secretary Johnson and others, including myself, have expressed, sequestration would be very difficult for us to overcome.

Senator SHAHEEN. And at a time when we are seeing this dramatic epidemic and an increase in the number of people being addicted, I understand that.

Director Botticelli, you talked about the prescription drug issue and how much of a challenge that is. One of the programs we used to have at the Federal level was National All Schedule Prescription Electronic Reporting (NASPER), and I wrote down what that acronym stands for. It unfortunately, expired several years ago and we have not been able to reauthorize it. But one of the things that I understand it would do is to allow us to better work across State lines on how class B prescription drugs are getting transferred to people.

So can you talk about what advantages it would give us if we could reauthorize a program like NASPER to address prescription drug overuse?

Mr. BOTTICELLI. Sure.

While we have had great support for our prescription drug monitoring programs, we, in essence, have the same funding level for our now 49 prescription drug monitoring programs as we did when we had 20. Clearly, we heard here, as we have heard across the country, that you cannot only have one robust State program, given the ability for people just to go across State lines, to go to another State if we do not have that. So information sharing and what we call interstate operability, the ability of state prescription drug monitoring programs to share data across State lines, become critically important. I am very familiar with the New England region. It is very easy when you have one State that has a robust program for people to go across to other States.

So having a robust prescription drug monitoring program, the ability for States to share that information across State lines, the ability to share that information in a de-identified way, with public health and public safety folks, become really important. As the commissioner said, we are always going to have finite resources and our ability to target, whether it is at a local level or at a county level, become really important. Those programs have really valuable information in terms of looking at what are hot spots in terms of overprescribing in various parts of our State and our Nation.

Senator SHAHEEN. Thank you.

Mr. Riley, I had the opportunity to visit the DEA office in Bedford not long ago, and one of the things that I heard from the folks

who were there was about the challenges—and, actually, Chief Willard talked about this as well this morning when we went on the walk-along with him—of fentanyl now being mixed in with the heroin.

Can you talk about what added challenges that presents for people out on the street trying to stop heroin?

Mr. RILEY. Well, I think it is one of many things that causes me to lose sleep, because it is really extremely dangerous—clearly to the trapped person, to the addicts, but to first responders, as well like the hard-working policeman that pulls somebody over. It is 50 times stronger than heroin. It can be absorbed through the skin or airborne and breathed in, and it is extremely toxic. We are beginning to see it more and more across the country. Unfortunately, what we have seen here in the Northeast is really at a much higher level.

Fentanyl, for the most part, is being produced clandestinely in Mexico, primarily by the Sinaloa Cartel. You can see from the map where the stronghold of the cartels are located, specifically in the eastern part of the United States. So, again, the key for us in Mexico is to make sure that we share the information when we develop information here, so that we can work it back.

And to give the police chief another shout-out, he recognizes that. He recognizes that we really have to work the street level to prevent violence. But for us to be successful, we have to jointly work these things back as far as we can go.

So, right now, I would say fentanyl, if it has not gotten every law enforcement officer's attention, it certainly will. We are doing everything we can to train and to get the word out, because it is a toxic substance.

Senator SHAHEEN. Just to add to that, I was aware of the potential dangers to addicts because I have heard testimony from people about the impact of fentanyl mixed with heroin on addicts. What I was not aware of until I had that briefing was the potential dangers to law enforcement. And I am not sure that that is widely known to the public, so I think that is a piece of this challenge that we need to make sure people understand.

Mr. RILEY. Yes, ma'am.

Senator AYOTTE. Thank you, Senator Shaheen. I think we will do one more round of questioning and I wanted to follow up with Mr. Riley on Senator Shaheen's question about fentanyl.

One of the things that was brought to my attention is that fentanyl is 50 times more powerful——

Mr. RILEY. Yes, ma'am.

Senator AYOTTE [continuing]. Than heroin.

And yet, under our laws, essentially the scheduling of fentanyl is not treated properly, in terms of quantities, as it is with regard to heroin.

So I recently introduced the Stop Trafficking in Fentanyl Act to bring parity to the penalty regime, and I just wanted to get your thought on this issue—especially as we look at how deadly fentanyl is—of whether we are really making sure that we are treating it with the seriousness under our Federal statutes that it deserves. I wanted to get your thought on that.

Mr. RILEY. Yes. We have the DEA that is reviewing the bill. We worked closely on the technical side with your staffers. I think it is extremely important for us to have a balanced approach to the emerging threat.

Fentanyl is clearly the reason many people are overdosing. So anything we can do to balance that—I am speaking as a cop, from my experience—is another tool, I think, that would benefit us across the board.

Senator AYOTTE. I appreciate it. I look forward to continuing to work with you on that, and we certainly appreciate any feedback you can give us.

Mr. RILEY. Yes, ma'am.

Senator AYOTTE. I wanted to also ask Director Botticelli about a couple of different issues.

The first one, just while we have Ms. Moran here—you heard her testimony—and this is an issue we have heard from other treatment providers, that perhaps the regulations that have come from HHS have not looked specifically at the challenges of residential substance abuse treatment.

And so I would ask you to work to look at this issue at the Federal level—I have written Health and Human Services about it—but I want to get your thoughts on it and how we can make sure that people who are in treatment get the support, make sure that the safety is all there. But we also want to make sure that we can maximize the resources that are directed toward treatment in order to get more individuals into treatment, and then, of course, hopefully after that, support their recovery.

Mr. BOTTICELLI. Sure. as she was testifying, and as someone who was in charge of State licensing practices at one point, there is probably, I think, Federal issues, but there are also State-level licensing issues involved.

So I think we can have a follow up conversation to learn a little bit more about what regulations are under the purview of the Federal Government and then determine what are under the State licensing authority, because I think it is really important. And as I was listening to her, I was thinking that many of the things that she, I think, is talking about fall under State licensing areas. But we would be happy to work with her in terms of those areas.

Senator AYOTTE. We really appreciate that very much. Thank you. Just to open up a dialogue so hopefully we can sort through this and really help make sure that we are able to use the resources that we do have and hopefully get more support.

I wanted to ask also, I know, Director Botticelli, you have been at many forums that we have been having in Washington on this issue, as well, and as a result of that, one of the pieces of legislation that we have reintroduced is called the Comprehensive Addiction and Recovery Act (CARA).

I wanted to get your thoughts on that legislation and what you think about it, as Senator Shaheen and I look to work together on what we are hearing today, and also hopefully push our colleagues in Washington—I keep saying to my other colleagues "Do you have a heroin problem?"

And they say, "Well, I don't know."

I say, "Well, go ask your public health officials, and go ask your first responders, and I guarantee that you have a heroin problem."

So I just wanted to get your thoughts on some of the areas we can work together on at the Federal level.

Mr. BOTTICELLI. I want to thank both you and Senator Shaheen in terms of your leadership at the Federal level. There are significant pieces of Federal legislation that I think speak to many of the issues that we talked about today. Certainly, CARA, I think, highlights many of the issues and fills really critical gaps, not only in terms of funding, but in terms of policy around this issue.

So we know it is not enough just to reduce—to reverse overdoses. Addiction is a chronic disease and we need to have really good continuum of care, including prevention, treatment, and recovery support. And so that is critical to be able to do that.

I think there are lots of additional opportunities that we can continue to work on together, particularly around prescribing behavior and about continuing to look at enhancing our prescription drug monitoring programs, as well as thinking about critical treatment resources that I know the State and locals critically need in terms of dealing with addiction issues.

Senator AYOTTE. Thank you very much. Senator Shaheen.

Senator SHAHEEN. Thank you, Senator Ayotte. And, again, thank you all very much for your testimony.

We have heard a lot of specific responses today to what is obviously a very complex challenge that we are facing. But if I were to ask each of you to talk about what is the number-one priority that you would urge us, as members of the Senate, Members of Congress, to address when we go back to Washington, what would it be? Director Botticelli.

Mr. BOTTICELLI. I think that is, at least from my standpoint, a simple question. It is really about resources. I think that we know that New Hampshire—we heard from providers who were talking about wait lists. When people are ready to get care, we should be able to give them care. So, resources, but also, clearly insurance plays a huge role in this. We know that only about 11 percent of people who have an addiction get care at a specialty treatment center, and often addicts cite lack of insurance coverage as a reason for not seeking care.

So we need to make sure we have good insurance coverage, both private and Medicaid, but we also know that there are people who will remain uninsured and who also need services that insurance will not pay for. So, clearly, having those resources at the State and local level become very important.

Senator SHAHEEN. Thank you. Commissioner.

Mr. KERLIKOWSKE. As I think it has been agreed on, we are not going to interdict or arrest our way out of the problem. And as important as it is to take down the cartels and the organizations, the traffickers with significant penalties, both civil and incarceration for them, I think that the prevention programs, the community coalitions that do the prevention work that have been underfunded, and they are incredibly inexpensive. And yet when you go to any of those meetings, and you sit and listen to these people that spend so much of their time, especially like listening to Mr. Griffin taking calls at home—and I do not think that is probably part of his job

that he is being paid for—those community coalitions could really use some help with resources.

Senator SHAHEEN. Thank you. Mr. Riley.

Mr. RILEY. From a law enforcement point of view, the one thing that would help is if law enforcement across the country really recognized the critical link between Mexican organized crime and urban street gangs. I do not think we can go anywhere throughout the country where we do not see that connection. So education and resources, things like the OCDETF strike force, where we target those intersections that affect the quality of life in our community, but at the same time make sure that we go after the highest level traffickers we can, it is evolving across the country and we have to face it.

Senator SHAHEEN. Thank you. Thank you all very much.

Senator AYOTTE. First of all, I want to thank all of our witnesses for being here today, our Federal panel and certainly the first panel for being here.

This is a very important issue, and I look forward to working with Senator Shaheen on some of the testimony that we have heard today. There are some excellent ideas that came forward here, and I hope the Federal partners I heard from, certainly the ideas that came forth, whether it is the OCDETF strike force and other ways that we can work together, whether it is with the insurance issues and the regulatory issues, I appreciate your being here.

And, again, this is about lives. We heard from Doug Griffin about Courtney, a beautiful young woman whose life was taken. And, unfortunately, there are too many other families in our State that are suffering like the Griffins. We need to do something about it, and I think the only way is for all of us to work together. And I look forward to working with Senator Shaheen on this, to take the feedback that we have gotten today and to really bring this to Washington, so that hopefully we can get some Federal legislation passed to make sure that we are all giving you the support at the State and local level that you need to combat this epidemic.

And with that, I have a couple of closing formalities, but I would like to turn it over to Senator Shaheen for any final comments.

Senator SHAHEEN. Thank you, Senator Ayotte, and, again, thank you for hosting this field hearing.

As the title of this hearing suggests, this really is an all-hands-on-deck challenge that we have all got to respond to at the local, State, and Federal level, in our communities, in the private and public sectors, in families—the kind of support that you talked about, Mr. Griffin. If we are going to meet this challenge, we have all got to work together, and I think that came through loud and clear as part of everyone's testimonies today. We appreciate that, and I will certainly be doing everything I can to work with Senator Ayotte and my colleagues in Washington, as well as people on the ground here in New Hampshire, to address this challenge.

And I hope you all will stay in touch with us. Call my office, let us know what challenges you see, and any ideas that you have to address this issue. Because that is the only way we are going to be able to solve this problem.

Thank you.

Senator AYOTTE. Thank you.

And I certainly echo Senator Shaheen's comments and appreciate her being here today and appreciate her leadership.

I also, before we close out this hearing, I just want to thank the staff that has come here from Washington from the Senate Homeland Security and Governmental Affairs Committee: Brooke Ericson and Scott Wittmann, who are both here, and Brian Papp, who is here to help us with this committee.

I would like to thank Sam Roberts and Chris Connelly from my staff. I know Senator Shaheen's staff was very helpful. And if there is anyone you want to——

Senator SHAHEEN. Yes. Chris Scott and Scott Merrick, who are here. Thank you.

Senator AYOTTE. Terrific. Thank you very much.

And before we close out this hearing, just for the record, I would like to request unanimous consent to enter my prepared opening statement for the record,[1] and also unanimous consent to enter Chairman Johnson's prepared statement[2] as well as Ranking Member Carper's prepared statement[3] for this hearing.

Senator SHAHEEN. And mine.[4]

Senator AYOTTE. As well as yours, Senator Shaheen. Sorry.

So if all of those statements could be entered for the record, I would appreciate it.

And the hearing record will remain open for 15 days until September 29 at 5 p.m. for the submission of statements and questions for the record.

And with that, this hearing is adjourned.

Thank you all.

[Whereupon, at 3:46 p.m., the Committee was adjourned.]

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[1] The prepared statement of Senator Ayotte appears in the Appendix on page 1519.
[2] The prepared statement of Senator Johnson appears in the Appendix on page 1515.
[3] The prepared statement of Senator Carper appears in the Appendix on page 1517.
[4] The prepared statement of Senator Shaheen appears in the Appendix on page 1523.

APPENDIX

Opening Statement of Chairman Ron Johnson

"All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin and Fentanyl"

September 14, 2015

Sen. Kelly Ayotte (R-NH) chaired this hearing. Sen. Johnson submitted the following opening statement for the record:

This congress, the committee has spent a great deal of time uncovering and defining the problems occurring at our borders. The accumulated testimony from our eight hearings and one public roundtable indicates that America's borders are not secure. One key indicator of our insecure border is the fact that we are interdicting only 5 to 10 percent of illegal drugs crossing our southwest border.

Today, the committee will explore how our insecure southwest border has become a gateway for drug traffickers to distribute illicit drugs across the country, particularly affecting states in the Northeast and Midwest. I want to thank Senator Ayotte, a trusted and valuable member of the committee, for proposing and organizing this very important hearing.

New England is facing a heroin epidemic. An overwhelming majority of federal, state and local law enforcement respondents indicate that heroin is the top drug threat in the region. New Hampshire, in particular, has seen a huge rise in heroin overdose deaths—from 16 in 2008 to nearly 250 overdoses related to heroin, fentanyl or a combination in 2014.

The Midwest has also been greatly affected by this epidemic. In Wisconsin, the price of heroin is at a four-year low and the number of deaths caused by heroin overdoses is on the rise. Between 2008 and 2012, heroin overdose deaths in Wisconsin tripled. While Wisconsin averaged only 29 heroin deaths a year from 2000 to 2007, in 2014 more than 200 heroin-related deaths occurred in Wisconsin. In Milwaukee County alone, 119 heroin-related deaths occurred in 2014.

For the most part, heroin enters the United States through our southwest land border via Mexican cartels and is then trafficked to major cities such as Chicago and New York City by drug trafficking organizations (DTOs). DTOs then distribute heroin into communities in New Hampshire and Wisconsin through criminal gangs.

Mexican cartels appear to be responding to the increased demand for heroin in the U.S. and heroin is transiting the border in greater volumes and in larger shipments. Until we take border security seriously in this country, heroin will continue to enter the supply chain through our southwest border to be distributed across all 50 states.

Today, the committee will hear very important, local perspectives defining the heroin epidemic occurring in small towns across the country. New Hampshire has been particularly devastated, and we will hear how law enforcement, treatment centers and families are addressing this issue. We will then hear from a federal panel that consists of the U.S. drug czar, the U.S. Customs and Border Protection commissioner and the Drug Enforcement Administration to understand interdiction efforts and ways to stop both the supply and demand for this deadly drug.

I thank the witnesses for their willingness to provide these important insights. I would also like to again extend a special thanks to Senator Ayotte for highlighting this issue and calling for a hearing to examine much needed solutions to this growing public health crisis.

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Opening Statement of Ranking Member Thomas R. Carper
"All Hands on Deck: Working Together to End the Trofficking and Abuse of Prescription Opioids, Heroin, and Fentanyl"
September 14, 2015

As submitted for the Record:

First, I want to thank my colleagues Senator Ayotte and Senator Shaheen for working together to address this serious issue and for holding this important hearing today.

I also want to thank our hearing witnesses, especially Doug Griffin and the Griffin family, for their willingness to share Courtney's story. The Griffins' experience is a powerful reminder of the human toll the epidemic the Committee is examining today has taken in New Hampshire and across the country. It's caused irreparable harm to families and communities alike. It's important that we learn from their experience and from the experiences of other witnesses during this hearing."

Unfortunately, no community is immune from this epidemic. Prescription drug and heroin abuse has been a growing problem for New Hampshire, Delaware and other states for many years now. For a sense of the scope of the problem heroin addiction poses, the Centers for Disease Control (CDC) notes that between 2002 and 2013, the rate of heroin-related overdose deaths nationally nearly quadrupled. In New Hampshire, the CDC reports a 27 percent increase in total drug overdose deaths between 2010 and 2013 and a reported 321 drug related deaths in 2014. In my home state of Delaware, there were 185 suspected overdose deaths in 2014 alone and around 3,000 adults sought public treatment indicating heroin as their primary drug at the time of admission in 2014.

I've often said that we as a country often pay too much attention to the symptoms of problems rather than trying to fix the underlying causes. That's the case with this issue, as well. Substance use disorders are preventable and treatable diseases. We must put a greater emphasis on prevention, treatment, and access to treatment for those who are suffering from substance abuse disorders. Our witnesses will explain how greater attention to this issue along with enhanced collaboration between multiple levels of government and health care providers can provide a path forward in addressing this issue.

Another key way to address the drug epidemic is through greater law enforcement collaboration between federal, state, and local officials. This hearing will explore what we are doing and what we can do more of to encourage collaboration and build better partnerships between law enforcement at all levels and public health representatives throughout the country. It will also examine how these drugs are brought across our borders and onto our streets, as well as our efforts to stop the trafficking of these substances.

The good news is that the Administration is taking important steps in this effort. Just last month, the Director of National Drug Control Policy, Michael Botticelli, announced additional funding for the High Intensity Drug Trafficking Areas program (HIDTA), including $2.5 million for a Heroin Response Strategy. This strategy is an unprecedented partnership among five regional HIDTA programs – including parts of New Hampshire and Delaware – and will foster collaborative partnerships between law enforcement and public health officials to improve data and communication about the trafficking of these drugs and the availability of treatment options. Our witnesses will explain this initiative in more detail, and share their insights on its progress and remaining challenges. But we must also look beyond our borders to realize the horrible effects our nation's drug addiction has on other countries, too.

Substance abuse is a multi-faceted problem with consequences for everyone from those who are suffering from this disease to their families and their communities. But it also is having a dramatic and deadly effect on the political and economic instability in South and Central America. As our Committee has found, so much of the corruption and violence in the Northern Triangle of Central America – Guatemala, Honduras, and El Salvador – and in other parts of Latin America is fueled in part by America's appetite for illegal drugs, including opioids. This violence and corruption is a major cause behind the surge of migration the United States has seen from those countries in the past couple of years. While the surge has declined this year, we should continue to be mindful of the role that substance abuse in America has in relation to the human suffering that it causes outside of our borders, as well as within it. We must look at long-term solutions that address the root cause of these issues afflicting our nation.

As the title of this hearing indicates, it will take an all-hands-on-deck effort to address the underlying causes of the epidemic and solve it. But through partnerships with law enforcement, health care providers, the community and others, I believe that real change can happen.

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U.S. Senate Committee on Homeland Security and Governmental Affairs Field Hearing

All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl

Senator (Chair) Kelly Ayotte Opening Statement

September 14, 2015

Good afternoon. Thank you all for being here today.

I'm grateful to see so many people here today as we discuss a public health and safety issue that is devastating New Hampshire communities and families: prescription opioid and heroin abuse, and the ever-increasing role of fentanyl in fatal drug overdoses.

Solving this crisis requires all hands on deck, and today's hearing is representative of that approach.

Over the past year and a half, I've hosted a number of discussions on this issue throughout our state. At each roundtable, I have heard from law enforcement, first responders, treatment providers, people in recovery, public health officials, and other community leaders. After all, it is their everyday work that makes the real difference.

Today's discussion, however, will be a little bit different. This is an official hearing of the Senate Homeland Security and Governmental Affairs Committee, which I serve on in Washington. I am grateful today to be able to serve as chair of this hearing and effectively bring the committee's work to New Hampshire.

I'm very glad that Senator Shaheen, who serves as Ranking Member of the Appropriations Subcommittee on Homeland Security, has joined me here today. I know this is an issue she has been working on as well.

And I'd like to recognize and thank each of our witnesses. On our first panel we will hear from Manchester Police Chief Nick Willard about what our state's police officers and first responders are facing on the front lines of this epidemic.

I'm especially grateful that Doug Griffin is here today to share his family's personal experience with heroin addiction. Doug and his wife, Pam, tragically lost their daughter Courtney to a heroin

overdose last year. Shannon, who is also here today, lost her sister. Since then, Doug and Pam have made it their mission to share her story in an effort to help others struggling with addiction and to prevent similar tragedies.

We will also hear from Heidi Moran, clinical administrator for Southeastern New Hampshire Services, who will provide her perspectives and insights as a treatment provider for New Hampshire residents struggling with addiction.

I am honored to extend a Granite State welcome to our three federal witnesses, who have traveled here from Washington and will testify on the second panel. I'm pleased to welcome the Honorable Michael Botticelli, Director of the Office of National Drug Control Policy; the Honorable R. Gil Kerlikowske, Commissioner of U.S. Customs and Border Protection; and John Riley, Acting Deputy Administrator of the Drug Enforcement Agency. I appreciate their willingness to participate in today's hearing, which is a valuable opportunity for federal officials to hear directly from New Hampshire residents on this issue.

Solving this crisis will take a multi-pronged approach, with local, state, and federal officials working together to identify and pursue effective strategies. In Washington, I am pursuing a number of bipartisan legislative efforts intended to support New Hampshire's communities.

Law enforcement is working tirelessly to take these drugs off the streets. But we can't simply "arrest our way out of" this problem. I've actually heard from law enforcement in New Hampshire that key pieces they need to confront this public safety issue are more prevention efforts, more treatment options and more support for individuals in recovery.

The number of people who have overdosed in New Hampshire is alarming. In 2014, there were over 320 fatal drug-related overdose deaths in our state, up from 193 in 2013. And heroin and fentanyl were the primary drivers of nearly 250 of those deaths. Last year, fentanyl factored in to 145 overdose deaths while heroin played a role in 98 deaths. In Manchester alone, overdose deaths so far have increased 90 percent over 2014, and 269 percent over 2013. In all of 2014, Manchester police seized 1,314 grams of heroin. As of July, Manchester police had seized over 27,000 grams of heroin in 2015. That's nearly 26,000 *more* grams in *just seven months.*

Every corner of our state is being affected by this epidemic. Even as we sit here in Manchester, places like Laconia, Keene, Berlin, and my hometown of Nashua are also dealing with this issue. The Seacoast region is being hit particularly hard.

In Laconia, it was recently reported that the City on the Lakes had 10 opioid-related deaths in 2014, and at least four so far in 2015.

In my hometown of Nashua, Police Chief Andy Lavoie reports that already this year, they have seen 142 drug overdoses—99 percent of which can be attributed to heroin and/or fentanyl. Last

year at this time they had 78. This is an 82 percent increase over 2014. Sadly, 16 of this year's overdoses have been fatal. At this time last year, that number was 8.

Dunbarton Police Chief Daniel Sklut recently told the *Union Leader* that since last Christmas, there have been three heroin overdoses in Dunbarton, a town of fewer than 3,000 residents. Last year, they did not see any overdoses.

And in the North Country—in Berlin—Police Chief Peter Morency has expressed his belief that a recent uptick in break-ins of cars and businesses is attributable to drug abuse in the community.

We know that addiction to prescription pain medication can often become a gateway to heroin use. According to a study from the Substance Abuse and Mental Health Services Administration, approximately four out of every five new heroin users previously used non-medical prescription opioids before using heroin. For that reason, I have approached the separate but related epidemics of prescription opioid and heroin abuse in a comprehensive manner.

In February, I helped reintroduce the bipartisan *Comprehensive Addiction and Recovery Act*. This legislation would expand opioid abuse prevention and educational efforts and expand the availability of Narcan to first responders and law enforcement. It would also support additional resources to identify and treat incarcerated individuals suffering from a substance use disorder, and encourage prevention by expanding drug take-back sites to promote the safe disposal of unwanted or unused prescription drugs, strengthening prescription drug monitoring programs, and launching a prescription opioid and heroin treatment and interventions program.

Earlier this year, I also reintroduced the *Heroin and Prescription Opioid Abuse Prevention, Education, and Enforcement Act*. This bipartisan bill would reauthorize programs related to prescription drug monitoring programs and grants for local law enforcement and establish an interagency task force to develop best practices in the prescribing of pain medication.

And I recently joined a group of bipartisan senators to call on the DEA to reinstate their successful national drug take-back days, which will start again on September 26th.

Last week, I introduced the *Stop Trafficking in Fentanyl Act* to reform trafficking penalties for fentanyl, ensuring that the law appropriately reflects the potency of this drug and its increasing prevalence in drug overdose deaths. Last year, fentanyl contributed to more drug overdose deaths in New Hampshire than heroin.

We know that many challenges remain.

For example, I've heard from some of our residential substance abuse treatment centers about impending regulations that could force them to reduce the number of available beds for treatment. This is a real concern given that New Hampshire already faces limited treatment options. While we need to ensure these facilities are safe, we also need to make sure we're not overburdening centers so much that they can't afford to treat those who are in need of treatment. I've called on HHS to work with New Hampshire on this issue and to provide flexibility in a manner that ensures safety.

There are countless other ways we can fight the heroin crisis – like stopping drug trafficking at the border, interdicting more drugs throughout the country, and decreasing the instances of drug-impaired driving. I will continue to pursue these and other solutions to protect and support the individuals, families, and communities impacted by this epidemic.

It's clear to me that we must take a multi-pronged approach to this problem and ensure that local, state and federal officials are working in partnership to identify effective strategies that will help save lives and take back our communities. I will remain committed to fighting against this epidemic on all fronts.

Again, thank you to all of the witnesses for your participation here today, and I look forward to hearing your testimony. I'd like to turn it over to Senator Shaheen for her opening statement, and then to our witnesses.

Opening Statement of Senator Jeanne Shaheen

All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl

September 14, 2015

As we all appreciate, the abuse of prescription opioids, heroin, and fentanyl is the most urgent public health challenge facing our state – and it is also the most urgent law enforcement challenge facing our state.

The sheer pervasiveness of the epidemic is shocking: In New Hampshire, three times more people are dying from drug overdoses than from traffic accidents, discarded needles are being left in parks where children play, teenagers are getting addicted not to cigarettes but to heroin and prescription opioids.

I was recently briefed on the crisis by Mike Ferguson, the DEA Special Agent in Charge for New England, and John DeLena, who heads DEA's Manchester District Office. They told me about a recent incident: agents stopped a car and found a mother, father, grandmother, and small child. The adults had just made a purchase of heroin and were heading back to Maine.

We know that we cannot arrest and jail our way out of this drug crisis. Law enforcement leaders are outspoken in telling us that the answer is prevention, treatment, and recovery.

To paraphrase from another context: It's going to take an entire village to defeat the heroin epidemic. Individuals can't do it alone. Families can't do it alone. Law enforcement can't do it alone. Public health can't do it alone. This is an all-hands-on-deck moment. It's about mobilizing entire communities and all their resources – because this is literally an issue of life or death.

Addiction is a chronic illness with no permanent cure. People don't find lasting recovery in a clinic; they find lasting recovery in their community. They need social supports, and they need to connect with a positive, healthy, caring community. This is the only way to sustain sobriety over a lifetime.

The good news is that we have a more enlightened approach to the surge in opioid abuse. We're learning. The response to the crack cocaine epidemic in the 80s and 90s was a sledgehammer, law-enforcement approach: arrests, convictions, and mandatory sentences.

Today, we know that the answer is education, not incarceration. The answer is prevention, not punishment. The answer is treatment, recovery, and rehabilitation, not sweeping the problem under the rug by throwing addicts in jail.

Another big part of the solution is drug courts for non-violent offenders with addiction or mental health issues. But there's a problem: Drug courts only work if there are treatment programs available for those who are referred by the court. Because of lack of funding,

thousands of Granite Staters are being denied treatment and recovery. Many are dying. Many are returning to criminal acts to pay for their next fix.

The Senate's HHS appropriations subcommittee voted to cut funding for substance abuse treatment under SAMSHA by nearly $130 million. That includes a $50 million cut to the Substance Abuse Prevention and Treatment block grant, which is so important to NH. In the subcommittee, I strongly opposed that cut.

Cutting funding is wrong on two counts. One, cutting funding for prevention and treatment is a classic case of penny-wise-pound-foolish budgeting. We will end up paying far more for incarceration and crime – not to mention the countless lives that will be lost and families that will be shattered.

And two, as I said earlier, we are confronting a profoundly destructive crisis. Heroin and opioid addiction are ravaging our state. The New Hampshire way is that when there is a crisis, we come together- we put partisanship and ideology aside - we work together on practical, pragmatic solutions. That will be the focus of today's hearing.

I thank our witnesses for traveling to Manchester, today, and I look forward to their testimony. I'm especially grateful that Doug Griffin can be with us today. Since his daughter, Courtney, lost her life to heroin last fall, Doug has been courageous and outspoken in sharing her tragic story and helping to lead the fight against heroin in the Granite State.

STATEMENT

OF

Enoch "Nick" Willard

Chief of Police
Manchester Police Department

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

"ALL HANDS ON DECK: WORKING TOGETHER TO END THE TRAFFICKING AND ABUSE OF PRESCRIPTION OPIOIDS, HEROIN, AND FENTANYL"
SEPTEMBER 14, 2015

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee:

Thank you for the invitation to appear before the committee today. It is an honor to be able to share with you what Manchester's officers are dealing with on a daily basis with regard to the abuse of prescription opioids and heroin. In addition, the role of fentanyl in fatal overdoses is truly alarming.

When I took over as Chief of Police in July, I expressed that two of my top priorities were to deal with our city's heroin problem and to support and boost morale among the ranks of the Manchester Police Department. These two priorities are effectively interrelated at this point—our department's officers are out there every day trying to save lives and make our community safe, and today far too often heroin is the direct or indirect cause of any one public safety or health issue in Manchester. At a time when we are asking the most of our officers, I am fighting for additional support and resources to support their work.

Drug abuse is undoubtedly taking a toll on our city. Every single day, officers are dealing with overdose victims. They are dealing with drug traffickers. There's also the intangible "quality of life" issue that drug abuse presents to us.

It is the mission of the Manchester Police Department to serve the greater good by protecting life, property and the liberties of Manchester's residents and the community at large. Sadly, the quality of life in Manchester is suffering from the scourge of prescription opioid and heroin abuse.

In Manchester alone, overdose deaths so far have increased 90 percent over 2014, and 269 percent over 2013. In all of 2014, MPD seized 1,314 grams of heroin. As of July, MPD had seized over 27,000 grams of heroin in 2015. That's an enormous increase in seizures.

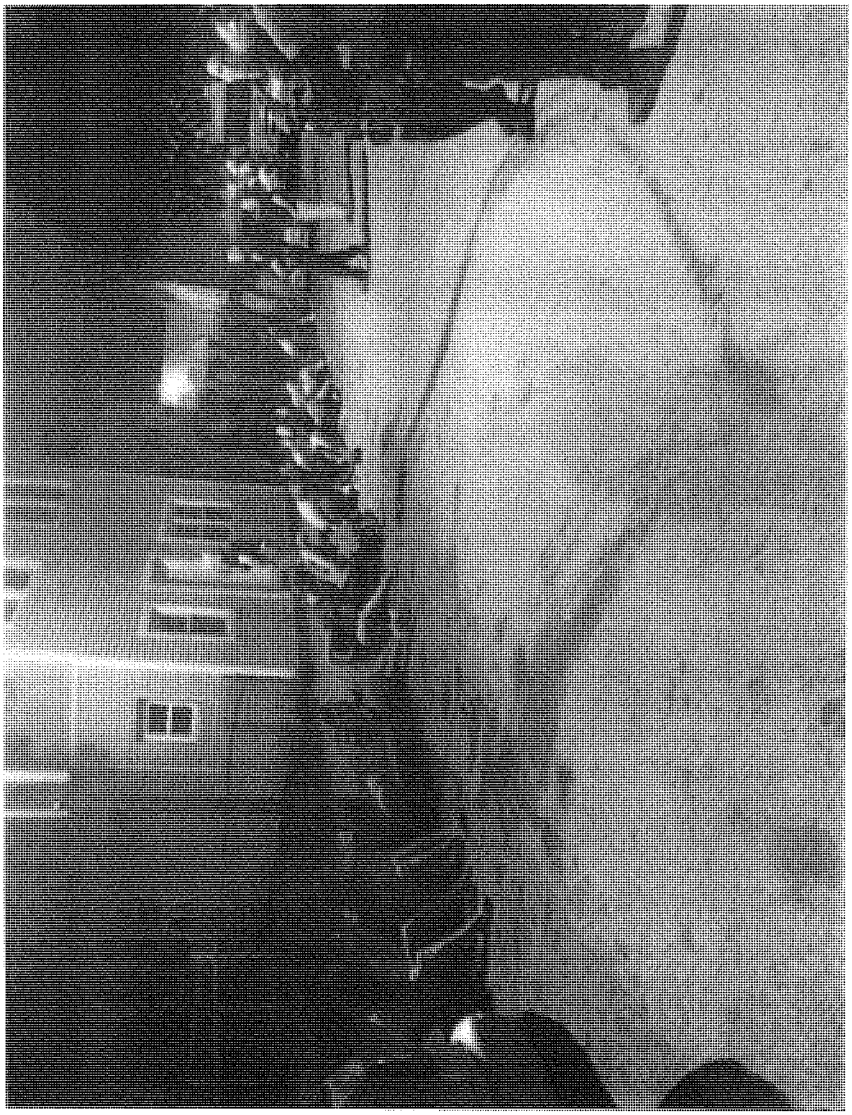
We must do more and we must do it now. At the same time, we must recognize this problem for what it is: a public safety and a public health issue. It certainly has been said before, but we won't be able to arrest our way out of this problem. Treatment and support for recovery are critical to our work in law enforcement.

On August 3, the City of Manchester announced a 60-day action plan to help fight this epidemic. I worked with Manchester Fire Chief Jim Burkush—whose department is facing the everyday reality of this problem just as MPD is—in addition to Manchester Health Director, Tim Soucy. Our plan made recommendations that generally fell into four categories: (1) reduce heroin and prescription opioids through physician education, expansion of Suboxone access, drop boxes and police support; (2) save the life of overdose patients by using Narcan, treatment options for every overdose victim, recovery coaches to work with those suffering from a substance use disorder, a Superior Court drug court in Manchester; (3) educate children and parents through appropriate-aged programs, a letter to parents to help them identify drug use, a city web page devoted to overdose statistics, prevention and resources, long-term recommendations for treatment, housing and employment; and (4) develop a continuum of care by mapping

all community assets devoted to drug-addiction programs and allowing an addict to enter the system at any point along the continuum.

While this 60-day action plan is still ongoing, I am confident we are moving in the right direction and our experiences will help inform our long-term efforts to help fight this epidemic.

Thank you. I am happy to address any questions.



Statement of Doug Griffin
September 14, 2015

The story of Courtney Ada Griffin

Courtney was born July 25th and was born the same way she left this earth, way too early. She spent her first 11 days in the NICU center of Mass General Hospital fighting to develop lungs strong enough to breathe on their own. We lived on Canobie Lake in Salem, NH until Courtney finished 2nd grade. She spent her early years playing in the water and spending time with the family. She was a quiet kid and never talked much but you could tell she was intelligent because she was always listening and you could see that in her eyes. We moved to Newton, NH as she started 3rd grade and as the new kid and being a bit chubby she was not comfortable in her new surroundings and really began to dislike school. We felt bad for her because she spent many mornings not wanting to go. She eventually made a couple friends when she got to middle school and a few of them were still her friends after high school.

We sent Courtney to Europe with the People to People program when she was 12 and she was able to see and do some amazing things. She climbed the Eiffel Tower, taught an English class in a German classroom, walked on Normandy Beach, walked through Anne Frank's apartment in Amsterdam, toured the Louvre museum and saw the Mona Lisa. She even bought a cuckoo clock for us in the Black Forest of Germany. She came home a changed person. She was talkative and much more mature. We really felt that was the turning point for her as she changed from a shy quiet kid into one that easily held conversations with adults.

As she entered high school she had some friends that used to come over the house and visit and play in the yard. As time went by her friend set began to change and some of her usual friends sort of dropped off and new friends that didn't come to the house were the norm. We believe this is when she first started with the pills. We knew she was smoking pot and would come home high sometimes but at least she was coming home. Prescriptions began disappearing from our medicine cabinet. When she got her first jobs they were working fast food and of course the new kid works the worst hours so she was working till after midnight on weekends. She didn't have a car so mom or dad would sit in the parking lot waiting for her to be released. When she finally got her car we were relieved that we didn't have to drop her off and pick her up daily.

Unfortunately she started not coming home right after work and was spending time with the folks that came in after midnight to buy food. This, as you can imagine, was an unsavory lot. Her school work was not what she was capable of doing and she seemed not to care much about it anyway. Upon graduation she was accepted at the University of Hawaii and was all set to take off for the islands. We told her that there was no way that was going to happen until she worked at the family business for a while and took a couple night classes to show us that she was ready. Because of her habits we were afraid to cut the girl a check and set her on an airplane off to Hawaii. If you ever asked Courtney what she wanted to be when she grew up she always gave the same answer "Hawaiian". We used to think that was a riot!

She began working for Seacoast Digital Computers right out of school and was a rock star! We have over a million parts in our inventory and she was managing it all without a problem. She handled the shipping and receiving and did everything we asked and more. I had one daughter upstairs on my office running my computer company and another downstairs running the flower shop. I was living the dream!

After about 6 months Courtney had saved a few thousand dollars and wanted a car so we let her lease a brand new Honda Civic. Isn't that every kid's dream? On the way home from the dealership while being followed by her mom she stopped to gas up the new wheels and who should she run into but the kid that kept stopping by Wendy's late night. From there things went all downhill. Chris was his name and he wasn't a bad kid. Chris was kind of tall and dorky and always kidding around. He loved every sport and was always talking baseball. They started seeing each other and things started disappearing around the house. Money at first then problems with the credit cards we had given her for "emergency" use started to go out of control. After taking the cards back they were stolen right out of our wallets and thousand in charges were run up. Things became difficult at home and we began arguing with Courtney constantly about the things she was doing and the stealing and constant lying. We couldn't believe anything she said and she would disappear suddenly. Courtney became a frequent visitor at local hospitals from car wrecks and overdoses. She would leave work for lunch and not return till the next morning. We never knew where she was or who she was with.

One day she left the house at lunchtime and was going to get together for dinner with the family. She drove to Lawrence bought some heroin, overdosed in Haverhill, was found by the police and ambulanced to the hospital, given Narcan and was home in time for dinner. The next day the ambulance bill showed up at the house and she said "It wasn't me". She ended up at Hampstead Hospital for 9 days trying to regain control of herself. While there she obtained the addresses of every drug dealer in a 100 mile range and upon her release she went off the deep end. She began going missing for days at a time and we had to hide anything valuable from her.

Courtney's addiction was taking over her life and she did not want to be that person. She signed up for the US Marine Corp and began a process of physical conditioning that would enable her to pass the entrance requirements. After a few months she was finally able to complete the number of crunches necessary for entry and she was sworn in. After approximately one month of boot camp and a lot of hard work Courtney was discharged because marijuana was found in the urine sample she gave the day she took the oath. That completely destroyed her. She had been so proud to be a Marine and to be free of the people and problems she left behind at home. Negative feelings began to overwhelm her and trouble began again. When Chris became homeless in the Spring of 2014 Courtney asked if he could move in with us. We were terrified but figured we could more easily keep tabs on them if they lived here.

At first it was awesome we laughed a lot, watched sports together and had fires in the back yard at night. Things settled into a nice routine and we thought all was well. Then the needles started showing up everywhere, even in the clothes dryer. Sometime in mid Summer of 2014 Courtney and Chris began stealing commodities from my company. This included copper wire, gold circuit boards, and aluminum. I deal in large quantities of these items so at first I was a bit confused and thought things had just been

moved around or maybe had been sold as scrap. When I found they were loading the car up every time my back was turned and then heading off to the scrap yard to sell my inventory things got nasty. My wife had a $7,000 necklace disappear and one of her favorite Ruby rings. I had to call the police one night because things became violent and I demanded they leave.

We began working with the Newton Police Department because one of the officers was able to befriend Courtney and was very well aware of the kids' activities. Courtney had even agreed to wear a wire and do a buy for the Newton Police Dept. We were advised to kick Courtney out of the house, cancel her insurance and then once homeless she could receive treatment in Mass. We did just that and Courtney and Chris moved into Chris' grandparent's house in Plaistow, NH. The constant battle with our insurance company gave us no satisfaction. We were actually told by Anthem that Courtney's problem was not a matter of life or death so no coverage would be offered!

Chris was arrested and jailed shortly thereafter and Courtney was alone at someone else's home. A bed became available for her at a local facility and Courtney was due to enter treatment on Sept 30th. Courtney totaled her car on the evening of Sept 28th and wanted to be taken to the grandparent's home rather than come home with us. She called her dealer who delivered the drugs to her at the grandparent's home. He remains unprosecuted today.

She passed away of an overdose of fentanyl. The NH State Medical Examiner told me the dose was approximately 80 times the strength she was expecting to receive. There was no note, she was alone and found by the grandfather on the afternoon of the 29th. When she was found the police were notified and somehow information was passed to Chris while in jail and I received a call from him indicating that my daughter had passed away. The most horrific call I could ever expect to receive came from an inmate and not the local authorities. Courtney left this world the same way she came into it, way too early.

The path to recovery

After Courtney's passing on Sept 29th, 2014 my family met with Pastor Aaron Goodro of the First Baptist Church of Plaistow, NH. He wanted to get to know a bit more about Courtney in order to provide a proper funeral service. He suggested that we let the congregation know that she passed away from an overdose of Heroin. I said "Absolutely not!". Nobody knew Courtney was an addict. We had paid her bills and made sure she was never arrested so we had kept it in the family. That evening my family decided that we should let the world know as many others were dying and in the papers it said things like "passed away at home" or "suddenly" but nobody used overdose.

On Nov 3, 2014 the Griffins held a rally on the Kingston, NH common to try to raise awareness of the drug problem in our area. About 200 people passed through and I had arranged for 4 speakers to help out with the event. 10 speakers actually came forward, many of them addicts that had been hiding in their recovery. We had decent media coverage and my little girl made the front page of the local paper.

Several times over the course of the past year there has been media presence at our home for an interview about whatever I have been working on and I will say they have done an amazing job of presenting the facts in a most tasteful way. I am proud of the work they have all done. I began hosting a monthly service at The First Baptist Church of Plaistow for those suffering with addiction and their families. This allows the addict to come out in public and be received by supportive members of the community. Some months we have as many as 40 persons in attendance. I've met many people that find comfort with our gatherings, especially those that have lost loved ones to addiction.

I have testified along with many of my cohorts before both the House and Senate Finance committees to try to increase funding for the treatment and recovery of those with addiction. This budget remains unpassed.

I began to attend NA (Narcotics Anonymous) meetings shortly after Courtney's passing to see what it was all about and to see if I could help. On one such meeting that I attended with Courtney's boyfriend I met a young lady that sat crying. She reminded me of my own little girl. I spoke with her and she told me how she woke up one morning an addict and it blew her mind. She did not want to be that person. I began the hunt for her family and after finding them I invited them to our church service. Their little girl is now going to receive her 9 month chip and is a superstar in my mind. She completed some jail time, some rehabilitation time and moved into a sober house. She is now getting ready to move out of that sober house and begin her life anew. Her family is on top of the world. I've met several others that I've been able to guide into rehabilitation and I see lives improving and moving forward. Unfortunately most of the kids have had to seek help in other states as the availability of beds in NH is almost nonexistent.

My family did a local access television show called The Empty Chair in Methuen that is available on Youtube. We have since then done another with the police chief from Gloucester MA, and the chiefs from Methuen and Andover. These are two other towns in Mass that are under attack.

As president and charter member of the Kingston Lions Club several fundraisers were done during my year as president to raise money in Courtney's honor. Courtney was also a charter member of the club.

She played the French horn in the Sanborn High School band so during the Spring concert the club donated a silver French horn to the band in Courtney's name. The case was embroidered with "Remembering Courtney Griffin".

I became involved and am on the board of directors of the Merrimack Valley Prevention and Substance Abuse Project (MVPASAP). This is a 501(c)(3) organization for the prevention treatment and recovery of those suffering with addiction. This is a robust group that works with local law enforcement, legislators, drug court, and even the local schools to increase awareness and to help those in need.

I recently accepted a position on the board of directors of Project Recovery, a new nonprofit New Hampshire corporation whose goal it is to open The Courtney Griffin Sober House. The other members of the board are eager professionals that have the support of many members of the local community. We have applied for our 501(c)(3) classification and anticipate being able to offer beds sometime in 2016.

I have been asked by the Methuen Schools to present two one hour presentations to the staff of the high school on Nov 3rd help increase their awareness of the heroin use in their city.

September 8, 2015 I met with the mother and grandmother of Christopher Honor, Courtney's boyfriend before she passed. He died Saturday the 5th of an overdose of heroin in the same bed, in the same room of the same house that Courtney died in. My family's flower shop will do the flowers for Chris as they did the flowers for Courtney and so many others lost to this epidemic. On Sept 10th, I attended the funeral of Chris Honor.

Without a proper course of treatment for those touched by the hand of addiction this scenario will continue unabated. There must be detox, rehabilitation, and sober housing and long term treatment if we hope to save these citizens from a life of torment, crime, jail, and death.

STATEMENT

OF

HEIDI MORAN

CLINICAL ADMINISTRATOR
SOUTHEASTERN NEW HAMPSHIRE SERVICES
272 COUNTY FARM RD.
DOVER, NH 03820

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

"ALL HANDS ON DECK: WORKING TOGETHER TO END THE TRAFFICKING AND ABUSE OF PRESCRIPTION OPIOIDS, HEROIN, AND FENTANYL."
SEPTEMBER 14, 2015

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee:

It is my privilege and honor to address you today on behalf of my agency and all those New Hampshire residents who are struggling with the disease of addiction and would like to access treatment.

Southeastern NH Services is a private, nonprofit agency dedicated to helping people recover from addictive disorders. Since being established in 1979, this agency has helped tens of thousands of individuals and families find recovery. We provide a full range of services to those in need. Services we offer include Outpatient Counseling, Intensive Outpatient programs, the Strafford County Drug Court Program and a women's program, as well as Impaired Driver Intervention programs, 28 day residential and a 90 day half way house. We also offer a weekly Family Education Program for the families of those clients who are in the 28-day residential program. Families attend 4 three-hour educational sessions to assist them with understanding the disease of addiction and how it affects the entire family.

Relapse prevention, self-help and support, as well as the biological, psychological and social aspects of the disease of addiction are discussed during the family program.

We run a very structured residential program with rules, schedules and boundaries that are closely monitored. The population we serve can be quite diverse. However, for the most part we have seen a staggering number of young people between the ages of 18 and 30 enter our residential programs these last few years. Previously we had seen more of a mixed group age wise. We still get the occasional older client, 35 – 55 years of age, but the majority remains younger. Many of our clients come from jails across the state and other legal referrals, like probation and parole. "No" is not a familiar word in the vocabulary of many young

clients and to be made to follow rules, get up in the morning and participate in their recovery are new concepts to them. Many clients come from the street and are homeless, couch surfing or living in shelters or tents. We have always been known as "The House of Hope" and that place that would help anyone, regardless of their ability to pay. Although we are structured and strict with our rules, we are fair and compassionate. The mixture of fairness, caring and structure instills a feeling of trust and safety in our clients. That feeling is one we hear about time and again from clients who have completed treatment and moved on to live a life of recovery, as well as those who relapsed and were able to pick up the phone and call us for another chance at changing their life. Although many hate the rules, they admit that knowing what to expect and having an understanding of what comes next, allows them the safety and environment they need to get well.

As I write this, I have tears in my eyes. I can't say enough about our programs and the fantastic work we all do to help our clients find their way back to life.

I have cried with clients who have come into treatment scared to death that they won't be able to "do it". I assure them they can, as long as they are willing to follow our suggestions and those they receive from other people in recovery. I have cried with parents who want to "fix" their children and can't let go. I have cried at funerals of those who couldn't stop. My tears have flowed freely for over 20 years.

Prior to 2013 Southeastern had not had to worry about billing or revenue sources. We were provided with our primary budget from the NH Board of Drug and Alcohol Services (BDAS) Block Grant, some funding from Federal Probation and Parole contracts, private pay resources from various DWI programs and some private donations. The Block Grant was dispersed at the rate of 1/12th of the budget each month. The 1/12th payment schedule allowed us to budget and monitor expenditures. Our residential services have

always remained full, or close to full on a regular basis. Due to the population we serve, it is difficult to maintain out patient services at the same level as residential. We have a very high no call/no show rate.

In 2013 BDAS changed their way of determining payment and went to utilization. We were given % numbers for our various programs and had to meet those numbers in order to get "full utilization" which meant full payment. Each program was given an amount from the 1/12th previous budget and we had to meet the new requirements to get the full benefit of our budget. We were always over the amount for utilization for residential, but could not meet the requirements for out patient. Consequently, we lost over $85,000 from our budget that year. Then BDAS changed the rules again and went to a Fee for Service way of payment.

Without trying to explain the painful in's and out's of this, it should suffice to say that the game changed frequently and without much notice or direction for staff who had never had to deal with billing, tracking or monitoring.

The building we are located in is owned by Strafford County. We rent our space and have been at this location in the Strafford County Complex for over 30 years. Our building is the oldest in the complex and was built in the early 1900's. The building is fully sprinkled and is maintained by the county. As I stated previously, we received state funding since the beginning of time. In October 2013, I received a call from BDAS asking if we could provide Access to Recovery (ATR) beds for ATR clients. ATR was a Federally funded program for a specific population comprised of Veterans, DWI offenders, and people coming out of jails. We said yes, we would provide beds. An application was filled out and I received a call asking for our DHHS License number. We have never had a license and had never been asked to provide one. After some discussion BDAS got back to me and said it was fine to accept the ATR clients without a license.

At the same time that this was happening there was a lot of discussion about Medicaid expansion and movement away from the Block Grant. I started to look into what would be required from us to be able to bill Medicaid and other insurances. DHHS Licensure was obviously something we had to get. No license is required for outpatient, however there are strict requirements for residential. I reached out to the state Safety Code Specialist and received the codes for compliance and instructions regarding what I needed to do next. I hired an architect to come and investigate the building and to look at what needed to be done.

In March of 2014 I met with BDAS and gave them an update as to what we needed to do. I asked why no one had ever required this in the past and was told it had not been necessary previously. That is the start of our journey towards licensure.

Since that time we have worked with State, County and Local agencies in an attempt to get the needed renovations done to comply with the codes for licensure. Some people will say "why not just buy another building?" We rent, we don't have the funds to buy and renovations for compliance would need to be done in any other structure as well. Plus, we are in a location that suits the population we serve by being close to the courts, probation, Strafford County Jail and on the bus route. It has taken all this time to get the necessary agencies together so the architectural plans and safety plan can be completed and approved. We are still waiting for final approvals and no hammers have swung as of yet. The County is doing all they can to work with us and to help us get the work done. However, we are looking at approximately $500,000 worth of work that we will be responsible for. The County will assume half of all the safety requirement costs. We will have to pay for the other half of safety costs and for all renovations to bring things up to ADA code compliance. If the County were to rent the space to anyone else and it not be used as a residential

facility, they would not have the same requirements and codes to meet because a license would not be needed.

We have always had two beds in the residential rooms. According to code we must have a minimum of 160 sq. ft. to have 2 beds. Most of our rooms are 122 sq. ft. We have lost 8 beds as a result of this sq. ft. requirement. We understand and agree with safety first thought processes. However, in our facility clients sleep and change their clothes in their rooms and that is all. Clients are not allowed to take naps or "hang out" alone in their rooms. We tell clients "being alone in their head is a very dangerous neighborhood to be in". Addicts spend a lot of time in early recovery thinking about using, plotting and planning and convincing themselves that they don't need to be in treatment. We require that clients stay out in the community and speak with their peers. We have groups and activities going from 8 am until 10:30 pm so clients don't have a lot of time to "think" themselves out of treatment. In a nursing home a resident lives in their room and needs space, which is not the same in my facility.

In addition, it has been our experience that having a roommate can be a great detour for any unhealthy behavior. Last winter a woman brought heroin into the half way house and used it in her room. She was in a room that had a bed removed. Fortunately it was 10:30 at night and quiet in the house. Another client could hear her gurgling from the hallway. Staff performed CPR and she was revived. There would be less of a chance for those types of incidents when people have roommates.

Then came Medicaid. Since Medicaid expansion became part of our outpatient billing reality we have had to hire additional staff and hire a billing agent. We have had very little training and assistance to figure out how to track and monitor our money. Our budget is very difficult to figure out since we don't know how much we will be paid or by whom from week to week. Our rates have been cut by BDAS for residential (by $30 a day per bed) treatment until we can

bill Medicaid, which won't happen until we get a license. That comes to about a $100,000 deficit for this year.
All the while trying to get a loan to help us with the $500,000 cost to fix our building so we can remain open and treating the Heroin epidemic!

My final thought is related to what I feel are unrealistic expectations placed on the addicts who need our help. I have heard over and over how wonderful Medicaid expansion is and how "everyone " will be able to get treatment. That is not true. Maybe they will be eligible, but that isn't the same thing. An opiate addict who is living on the streets or from couch to couch, doesn't have an address. He/she may be carrying a backpack or trash bag and the chances that they will have their Social Security card, income tax return, ID or other information they may need to prove the information they give on their Medicaid application in that bag is slim to none. If they are given some direction by a social worker or someone in another agency to get insurance they may follow through, but more often than not they get frustrated, are sick and can't think straight.

They don't follow through, they give up and get high.

My agency and others in NH need help. We have not had the guidance, financial support or time to do what needs to be done. NH cannot afford to lose any beds. We have been working on a shoestring for many years and providing quality treatment to the population in greatest need. We are all passionate about our work and are here to promote change and increase the possibilities for a life without drugs for those who continue to struggle. BDAS has given us until June 30, 2016 to get our license or have all support pulled from our residential programs. That would be a disaster. I have 10 short-term residential and 15 long-term residential beds. Can NH afford to lose 25 beds? How many kids would die? We need people in our corner who will help us get done what is needed to stay operating.

I thank you for the opportunity to appear before the committee today to share some of the challenges we are facing in trying to help treat those who are suffering from addiction.

I will be happy to address any questions you may have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

"All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl"

Field Hearing
of the
Committee on Homeland Security and Governmental Affairs
United States Senate

Monday September 14, 2015
2:00 p.m.
New Hampshire Institute of Politics
Manchester, New Hampshire

Statement of
Michael P. Botticelli
Director of National Drug Control Policy

Senator Ayotte, Senator Shaheen, and members of the Committee, thank you for this opportunity to address the issues surrounding opioids, including heroin, in the United States and in New Hampshire in particular, and the Federal response.

As you know, the Office of National Drug Control Policy (ONDCP) was established in 1988 by Congress with the principal purpose of reducing illicit drug use, manufacturing, and trafficking; drug-related crime and violence; and drug-related health consequences. As a component of the Executive Office of the President, our office establishes policies, priorities, and objectives for the Nation's drug control programs and ensures that adequate resources are provided to implement them. We also develop, evaluate, coordinate, and oversee the international and domestic anti-drug efforts of Executive Branch agencies and ensure such efforts sustain and complement state and local drug policy activities.

At ONDCP, we are charged with producing the *National Drug Control Strategy* (*Strategy*), the Administration's primary blueprint for drug policy, along with a national drug control budget. The *Strategy* is a 21st century plan that outlines a series of evidence-based reforms that treat our Nation's drug problem as a public health challenge, not just a criminal justice issue. It is guided by what science, experience, and compassion demonstrate about the true nature of drug use in America.

The considerable public health and safety consequences of nonmedical prescription opioid and heroin use underscore the need for action. Since the Administration's inaugural 2010 *National Drug Control Strategy*, we have deployed a comprehensive and evidence-based strategy to address opioid use disorders and overdose deaths due to heroin use and prescription opioid misuse. The Administration has increased access to treatment for substance use disorders, expanded efforts to prevent overdose and has coordinated a Government-wide response to the consequences of nonmedical prescription drug use. We also have continued to pursue actions against criminal organizations trafficking in opioid drugs. This statement focuses largely on the Administration's public health policy interventions to address opioid drug abuse, as well as those of our Federal, state and local partners, including professional associations that are involved with opioid prescribing or the prevention and treatment of opioid misuse. The statement of the Drug Enforcement Administration (DEA) for this hearing will discuss supply and law enforcement approaches.

Trends and Consequences of Opioid Use

Opioids – a category of drugs that includes heroin and prescription pain medicines like oxycodone, oxymorphone and hydrocodone – are having a considerable impact on public health and safety in communities across the United States. According to the Centers for Disease Control and Prevention (CDC), approximately 120 Americans on average died from a drug overdose every day in 2013. Of the nearly 44,000 drug overdose deaths in 2013, opioid pain relievers were involved in over 16,200, while heroin was involved in over 8,200. Overall, drug overdose deaths now outnumber deaths from gunshot wounds (over 33,600) or motor vehicle crashes (over

32,700)[1] in the United States.[2] Moreover, overdose deaths related to opioid pain relievers and heroin are undercounted as around one quarter of death certificates do not list the drug responsible for the fatal drug overdose,[3] and until recently standards did not exist for death investigation reporting, and adoption of these standard is not universally practiced.[4]

The diversion and nonmedical use of prescription opioid medications has been of serious concern at the national, state, and local levels for over a decade. Increases in admissions to treatment for substance use disorders,[5] drug-related emergency department visits,[6] and, most disturbingly, overdose deaths[7] attributable to nonmedical prescription drug use place enormous burdens upon communities across the country. Heroin, in contrast, until very recently has been used at much lower rates, possibly because historically its use was generally via injection, which often was necessitated by its low purity. As heroin purity increases, heroin can be smoked or snorted.[8] Research shows that price reductions (resulting from greater availability) are closely related to overdose hospitalization rates; every $100 decrease in the price of heroin per pure gram results in a 2.9 percent increase in the number of overdose hospitalizations.[9]

In 2014, over 4.3 million Americans ages 12 and older reported using prescription pain relievers non-medically within the past month.[10] This makes nonmedical prescription pain reliever use more common than use of any category of illicit drug in the United States except for marijuana. Approximately 435,000 Americans reported past month use of heroin in 2014.[11] Heroin use remains relatively low in the United States when compared to other drugs; however, the increase in the number of people using the drug in recent years – from 373,000 past year users in 2007 to 914,000 in 2014 – is troubling.[12] These figures likely undercount the number of users, as national household surveys do not track all heroin-using populations such as homeless users. At least one community with a high level of chronic drug users among its homeless

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[1] Fatality Analysis Reporting System (FARS) Encyclopedia Available at: http://www-fars.nhtsa.dot.gov/Main/index.aspx

[2] Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death, 1999-2013 on CDC WONDER Online Database, released 2015. Extracted by ONDCP from http://wonder.cdc.gov/mcd-icd10.html on January 30, 2015.

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[8] Stöver HJ1, Schäffer D. SMOKE IT! Promoting a change of opiate consumption pattern - from injecting to inhaling. Harm Reduct J. 2014 Jun 27;11:18. doi: 10.1186/1477-7517-11-18. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4094754/

[9] Unick G1, Rosenblum D, Mars S, Ciccarone D.Addiction. The relationship between US heroin market dynamics and heroin-related overdose, 1992-2008.2014 Nov;109(11):1889-98. doi: 10.1111/add.12664. Epub 2014 Aug 4.

[10] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014. Table 1.1A Types of Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older: Numbers in Thousands, 2013 and 2014.*

[11] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014: Table 1.1A Types of Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older: Numbers in Thousands, 2013 and 2014.*

[12] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014: Table 1.1A Types of Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older: Numbers in Thousands, 2013 and 2014.*

population, Baltimore, revises their heroin count by 10 percent to adjust for heroin use among its homeless population.[13]

Nonetheless, the trend for increases in heroin users shown in the National Survey on Drug Use and Health (NSDUH), a household-based survey from the Substance Abuse and Mental Health Services Administration (SAMHSA), comports with other indicators, including recent reporting from the National Institute on Drug Abuse's (NIDA) Community Epidemiology Work Group, which found that a number of U.S. cities, including Atlanta, Baltimore, Boston, Chicago, Cincinnati, Denver, Miami, Minneapolis, San Diego, Seattle, and St. Louis, indicated increases in heroin use. In addition, heroin remained at relatively stable but high levels in Detroit, New York City, and Philadelphia.[14] DEA also reports an over 300 percent increase of heroin seizures at the Southwest border from 2008 to 2013.[15]

A recent report from CDC and FDA using NSDUH public-use data[16] shows a significant increase in heroin use from 2002 to 2004 and from 2011 to 2013. Rates remained highest among males, persons aged 18 to 25 years, persons with annual household incomes below $20,000, persons living in urban areas, and persons with no health insurance or with Medicaid; however, rates increased significantly across almost all study groups. Moreover, the greatest increases in heroin use occurred in demographic groups that historically have had lower rates of heroin use, doubling among women and more than doubling among non-Hispanic whites. The rates of individuals who developed abuse or dependence on heroin, a near doubling during the decade-long study period, with a 35.7 percent increase during 2008–2010 alone, emphasize the addictive nature of this drug. This increase parallels the sharp increase in heroin-related overdose deaths reported since 2010.

This report also indicates that individuals who use heroin also use other drugs. People with past year abuse of or dependence on alcohol, marijuana, cocaine, or opioid pain relievers were at increased risk for past year heroin abuse or dependence. In 2013, 59 percent of the 8,257 heroin-related overdose deaths in the United States involved at least one other drug.[17] Data presented in this report indicate the relationship between heroin and opioid pain relievers, as well as the relationship between heroin and cocaine, are particularly strong. In fact, past year abuse or dependence on opioid pain relievers was the strongest risk factor for past year heroin abuse or dependence. These results, coupled with prior research on heroin use trajectories, underscore that heroin use has its roots in, and often exists alongside, other forms of substance misuse.

Research illustrates that heroin use today is one of the later steps in most personal drug use trajectories. An analysis of NSDUH data shows that 21,000 people nationally began using

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[13] Baltimore Mayor's Heroin Treatment & Prevention Task Force Report http://health.baltimorecity.gov/sites/default/files/Mayor%20Heroin%20Treatment%20Prevention%20Task%20Force%20Final%20Report%20July%2013%202015.pdf

[14] National Institute on Drug Abuse. Highlights and Summaries from January 2014 Reports. Available: http://www.drugabuse.gov/about-nida/organization/workgroups-interest-groups-consortia/community-epidemiology-work-group-cewg/highlights-summaries-january-2014-reports

[15] National Seizure System, El Paso Intelligence Center, extracted January 25, 2014.

[16] Jones CM, Logan J, Gladden RM, Bohm MK. Vital Signs: Demographic and Substance Use Trends Among Heroin Users - United States, 2002-2013. MMWR Morb Mortal Wkly Rep. 2015 Jul 10;64(26):719-25 Available at: http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6426a3.htm?s_cid=mm6426a3_w

[17] CDC. Wide-ranging online data for epidemiologic research (WONDER). Atlanta, GA: CDC, National Center for Health Statistics; 2014. Available at http://wonder.cdc.gov.

heroin when 12 to 17 years old, 66,000 people began using when 18 to 25 years old, and 82,000 began when 26 years and older.[18] Past-year heroin users were most likely to be in the 26 and older demographic. A second study of treatment seekers found the average age of treatment seekers to be around 23, and 75 percent of these began by using prescription opioids first.[19] While the increases in overdose deaths among young people is disturbing, and pediatricians and doctors caring for people under the age of 25 need to be engaged on this issue, practitioners who treat adults normally past the typical age for developing substance use disorders need to monitor their patients for possible heroin use.

We are also concerned about the rise in reports by law enforcement about heroin that is cut with fentanyl. Fentanyl, a Schedule II substance under the Controlled Substances Act, is an opioid drug that is estimated to be 80 times as potent as morphine and hundreds of times more potent than heroin.[20] Fentanyl can serve as a direct substitute for heroin in opioid dependent individuals. However, fentanyl is a dangerous substitute for heroin because its increased potency results in frequent overdoses that can lead to respiratory depression and death.[21] On July 17, 2015, DEA issued a Final Rule using its emergency scheduling authority to place acetyl fentanyl, a fentanyl analogue, in Schedule I of the Controlled Substances Act.[22]

The nonmedical use of opioids translates into serious health consequences. In 2014 alone, approximately 1.9 million Americans met the diagnostic criteria for abuse of or dependence on prescription pain relievers, with heroin accounting for approximately 586,000 people with past-year abuse or dependence; both figures represent significant increases from just eleven years earlier.[23] For the duration of this statement, the terms "opioid use disorder" and "heroin use disorder" will be used to describe people who meet the criteria for abuse and dependence, since the terminology in the Diagnostic and Statistical Manual, Fifth Edition (DSM 5), the U.S. standard for classifying mental health disorders, no longer makes a distinction between abuse and dependence.

Beyond the many lives taken by fatal overdoses involving these medications, prescription opioids are associated with significant burden on our healthcare system. In 2011 alone, the last year for which these data are available, 1.2 million emergency department (ED) visits involved the nonmedical use of prescription drugs.[24] Of these 1.2 million ED visits, opioid pain relievers accounted for the single largest drug class, accounting for approximately 488,000 visits. This is

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[18] R.N. Lipari and A. Hughes. The NSDUH Report: Trends in Heroin Use in the United States: 2002 to 2013. (2015). Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. Rockville, MD. http://www.samhsa.gov/data/sites/default/files/report_1943/ShortReport-1943.html Available at linked to on 7-19-2015.

[19] Cicero TJ, Ellis MS, Surratt HL, Kurtz SP.The changing face of heroin use in the United States: a retrospective analysis of the past 50 years. JAMA Psychiatry. 2014 Jul 1;71(7):821-6. doi: 10.1001/jamapsychiatry.2014.366.
PMID: 24871348 available at http://archpsyc.jamanetwork.com/article.aspx?articleid=1874575

[20] National Institute for Occupational Safety and Health, Emergency Response Safety and Health Database, Fentanyl, Incapacitating Agent. Available at: http://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750022.html

[21] Drug Enforcement Administration, Office of Diversion Control. Fentanyl Fact Sheet. Available at: http://www.deadiversion.usdoj.gov/drug_chem_info/fentanyl.pdf.

[22] Schedules of Controlled Substances: Temporary Placement of Acetyl Fentanyl Into Schedule I, 80 FR 42381 (July 17, 2015).

[23] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014. Table 5.2A Substance Dependence or Abuse for Specific Substances in the Past Year, by Age Group: Numbers in Thousands, 2013 and 2014*

[24] Substance Abuse and Mental Health Services Administration. *Drug Abuse Warning Network, 2011: National Estimates of Drug-Related Emergency Department Visits*. U.S. Department of Health and Human Services. [May 2013]. Available: http://www.samhsa.gov/data/2k13/DAWN2k11ED/DAWN2k11ED.htm#5.2

nearly triple (2.8 times) the number of ED visits involving opioid pain relievers just 7 years earlier in 2004 (173,000). Among specific opioid drugs in 2011, oxycodone accounted for the largest share (31%) of ED visits; there were 100,000 more visits involving oxycodone in 2011 than in 2004, an increase of 263 percent. Heroin was involved in nearly 258,000 visits in 2011. Increases in hospitalizations for prescription opioid overdose within a community actually predicts subsequent year heroin overdose,[25] indicating that not only do some people tend to migrate to heroin if it is available, but also entire communities may shift usage habits. Although conventional theory suggests demand influences supply, it may also be the case that ample supply, especially pure and low priced product, can shift usage patterns and stoke demand.

Similar trends concerning growth in heroin use are reflected in the country's specialty substance use disorder treatment system. Data show a more than double increase in the past ten years of treatment admissions for individuals primarily seeking treatment for prescription opioid use disorder, from 53,000 in 2003 to 127,000 in 2011. Heroin treatment admissions remained flat over the same time period, yet accounted for 285,451 admissions in 2012.[26] Although all states have not yet reported specialty treatment admission data for 2013 and 2014, the trend in those states that have is that many more people are seeking treatment for heroin use than in the past.[27] In contrast, the percentage of people seeking treatment for prescription opioid use disorder has declined. Not every state, however, has experienced this decline. In some states with particularly intransigent prescription opioid misuse problems (for example, Tennessee), treatment admissions remain higher. In some states with historically high heroin treatment admissions (for example, New York), prescription opioid treatment admissions began an upward climb only in the late 1990s and at much lower levels.

There has been considerable discussion around potential connections between the non-medical use of prescription opioids and heroin use. There is evidence to suggest that some users, specifically those with a serious prescription opioid use disorder, will substitute heroin for prescription opioids. Heroin is cheaper than prescription opioids. A SAMHSA report found that four out of five recent heroin initiates had previously used prescription pain relievers nonmedically. However, only a very small proportion (3.6%) of those who recently had started using prescription drugs nonmedically initiated heroin use in the following five-year period.[28] Preventing the initiation of nonmedical opioid use nevertheless can help reduce the pool of people who may resort to heroin initiation later on because a large proportion of heroin users begin with abusing opioid pain relievers, even if this is a small subset of overall nonmedical opioid users.

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[25] Unick GJ, Rosenblum D, Mars S, Ciccarone D. Intertwined epidemics: national demographic trends in hospitalizations for heroin- and opioid-related overdoses, 1993-2009. PLoS One. 2013;8(2):e54496. doi: 10.1371/journal.pone.0054496. Epub 2013 Feb 6. PMID: 23405084.

[26] Substance Abuse and Mental Health Services Administration. *Treatment Episode Data Set (TEDS) Substance Abuse Treatment Admissions by Primary Substance of Abuse, United States* [2002 through 2012 – Table 1.1a]. U.S. Department of Health and Human Services. [July 2014]. Available: http://www.samhsa.gov/data/sites/default/files/2002_2012_TEDS_National/2002_2012_Treatment_Episode_Data_Set_National_Tables.htm

[27] Substance Abuse and Mental Health Services Administration. *Treatment Episode Data Set (TEDS) Substance Abuse Treatment extracted 6/2/2015 (Source Cala TIC Presentation Primary Drug Treatment Admissions.*

[28] Substance Abuse and Mental Health Services Administration. *Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the United States*. Department of Health and Human Services. [August 2013]. Available: http://www.samhsa.gov/data/2k13/DataReview/DR006/nonmedical-pain-reliever-use-2013.pdf

We also know that substance use is often progressive, with some users rapidly escalating their use frequency, dosing, potency of drug and using through routes other than oral administration (e.g., sniffing, smoking or injecting) to achieve greater euphoria. Because the body rapidly develops tolerance to most effects of opioids and because withdrawal from opioids exerts the opposite effect (e.g., severe pain and gastrointestinal distress) regardless of whether the drug used is a relatively weak opioid like codeine or a stronger one like heroin, a vicious cycle can develop, where a user must keep using to avoid the severe flulike and depressive symptoms associated with withdrawal. We know from survey data that as an individual's nonmedical use of prescription opioids becomes more frequent or chronic, that person is more inclined to purchase the drugs from dealers/prescriptions from multiple doctors, rather than simply getting them for free from a friend or relative.[29] Qualitative data indicates as tolerance, dependence, or craving increases, users tend to obtain more opioid sources and at times will select lower cost alternatives such as heroin as a way to meet and afford escalating opioid needs.[30,31,32] Research also suggests that the same dealers who deal in illicit pills often also supply heroin.[33]

The Problem in New Hampshire

Overdose and non-medical prescription opioid use is a concern in New Hampshire, just as it is in other parts of the United States, and certain demographic groups have been affected greatly. For example:

- In 2013, New Hampshire had the 22nd highest drug poisoning rate (per 100,000 population) in the Nation. More New Hampshire residents died from drug poisonings (203) than motor vehicle crashes (138) or firearms (93).
- In New Hampshire during the 2012-2013 time period, the rate of prevalence of nonmedical use of prescription pain medication was more than 10 percent above the national average for persons age 18 to 25.
- The rate of drug poisoning deaths involving heroin increased in New Hampshire to surpass the national rate. In 2013, that rate reached 5.5 per 100,000 population.
- The rate of opioid analgesic-involved deaths in New Hampshire in 2013 (6.7 per 100,000 population) remained above the national rate (5.1 per 100,000 population).
- Eight of New Hampshire's 10 counties have a drug poisoning death rate above the national rate (12.9 per 100,000 population). The two counties with the highest rates are

[29] Unpublished estimates from Substance Abuse and Mental Health Services Administration, *National Survey on Drug Use and Health*, 2009-2012, March 2014.

[30] Lankenau SE, Teti M, Silva K, Jackson Bloom J, Harocopos A, Treese M. Initiation into prescription opioid misuse amongst young injection drug users. Int J Drug Policy. 2012 Jan;23(1):37-44. doi: 10.1016/j.drugpo.2011.05.014. Epub 2011 Jun 20. PMID: 21689917 available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3196821/

[31] Lankenau SE1, Teti M, Silva K, Bloom JJ, Harocopos A, Treese M.J. Patterns of prescription drug misuse among young injection drug users.Urban Health. 2012 Dec;89(6):1004-16. doi: 10.1007/s11524-012-9691-9. Available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3531346/

[32] Sarah G. Mars, Philippe Bourgois, George Karandinos, Fernando Montero, Daniel Ciccarone. "Every 'Never' I Ever Said Came True": Transitions from opioid pills to heroin injecting Int J Drug Policy. Author manuscript; available in PMC 2015 March 1.Published in final edited form as: Int J Drug Policy. 2014 March; 25(2): 257–266. Published online 2013 October 19. doi: 10.1016/j.drugpo.2013.10.004 available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3961517/pdf/nihms533727.pdf

[33] Sarah G. Mars, Philippe Bourgois, George Karandinos, Fernando Montero, Daniel Ciccarone. "Every 'Never' I Ever Said Came True": Transitions from opioid pills to heroin injecting Int J Drug Policy. Author manuscript; available in PMC 2015 March 1.Published in final edited form as: Int J Drug Policy. 2014 March; 25(2): 257–266. Published online 2013 October 19. doi: 10.1016/j.drugpo.2013.10.004 available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3961517/pdf/nihms533727.pdf

Cheshire County (16.9 per 100,000 population) and Belknap County (16.3 per 100,000 population).

- Although its death rate is not as high because the population is so large, from 2009 to 2013 Hillsborough County lost the most people to overdose. In this time period 214 people died from drug poisonings involving opioids.

Drug treatment admissions can reflect a location's primary drug problem but can also reflect its treatment system infrastructure and workforce. The per capita rate of drug treatment admissions for other opiates besides heroin peaked in 2010 in New Hampshire at 102 per 100,000 population. That rate has declined slightly since then; however, in 2013 the rate was still above the national average, placing New Hampshire in the top 20 states (79 per 100,000 population). In 2012 heroin surpassed other opioids in treatment admissions. By 2014, heroin was the most common drug for which New Hampshire residents sought treatment; 1,508 primary drug treatment admissions were for heroin. Overall in New Hampshire, more than five times as many people in 2014 sought treatment for an opioid use issue (as their primary drug) than sought treatment for using marijuana, the most commonly used drug. Although New Hampshire has the lowest overall rate of drug treatment admissions in New England, opioid treatment has grown from 2009 to 2013 from a single-day count of 1763 people receiving methadone to 2,340 people receiving methadone in outpatient treatment programs and from 124 to 311 people receiving buprenorphine over those same dates.[34] Using the single-day count as a measure of capacity, as of 2013 New Hampshire ranked behind Connecticut, Massachusetts, Maine, and Rhode Island and only ahead of Vermont in the number of available treatment slots for treatment with either of these medications.[35,36,37,38,39]

Injection drug users are at high risk for acquiring HIV because they may exchange syringes and equipment with others who are living with HIV. Among those living with HIV/AIDS in New Hampshire as of December 2013, 12.4 percent of persons living with AIDS contracted HIV through IDU.[40]

The Administration's Response

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[34] Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: New Hampshire, 2014. HHS Publication No. SMA–15–4895NH. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. Available at http://www.samhsa.gov/data/sites/default/files/State_BHBarometers_2014_2/BHBarometer-NH.pdf linked to on 9-1-2014. (7 Single-day counts reflect the number of persons who were enrolled in substance use treatment on March 31, 2009; March 31, 2010; March 31, 2011; March 30, 2012; and March 29, 2013).

[35] Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: Connecticut, 2014. HHS Publication No. SMA–15–4895CT. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. Available at http://www.samhsa.gov/data/sites/default/files/State_BHBarometers_2014_1/BHBarometer-CT.pdf Linked to on 9-1-2015.

[36] Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: Massachusetts, 2014. HHS Publication No. SMA–15–4895MA. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. http://www.samhsa.gov/data/sites/default/files/State_BHBarometers_2014_1/BHBarometer-MA.pdf.

[37] Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: Maine, 2014. HHS Publication No. SMA–15–4895ME. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. http://www.samhsa.gov/data/sites/default/files/State_BHBarometers_2014_1/BHBarometer-ME.pdf.

[38] Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: Rhode Island, 2014. HHS Publication No. SMA–15–4895RI. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015 http://www.samhsa.gov/data/sites/default/files/State_BHBarometers_2014_2/BHBarometer-RI.pdf.

[39] Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: Vermont, 2014. HHS Publication No. SMA–15–4895VT. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. http://www.samhsa.gov/data/sites/default/files/State_BHBarometers_2014_2/BHBarometer-VT.pdf.

[40] New Hampshire Division of Public Health Services. Department of Health and Human Services, Epidemiologic Profile for HIV/AIDS Prevention and Care Planning 2013 available at http://www.dhhs.nh.gov/data/index.htm linked to on 08/28/2015.

Since 2009, the Obama Administration has deployed a comprehensive and evidence-based strategy to address: (1) excessive and dangerous opioid prescribing for pain and its consequences; and (2) illegal importation and sales of heroin. These efforts have expanded as surveillance has revealed an uptick in deaths related to the laboratory-created synthetic drug fentanyl and its analogs.

The following discussion identifies the efforts in each of these areas as experts believe they are all important for addressing heroin and the public health of people and communities heroin impacts.

Efforts to Stem the Prescription Opioid Crisis

President Obama's inaugural *National Drug Control Strategy*, released in May 2010, labeled opioid overdose a "growing national crisis" and laid out specific actions and goals for reducing nonmedical prescription opioid and heroin use.[41]

Nonmedical use of prescription drugs still represents the bulk of illicit opioid use in America, and pharmaceutical opioids are responsible for the majority of opioid-related deaths. Our response to this public health emergency focuses on preventing the diversion and nonmedical use of prescription drugs, decreasing the number of Americans dying from opioid overdose every day, and expanding access to effective treatment, health care, and services for people with opioid use disorders.

In April 2011, the Administration released a comprehensive *Prescription Drug Abuse Prevention Plan (Plan)*,[42] which created a national framework for reducing prescription drug diversion and misuse. The *Plan* focuses on: improving education for patients and healthcare providers; supporting the expansion of state-based prescription drug monitoring programs; developing more convenient and environmentally responsible disposal methods to remove unused and unneeded medications from the home; and reducing the prevalence of pill mills and doctor shopping through targeted enforcement efforts.

The Administration has made considerable progress in all four areas of the *Plan*. To start, much progress has been made in expanding available continuing education for prescribers. Managing patients' pain is a crucial area of clinical practice, but research indicates that health care practitioners receive little training on pain management or, safe opioid prescribing.[43,44] Ten

[41] Office of National Drug Control Policy. *2010 National Drug Control Strategy*. Executive Office of the President. [2010]. Available: http://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/ndcs2010.pdf#page=49
[42] Office of National Drug Control Policy. *Epidemic: Responding to America's Prescription Drug Abuse Crisis* [2011] Available: http://www.whitehouse.gov/sites/default/files/ondcp/issues-content/prescription-drugs/rx_abuse_plan.pdf
[43] Mezei, L., et al. Pain Education in North American Medical Schools. *The Journal of Pain*. 12(12):1199-1208. 2011.
[44] U.S. Government Accountability Office. *Prescription Pain Reliever Abuse*. [December 2011]. Available: http://www.gao.gov/assets/590/587301.pdf

states (Connecticut,[45] Delaware,[46] Iowa,[47] Kentucky,[48] Massachusetts,[49] New Mexico,[50] Ohio,[51] Tennessee,[52] Utah,[53] and West Virginia[54]) have passed legislation mandating education for prescribers, and we strongly encourage other states to explore this as an option.

At the Federal level, the Department of Health and Human Services (HHS) has implemented education requirements for its agency health care personnel, including professionals serving tribal communities through the Indian Health Service (IHS), those working with underserved populations through the Health Resources and Services Administration (HRSA), and personnel attending to biomedical research trial participants at the Clinical Center of the National Institutes of Health (NIH). Similar efforts have been implemented by the Bureau of Prisons and the Department of Defense (DoD).

The Administration developed and has made available free and low-cost training options available for prescribers and dispensers of opioid medications via several sources, including SAMHSA and NIDA. The Food and Drug Administration (FDA) now requires manufacturers of extended-release and long-acting (ER/LA) opioid pain relievers to make available free or low-cost continuing education to prescribers under the Risk Evaluation and Mitigation Strategy (REMS) for these drugs.

These efforts alone, however, cannot address the dearth of critical and necessary opioid prescriber training as it is an optional program. From 2010 to 2013, overdose deaths involving prescription opioids have decreased – but only by 2 percent.[55] We must do more to ensure all prescribers have the tools they need to prevent nonmedical prescription drug use. The Administration continues to support policies that mandate a continuing education requirement for prescribers, as outlined in the *Plan,* potentially linked to their registration to prescribe with the DEA.

In March, HHS announced a comprehensive, evidence-based initiative aimed at reducing opioid dependence and overdose. Among the three priority areas of the initiative are efforts to train and educate health professionals on safe opioid prescribing, including the development of prescribing guidelines for chronic pain by the CDC.

FDA has also taken a number of steps to help safeguard access to opioid analgesics while reducing risks of non-medical use and overdose. In April 2013, FDA approved updated labeling for reformulated OxyContin that describes the medication's abuse-deterrent properties. These

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[45] CONN. GEN. STAT. § 20-10b (2015), *available at* http://www.cga.ct.gov/2015/ACT/PA/2015PA-00198-R00HB-06856-PA.htm
[46] 24 DEL. CODE ANN. § 3.1.1, *available at* http://regulations.delaware.gov/AdminCode/title24/Uniform%20Controlled%20Substances%20Act%20Regulations.pdf.
[47] IOWA ADMIN. CODE r. 253-11.4 (2011), *available at* https://www.legis.iowa.gov/docs/ACO/chapter/07-22-2015.653.11.pdf.
[48] 201 Ky. Admin. Reg. 9:250 (2013), *available at* http://www.lrc.ky.gov/kar/201/009/250.htm.
[49] MASS. GEN. LAWS ch. 94C, § 18(e) (2011), *available at* https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94c/Section18.
[50] N.M. ADMIN. CODE § 16-10-14 (2012), *available at* http://164.64.110.239/nmac/parts/title16/16.010.0014.htm.
[51] OHIO REV. CODE ANN. § 4723.482
[52] TENN. CODE ANN. § 63-1-402 (2013), *available at* http://www.tn.gov/sos/acts/108/pub/pc0430.pdf.
[53] UTAH ADMIN. CODE r. 58-37-6.5 (2012), *available at* http://le.utah.gov/xcode/Title58/Chapter37/58-37-S6.5.html?v=C58-37-S6.5_1800010118000101.
[54] W. VA. CODE § 30-1-7A (2011), *available at* http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=30&art=1&section=7A.
[55] Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death, 1999-2013 on CDC WONDER Online Database, released 2015. Extracted by ONDCP from http://wonder.cdc.gov/mcd-icd10.html on January 30, 2015.

properties are expected to make the drug more difficult to inject or abuse nasally.[56] In September 2013, ONDCP joined the FDA to announce significant new measures to enhance the safe and appropriate use of ER/LA opioid analgesics.[57] FDA required class-wide labeling changes for these medications, including modifications to the products' indication for pain severe enough to require daily, around-the clock, long-term opioid treatment and for which alternative treatment options are inadequate, warnings around use during pregnancy, as well as post-market research requirements. FDA also announced that manufacturers of ER/LA opioids must conduct further studies and clinical trials to better assess risks of misuse, addiction, overdose, and death. And in December 2013, following a congressionally-mandated public hearing, FDA announced that it agreed with the DEA recommendation that hydrocodone combination products be rescheduled from Schedule III to Schedule II of the Controlled Substances Act; in August 2014, DEA issued a Final Rule rescheduling hydrocodone combination products, which became effective in October 2014.[58]

The Administration is also educating the general public about the dangers of opioid use. ONDCP's Drug-Free Communities (DFC) Support Program currently funds 680 community coalitions to work with local youth, parent, business, religious, civic, and other groups to help prevent youth substance use. Grants awarded through the DFC program are intended to support established community-based coalitions capable of effecting community-level change. All DFC-funded grantees are required to collect and report data on past 30-day use; perception of risk or harm of use; perception of parental disapproval of use; and perception of peer disapproval of use for four substances, including prescription drugs.

The second area of the Administration's *Plan* focuses on improving the operations and functionality of state-administered Prescription Drug Monitoring Programs (PDMPs). PDMP data can help prescribers and pharmacists identify patients who may be at-risk for substance use disorders, overdose, or other significant health consequences of misusing prescription opioids. State regulatory and law enforcement agencies may also use this information to identify and prevent unsafe prescribing, doctor shopping, and other methods of diverting controlled substances. Aggregate data from PDMPs can also be used to track the impact of policy changes on prescribing rates. The Prescription Behavior Surveillance System, funded by CDC and FDA, is developing this surveillance capacity for PDMPs. Research also shows that PDMPs may have a role in reducing the rates of prescribing for opioid analgesics. For example, states where PDMPs are administered by a state health department showed especially positive results.[59]

In 2006, only twenty states had PDMPs. Today, the District of Columbia has a law authorizing a PDMP, and forty-nine states, including New Hampshire, have operational

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[56] "Determination That the OXYCONTIN (Oxycodone Hydrochloride) Drug Products Covered by New Drug Application 20–553 Were Withdrawn From Sale for Reasons of Safety or Effectiveness." Federal Register 78:75 (April 18, 2013) p. 23273. Available: http://www.gpo.gov/fdsys/pkg/FR-2013-04-18/pdf/2013-09092.pdf

[57] Food and Drug Administration. "ER/LA Opioid Analgesic Class Labeling Changes and Postmarket Requirements – Letter to ER/LA opioid application holders." Department of Health and Human Services. [September 2013]. Available: http://www.fda.gov/downloads/Drugs/DrugSafety/InformationbyDrugClass/UCM367697.pdf

[58] 21 CFR Part 1308 Schedules of Controlled Substances: Rescheduling of Hydrocondone Combination Products from Schedule III to Schedule II. DEA. Final Rule. Available at http://www.gpo.gov/fdsys/pkg/FR-2014-08-22/pdf/2014-19922.pdf

[59] Brady, JE, Wunsch, H, Dimaggio, C, Lang, BH, Giglio, J, and Li, G. Prescription drug monitoring and dispensing of prescription opioids. Public Health Reports 2014, 129 (2): 139-47. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3904893/pdf/phr129000139.pdf

programs.[60] The state of Missouri stands alone in not authorizing a PDMP. Kentucky[61], New Jersey,[62] New Mexico[63], New York[64], Oklahoma[65], and Tennessee[66] all require their prescribers to use their state's PDMP prior to prescribing in certain circumstances. In Tennessee, where the requirement to check the PDMP went into effect in 2013, there was a drop in the number of high utilizers of opioid pain relievers from the fourth quarter of 2011 to the fourth quarter of 2013.[67]

Building upon this progress, the HHS Office of the National Coordinator for Health Information Technology (ONC) and SAMHSA are working with state governments and private sector technology experts to integrate PDMPs with health information technology (health IT) systems such as electronic health records. Health IT integration will enable authorized healthcare providers to access PDMP data quickly and easily at the point of care. CDC is evaluating the SAMHSA grantees to identify best practices and determine the impact of the integration efforts.

The Department of Justice's (DOJ) Bureau of Justice Assistance (BJA) is also supporting expanded interstate sharing of PDMP data, which is especially important. Currently, at least thirty states have some ability to share data. PDMP administrators are working to better integrate these systems into other health IT programs. In FY 2014, BJA made fifteen site-based awards for states to implement or enhance a PDMP program or strategy to address non-medical prescription drug use, misuse and diversion within their communities. Since inception of the grant program in FY 2002, grants have been awarded to forty-nine states and one U.S. territory. In recent years, the grant program included tribal participation, and gave support to states and localities to expand collaborative efforts between public health and public safety professionals. For example, according to Maryland's Department of Health and Mental Hygiene, [68] the state used its grant funding to form local overdose fatality review (OFR) teams comprised of multi-agency, multi-disciplinary stakeholders who review information on individuals who died from drug and alcohol related overdose. The OFR teams meet monthly to review medical examiner and other data to identify overdose risk factors, missed opportunities for prevention/intervention, and make policy recommendations. These teams work on both prescription opioid and heroin overdose deaths. Currently the PDMP cannot disclose its information directly to the fatality review teams but there is a proposal to change this law so the review team can request data directly. This is an excellent example of how the PDMP expansion can be useful in understanding and addressing what for some can be the second stage of opioid use disorders, heroin use.

In February 2013, the Department of Veterans Affairs (VA) issued an Interim Final Rule authorizing VA physicians to access state PDMPs in accordance with state laws and to develop

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[60] National Alliance of Model State Drug Laws. (2014). Status of State Prescription Drug Monitoring Programs (PDMPs). Retrieved from http://www.namsdl.org/library/16666FCC-65BE-F4BB-A2BBAD44F1BC7031/.
[61] Kentucky 201 KAR 9:260. 2012. Available at http://www.lrc.ky.gov/kar/201/009/260.htm
[62] P.L. 2015, c.74 (N.J. 2015), *available at* http://www.njleg.state.nj.us/2014/Bills/AL15/74_.PDF
[63] New Mexico Register. 16.12.9.9. November 15, 2012. Available at http://www.nmcpr.state.nm.us/new-mexico-register/prev_issues/prev_issuesxxiii/xxiii21/16.12.9amend
[64] New York 3343-A. 2012. Available at http://law.justia.com/codes/new-york/2012/pbh/article-33/title-4/3343-a
[65] Oklahoma 3251. 2010. Available at http://www.oklegislature.gov/cf_pdf/2009-10%20FLR/hflr/HB3251%20hflr.pdf
[66] Tennessee 2253. 53-10-310. 2012. Available at http://www.tn.gov/sos/acts/107/pub/pc0880.pdf
[67] Tennessee Department of Health Controlled Substance Monitoring Database Committee. Controlled Substance Monitoring Database 2014 Report to the 108th Tennessee General Assembly, February 1, 2014. Page 5. Available at http://health.tn.gov/statistics/Legislative_Reports_PDF/CSMD_AnnualReport_2014.pdf Linked to 9-04-2014
[68] Maryland Department of Health & Mental Hygiene. (2014). Overdose Fatality Review in Maryland. Harold Rogers PDMP National Meeting. Retrieved from http://www.pdmpassist.org/pdf/PPTs/National2014/2-04_Baier.pdf. Accessed on 4-22-2015.

mechanisms to begin sharing VA prescribing data with state PDMPs. The interim rule became final on March 14, 2014.[69] Since then, the VA has developed and installed software to enable VA pharmacies to transmit their data to PDMPs. As of April 2015, 67 VA facilities were sharing information with PDMPs in their respective states. VA providers have also begun registering and checking the state databases. However, the VA does not currently require prescribers to check the PDMP prior to prescribing.

While PDMP reporting is not required by IHS facilities, many tribes have declared public health emergencies and have elected to participate with the PDMP reporting initiative. Currently, IHS is sharing its pharmacy data with PDMPs in 18 states,[70] and IHS is in the process of negotiating data-sharing with more states.[71] As these systems continue to mature, PDMPs can enable health care providers and law enforcement agencies to prevent the non-medical use and diversion of prescription opioids.

The third pillar of our *Plan* focuses on safely removing millions of pounds of expired and unneeded medications from circulation. Research shows that approximately 53 percent of past year nonmedical users of prescription pain relievers report getting them for free from a friend or relative the last time they used them, and for approximately 84 percent of these, that friend or relative obtained the pain relievers from one doctor. An additional 15 percent bought or took them from a friend or relative.[72] Safe and proper disposal programs allow individuals to dispose of unneeded or expired medications in a safe, timely, and environmentally responsible manner.

From September 2010 through September 2014, the DEA partnered with hundreds of state and local law enforcement agencies and community coalitions, as well as other Federal agencies, to hold nine National Take-Back Days. Through these events, DEA collected and safely disposed of more than 4.8 million pounds of unneeded or expired medications.[73] DEA has scheduled its next National Take-Back Day for September 26, 2015.

In addition, DEA published a Final Rule for the Disposal of Controlled Substances, which took effect October 9, 2014.[74] These new regulations expand the options available to securely and safely dispose of unneeded prescription medications. They authorize certain DEA registrants (manufacturers, distributors, reverse distributors, narcotic treatment programs, retail pharmacies, and hospitals/clinics with an on-site pharmacy) to modify their registration with the DEA to become authorized collectors. Collectors may operate a collection receptacle at their registered location, and anyone can distribute pre-printed/pre-addressed mail-back packages that go to mail-back program operators. Collectors that are retail pharmacies and hospitals/clinics

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[69] Disclosures to Participate in State Prescription Drug Monitoring Programs, 78 Fed. Reg. 9589 (Feb. 11, 2013); 79 Fed. Reg. 14400 (Mar. 14, 2014).

[70] Indian Health Service. (2014). Prescription Drug Monitoring Programs: Indian Health Service Update. Harold Rogers PDMP Annual Meeting. Retrieved from http://www.pdmpassist.org/pdf/PPTs/National2014/2-14_Tuttle.pdf.

[71] Cynthia Gunderson, Prescription Drug Monitoring Programs & Indian Health Service, Barriers, Participation, and Future Initiatives, Presentation at Third Party Payer Meeting, December 2012. http://www.pdmpexcellence.org/sites/all/pdfs/Gunderson.pdf.

[72] Substance Abuse and Mental Health Services Administration. *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*. Department of Health and Human Services. [September 2014]. Available: http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.htm#2.16

[73] Drug Enforcement Administration. "DEA and Partners Collect 309 Tons of Polls on Ninth Prescription Drug Take-Back Day." Department of Justice. [November 5, 2014]. Available: http://www.dea.gov/divisions/hq/2014/hq110514.shtml

[74] Disposal of Controlled Substances, 79 Fed. Reg. 53519 (Sep. 9, 2014). Available: https://www.federalregister.gov/articles/2014/09/09/2014-20926/disposal-of-controlled-substances

with on-site pharmacies and law enforcement to include Veterans Health Administration (VHA) and DoD police officers may operate their own disposal collection receptacles. In addition, long-term care facilities that offer disposal collection receptacles must partner with either a retail pharmacy or a hospital/clinic with an on-site pharmacy to operate collection receptacles in their facilities. Any person or entity may partner with law enforcement to conduct take-back events. Additionally, VHA is offering drug take back options to Veterans.[75]

ONDCP and DEA have engaged with Federal, state, and local agencies, and other stakeholders to increase awareness and educate the public about the new rule. In November 2014, ONDCP, DEA and the Alameda County California Superintendent's office hosted a webinar for community agencies to explain the new rule and discuss how local ordinances might define or fund disposal programs. Over 800 people registered for the program, and 436 viewed it live.[76] ONDCP and DEA will engage with Federal partners as well as with state and local entities to develop and implement a plan to develop disposal programs nationwide.

The *Plan's* fourth pillar focuses on improving law enforcement capabilities to reduce the diversion of prescription opioids. Federal law enforcement, to include our partners at DEA, is working with state and local agencies across the country to reduce pill mills, prosecute those responsible for improper or illegal prescribing practices, and make it harder for unscrupulous registrants including pharmacies to remain in business.

All of these efforts under the *Prescription Drug Abuse Prevention Plan* are intended to reduce the diversion, non-medical use, and health and safety consequences of prescription opioids. The Administration has worked tirelessly to address the problem at the source and at an array of intervention points. This work has been paralleled by efforts to address heroin trafficking and use, as well as the larger opioid overdose problem facing this country.

Efforts to Stem the Heroin Crisis:

Heroin was added to Schedule I of the controlled substances list in 1914, and efforts to address heroin use and trafficking have been reflected annually in our *National Drug Control Strategy*. Opium poppy, from which heroin is derived, is not grown in the United States, and manufacturing is based outside of the country, primarily in Mexico for U.S. sales. Drug seizure data suggest a great deal of heroin has been flowing into the United States in recent years, primarily from Mexico but also from South America.

Pharmaceutical opioids activate the same receptors in the brain as heroin, a reason why users can switch from one to the other and avoid withdrawal. Approximately 18 billion opioid pills were dispensed in 2012,[77] enough to give every American 18 years or older 75 pills.[78] Plentiful access to opioid drugs via medical prescribing and easy access to diverted opioids for

[75] Veterans Health Administration. "Joint Fact Sheet: DoD and VA Take New Steps to Support the Mental Health Needs of Service Members and Veterans." [August 26, 2014]. Available at: http://www.va.gov/opa/docs/26-AUG-JOINT-FACT-SHEET-FINAL.pdf. Accessed on 12-01-2014.
[76] Office of National Drug Control Policy. "Website Blog Watch: Webinar DEA Final Rule on Disposal of Controlled Substances." Available at: https://www.whitehouse.gov/blog/2014/11/17/watch-webinar-dea-s-final-rule-disposal-control-substances. Accessed on 4-15-2015
[77] IMS Health, National Prescription Audit, 2012
[78] Estimate presented by Thomas Frieden during oral presentation at Preventing Prescription Drug Overdose: New Challenges, New Opportunities. National RX Drug Abuse Summit, Operation Unite. Atlanta GA. April 8, 2014.

nonmedical use help feed our opioid crisis. In fact, as discussed above, the majority of new users come to heroin with experience as nonmedical prescription drug users.[79] Prior to today's opioid epidemic, heroin largely had been confined to urban centers with larger heroin using populations. Many communities and states that have never had a heroin use problem are now dealing with this epidemic, as Vermont Governor Shumlin discussed in his 2014 *State of the State* address.

In 2012 ONDCP held an interagency meeting focused on heroin, as many agencies were concerned that prescription opioid users might migrate to heroin. The interagency prescription drug working group formed a research group to examine the nature of the transition from prescription opioids to heroin, and CDC and SAMHSA have increased their focus on this issue, developing additional analyses to help track and publicize the issue.[80,81]

In May 2015, the Administration held its inaugural meeting of the Congressionally-mandated interagency Heroin Task Force. This Task Force is co-chaired by ONDCP Deputy Director for State, Local and Tribal Affairs Mary Lou Leary and U.S. Attorney for the Western District of Pennsylvania David Hickton and includes Federal agency experts from law enforcement, medicine, public health and education. The Task Force report will highlight emerging evidence-based public health and public safety models for Federal agency engagement in activities that promote solutions to reduce demand or decrease spread of disease.

The *National Drug Control Strategy*'s efforts also include pursuing action against criminal organizations trafficking in opioid drugs, working with the international community to reduce cultivation of poppy, identifying labs creating dangerous synthetic opioids like fentanyl and acetyl-fentanyl and enhancing border efforts to decrease the flow of these drugs into the country.

Administration Support of State and Local Efforts

The Administration is funding numerous efforts to reduce opioid misuse and abuse in the states. In July, HHS announced an additional $11 million in to states to expand the use of medication-assisted treatment (MAT) and an additional $100 million to improve and expand substance use disorder services at community health centers, with a focus on MAT. In response to a number of requests from states and stakeholders, the Centers for Medicare & Medicaid Services is offering state Medicaid programs a new opportunity to receive Federal funding through a Social Security Act section 1115 demonstration project to support the design of service delivery systems to effectively treat individuals with substance use disorder, including by providing care in residential settings that would not ordinarily be covered.

The President's FY 2016 Budget proposal also includes critical investments to intensify efforts to reduce opioid misuse and abuse, including $133 million overall in new funding. This

[79] Muhuri, P.K., Gfroerer, J.C., Davies, MC. SAMHSA CBHSQ Data Review. Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the United States. August 2013.
[80] R.N. Lipari and A. Hughes. The NSDUH Report: Trends in Heroin Use in the United States: 2002 to 2013. (2015). Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. Rockville, MD. http://www.samhsa.gov/data/sites/default/files/report_1943/ShortReport-1943.html Available at linked to on 7-19-2015
[81] Jones CM, Logan J, Gladden RM, Bohm MK. Vital Signs: Demographic and Substance Use Trends Among Heroin Users - United States, 2002-2013. MMWR Morb Mortal Wkly Rep. 2015 Jul 10;64(26):719-25. PMID: 26158353

overall amount includes $48 million in new funding to strengthen and evaluate state-level prescription drug overdose prevention, including a major expansion of CDC's Prescription Drug Overdose Prevention for States program to support efforts to reduce overdoses from opioids and other drugs. This investment would leverage existing PDMP activities and bring total CDC funding for this state prevention program to $65 million. These funds would support grants to all 50 states and Washington, DC, for improvements to prescription drug monitoring programs, such as interstate interoperability and improved proactive reporting. Grants would also support national-level activities, including patient safety improvements and enhancements in data quality and monitoring with an emphasis on real-time mortality data. The FY 2016 Budget also includes $5.6 million in new funding to address the rising rate of heroin-related overdose deaths by working to collect near real-time emergency department data and higher quality and timely mortality data by rapidly integrating death certificate and toxicology information, and $5 million in increased funding for electronic death reporting to provide faster, better quality data, including on opioid overdose deaths.

The FY 2016 Budget for SAMHSA includes $12 million for a new program to provide grants to 10 states to significantly reduce the number of opioid overdose-related deaths and help states purchase naloxone, equip and train first responders in high-risk communities on its use, support education on the use of naloxone and other overdose death prevention strategies, and support dissemination efforts. The Budget also includes $10 million in new funding for SAMHSA's Strategic Prevention Framework to help states incorporate substance abuse prevention into state strategic planning efforts, including implementation of evidence-based practices aimed at reducing prescription drug abuse and misuse.

The Budget also proposes to establish a program in Medicare Part D to prevent prescription drug abuse by requiring that beneficiaries at risk for prescription drug misuse obtain controlled substances only from specified providers and pharmacies, similar to many state Medicaid programs. And the Budget requests $5 million in new funding for ONC to improve the integration of Prescription Drug Monitoring Programs with electronic health records.

The FY 2016 Budget includes $13 million in new resources for SAMHSA to expand or enhance MAT and other clinically appropriate services for persons with opioid use disorders through grants to states. This program will fund technical assistance and treatment services to communities with the greatest need. It also includes $5 million in new funding for HHS's Agency for Healthcare Research and Quality to conduct a robust review of evidence and evaluation regarding MAT in primary care settings as well as grants to develop and test new methods, processes, and tools for better implementing these treatment strategies.

HIDTA Program Support to Respond to the Heroin Epidemic

ONDCP has committed $2.5 million in FY 2015 funds for its High Intensity Drug Trafficking Areas (HIDTA) Program to develop a strategy to respond to the Nation's heroin epidemic.[82] This project will combine prevention, education, intelligence, and enforcement

[82] The Organized Crime and Drug Enforcement Task Forces (OCDETF) announced its National Heroin Initiative in December 2014, which outlines a similar strategy to respond to the national heroin epidemic, and appointed a National Coordinator in May 2015. Throughout the development of this program, HIDTA has been partnering with OCDETF in multiple regions across the country by participating in multiple

resources to address this drug threat across 15 states, including New Hampshire (Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia), and the District of Columbia. The effort will be carried out through a unique partnership of five HIDTAs – Appalachia, New England, New York/New Jersey, Philadelphia/Camden, and Washington/Baltimore. The Heroin Response Strategy incorporates three key components:

1. Enhancement of the Drug Intelligence Officer Network

The Heroin Response Strategy will foster a collaborative network of public health-public safety partnerships to address the heroin/opioid epidemic from multiple perspectives. The Strategy will enhance the efficacy and efficiency of the criminal intelligence process in support of cooperative law enforcement operations. The five HIDTAs will create a multistate network of experienced, connected law enforcement contacts and leverage these connections and information-gathering capabilities with a strong, complementary, analytical capacity.

The five HIDTAs will select two centrally located Regional Coordinators, one with a public health focus and the other with a public safety focus, who will manage and oversee implementation and operation of the Heroin Response Teams. The Public Health Coordinator will oversee regional reporting of fatal and non-fatal overdose information and issuing of relevant alerts regarding dangerous batches of heroin and other heroin-related threats to health authorities. This will mobilize a rapid public health response to distribute naloxone or expand resources in the affected areas, helping to mitigate the number of overdoses and prevent deaths. The Public Safety Coordinator will oversee execution of public safety goals by ensuring case support is provided where needed and intelligence is being disseminated to relevant law enforcement authorities to enable disruption of the heroin supply.

2. Education and Training for Public Safety First Responders

A heroin and prescription opioid training curriculum will be developed and used to prepare rural and municipal officers and first responders who are inexperienced in responding to heroin and prescription opioid-related incidents. To assist communities in coping with this escalating problem, the HIDTAs will develop education and training strategies that will increase awareness of heroin and opiate addiction, create linkages to available prevention and treatment resources in the respective regions, and enable first-responders to know how to report all pertinent information developed from seizures and overdose responses.

3. State of the Region Public Health-Public Safety Symposia

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strategic initiatives developed by OCDETF on the district and regional level, through its member agencies and their collaboration with state and local law enforcement partners.

The Heroin Response Strategy will build on the successes of the 2014 symposium hosted by the Washington/Baltimore HIDTA. The five HIDTAs will host two, 2-day State of the Region symposia at a jointly nominated HIDTA. These symposia will build additional structure within each respective HIDTA by allowing attendees to maintain regular contact and continue their public health-public safety partnerships between symposia. The aim will be to facilitate collaboration between public health and public safety partners within and across jurisdictions, sharing best practices, innovative pilots, and identifying new opportunities to leverage resources.

The HIDTA Program is funding two additional discretionary projects in FY 2015 that will benefit New Hampshire. The Southern New Hampshire Drug Task Force will be receiving $90,000 to support Safe and Competent Opioid Prescribing Education (SCOPE) of Pain continuing medical education (CME) training. And the New England HIDTA received $125,000 to support efforts throughout the HIDTA region. We anticipate that New Hampshire will receive a portion of that funding, although specific amounts are not yet available.

Treatment, Overdose Prevention, and Other Public Health Efforts

The public health consequences of nonmedical opioid and heroin use are often similar if not identical. Most notably, in both cases, some proportion of individuals escalate use and eventually develop a chronic opioid use disorder requiring treatment. The low rate of cases referred to treatment by medical personnel in the face of such a dangerous epidemic suggests that providers may ignore or miss the problems of nonmedical prescription opioid use and heroin use among their patients. The extent of the opioid use problem requires that health care providers work in tandem with law enforcement to address the issue.

People who escalate use are vulnerable to begin injecting, and this behavior dramatically increases their risk of exposure to blood-borne infections, including human immunodeficiency virus (HIV) and hepatitis C. It is noteworthy that in the latest HIV outbreak in rural Indiana, it was intravenous use of the strong prescription opioid oxymorphone, not heroin, which accounted for most of the cases. Since the first patient in the outbreak was identified in January 2015, 174 people have tested positive for HIV. To combat the spread of HIV, Indiana instituted an emergency syringe services program, among other efforts to expand treatment for HIV and opioid use disorders. The Administration continues to support a consistent policy that would allow Federal funds to be used in locations where local authorities deem syringe services programs to be effective and appropriate. Studies show that comprehensive prevention and drug treatment programs, including syringe services program, have dramatically cut the number of new HIV infections among people who inject drugs.

Nonmedical use of prescription opioids and use of heroin can produce overdose including fatal overdose especially when used in conjunction with other sedatives including alcohol and anti-anxiety medicines. People who have stopped using for a period of time, such as those who were in treatment, have been medically withdrawn, or have been incarcerated, are especially at risk of overdose because their tolerance has worn off but they use amounts similar to those prior to cessation. When used chronically by pregnant women, both prescription opioids and heroin

can cause withdrawal symptoms in newborns upon birth, and if these opioids are withdrawn during pregnancy, fetal harm may result.

For these reasons, it is important to identify and treat people with prescription opioid use disorder quickly, ensure they are engaged in the most effective forms of evidence-based treatment, and make lifesaving tools like the overdose reversal antidote naloxone widely available. Fortunately, the treatments for heroin and prescription opioid use disorder are the same. The standard of care is behavioral treatment plus stabilization on one of three FDA-approved medicines, often called medication-assisted treatment. MAT may be tapered in time to produce abstinence, but a health care provider must make the decision that is right for his or her patient regarding whether to cease a medication.

The Administration continues to focus on vulnerable populations affected by opioids, including pregnant women and their newborns. From 2000 to 2009 the number of infants displaying symptoms of drug withdrawal after birth, known as neonatal abstinence syndrome (NAS), increased approximately threefold nationwide.[83] Newborns with NAS have more complicated and longer initial hospitalizations than other newborns.[84] Newly published data shows the problem nearly doubled from 2009 to 2012.[85] Additionally, the study showed that 80 percent of the cost for caring for these infants was the responsibility of state Medicaid programs during this time.

The Administration is focusing on several key areas to reduce and prevent opioid overdoses from prescription opioids and heroin, including educating the public about overdose risks and interventions; increasing access to naloxone, an emergency opioid overdose reversal medication; and working with states to promote Good Samaritan laws and other measures that can help save lives. With the recent rise in opioid-involved overdose deaths across the country, it is increasingly important to prevent overdoses and make antidotes available.

It is important to note in some cases traffickers are combining heroin with the synthetic lab-produced opioid fentanyl or an analog, presumably as a way to increase user perception of product strength and thus user experience.[86] Fentanyl can produce overdose rapidly in naïve users and in such cases naloxone may be insufficient remedy for fentanyl or its analogs.[87]

The Administration is providing tools to local communities to deal with the opioid drug epidemic. In August 2013, SAMHSA released the *Opioid Overdose Prevention Toolkit.*[88] This

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[83] Epstein, R.A., Bobo, W.V., Martin, P.R., Morrow, J.A., Wang, W., Chandrasekhar, R., & Cooper, W.O. (2013). Increasing pregnancy-related use of prescribed opioid analgesics. Annals of Epidemiology, 23(8): 498-503. Retrieved from http://www.ncbi.nlm.nih.gov/pubmed/23889859.

[84] Patrick, S., Schumacher, R.E., Benneyworth, B.D., Krans, E.E., McAllister, J.M., & Davis, M.M. (2012). Neonatal abstinence syndrome and associated health care expenditures: United States, 2000-2009. Journal of the American Medical Association, 307(18): 1934-40. Retrieved from http://www.ncbi.nlm.nih.gov/pubmed/22546608.

[85] Patrick, SW, Davis, MM, Lehman, CU, Cooper, WO. Incresing incidenee and geographic distribution of neonatal abstinence syndrome: United States 2009-2012. Journal of Perinatology (2015): 1-6 online publication, April 30, 2015; doi:10.1038/jp.2015.36

[86] Notes from the field: increase in fentanyl-related overdose deaths - Rhode Island, November 2013-March 2014.
Mercado-Crespo MC, Sumner SA, Spelke MB, Sugerman DE, Stanley C; EIS officer, CDC.
MMWR Morb Mortal Wkly Rep. 2014 Jun 20;63(24):531. http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6324a3.htm

[87] Zuckerman M, Weisberg SN, Boyer EW. Pitfalls of intranasal naloxone.Prehosp Emerg Care. 2014 Oct-Dec;18(4):550-4. doi: 10.3109/10903127.2014.896961. Epub 2014 May 15..

[88] Substance Abuse and Mental Health Services Administration. Opioid Overdose Prevention Toolkit. Department of Health and Human Services. [August 2013]. Available: http://store.samhsa.gov/product/Opioid-Overdose-Prevention-Toolkit/SMA13-4742

toolkit provides communities and local governments with material to develop policies and practices to help prevent opioid-related overdoses and deaths. It contains information for first responders, treatment providers, and those recovering from opioid overdose. In July 2014, Attorney General Holder issued a Memorandum urging Federal law enforcement agencies to identify, train and equip personnel who may interact with victims of an opioid overdose,[89] and in October 2014, the Attorney General announced the launch of the Department of Justice's *Naloxone Toolkit* to support law enforcement agencies in establishing a naloxone program.[90] In August 2014, the Administration announced that DoD was making a new commitment to ensure that opiate overdose reversal kits and training are available to every first responder on military bases or other areas under DoD's control.[91] And earlier this month, the Indian Health Service announced its own toolkit for use with American Indian and Alaskan Natives a population who has disparate rates of past year non-medical prescription pain reliever use (6.9 percent vs. 4.2 percent in the rest of the population).[92]

The Administration continues to promote the use of naloxone by those likely to encounter overdose victims and for them to be in the position to reverse the overdose, especially first responders and caregivers. The Administration's FY 2016 Budget requests $12 million in grants to be issued by SAMHSA to states to purchase naloxone, equip first responders in high-risk communities, and provide education and the necessary materials to assemble overdose kits, as well as cover expenses incurred from dissemination efforts. Profiled in the 2013 *National Drug Control Strategy*, the Quincy Massachusetts Police Department has partnered with the State health department to train and equip police officers to resuscitate overdose victims using naloxone. The Department reports that since October 2010, officers in Quincy have administered naloxone in more than 382 overdose events, resulting in 360 successful overdose reversals.[93] In the past year, we have witnessed an exponential expansion in the number of police departments that are training and equipping their police officers with naloxone. They now number in the hundreds.

Extraordinary collaboration is taking place in rural and suburban communities such as Lake County, Illinois. As part of the Lake County Heroin/Opioid Prevention Taskforce, the Lake County State's Attorney has partnered with various county agencies, including the Lake County Health Department; drug courts; police and fire departments; health, advocacy and prevention organizations; and local pharmacies to develop and implement an opioid overdose prevention plan.[94] Since July 2014, the Lake County Health Department has trained more than 34 police departments, 27 of which are carrying naloxone. As of February 2015, the Lake County Health

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[89] Department of Justice, Office of Public Affairs. "Attorney General Holder Announces Plans for Federal Law Enforcement Personnel to Begin Carrying Naloxone." [July 31, 2014]. Available at http://www.justice.gov/opa/pr/attorney-general-holder-announces-plans-federal-law-enforcement-personnel-begin-carrying linked to 10-18-2014

[90] Department of Justice, Office of Public Affairs. "Remarks by Attorney General Holder at the International Association of Chiefs of Police Annual Conference." [October 27, 2014]. Available at: http://www.justice.gov/opa/speech/remarks-attorney-general-holder-international-association-chiefs-police-annual-conference

[91] http://www.va.gov/opa/docs/26-AUG-JOINT-FACT-SHEET-FINAL.pdf

[92] SAMHSA. National Survey on Drug Use and Health. The CBHSQ Report, June 2015.Nonmedial use of prescription pain relievers varies by race. http://www.samhsa.gov/data/sites/default/files/report_1972/Spotlight-1972.html linked to on 7-19-2015.

[93] Quincy (Massachusetts) Police Department Reporting. Email received 3/15/15.

[94] Office of the State's Attorney, Lake County, Illinois, Michael G. Nerheim. "Call to Action Lake County Opioid Prevention Initiative." [May 29, 2013]. Available at: http://lcsao.org/news/press-releases

Department had trained 828 police officers and 200 sheriff's deputies to carry and administer naloxone, and more departments have requested this training.[95]

Prior to 2012, just six states had any laws which expanded access to naloxone or limited criminal liability. Today, 36 states[96] and the District of Columbia have passed laws that offer criminal and/or civil liability protections to lay persons or first responders who administer naloxone. Twenty-five states[97] have passed laws that offer criminal and/or civil liability protections for prescribing or distributing naloxone. Thirty-four states[98] have passed laws allowing naloxone distribution to third-parties or first responders via direct prescription or standing order. ONDCP is collaborating with state health and law enforcement officials to promote best practices and connect officials interested in starting their own naloxone programs. The odds of surviving an overdose, much like the odds of surviving a heart attack, depend on how quickly the victim receives treatment. Twenty-five states[99] and the District of Columbia have passed laws which offer protections from charge or prosecution for possession of a controlled substance and/or paraphernalia if the person seeks emergency assistance for someone that is experiencing an opioid induced overdose. As these laws are implemented, the Administration will carefully monitor their effect on public health and public safety.

The Affordable Care Act and Federal parity laws are extending access to mental health and substance use disorder benefits for an estimated 62 million Americans.[100] This represents the largest expansion of treatment access in a generation and could help guide millions into successful recovery. The President's FY 2016 budget request includes $11 billion for treatment, a nearly seven percent increase over the FY 2015 funding level.

It is essential to identify and engage people who use prescription opioids non-medically early because the risks of being infected with HIV or hepatitis C increases dramatically once someone transitions to injection drug use. It is much less expensive to treat a person for just a substance use disorder early using evidence-based treatment, rather than to treat a person with a substance use disorder and provide lifetime treatment for HIV or pharmaceuticals to treat and cure hepatitis C.

Medication-assisted treatment should be the recognized standard of care for opioid use disorders. Research shows that even heroin users can sustain recovery if treated with evidence-based methods. Studies have shown that individuals with opioid use disorders have better outcomes with maintenance MAT.[101] Yet for too many people, it is out of reach. For instance, only 26.2 percent (3,713) of treatment facilities provided treatment with methadone and/or

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[95] Lake County Health Department Reporting. Email 2/19/15.
[96] NH, CA, CO, ID, OR, UT, WA, AZ, NM, OK, GA, KY, LA, MS, NC, TN, VA, WV, CT, DE, MA, MD, ME, NJ, NY, PA, RI, VT, IL, IN, MI, MN, MO, OH, SD, and WI.
[97] NH, CA, CO, ID, UT, AZ, NM, GA, MS, NC, TN, VA, WV, CT, MA, NJ, NY, PA, VT, IN, MI, MN, OH, SD, and WI.
[98] NH, CA, CO, ID, OR, UT, WA, AZ, OK, GA, KY, LA, MS, NC, TN, VA, WV, CT, DE, MA, MD, ME, NJ, NY, PA, VT, IL, IN, MI, MN, MO, OH, SD, and WI.
[99] AK, CA, CO, UT, WA, NM, FL, GA, KY, LA, NC, WV, CT, DE, MA, MD, NJ, NY, PA, RI, VT, IL, IN, MN, and WI.
[100] Berino, K., Rosa, P., Skopec, L. & Glied, S. (2013). Affordable Care Act Will Expand Mental Health and Substance Use Disorder Benefits and Parity Protections for 62 Million Americans. *Research Brief.* Assistant Secretary for Planning and Evaluation (ASPE). Washington, DC (Citation: Abstract of the Brief found at http://aspe.hhs.gov/health/reports/2013/mental/rb_mental.cfm)
[101] Weiss RD, Potter JS, Griffin ML, McHugh RK, Haller D, Jacobs P, Gardin J 2nd, Fischer D, Rosen KD. Adjunctive Counseling During Brief and Extended Buprenorphine-Naloxone Treatment for Prescription Opioid Dependence: A 2-Phase Randomized Controlled Trial Published in final edited form as: Arch Gen Psychiatry. 2011 December; 68(12): 1238–1246.

buprenorphine.[102] Treatment programs are too often unable to provide this standard of care, and there is a significant need for medical professionals who can provide MAT in an integrated health care setting.

Medicines for opioid use disorder containing buprenorphine are important advancements that have only been available since Congress passed the Drug Addiction Treatment Act of 2000 (DATA 2000). They expand the reach of treatment beyond the limited number of heavily regulated Opioid Treatment Programs that generally dispense methadone. Also because physicians who have taken the training to administer the medicines are allowed to treat patients in an office-based setting, it allows patient care to be integrated with mainstream medicine. Injectable naltrexone offers similar advantages but only to patients who have been abstinent from opioids for 7-10 days. Special training required by DATA 2000 for prescribing buprenorphine is not required for injectable naltrexone.

We need to increase the number of physicians who can prescribe buprenorphine, when appropriate and the numbers of providers offering injectable naltrexone. Of the more than 877,000 physicians who can write controlled substance prescriptions, only about 29,194 have received a waiver to prescribe office-based buprenorphine. Of those, 9,011 had completed the requirements to serve up to 100 patients. The remainder can serve up to 30. Although they are augmented by an additional 1,377 narcotic treatment programs, far too few providers elect to use any form of medication-assisted treatment for their patients.[103] Injectable naltrexone was only approved for use with opioid use disorders in 2012, and little is known about its adoption outside specialty substance use treatment programs but use in primary care and other settings are possible. To date only about 3 percent of U.S. treatment programs offer this medicine for opioid use disorder.[104] Education on the etiology of opioid abuse and clinician interventions is critical to increasing access to treatments that will stem the tide of opioid misuse and overdose.

And there are some signs that these national efforts are working with respect to the prescription opioid problem. The number of Americans 12 and older initiating the nonmedical use of prescription opioids in the past year has decreased significantly since 2009, from 2.2 million in that year to 1.5 million in 2013.[105] Additionally, according to the latest Monitoring the Future survey, the rate of past year use among high school seniors of OxyContin or Vicodin in 2014 is its lowest since 2002.[106]

However, while all of these trends are promising, the national data cited earlier concerning increases in emergency department visits, treatment admissions, and overdoses involving opioids bring the task ahead of us into stark focus. Continuing challenges with

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[102] SAMHSA. *National Survey of Substance Abuse Treatment Services (N-SSATS): 2012 -- Data on Substance Abuse Treatment Facilities* (December 2013).

[103] Personal communication (email) from Robert Hill (DEA).

[104] Aletraris LI, Bond Edmond MI, Roman PMI., Adoption of injectable naltrexone in U.S. substance use disorder treatment programs. J Stud Alcohol Drugs. 2015 Jan;76(1):143-51.

[105] Substance Abuse and Mental Health Services Administration. *Results from the 2013 National Survey on Drug Use and Health: Detailed Tables.* Department of Health and Human Services. [November 2014]. Available: http://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabsPDFWHTML2013/Web/HTML/NSDUH-DetTabsSect7peTabs1to45-2013.htm#tab7.36A

[106] The Monitoring the Future study. *Narcotics other than Heroin: Trends in Annual Use and Availability – Grades 8, 10, and 12.* University of Michigan. [December 2014]. Available: http://www.monitoringthefuture.org/data/14data/14drfig11.pdf

prescription opioids, and concerns about a reemergence of heroin use, particularly among young adults, underscore the need for leadership at all levels of government.

New Hampshire Policy Status and what People from New Hampshire Can Do

In June 2015, the New Hampshire legislature passed HB 271,[107] a bill that allows health care professionals authorized to prescribe an opioid antagonist to prescribe, dispense, or distribute naloxone directly or by standing order to an individual or family member, friend or any person in a position to assist in the event of an opioid related overdose. The new law permits emergency medical technicians and law enforcement first responders to use naloxone. It also contains a Good Samaritan provision, which prevents criminal or civil liability against a person who administers naloxone acting in good faith if they thought a person was experiencing an overdose. In July HB 270,[108] another Good Samaritan statute, was signed into law, granting immunity from arrest, prosecution, or conviction to a person who requests medical assistance to save the life of an overdose victim.

New Hampshire has a challenge meeting the need of its residents for medication-assisted treatment, given that its population is distributed across a mostly rural region. There are no opioid treatment programs north of Plymouth that provide methadone, and there are only three programs in the northern part of the state that list buprenorphine providers.[109] Recently, HHS announced that community health centers are eligible to apply for grants which will pay for inclusion of at least one MAT provider. This program stands to benefit people in New Hampshire, because a number of community health centers are located in the northern part of the State. We are hopeful that the State takes advantage of these funds and applies by September 28 for these grants,[110] so that New Hampshire residents can benefit from MAT.

In addition, many New Hampshire police departments are partnering with DEA to host Drug Take-Back Day events on September 26.[111] The new DEA take-back regulations permit a variety of other means to dispose of excess drugs. Local communities should develop and fund programs that take advantage of all means of prescription drug disposal allowed under the DEA regulations, including take-back through pharmacies and mail-back programs and use of drug deactivation systems.

Conclusion

We continue to work with our Federal, state, local, and tribal partners to continue to reduce and prevent the health and safety consequences of nonmedical prescription opioid and heroin use. Together with all of you, we are committed partners, working to reduce the prevalence of substance use disorders through prevention, increasing access to treatment, and helping individuals recover from the disease of addiction. Thank you for the opportunity to

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[107] Chapter 65 New Hampshire HB 271 available at https://legiscan.com/NH/text/HB271/id/1245750/New_Hampshire-2015-HB271-Chaptered.html Linked to on 9-1-2015.
[108] Chapter 65 New Hampshire HB 271 available at https://legiscan.com/NH/text/HB270/id/1255158.
[109] New Hampshire Alcohol and Drug Treatment Locator. http://nhtreatment.org/
[110] See http://www.grants.gov/view-opportunity.html?oppId=278195.
[111] https://www.deadiversion.usdoj.gov/NTBI/ntbi-pub.pub?_flowExecutionKey=_cFD9EF984-E349-C95D-0EC1-E46EEB9B1B86_k8090544E-FF20-C2EE-0FF7-5C51996F7D22

testify here today, and for your ongoing commitment to this issue. I look forward to continuing to work with you on this pressing public health matter.

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TESTIMONY OF

R. GIL KERLIKOWSKE
Commissioner
U.S. Customs and Border Protection
Department of Homeland Security

For a Field Hearing

BEFORE

United States Senate
Committee on Homeland Security and Governmental Affairs

ON

"All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl"

September 14, 2015
Manchester, New Hampshire

Introduction

Good morning, Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. Thank you for the opportunity to appear today in New Hampshire to discuss the role of U.S. Customs and Border Protection (CBP) in combating the flow of dangerous narcotics into the United States.

The use and availability of heroin and other clandestinely made opioids as well as the abuse of prescription opioids in the United States have been increasing at an alarming rate. The situation is one of the most important, complex, and difficult challenges our Nation faces today. According to a recent report[1] from the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA), overdose deaths involving heroin nearly doubled between 2011 and 2013 and are climbing.

There is no single entity, nor a single solution, that can solve this problem or cure as complicated a disease as opioid use disorder. Addressing this complex threat involves a united, comprehensive strategy and aggressive approach by multiple entities – from law enforcement, science, medicine, education, social work, and the public health sector – across all levels of government. While continued efforts to interdict heroin and other narcotics at the border are a key aspect of addressing this crisis, interdictions, arrests and convictions alone cannot solve the epidemic consequences of prescription opioid and heroin use. We need to focus on prevention and treatment, and identify the characteristics of a developing opioid use disorder before it escalates. We must also concentrate on deterring opioid trafficking through transnational criminal organizations, cartels, and other distribution networks.

To do this effectively, we need to better integrate our efforts, share information, and partner with federal, state, local and tribal communities as well as the private sector. The Heroin Response Strategy,[2] recently announced by the Office of National Drug Control Policy (ONDCP), will foster a collaborative partnership between public health and law enforcement entities. The strategy seeks a comprehensive response to this complex epidemic by addressing the broad range of efforts required – on the international, national, and local levels – to reduce the use, distribution, and trafficking of this dangerous substance.

As America's unified border agency, CBP has a critical role in the efforts to keep dangerous drugs like heroin and other clandestinely made opioids out of the hands of the American public. Combating transnational criminal organizations (TCO) and drug trafficking organizations (DTO) is a key component of our multi-layered, risk-based approach to enhance the security of our borders. This layered approach to security reduces our reliance on any single point or program and extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but one of many.

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[1] *Vital Signs*, a report from the Centers for Disease Control and Prevention and Food and Drug Administration; July 7, 2015; http://www.cdc.gov/media/releases/2015/p0707-heroin-epidemic.html

[2] https://www.whitehouse.gov/the-press-office/2015/08/17/white-house-drug-policy-office-funds-new-projects-high-intensity-drug

Secretary Johnson's Unity of Effort initiative has put in place new and strengthened management processes to enable more effective DHS component operations to address transnational criminal organizations, drug-trafficking, and other cross-border threats. In addition, DHS-wide border and maritime security activities are guided by the new Southern Border and Approaches Campaign and complement the Administration's biennial *National Southwest Border Counternarcotics Strategy*. Aimed at leveraging the range of unique Department roles, responsibilities, and capabilities, the Campaign enhances our ability to work together in a more unified way to address these comprehensive threats. In support of this new strategy, on November 20, 2014, the Secretary announced the piloting of three new joint task forces (JTF) to coordinate the efforts of the combined resources of DHS component agencies. Joint Task Force-East is responsible for the maritime approaches to the United States across the southeast, from the Gulf of Mexico to the Caribbean. Joint Task Force-West is responsible for the southwest land border from Texas to California. And, supporting the work of the other two task forces is a standing Joint Task Force for Investigations. These three JTFs reached full operational capability on July 30 of this year.

Interdictions and Trends

Although CBP saw a 13 percent decrease in overall nationwide drug seizures from Fiscal Year (FY) 2013 to FY 2014, heroin seizures increased 12 percent during the same period, with CBP seizures totaling 2,235 kilograms (kg). Ports of entry (POE) saw an eight percent increase and Border Patrol seizures of heroin increased five percent. CBP has seen similar heroin seizure increases in the air and marine environments.[3] CBP seizures of clandestinely made opioids like fentanyl, while relatively small compared to heroin, have also significantly increased from 1.1 kg in FY 2013 to 3.3 kg seized in FY 2014 and 27.5 kg seized to date in FY 2015. The majority of seizures occur at express consignment facilities.

Mexican manufacturers and traffickers continue to be the primary suppliers of heroin to the United States, providing approximately 53 percent of the U.S. supply. Although the vast majority[4] of CBP's heroin interdictions occur along the Southwest land border, seized from vehicles of smugglers who are part of a network of drug trafficking organizations (DTO) and cartels, CBP interdicts this dangerous drug in various forms in all environments and transportation modes. The reach and influence of Mexican cartels, notably Los Zetas, and the Gulf, Juarez, Jalisco New Generation, and Sinaloa Cartels, stretches across and beyond the Southwest border, operating through loose business ties with smaller organizations in cities across the United States. The threat of DTOs is dynamic; rival organizations are constantly vying for control, and as U.S. and Mexican anti-drug efforts diminish criminal networks, new groups arise and form new alliances.

DHS Resources and Capabilities to Counter Drug Trafficking Organizations

[3] Nationally, across land, air, and marine border environments, CBP's Office of Air and Marine (OAM) contributed to the seizure of 225 pounds (lbs.) of heroin in FY 2015, 724 lbs. in FY 2014 and 356 lbs. of heroin in FY 2015 as of August 28, 2015.

[4] Approximately 85 percent of CBP's heroin seizures in FY 2014 were via land.

CBP, responsible for America's frontline border security, has a significant role in the Nation's efforts to combat the cross-border criminal activity of cartels and other drug trafficking organizations. In the past decade, DHS has deployed more resources, technology, and tactical infrastructure for securing our borders than at any other time in history. Technology and detection capabilities significantly contribute to identifying and deterring the entry of potentially dangerous people and contraband.

Between the POEs along the Southwest border, CBP has made significant technology deployments, including mobile surveillance units, ground sensors, and thermal imaging systems to increase its ability to detect illegal cross-border activity and contraband in recent years. CBP also has 652 miles of fencing and deployed other tactical infrastructure to key trafficking areas. Additionally, the Department of Defense (DoD) ReUse effort enables CBP to leverage DoD technologies to satisfy critical border security missions while saving DHS resources. DHS and CBP have employed these technologies for line-watch persistent surveillance, aerial surveillance, detection of contraband and Weapons of Mass Destruction, and agent/officer safety.

CBP's Border Patrol, as part of its efforts to prevent the illicit smuggling of humans, drugs, and other contraband, maintains checkpoints and a high level of vigilance on corridors of egress from our Nation's borders. For example, this past May, San Diego Sector Border Patrol agents made an arrest after discovering more than 16 pounds of heroin in the back of a vehicle travelling along Interstate 5 in California. Just a few weeks ago, Border Patrol agents in the El Centro Sector, also in California, arrested a suspected drug smuggler during a check of a commercial passenger bus at the Highway 86 checkpoint after discovering packages of heroin hidden inside his shoes. And earlier this year, Border Patrol agents participated in "Operation Crazy Bull", which targeted drug traffickers in northwest Pennsylvania and other states in the region. The operation, which resulted in the arrest of 15 suspected members of a DTO, included federal and state agencies and was the culmination of a two-year investigation initiated by the Border Patrol and U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI).

At POEs, technology, such as non-intrusive x-ray and gamma ray imaging systems, and canine teams are invaluable in detecting the illegal transit of drugs hidden on people, in cargo and in other conveyances. Two weeks ago, CBP officers conducting a container check in San Juan, Puerto Rico discovered two backpacks with brick-shaped objects inside that tested positive for cocaine and heroin. While cargo conveyances may be a popular conveyance for smuggling, DTOs also move heroin in smaller quantities to try to evade detection. Last December, CBP officers working express consignment operations in Cincinnati seized five pounds of heroin when a shipment manifested as a baby playpen arrived at the facility for processing. The shipment was mailed from Malaysia and was destined for delivery in Toronto, Canada. ICE and the Royal Canadian Mounted Police Serious and Organized Crime Division conducted a controlled delivery that resulted in the arrest of two individuals suspected of illegal importation and narcotics trafficking.

Recognizing the importance of law enforcement playing a role beyond simply enforcement, and observing the upsurge in heroin use and the increase in heroin seizures at POEs, CBP has initiated a Naloxone Pilot Program. This program will ensure that CBP officers are prepared to save a life, if any of the nearly one million daily travelers who are processed through our

Nation's POEs experience an opioid overdose. The first phase of the program, which involved naloxone instructor training, was completed in January of 2015. Training includes instruction on the application of naloxone, cardiopulmonary resuscitation instructor certification, and other administrative requirements. The second phase is currently underway, which is the rollout of naloxone training for first and second line supervisors and EMT-certified staff at seven pilot POEs by October 1, 2015.[5]

CBP also has capable and effective aerial and marine assets, including unmanned aircraft systems and strategic and tactical aerostats, providing critical surveillance coverage and domain awareness toward counternarcotic efforts. In the maritime domain, CBP's Office of Air and Marine (OAM) employs high speed Coastal Interceptor Vessels that are specifically designed and engineered with the speed, maneuverability, integrity and endurance to intercept and engage a variety of suspect non-compliant vessels in offshore waters, as well as the Great Lakes on the northern border.

This past May, OAM participated in a joint law enforcement operation with the Drug Enforcement Administration (DEA) targeting a heroin ring in Philadelphia, PA, and Rochester, NY. OAM's highly-trained air crews and marine agents conducted aerial and land surveillance and executed search warrants. The operation yielded the arrest of more than a dozen suspects and seizure of $187,000 in currency, 1.6 kg of heroin, five handguns, and an assault rifle.

CBP OAM P-3 Orion Aircraft (P-3s) have also been an integral part of the successful counternarcotic missions operating in coordination with Joint Interagency Task Force South (JIATF-S). The P-3s patrol in a 42 million-square mile area known as the Source and Transit Zone, which includes more than 41 nations, the Pacific Ocean, Gulf of Mexico, Caribbean Sea, and seaboard approaches to the United States. In Fiscal Year 2014, CBP's P-3s operating out of Corpus Christi, Texas and Jacksonville, Florida flew more than 5,900 hours in support of counternarcotic missions resulting in 135 interdiction events of suspected smuggling vessels and aircraft. These events led to the total seizure of 57,374 kg of cocaine with an estimated street value of $9.47 billion.

Improved technology and enhanced capabilities have also expanded the collection, analysis, and dissemination of information between law enforcement partners working to dismantle DTO networks. For example, CBP's Laboratories and Scientific Services Directorate uses advanced techniques to provide qualitative identification and quantitative determination as well as pollen analysis of heroin, cocaine, marijuana, and methamphetamine to assist with identifying potential drug smuggling routes.

Intelligence and Information Sharing

Criminal intelligence sharing is a key component of countering drug-trafficking along the Southwest and Northern borders. CBP contributes to several initiatives to improve the combined intelligence capabilities of Federal, state, local, tribal, and international partners.

[5] The Naloxone Pilot Program has been implemented at the following POEs: El Paso, Fort Lauderdale International Airport, John F. Kennedy International Airport, Laredo, San Luis, San Ysidro, and Seattle/Blaine.

CBP hosts monthly briefing/teleconferences with federal, state and local partners regarding the current state of the border – the Northern border and Southwest border – in order to monitor emerging trends and threats and provide a cross-component, multi-agency venue for discussing trends and threats. The monthly briefings focus on narcotics, weapons, and currency interdictions and alien apprehensions both at and between the POEs. These briefings/teleconferences currently include participants from Canada, the Government of Mexico; ICE; U.S. Coast Guard (USCG); DEA; Federal Bureau of Investigation (FBI); U.S. Northern Command; Joint Interagency Task Force-South; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Attorneys' Offices; Naval Investigative Command; State and Major Urban Area Fusion Centers; and other international, federal, state, and local law enforcement as appropriate.

The operation of the JTFs increases information sharing with Federal, state and local law enforcement agencies; improves border-wide criminal intelligence-led interdiction operations; and addresses transnational threats. Information, including physical evidence and other forensic information, gathered at POEs is also valuable to the information sharing effort. Substantive and timely information sharing is critical in targeting and interdicting individuals that move drugs and illicit merchandise from the POEs to their destinations through the United States and Mexico.

Enhancing counternarcotic operations in the air and maritime environments, the Air and Marine Operations Center (AMOC), a state-of-the-art law enforcement radar surveillance center, integrates data from multiple sensor sources to provide real-time information on suspect targets to responders at the Federal, state, and local levels. AMOC's capabilities are enhanced by the continued integration of DHS and other Federal and Mexican personnel to increase efforts to identify, interdict, and investigate suspected drug trafficking in the air and maritime domains.

Operational Coordination

Our Nation's borders – land, maritime, and air environments – cannot be effectively policed by a single DHS component or even a single governmental entity. A whole-of-government approach that leverages interagency and international partnerships as a force multiplier has been and will continue to be the most effective way to keep our border secure.

Providing critical capabilities toward the whole-of-government approach, CBP works extensively with our Federal, state, local, tribal and international partners to address drug trafficking and other transnational threats along the Southwest border, Northern border, and coastal approaches. Our security efforts are enhanced through special joint operations and task forces conducted under the auspices of multi-agency enforcement teams, composed of representatives from international and U.S. federal law enforcement agencies who work together with state, local, and tribal agencies to target drug and transnational criminal activity, including investigations involving national security and organized crime.

Under the Secretary's Unity of Effort initiative and with the three new DHS JTFs, CBP is enhancing our collaboration with other DHS components – specifically ICE and USCG – to

leverage the unique resources, authorities, and capabilities of each agency to more effectively and efficiently execute our border security missions against transnational criminal organizations, drug-trafficking and other threats and challenges.

CBP is a critical partner in the ICE-led Border Enforcement Security Task Forces (BESTs), which are composed of Federal, state, local, and international law enforcement and intelligence stakeholders working together to counter TCOs and enhance border security. BESTs currently operate in 37 locations, including 14 along the Southwest border. In FY 2014, BESTs made 3,231 criminal arrests and 870 administrative arrests; and federal prosecutors obtained 2,013 indictments and 1,837 convictions in BEST-investigated cases.

OAM works in partnership with ICE-HSI, DEA, and FBI facilitating the logistical aspect of covert operations in the maritime environment utilizing unmarked and undercover vessels when situations dictate that the surveillance of drug loads or TCO activity can yield larger seizures as a part of ongoing investigations. OAM routinely facilitates controlled deliveries with partner agencies through the utilization of undercover vessels and the incorporation of undercover or plainclothes agents. OAM develops and retains confidential human sources and specializes in the installation of covert trackers aboard suspect vessels and often leads these covert missions under hours of darkness utilizing plainclothes or undercover tactics with critical partner agencies. This leads to significant intelligence and seizures and the critical information gained is often crucial to identifying TCO suspects, associates, and accomplices. Additionally, OAM periodically augments vessel crews from these investigative partner agencies when a specific level of larger vessel certification coupled with investigative authority and experience is needed when operating these assets. OAM also actively participates in Operation Martillo, an international counter illicit trafficking initiative whereby U.S. and regional partner nations' military and law enforcement agencies patrol the air and sea environments in the Caribbean Sea, Gulf of Mexico and the Eastern Pacific on a year-round basis.

In the air environment, OAM detects, identifies, investigates, and interdicts potential air threats to the United States including general aviation (GA) aircraft involved in the aerial transit of contraband. The AMOC monitors complex airway traffic to identify illicit use of aircraft and those attempting to blend in with legitimate traffic. Through its national SKY PRO initiative, OAM, in collaboration with ICE-HSI, the Federal Aviation Administration, and state, local, and tribal law enforcement agencies, works to enhance law enforcement interactions with the GA community to increase awareness and intelligence on international and domestic smuggling activities.

Because DTOs are also known to use legitimate commercial modes of travel and transport to smuggle drugs and other illicit goods, CBP partners with the private sector to provide anti-drug smuggling training to air, sea, and land commercial transport companies (carriers). The overall goals of these programs and their training component are to encourage commercial carriers to share with CBP the burden of stopping the flow of illicit drugs; to deter smugglers from using commercial carriers to smuggle drugs; and to provide carriers with the incentive to improve their security and their drug smuggling awareness. The Carrier Initiative Program is a voluntary training program directed at employees of carriers with route systems that are high risk for drug smuggling. The Super Carrier Initiative Program is for those carriers that face an extraordinarily

high risk from drug traffickers. Participating carriers sign agreements stating that the carrier will exercise the highest degree of care and diligence in securing their facilities and conveyances, while CBP agrees to conduct site surveys, make recommendations, and provide training. CBP and various carriers have signed over 3,800 Carrier Initiative Agreements and 27 Super Carrier Agreements.

Heroin trafficking is a global problem, and CBP continues to work with our international partners to share information and leverage resources to combat this threat. Through the 21st Century Border Management Initiative, the U.S. Government, and Government of Mexico (GOM) are working to strengthen our collaborative relationship and efforts to secure and facilitate the cross-border flows of people and cargo. CBP also has Border Patrol International Liaison Units who facilitate cooperation between U.S. and Mexican law enforcement authorities as part of a multi-layered effort to target, disrupt, and dismantle criminal organizations.

AMOC's coordinating efforts with the GOM and the deployment of shared surveillance technology has enabled the GOM to focus aviation and maritime enforcement efforts to better combat TCO operations in Northern Mexico and the contiguous U.S./Mexico border. For example, this past January, officers working at the AMOC detected a suspicious aircraft travelling north towards the United States. AMOC subsequently alerted GOM of the activity, and both the Mexican Federal Police and Air Force responded to investigate. The abandoned aircraft was located by Mexican officials a short time later, where 27 bags containing approximately 389 kilos methamphetamine, 79 kilos of cocaine, 79 kilos of white heroin, and 1.5 kilos of black tar heroin were discovered and seized.

CBP, together with our international, federal, state, local and tribal partners, is committed to reducing the risk associated with TCOs by addressing threats within the Southern Border and Approaches Joint Operating Area. The establishment of JTFs marks a renewed commitment to seek out and coordinate optimal, multi-component authorities, capabilities, competencies, and partnership expertise to combat all threats to the homeland.

Conclusion

CBP, through collaboration and coordination with our many Federal, state, local, tribal, international government, and other partners, has made great strides with regard to the integrity and security of our borders.

With continued support from Congress, CBP, in coordination with our partners, will continue to refine and further enhance the effectiveness of our detection and interdiction capabilities to combat transnational threats and the entry of heroin into the United States. We will continue to work with the intelligence community and our law enforcement partners to improve the efficiency of information sharing with relevant partners, to guide strategies, identify trafficking patterns and trends, develop tactics, and execute operations to address the challenges and threats posed by transnational criminal organizations to the safety and security of the American public.

Chairman Johnson, Ranking Member Carper, and distinguished Members of Committee, thank you for the opportunity to testify today. I look forward to your questions.

Department of Justice

STATEMENT OF

JACK RILEY
ACTING DEPUTY ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

FOR A FIELD HEARING ENTITLED

ALL HANDS ON DECK: WORKING TOGETHER TO END
THE TRAFFICKING AND ABUSE OF PRESCRIPTION
OPIOIDS, HEROIN, AND FENTANYL

PRESENTED

SEPTEMBER 14, 2015

Statement of Jack Riley
Acting Deputy Administrator
Drug Enforcement Administration
Before the
Committee on Homeland Security and Governmental Affairs
United States Senate
September 14, 2015

INTRODUCTION

Chairman Johnson, Ranking Member Carper, Senator Ayotte, and Senator Shaheen: on behalf of the approximately 9,000 employees of the Drug Enforcement Administration (DEA), thank you for the opportunity to discuss heroin use, its availability here in the United States and the DEA's response to the threat.

Drug overdoses are the leading cause of injury-related death here in the United States, eclipsing deaths from motor vehicle crashes.[1] There were over 43,000 deaths in 2013, or approximately 120 per day, over half of which involved either a prescription painkiller or heroin. These are our family members, friends, neighbors, and colleagues.

Overdose deaths involving heroin are increasing at an alarming rate having almost tripled since 2010. Today's heroin at the retail level costs less and is more potent than the heroin that DEA encountered a decade ago. It comes predominantly across the Southwest Border (SWB) and is produced with greater sophistication from powerful transnational criminal organizations (TCOs) like the Sinaloa Cartel. These Mexican-based TCO's are extremely dangerous and violent and continue to be the principal suppliers of heroin to the United States.

DEA is addressing the threat both internationally and domestically. DEA prioritizes its resources by identifying and targeting the world's biggest and most powerful drug traffickers, designated as Consolidated Priority Organization Targets (CPOTs), as well as other Priority Target Organizations (PTOs). We partner internationally with our foreign host-nation counterparts through our Sensitive Investigative Unit (SIU) and Bilateral Investigations Units (BIU) programs.

Domestically, our enforcement teams are targeting heroin distribution cells which have become an increasing threat to the safety and security of our communities due to their increasing alliances with Mexican TCOs. By partnering with Federal, state, and local law enforcement, through programs such as the High Intensity Drug Trafficking Areas (HIDTA) program, the Organized Crime Drug Enforcement Task Force (OCDETF) regions, etc., we are identifying and disrupting these drug traffickers. During FY 2014, DEA initiated 2,049 heroin cases, an increase of 141% over the number opened in 2007. In addition, our tactical diversion squads (TDS) are identifying those individuals in the prescription drug supply chain who are diverting controlled

[1] Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS) [online], (2014), *available at*: http://www.cdc.gov/injury/wisqars/fatal.html.

prescription drugs (CPDs). Once identified, the TDSs use administrative, civil, and criminal tools to bring these individuals to justice.

Finally, on September 9, 2014, DEA issued a final rule titled "Disposal of controlled substances" to help focus national attention on the issue of nonmedical use of prescription drugs and related substance use disorders (SUDs), promote awareness that one source of these drugs is often the home medicine cabinet, and provide a safe and legal method for the public to dispose of unwanted CPDs through DEA's National Drug Take Back Initiative (NTBI). Since 2010, DEA has sponsored nine Take Back events and the 10th Take Back event is scheduled for September 26, 2015 (September 12th for Pennsylvania and Delaware). The new rule allows all previous methods of disposal but now also includes disposal at drop-boxes in pharmacies and law enforcement agencies, mail back programs and drug deactivation systems if they render the product irretrievable.

CURRENT ASSESSMENT OF THE THREAT

Increased demand for, and use of heroin is being driven by both increasing availability of heroin in the U.S. market and by individuals with opioid use disorders using heroin. Individuals with opioid use disorders who begin using heroin do so because of price differences (i.e., heroin is less expensive), but also because of increasing heroin availability relative to opiate based CPDs as well as the reformulation of OxyContin®, a highly sought opioid.[2]

Heroin overdose deaths are increasing in many cities and counties across the United States, but particularly in the Mid-Atlantic, New England, New York/New Jersey Regions, certain parts of Appalachia, and areas of the Midwest. In New Hampshire, heroin overdose deaths more than tripled between 2008 and 2013. In 2015 alone, there have been at least 176 deaths involving opiates and opioids, with over three quarters of those involving fentanyl. [3] Possible reasons for these increases in overdose deaths include an overall increase in heroin use; high purity batches hitting certain markets causing unintentional overdose; an increase in new heroin initiates (many of whom may be inexperienced); nonmedical use of prescription opioids initiating use of heroin; and the addition of extremely potent adulterants such as fentanyl in certain markets.

According to the DEA's 2015 National Drug Threat Survey (NDTS), 38 percent of law enforcement respondents reported that heroin was the greatest drug threat in their area; more than any other drug. Since 2007, the percentage of NDTS respondents reporting heroin as the greatest threat has steadily grown, from 8 percent in 2007 to 38 percent in 2014. The OCDETF regions with the largest number of respondents ranking heroin as the greatest drug threat were the Mid-Atlantic, Great Lakes, New England, and New York/New Jersey. Of the New England respondents to this survey, 63 percent reported heroin as the greatest threat in the region. In addition, the DEA New England Field Division has identified opioids as the number one drug threat in its area of responsibility.

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[2] Cicero, Theodore J., PhD; Matthew S. Ellis, MPE; Hilary L. Surratt. PhD; Steven P. Kurtz, PhD, The Changing Face of Heroin Use in the United States; A Retrospective Analysis of the Past 50 Years, July 2014.
[3] Source: New Hampshire Medical Examiner's Office.

Data from the National Seizure System (NSS), demonstrates that domestic heroin seizures have increased 81 percent over five years, from 2,763 kilograms in 2010 to 5,014 kilograms in 2014. Traffickers are also transporting heroin in larger amounts. The average size of a heroin seizure in 2010 was 0.86 kilograms; in 2014, the average heroin seizure was 1.74 kilograms. According to the DEA's National Forensic Laboratory Information System, which collects drug identification results from drug cases submitted to and analyzed by Federal, state, and local forensic laboratories, there has been a 37 percent increase in heroin samples analyzed from 2009 to 2013 (from 108,778 to 149,479 samples).

AVAILABILITY OF HEROIN FOR THE U.S. MARKET

There are four major heroin-producing areas in the world, but heroin bound for the U.S. market originates predominantly from Mexico, and to a lesser extent, Colombia. The heroin market in the United States has been historically divided along the Mississippi River, with western markets using Mexican black tar and brown powder heroin, and eastern markets using white powder which, over the last two decades has been sourced primarily from Colombia. The largest, most lucrative heroin markets in the United States are the white powder markets in major eastern cities: New York City and the surrounding metropolitan areas, Philadelphia, Chicago, Boston and its surrounding cities, Washington, D.C., and Baltimore. With the growing number of individuals with an opioid use disorder in the United States, Mexican TCOs have seized upon a business opportunity to increase their profits. Mexican TCOs are now competing for the East Coast and Mid-Atlantic markets by introducing Mexican brown/black tar heroin as well as by developing new techniques to produce highly refined white powder heroin.

DEA has also seen a 50 percent increase in poppy cultivation in Mexico primarily in the State of Guerrero and the Mexican "Golden Triangle" which includes the states of Chihuahua, Sinaloa, and Durango. The increased cultivation results in a corresponding increase in heroin production and trafficking from Mexico to the United States, and impacts both of our nations, by supporting the escalation of heroin use in the United States, as well as the instability and violence growing throughout areas in Mexico.

TRAFFICKING ALONG THE SOUTHWEST BORDER (SWB)

The majority of Mexican and Colombian heroin bound for the United States is smuggled into the United States via the SWB, and heroin seizures at the border have more than doubled, from 846 kilograms in 2009 to 2,196 kilograms in 2013.[4] During this time, the average seizure also increased from 2.9 kilograms to 3.8 kilograms. The distribution cells and the Mexican and South American traffickers who supply them are the main sources of heroin in the United States today. The threat of these organizations is magnified by the high level of violence associated with their attempts to control and expand drug distribution operations.

[4] Drug Enforcement Administration, Unclassified Summary, 2014 National Drug Threat Assessment, Pg. 10, *available at:* http://www.dea.gov/resource-center/dir-ndta-unclass.pdf.

USE AND DEMAND

In 2014, over 4.3 million Americans ages 12 or older reported using prescription pain relievers non-medically within the past month.[5] This makes nonmedical prescription pain reliever use more common than use of any category of illicit drug in the United States except for marijuana. Approximately 435,000 Americans reported past month use of heroin in 2014.[6] Heroin use remains relatively low in the United States when compared to other drugs; however, the increase in the number of people using the drug in recent years – from 373,000 past year users in 2007 to 914,000 in 2014 – is troubling.[7]

Black-market sales for CPDs are typically five to ten times their retail value. DEA intelligence reveals the "street" cost of prescription opioids steadily increases with the relative strength of the drug. For example, generally, hydrocodone combination products (a Schedule II prescription drug and also the most prescribed CPD in the country)[8] can be purchased for $5 to $7 per tablet. Slightly stronger drugs like oxycodone combined with acetaminophen (e.g., Percocet) can be purchased for $7 to $10 per tablet. Even stronger prescription drugs are sold for as much as $1 per milligram (mg). For example, 30 mg oxycodone (immediate release) and 30 mg oxymorphone (extended release) cost $30 to $40 per tablet. These increasing costs make it difficult to purchase in order to support the addiction, particularly when many first obtain these drugs for free from the family medicine cabinet or friends. Data from the National Survey on Drug Use and Health show that the more chronic an opioid use disorder becomes, the more likely the individual is to buy opioid drugs from a dealer.[9] Not surprisingly, some users of prescription opioids turn to heroin, a much cheaper opioid, generally $10 per bag, which provides a similar "high" and keeps individuals with opioid use disorders from experiencing painful withdrawal symptoms. This cycle has been repeatedly observed by law enforcement agencies. For some time now, law enforcement agencies across the country have been specifically reporting an increase in heroin use by those who began using prescription opioids non-medically.[10]

Healthcare providers as well as those abusing CPDs are confirming this increase. According to some reporting by treatment providers, many individuals with serious opioid use

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[5] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014. Table 1.1A Types of Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older: Numbers in Thousands, 2013 and 2014*

[6] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014. Table 1.1A Types of Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older: Numbers in Thousands, 2013 and 2014*

[7] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *National Survey on Drug Use and Health, 2013 and 2014. Table 1.1A Types of Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older: Numbers in Thousands, 2013 and 2014*

[8] On October 6, 2014, DEA published a final rule in the *Federal Register* to move hydrocodone combination products from Schedule III to Schedule II, as recommended by the Assistant Secretary for Health of the U.S. Department of Health and Human Services.

[9] SAMHSA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2012-2013. Unpublished special tabulations (March 2015).

[10] U.S. Department of Justice, Drug Enforcement Administration, 2015 National Heroin Threat Assessment Summary, DEA Intelligence Report, April, 2015, *available at*: http://www.dea.gov/divisions/hq/2015/hq052215_National_Heroin_Threat_Assessment_Summary.pdf.

disorders will use whichever drug is cheaper and/or available to them at the time. Individuals with opioid use disorders are known to switch back and forth between prescription opioids and heroin, depending on price and availability. Individuals with opioid use disorders who have recently switched to heroin are at high risk for accidental overdose. Unlike with prescription drugs, heroin purity and dosage amounts vary, and heroin is often cut with other substances (e.g. fentanyl), all of which could cause individuals with lower tolerance to higher potency opioids to accidentally overdose.[11]

Some CPD users become dependent on opioid medications originally prescribed for a legitimate medical purpose.[12] A Substance Abuse and Mental Health Services Administration (SAMHSA) study found that four out of five recent new heroin users had previously used prescription pain relievers non-medically, although a very small proportion (3.6%) of those initiated heroin use in the following five-year period.[13] The reasons an individual may shift from one opiate to another vary, but today's heroin is higher in purity, less expensive, and often easier to obtain than illegal CPDs. Higher purity allows heroin to be smoked or snorted, thereby circumventing a barrier to entry (needle use) and avoiding the stigma associated with injection. However many who smoke or snort are vulnerable to eventually injecting. Heroin users today tend to be younger, more affluent, and more ethnically and geographically diverse than ever before.[14]

FENTANYL AND FENTANYL ANALOGUES

DEA has become increasingly alarmed over the addition of fentanyl into heroin sold on the streets as well as the use of fentanyl analogues such as acetyl fentanyl. One of the most potent Schedule II narcotics which is 25 to 40 times more potent than heroin,[15] fentanyl presents a serious increased risk of overdose death for a heroin user. In addition, this drug can be absorbed by the skin or inhaled, which makes it particularly dangerous for law enforcement officials who encounter the substance during the course of an enforcement operation. On March 18, 2015, DEA issued a nationwide alert to all U.S. law enforcement officials about the dangers of fentanyl and fentanyl analogues and related compounds. In addition, due to a recent spike in overdose deaths related to the use of acetyl fentanyl; on July 17, 2015, DEA used its emergency

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[11] Stephen E. Lankenau, Michelle Teti, Karol Silva, Jennifer Jackson Bloom, Alex Harocopos, and Meghan Treese, Initiation into Prescription Opioid Misuse Among Young Injection Drug Users, Int J Drug Policy, Author manuscript; available in PMC 2013 Jan 1, Published in final edited form as: Int J Drug Policy, 2012 Jan; 23(1): 37-44. Published online 2011 Jun 20. doi: 1016/j.drugpo.2011.05.014. and; Mars SG, Bourgois P, Karandinos G, Montero F, Ciccarone D., "Every 'Never' I Ever Said Came True": Transitions From Opioid Pills to Heroin Injecting, Int J Drug Policy, 2014 Mar;25(2):257-66. doi: 10.1016/j.drugpo.2013.10.004. Epub 2013 Oct 19.

[12] Pain, 2015 Apr; 156(4):569-76, doi: 10.1097/01.j.pain.0000460357.01998.f1, Rates of opioid misuse, abuse, and addiction in chronic pain: a systematic review and data synthesis. Vowles KE1, McEntee ML, Julnes PS, Frohe T, Ney JP, van der Goes DN.

[13] Substance Abuse and Mental Health Services Administration, *Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the United States*, Department of Health and Human Services, [August 2013], *available at*: http://www.samhsa.gov/data/2k13/DataReview/DR006/nonmedical-pain-reliever-use-2013.pdf.

[14] Cicero, T., Ellis, M., Surratt,H, Kurtz, S. The Changing Face of Heroin Use in the United States: A Retrospective Analysis of the Past 50 Years, July, 2014.

[15] Centers for Disease Control, Emergency Response Safety and Health Database, FENTANYL: Incapacitating Agent, http://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750022.html, accessed March 19, 2015; U.S. Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Drug & Chemical Evaluation Section, Fentanyl, March 2015.

scheduling authority to place acetyl fentanyl in Schedule I of the Controlled Substances Act (CSA).

DEA's RESPONSE TO THE CURRENT HEROIN AND OPIOID THREAT

Anti-Heroin Task Force Program

As directed by Congress, the Department of Justice has joined with the Office of National Drug Control Policy (ONDCP) to convene an interagency task force to confront the growing use, abuse, and trafficking of heroin in America. DEA and more than 28 Federal agencies and their components are actively participating in this initiative. The task force expects to have a strategic plan for the President and Congress by the end of 2015.

International Enforcement: Sensitive Investigative Units

Funds requested for International Drug Enforcement Priorities will be used to support and expand a key element of DEA's international efforts: the Sensitive Investigative Unit (SIU) program. DEA's SIU program, nine of which are in the western hemisphere, helps build effective and vetted host nation units capable of conducting complex investigations targeting major TCOs. DEA currently mentors and supports 13 SIUs, which are staffed by over 900 foreign counterparts. The success of this program has unquestionably enhanced DEA's ability to fight drug trafficking on a global scale.

International Enforcement: Bilateral Investigations Units

Bilateral Investigations Units (BIUs) are one of DEA's most important tools for targeting, disrupting, and dismantling significant TCOs. The BIUs have used extraterritorial authorities to infiltrate, indict, arrest, and convict previously "untouchable" TCO leaders involved in drug trafficking.

Domestic Enforcement: Tactical Diversion Squads

DEA Tactical Diversion Squads (TDSs) investigate suspected violations of the CSA and other Federal and state statutes pertaining to the diversion of controlled substance pharmaceuticals and listed chemicals. These unique groups combine the skill sets of Special Agents, Diversion Investigators, and a variety of state and local law enforcement agencies. They are dedicated solely to investigating, disrupting, and dismantling those individuals or organizations involved in diversion schemes (e.g., "doctor shoppers," prescription forgery rings, and practitioners and pharmacists who knowingly divert CPDs). Since September 30, 2014, DEA has deployed 66 Tactical Diversion Squads (TDS) in 41 states including New Hampshire, as well as in the District of Columbia, and Puerto Rico. Case initiations increased from 691 in 2005 to 1,727 in 2014, while arrests increased from 105 in 2005 to 2,418 in 2014.

Domestic Enforcement: Regulatory Investigations

When the DEA was established in 1973, DEA regulated 480,000 registrants. Today, DEA regulates more than 1.59 million registrants. The expansion of the TDS groups has allowed Diversion Groups to concentrate on the regulatory aspects of enforcing the CSA. DEA has steadily increased the frequency of compliance inspections of specific registrant categories such as manufacturers (including bulk manufacturers), distributors, pharmacies, importers, exporters, and narcotic treatment programs. This renewed focus on oversight has enabled DEA to take a more proactive approach to educating registrants of their corresponding responsibilities under the CSA and its implementing regulations.

National Drug Take Back Initiative (NTBI):

On September 25, 2010, DEA began coordinating NTBIs to help focus national attention on the issue of nonmedical prescription drug use; promote awareness that one source of these drugs is often the home medicine cabinet; and provide a safe and legal method for the public to dispose of unwanted CPDs. These "take back" events were sponsored by the DEA while it prepared regulations that established permanent disposal methods, which was published on October 6, 2014. Since its first National Take Back Day in September of 2010, DEA has collected more than 4.1 million pounds (over 2,100 tons) of prescription drugs throughout all 50 states, the District of Columbia, and several U.S. territories. DEA plans another Take Back day September 12, 2015 for Pennsylvania and Delaware and a National Take Back Day on September 26th, 2015.

CONCLUSION

The supply of heroin entering the United States feeds the increasing user demand for opioids which has been spurred, in part by the rise of nonmedical prescription opioid use and untreated substance use disorders. It is likely that this demand will continue to be met primarily by Mexican-based TCOs who are pushing to expand their profits. DEA will continue to address this threat by attacking the crime and violence perpetrated by the Mexican-based TCOs which have brought tremendous harm to our communities. Additionally, DEA's Office of Diversion Control will use all criminal and regulatory tools possible to identify, target, disrupt, and dismantle individuals and organizations responsible for the illicit manufacture and distribution of pharmaceutical controlled substances in violation of the CSA. The Anti-Heroin Task Force will develop a comprehensive strategy that will combine education; law enforcement; treatment and recovery; and a coordinated community response.

ONGOING MIGRATION FROM CENTRAL AMERICA: AN EXAMINATION OF FISCAL YEAR 2015 APPREHENSIONS

WEDNESDAY, OCTOBER 21, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:36 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ayotte, Ernst, Carper, McCaskill, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will be called to order.

I want to welcome all of our witnesses. Thank you for taking the time to appear here, for your thoughtful testimony, and for your willingness to answer our questions.

This is our 12th hearing on the lack of security on our border. We have also had three roundtables. This hearing, like the previous hearings, is really just a very sincere attempt on this Committee's part to try and lay out the reality. I come from a manufacturing background. I have had to solve a lot of problems, and it starts with describing the reality and acknowledging it. Sometimes you do not like looking at the reality, and I would say that is certainly the case with the problem of our unsecure borders and the level of illegal immigration out of certainly Central America and Mexico. These are tough problems. It is what I call the true definition of a problem, something that does not have real easy solutions, which is why we have been grappling with this thing for decades.

Later this month, in further fact finding, we are going to be taking a trip, the Members of the Committee, to Central America to see the conditions on the ground there, which, let us face it, we acknowledge the fact that people love to live in America. This is the land of opportunity. It is a land of immigrants. Through our history, generation after generation, waves of immigrants have come here and made our country strong. But it has to be a legal process. It has to be an orderly process.

In a few weeks, maybe a couple days; I am going through the final editing process—we are going to be releasing a report on

those 12 hearings and what we have learned. I think I can describe it a little bit in terms of, what the conclusions of that report are.

First and foremost—and this is, I think, shared by my Ranking Member and everybody on this Committee—our borders are not secure. They are just not secure. If you want to have one piece of information, one metric that tells you how unsecure our border is, General McCaffrey testified that they were only interdicting 5 to 10 percent of illegal drugs coming through the Southern Borders. That is how unsecure it is.

Now, we have to secure our borders for a number of reasons, not just the illegal immigration issue but for national security, for public health and safety. This is a serious matter. It deserves serious attention. And, again, that is the purpose of these hearings.

I think one conclusion of our report of these hearings is also that there are multiple causes, multiple root causes. But from my standpoint looking at this, probably the root cause of our unsecure borders is literally our insatiable demand for drug in this country that for decades basically gave rise to the drug cartels that are businesses. They developed those drug-trafficking routes, and they started expanding their product line to human trafficking, to sex trafficking, and all manners of deprivations as a result of those things. So, we bear responsibility in this country for our insatiable demand for drugs. We need to understand that.

We also have to understand, too, that within our immigration system we have created, unintentionally—with the best of intentions, quite honestly—a number of incentives for illegal immigration. We need to honestly look at those incentives, and we need to ask ourselves, Is there anything we should do to change those laws, change those regulations that actually incentivized people to come here illegally as opposed to coming here in a legal and orderly process?

I would argue—and, of course, the purpose of this hearing today is really talking about the continuing crisis. And it is a continuing crisis of unaccompanied children coming across our borders illegally.

I would turn everybody's attention to our first chart[1] here, which shows the history of unaccompanied children coming to this country illegally since 2009. And you can see the line of demarcation there, being Deferred Action on Childhood Arrivals in 2012, which I would say goes a long way toward explaining why we have had this explosion.

Now, it is true that the biggest problem we have is in 2014, but now that the figures from 2015 are in, yes, we are down from 51,705 unaccompanied children from Central America coming to this Nation from 2014, but in 2015, it is still 28,387. I would say by any measure still at crisis levels.

Now, we have gotten better at processing them. We have gotten better at dispersing them in a humane fashion, and that is not a bad thing that we are treating these people with humanity. We are America. We are going to show that kind of compassion. But, unfortunately, I think it continues to incentivize more individuals com-

[1] The chart referenced by Senator Johnson appears in the Appendix on page 1831.

ing here, and I think the next graph[1] is something we also have to take a look at. Because we often just talk about unaccompanied children. We have also created some additional incentives now for family units, and so we have seen a real spike in the number of family units coming in here because, you know, our policy now is to no longer really hold them in detention centers, but also send them throughout the country, again, in a human fashion—I understand that—but it is incentivizing more individuals to come into this country illegally, and we have to really face that reality.

I would ask unanimous consent to enter my written statement into the record.[2] We have five witnesses here, so I do not want to belabor the point any further. But the bottom line is we have to face these realities. We have to ask ourselves some hard questions, and we have to start solving this problem for the reasons I have stated.

With that, I am happy to turn it over to our Ranking Member, Senator Carper.

OPENING STATEMENT OF RANKING MEMBER CARPER

Senator CARPER. Thanks. Thanks, Mr. Chairman. Thanks for pulling this together again.

I want to thank you for calling this hearing on the ongoing surge of Central American migration that we are experiencing at our southwest border. This is an important challenge for the region and for our country as well. I think it is a moral challenge. I look forward to working together, continuing to working together with the Chairman and the rest of the delegation toward lasting solutions. I look forward to joining him and several of our colleagues—I think Senator Peters, maybe Senator Heitkamp, and maybe a House Member—to go down to several of these countries, including, I believe, Guatemala and Honduras, later this month.

Last summer, as the Chairman has said, we were shocked by the flood of migrants arriving across our borders from Guatemala, Honduras, and El Salvador, particularly the thousands of unaccompanied children and families with young kids. When they arrived, most did not try to evade our Border Patrol agents. Instead, they sought them out for protection. Some of their stories—and those of migrants who did not survive the journey—were, frankly, heartbreaking.

Our government took emergency steps to shelter and process these individuals, but also put into place strategies to stem the flow. These included public information campaigns on the dangers of the journey, expedited court hearings, an increased focus on human smuggling and trafficking rings, and support for Mexico's efforts to better police its own Southern Border.

I was pleased that these efforts had an impact—I think we all were—for a time in slowing migration. But many observers warned that as long as the Northern Triangle countries remained mired in violence and poverty, migration would continue. And that is exactly what appears to have happened. This time, we should not be surprised.

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[1] The chart referenced by Senator Johnson appears in the Appendix on page 1832.
[2] The prepared statement of Senator Johnson appears in the Appendix on page 1625.

Although for a number of months significantly fewer Central Americans were apprehended at our Southern Border, the flow never really stopped. In fact, much of the decrease was due not to fewer people fleeing the Northern Triangle countries, but from the unprecedented new enforcement efforts by Mexico, which we encouraged, on its Southern Border with Guatemala.

Between July 2014 and June 2015, for example, Mexico reportedly apprehended nearly 157,000 Central American migrants. That is a 70-percent increase compared to the same period for the previous year.

But since this summer, even this enhanced effort on the part of our Mexican partners has not been enough. Border Patrol apprehensions of Central American children and families began slowly climbing toward last year's levels early in 2015. In August, they surpassed the number of new arrivals in August 2014.

In September, arrivals have remained relatively high as well. I think this is particularly striking given that apprehensions usually peak in the spring and they decline over the summer and early fall. There are different theories as to why we are seeing more Central American migrants again, particularly children and families. Some people point to increased violence in El Salvador, others to drought conditions that have worsened poverty for many in the region. Still another theory is that the smugglers have found new routes that have allowed them to get around Mexico's enhanced apprehension efforts and our own.

Of course, there are also pull factors—and they have been alluded to already—particularly a desire on the part of migrants to reunite with family members who are already here. Smugglers may also be marketing real or perceived changes in our immigration policy—such as current litigation calling into question family detention—to persuade migrants that now is the right time to make this trip. We are going to discuss today some of those factors and also what we can do to try to change the dynamic.

I think the increased apprehensions we are seeing this summer and fall are an important reminder that we must—in addition to ongoing efforts to better secure our borders—work with our partners to address the root causes of Central American migration.

The Governments of Guatemala, Honduras, and El Salvador have joined in an unprecedented regional agreement, as we know, called the "Alliance for Prosperity." It seeks to change the underlying conditions on the ground that compel so many people to flee.

Our own government has proposed a $1 billion investment in foreign aid in the current fiscal year for initiatives to complement the Alliance for Prosperity. These funds are intended not only to improve security, but also to provide more economic opportunity for the citizens of the Northern Triangle and improve the rule of law in the region. I like to say that the focus of these investments largely is to create a more nurturing environment for job creation and job preservation, mostly job creation, in El Salvador, Honduras, and Guatemala, which is a key part of what needs to be done.

This is clearly a daunting undertaking that will not yield immediate results, yet we cannot continue to neglect the underlying conditions that have led to the current migration crisis.

It is also worth remembering that it is our appetite for drugs—the Chairman has already mentioned this, but it is worth mentioning again. It is our appetite for drugs that fuels much of the violence and corruption in this region. As a result, I believe we have a moral obligation to try and help to undo that damage. The United States of America is complicit in creating a situation in El Salvador, Honduras, and Guatemala that people want to flee. They want to get out of there. And for us to say we are helping to create a situation which is unbearable for you, intolerable, we would not want to live there, we would not want to raise our kids there, we are going to be complicit in creating that situation; and then when you try to get out and escape, we are going to make sure you do not come to our country. That is a moral dilemma and one that I am not comfortable with, and I suspect none of us are.

But several of us on the Committee, as I said, are going to be traveling to the Northern Triangle in a couple of weeks to explore more fully what is fueling this ongoing migration and how U.S. engagement in the region might help turn the tide.

I think our efforts and those of others working on this issue are very much in keeping with the valuable message that Pope Francis delivered here just a couple of weeks ago during his visit. We need to see these migrants as people, not simply as numbers, and work in partnership to try to alleviate the desperate conditions that cause so many to risk life and limb to flee to the United States, and to remember we have a moral obligation to—and I am not preaching—but maybe I am. I am preaching to the choir. We have a moral obligation, I think, to put ourselves in their shoes, how would we want to be treated, and to act accordingly.

Chairman JOHNSON. Thank you, Senator Carper.

It is the tradition of this Committee to swear in witnesses, so if you will all rise and raise your right hand? Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. GIANOPOULOS. I do.

Mr. CABRERA. I do.

Mr. CASAS-ZAMORA. I do.

Mr. WOOD. I do.

Rev. SEITZ. I do.

Chairman JOHNSON. Our first witness is Kimberly Gianopoulos. Ms. Gianopoulos is the Director of International Affairs and Trade, Government Accountability Office (GAO), one of our favorite agencies.

Ms. Gianopoulos recently authored a report that reviewed U.S. assistance in El Salvador, Guatemala, and Honduras. To research this report, Ms. Gianopoulos traveled to Central America to observe U.S. programs and interview migrants on their perceptions of U.S. policies and laws. She will testify today on the findings and recommendations of her report. Ms. Gianopoulos.

TESTIMONY OF KIMBERLY M. GIANOPOULOS,[1] DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. GIANOPOULOS. Thank you, Chairman.

Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to be here today to discuss our recent work on child migration from Central America.

Unaccompanied alien children (UACs), crossed the U.S.-Mexican border in record numbers in fiscal year (FY) 2014. Most of these UACs were from Honduras, Guatemala, and El Salvador. A recent surge in August 2015 has renewed concerns about the efforts being taken by U.S. agencies to address the causes of migration. We issued a report in July 2015 that focused on U.S. agency efforts to address these causes. Today my statement will focus on our conclusions and recommendations from that report, as well as some updated information on the recent surge.

According to U.S. officials, the increase in migration since 2012 was likely triggered by several factors, such as the increased presence and sophistication of child smugglers, or coyotes, and confusion over U.S. immigration policy. For example, agency officials told us that in some cases coyotes led many people to believe children could migrate to the United States and receive permission to stay indefinitely if they arrived by a certain date.

Additionally, Honduran youth and coordinators of community centers who were interviewed as part of a U.S Agency for International Development (USAID) focus group indicated that they believed the United States would allow migrant minors, mothers traveling with minors, and pregnant women to stay for a period of time upon arrival in the United States.

Social media also plays a factor in migration. Officials in Guatemala told us that social media outlets enable migrants who arrive in the United States to share messages and pictures with families in their home countries. This can serve as a powerful and influential endorsement of the decision to migrate. Additionally, officials noted that persistent conditions such as violence, poverty, and the lack of economic opportunity have worsened.

We met with children in all three countries, and they echoed many of the same reasons for migrating to the United States.

For example, children at a USAID outreach center in San Pedro Sula, Honduras, noted the lack of educational and job opportunities in their communities as a reason for migrating. Children from a particularly violent neighborhood told us it was even more difficult for them to find employment since potential employers would sometimes choose not to hire them simply because of where they lived.

A number of U.S. agencies have programs providing assistance in areas such as economic development, community development, law, citizen security, rule of law enforcement, and education.

Some program address longstanding concerns while others were developed to address the recent surge in migration. For example, Department of Homeland Security (DHS)-led units supported an increased focus on investigating and dismantling smuggling operations in all three countries. We found that U.S. agencies chose to

[1] The prepared statement of Ms. Gianopoulos appears in the Appendix on page 1628.

locate programs in the three countries based on various factors, including high poverty and crime, but adjusted their efforts to locate more programs in high migration communities.

With regard to evaluation, we found that most agencies had developed processes to assess the effectiveness of UAC migration-related programs, but there were weaknesses. For example, DHS had established performance measures such as arrests for units combating UAC smuggling, but had not established numeric or other types of targets for these measures which would enable the DHS to measure the unit's progress toward a stated goal.

In addition, DHS and State had not always evaluated the information campaigns intended to combat coyote misinformation. For example, DHS launched its 2013 campaign in April of that year, but launched its 2014 campaign in late June, which was after the migration levels had peaked. Neither agency evaluated the effect of its 2014 campaign.

Public affairs officers from all three countries expressed uncertainty or doubt concerning the effectiveness of campaigns centered on the dangers of migration. Specifically, they were uncertain whether such campaigns resonated with citizens of the three countries since the dangers were already well known.

Accordingly, we recommended that the agencies integrate evaluations into their information campaigns intended to deter migration and that DHS establish performance targets for its investigative units.

This concludes my opening remarks. Thank you for the opportunity to testify on this very important topic, and I am prepared to answer any questions you might have.

Chairman JOHNSON. Well, thank you, Ms. Gianopoulos.

Our next witness is Agent Chris Cabrera. He is a Border Patrol agent in the Rio Grande Valley Texas Sector. Mr. Cabrera can draw on his experience as a Border Patrol agent in the Rio Grande Valley to discuss migration trends in the Rio Grande Valley Sector and the recent increase in unaccompanied minors and family units from Central America arriving at the border. He can explain how apprehensions in fiscal year 2015 compare to last year as well as share anecdotes he has gathered through interviews with migrants. Mr. Cabrera.

TESTIMONY OF CHRIS CABRERA,[1] BORDER PATROL AGENT, RIO GRANDE VALLEY SECTOR, U.S. CUSTOMS AND BORDER PROTECTION, ON BEHALF OF THE NATIONAL BORDER PATROL COUNCIL

Mr. CABRERA. Chairman Johnson, Ranking Member Carper, thank you for providing me the opportunity to testify on behalf of the National Border Patrol Council (NBPC).

The Council represents the interests of 16,500 line agents of the Border Patrol. My name is Chris Cabrera. I joined the Border Patrol in 2001, after serving 4 years in the Army. I have spent my entire career in the Border Patrol in the Rio Grande Valley of Texas.

[1] The prepared statement of Mr. Cabrera appears in the Appendix on page 1641.

Last year, the American people were shocked by the massive surge in unaccompanied children. In fiscal year 2014, the Border Patrol apprehended 66,000 unaccompanied children primarily in the Rio Grande Valley. Although the apprehensions of unaccompanied children are down 50 percent fiscal year 2015, this is no cause for celebration. We will still apprehend 35,000 unaccompanied children this year and an additional 34,000 in family groups.

There are a number of factors that are driving the UACs to come. Many point to the endemic violence in Central America. Without a doubt, violence and instability in Central America, where the vast majority of the UACs and family groups are coming from, is a factor. It is not, however, the primary factor driving this mass migration at this point in time. Unfortunately, many of these countries have been suffering violence, corruption, and poverty for decades, yet they did not leave in large numbers with the exception of the Salvadorans during their civil war 30 years ago.

When Border Patrol Agents detain a UAC or family group, we interview them, and they are typically very forthcoming about their motivation for coming into the United States. Most believe they will either not be caught or, even if they are caught, they will not be deported back to their home country. The UACs and family groups we detain are acutely aware of the fact we will not hold them until they are adjudicated. They know that they will be released and issued a Notice to Appear (NTA). What we have right now is essentially a catch-and-release policy. This coupled with violence and instability in their home country is what is driving the continued flow into the United States. Unless we hold them until we adjudicate their cases, they will continue to come.

The second driver is the idea that they need to get here before some ambiguous deadline. Some of them do not even know when that deadline is; they only know that they need to beat it if they want to stay in the United States permanently. We call this the "myth of the permiso," and it is most likely being advanced by the drug cartels that are controlling the illegal alien and drug smuggling across the border.

For cartels, human smuggling is big business worth hundreds of millions of dollars each year. Most are paying $10,000 per person. Higher-value aliens, such as Middle Eastern and Asians, pay double or triple this figure. The UACs and family units serve another purpose. They are human screens that tie up the Border Patrol Agents while the cartels smuggle narcotics and higher-value aliens behind them, who, if caught, will be deported back to their home country.

When the crisis hit last summer, we soon realized why they are doing this. The cartels are driving these kids and families into the middle of nowhere to cross the Rio Grande River. Most of these people cannot swim, and crossing the Rio Grande on a flimsy rubber raft is incredibly dangerous. Why didn't they simply march up to the port of entry (POE) and turn themselves in to Customs? Customs could just as easily have detained them. The cartels know that a group of 30 UACs will tie up an entire shift of Border Patrol agents. All they are doing is sending these children to tie up our agents and leaving the border completely unguarded.

If there is one thing that could be done to correct this problem, it would be to end the catch-and-release policy. If they knew that if they were caught they would be detained, adjudicated, and repatriated to their home country, the calculus changes dramatically. I guarantee that if this was the case, the numbers would fall dramatically.

The second action deals with resources. I know the budget is tight, but I would estimate that in Rio Grande Valley we are apprehending 40 percent of illegal immigrants caught crossing into this country. This low capture rate again leaves the perception that crossing the border illegally is a viable option. I am happy to discuss this in greater detail during the question-and-answer period, but I believe we are at least 5,000 agents below where we need to be to effectively secure the borders.

Chairman JOHNSON. Thank you, Agent Cabrera, for your service and your testimony. And I would point out this is your second time before this Committee, and we appreciate that.

Our next witness is Kevin Casas-Zamora. Mr. Casas-Zamora is the senior fellow and program director, Peter D. Bell Rule of Law Program, Inter-American Dialogue. Mr. Casas-Zamora can speak to the need of prioritized U.S. funding to ensure programs are effective in improving the security and economic stability in Central America. Mr. Casas-Zamora can also discuss the conditions in El Salvador, Guatemala, and Honduras that are contributing to increased migration from the region, the current status of the rule of law in these countries, and how these conditions affect U.S. aid. Mr. Casas-Zamora.

TESTIMONY OF KEVIN CASAS–ZAMORA,[1] D.PHIL., SENIOR FELLOW AND PROGRAM DIRECTOR, PETER D. BELL RULE OF LAW PROGRAM, INTER–AMERICAN DIALOGUE

Mr. CASAS-ZAMORA. Thank you, Senator. I am grateful for the opportunity to address the honorable Members of this Committee.

Over the past 5 years, 100,000 migrant children from Guatemala, Honduras, and El Salvador have been apprehended at the U.S. border. They are a particularly tragic subset of the approximately 3 million migrants from Central America's Northern Triangle that have reached U.S. shores over the past two decades.

Four factors are at the root of those migration flows:

First, the weakness of the State. States in the Northern Triangle are very feeble. At just below 16 percent of gross domestic product (GDP), the region's average tax burden is among the lowest in the world. Such fiscal starvation impinges on the ability of the State to mitigate the impact of the very high levels of poverty and inequality that afflict these countries. Also, fiscally weak States have great problems exerting effective control over their territory.

Second, corruption. The effects of fiscal weakness are compounded by endemic corruption, notably in Guatemala and Honduras. Relative to the size of the economy, the fraud recently uncovered at Honduras' social security system dwarfs the massive bribery scandal of Brazil's Petrobras by a factor of 20.

[1] The prepared statement of Mr. Casas-Zamora appears in the Appendix on page 1643.

The state of judicial institutions is a critical factor in explaining these levels of corruption. In all three countries, political interference in judicial and overseeing institutions is rife. The struggle for democracy and development in the Northern Triangle is, above all, a fight for the rule of law, for accountability and against all forms of impunity.

Third, economic vulnerability. For the majority of migrants from Northern Central America, economic reasons underlie the decision to leave their countries. Despite the efforts made by these countries to open up their economies, they appear unable to generate the kind of growth that could make a real dent in their poverty levels. Over the past decade, per capita income growth in all three countries has been mediocre at best. Given their distributional problems, it is unsurprising that the majority of the population remains mired in poverty or economic vulnerability. Today remittances contribute 10 percent of GDP in Guatemala, nearly 17 percent in El Salvador, and over 18 percent in Honduras. The truth is that it is remittances from migrants that keep these economies afloat.

Fourth, crime and violence. The most pressing challenge faced by the Northern Triangle concerns high levels of crime. Last year, Honduras alone had more homicides than the 28 member States of the European Union combined.

Senator CARPER. I am sorry. Would you say that again?

Mr. CASAS-ZAMORA. Sure. Last year, Honduras alone had more homicides than the 28 member States of the European Union combined. Violence levels in Northern Central America cannot be understood but in terms of the pervasive presence of organized crime, particularly drug trafficking.

All these mythologies are not just complex, but are deeply intertwined. None of this can be corrected by foreign assistance alone, yet none of this will be corrected without foreign assistance. Let me suggest a few ways in which the United States could play a constructive role.

One, fund generously the Alliance for Prosperity in the Northern Triangle. The alliance is a timely and well-conceived program. It embodies the long-term and integral approach that is essential to bring about structural change and hopefully contain migratory flows. It would be a loss if the program were to shed its holistic conception and wind up as yet another narrow counternarcotics effort.

Two, support Guatemala's International Commission Against Impunity (CICIG) and expand it. The United States played no small part in the creation of CICIG. You should be commended for that. Even before its crucial role in the investigation that led to the resignation of President Otto Perez Molina, the Commission had proved a very valuable resource for Guatemala. The United States continued support for CICIG is vital for the whole region. Its experience provides a blueprint for similar bodies that could and should be adopted in other countries, certainly Honduras.

Three, insist on structural reforms. There are clear limits to what even a generous and soundly conceived program of foreign assistance can achieve in Northern Central America. It is a legitimate question whether the United States will find in the region's political elites suitable partners to make this effort worthwhile.

The case of Perez Molina and the popular mobilization against corruption in Honduras suggest that some of the best partners are to be found in the region's civil societies. One can also point to brave, isolated reformers that defy impossible odds to bring about institutional change in all three countries. Identifying those champions of reform is difficult but possible.

I will submit that the United States can gauge the seriousness of political partners in the region according to two criteria: first, their readiness to push for robust and progressive tax systems; and, second, their sincerity about introducing checks and balances and promoting judicial independence. Hence, attempts to pack the supreme court or to introduce indefinite reelection, for instance, ought to be taken for what they are: preludes to the corruption, power abuse, and impunity that have sadly been the historical norm in much of Central America.

Introducing progressive tax reform and real checks and balances on are the crux of the matter. If the United States is serious about helping the Northern Triangle, it should not be shy about demanding those structural changes.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Mr. Casas-Zamora.

Our next witness is Duncan Wood. Mr. Wood is the Director of the Mexico Institute, Woodrow Wilson International Center for Scholars. Dr. Wood recently visited the Mexico-Guatemala border to assess Mexico's border enforcement efforts. He can describe the State of Mexico's border enforcement efforts and how these efforts impact Central America migration to the United States. Dr. Wood.

TESTIMONY OF DUNCAN WOOD, PH.D.,[1] DIRECTOR, MEXICO INSTITUTE, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

Mr. WOOD. Thank you, Chairman Johnson and Ranking Member Carper, for the invitation. Good morning, everybody.

As you just said, I am here to talk about Mexico's Programa Frontera Sur, the Southern Border Program, based on two recent study tours that the Wilson Center has taken to the border with Guatemala and Belize, and there are two main messages I would like to leave with you today:

One, the Southern Border Program is very much a work in progress, but it is having an impact in multiple ways that are of enormous interest to the United States' homeland security.

And, second, based upon what Mexico is attempting to do on its Southern Border, migrant roots are changing as migrants and smugglers learn how to get around Mexican Government controls.

Let me begin by just talking about the border a little bit between Mexico and Guatemala. The map here—which, of course, is too small for you to see, but I think you have a copy of it somewhere—between Mexico and Guatemala there are eight formal crossing points, so eight border crossings where you can cross legally between the two countries. And there are identified by the Mexican Government 57 informal crossing points where people regularly cross back and forth, often for entirely innocent reasons of doing

[1] The prepared statement of Mr. Wood appears in the Appendix on page 1656.

some shopping for the Sunday lunch, for example, or buying basics for their house.

The border region is, of course, a divers region, difficult terrain, rivers, forest, hills, and also urban areas. There is an active border life. As I said, people cross regularly, formally and informally, to engage in commerce, visits, et cetera. And local communities are very wary of a thickening of the Guatemala-Mexico-Belize border. And, in fact, there have been examples, cases of protests from local communities when efforts have been made to try to restrict traffic. And Mexican Government officials have told us that that is actually one of the issues they are struggling with.

Mexico's interest in its Southern Border is, of course, not new. It really began in recent times, in the mid-2000s, a growing awareness of the importance of the Southern Border for organized crime and for the question of transmigration. And, of course, there have been many criticisms from Mexican civil society of Mexico's record of protecting Central American migrants.

The Mexico Comision Internacional de Limites Y Aguas—the Mexican international commission for boundaries and waters—has done impressive work in actually mapping the border and understanding the reality, the day-to-day reality there. They were of enormous help to us when we actually conducted our tour.

And, in fact, just to give you an idea of where we began with all of this, it is only in the last decade that the border itself between Mexico and Guatemala has been adequately demarcated so that you actually can now visit the actual borderline and know when you are crossing over the territory from one country to another. That is the starting point. So there is a lot of work to be done there.

The Southern Border Program in Mexico has existed for a number of years, but it was reinvigorated under the current presidency of Enrique Pena Nieto. The program has two official objectives: one, to protect migrants who enter Mexico; two, to manage the ports of entry in a way that promotes the security and prosperity of the region. It aims to do this in five ways: one, through bringing about regular and orderly migration; two, improvements to infrastructure for border security and migration; three, protecting migrants; four, regional shared responsibility; and, five, interagency coordination. We saw elements of all of those things on our tours.

The most important thing that I would say we saw there was the impressive investment in facilities, procedures, and controls that the Mexican Government has put in place. They have put in place a regional visitor visa program and a visiting border worker program, which is allowing people to actually cross over legally in a formal fashion to visit southern Mexico from Guatemala and Belize. And I have the numbers of those visa permits if you need them.

This attempt to provide a formal way for Guatemalans and Belizeans to enter Mexico is very important. The facilities at the border are multimodal. You see the migration agency, the military, customs, health, agriculture, everybody is actually there. This means that there is a growing presence of the Mexican State in the Southern Border region which has not been there before.

What are the challenges that remain? Well, it is an impressive attempt to establish some sense of order and to raise the visibility of the Mexican State in the south. And in many ways, it is positive for local communities in terms of security. However, it is clear that the flows are not going to diminish as long as conditions in Central America continue to be as harsh as they are. Migrants learn and migrants adapt, and we saw multiple examples of migrant routes going around Mexican attempts to control. So it is a problem of abuses, many criticisms of Mexico's treatment of migrants. We saw evidence on both sides of that that, in fact, there are actually some respectable conditions in detention centers in southern Mexico. But we also heard stories that told an opposite story.

And, last, on the question of regional cooperation, Mexico is going to face a very big challenge in evolving its regional cooperation with countries like Guatemala simply because of the lack of capacity in their counterpart. Interestingly enough, military cooperation between Mexico and Guatemala has advanced very rapidly and there is good understanding. Working with the rest of the government agencies has been much more challenging.

Thank you very much.

Chairman JOHNSON. Thank you, Dr. Wood.

Our final witness is Bishop Mark Seitz. Bishop Seitz is a member of the diocese of El Paso, Texas, U.S. Conference of Catholic Bishops (USCCB). Bishop Seitz can describe the programs his organization is employing to assist youth and other vulnerable populations in Central America in order to deter migration and assist in repatriation proceedings. Bishop Seitz is also an original native from Wisconsin, so, again, we welcome you here. Thank you for your testimony.

TESTIMONY OF THE MOST REVEREND MARK J. SEITZ,[1] BISHOP, DIOCESE OF EL PASO, TEXAS, ON BEHALF OF THE U.S. CONFERENCE OF CATHOLIC BISHOPS

Rev. SEITZ. Thank you very much, Chairman Johnson, Senator Carper, Ranking Member, for holding this hearing today.

Mr. Chairman, we are witnessing a humanitarian situation in our hemisphere in which vulnerable children and families are fleeing for their lives in search of protection. If we cannot respond justly and humanely to this challenge in our own backyard, then we relinquish our moral leadership and influence globally, where much greater crises are being experienced.

Mr. Chairman, the U.S. Bishops sent a delegation led by myself to Central America to assess the situation there and were among the first groups to warn of a possible outflow of children and families fleeing from that region.

Since then, the violence in the Northern Triangle region of Central America has only worsened. El Salvador, victim of a new gang war, now rivals Honduras as the Nation with the highest murder rate in the world. A recent study by the United Nations (U.N.) determined that more than 6 in 10 of those who arrived at our borders or were leaving had legitimate asylum claims.

[1] The prepared statement of Bishop Seitz appears in the Appendix on page 1666.

I would like to recall with you a very distinguished visitor who graced these hallowed halls just last month. In his speech to Congress, Pope Francis urged us to show compassion to those fleeing to our land, and I quote: "We must not be taken by their numbers but, rather, as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation."

We should listen to the story of Maria, a 14-year-old from El Salvador who was kidnapped by a gang member and held captive, raped, and drugged. She managed to escape and fled to the United States.

We should listen to the story of Manuel, a 17-year-old boy who was severely beaten by gang members and threatened with death if he did not join the gang. He escaped to the United States and was granted a Trafficking Victims eligibility letter by the U.S. Department of Health and Human Services (HHS).

Mr. Chairman, I would like to submit their stories and those of other children for the record.[1]

While the number of children and families arriving at our border has dropped in this past fiscal year by 40 percent, that does not mean that the number of persons fleeing Central America has dropped, as we have noted. Instead, it means that they are fleeing to neighboring countries or, worse, are being intercepted by Mexican authorities at our behest and sent back to danger, without proper screening and protection mechanisms.

Mr. Chairman, according to the Migration Policy Institute, the Mexican Government has returned 70 percent more migrants, mostly women and children, back to the Northern Triangle over the past fiscal year ending September 30. They have returned six times more children than at this time last year. We have transferred the authority—or the responsibility for this crisis to others, and in so doing perhaps we have abdicated our own.

But as we have heard, children and families continue to arrive at our Southern Border, and more recently we have seen a spike in their numbers. By increasing interdiction efforts, we have driven them into the hand of more sophisticated smugglers who are charging them $7,000 and more per trip and are finding ways to circumvent enforcement efforts using private cars and bribes along the way.

However, Mr. Chairman, there are more serious humanitarian consequences to this interdiction policy. According to the Mexican Human Rights Commission, abuse of migrants by enforcement personnel has increased by 40 percent over the past year, including physical and sexual assault.

There have also been reports that migrants sent back to their countries have been killed with at least 90 such deaths documented over the past year and a half.

Mr. Chairman, if we export enforcement, we must also export protection.

As my testimony details, we recommend that Congress and the administration, No. 1, approve and increase the $1 billion administration request for aid to Central America, directing assistance to youth development and reintegration programs.

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[1] The stories referenced by Bishop Seitz appears in the Appendix on page 1833.

No. 2, that we halt our punitive deterrence strategy and instill a regional protection system based on the best interest determinations for children.

Third, that we improve the Central American Minors (CAM), program.

And, fourth, that we end family detention and replace it with community-based alternative to detention programs.

Fifth, that we ultimately get comprehensive immigration reform.

Mr. Chairman, I would like to sum up the current situation with an analogy. Our current enforcement posture toward children and families fleeing the violence in Central America is akin to firemen arriving at a house fire and locking the doors. Instead of locking the doors, Mr. Chairman, we must put out the fire and rescue those inside.

As I conclude, perhaps we could recall our Holy Father's words during his visit. He also invoked a basic rule of life that should guide all of our actions: the Golden Rule. He reminded us that it is not only right but in our long-term best interest to practice that wise dictum. As he explained, "In a word, if we want security, let us give security. If we want life, let us give life. If we want opportunity, let us give opportunity. The yardstick we use for others will be the yardstick which will be used for us."

Mr. Chairman, I pray that time and history will conclude that we honored this rule in meeting this humanitarian challenge. Thank you.

Chairman JOHNSON. Thank you, Bishop.

I will start with the questioning. Again, there is no doubt about the fact that this is an enormous problem, and as we talked about, one of the root causes is our insatiable demand for drugs, the lack of opportunity in Central America, the violence being driven a lot because of the drug cartels, that type of thing.

The question always is, well, OK, what is an achievable goal here? I do not think it is good for Central America that those individuals that actually want to seek opportunity flow out of the country. I think the goal of our policy should be to stop the flow—again, understanding how complex that is, if you could wave a magic wand and, make Central America corruption-free so they actually had a rule of law, so that their economies could actually grow, that is what we are trying to achieve. And the hard questions are, in terms of aid programs, are we just pouring money down a rat hole? Is there any chance that money spent in Central America will be utilized effectively? So if we put the money in there, what kind of controls do we have?

Ms. Gianopoulos, I would like to talk to you in terms of the GAO study because I think one thing I really want you to comment on, the reality of the situation, regardless of what Deferred Action on Childhood Arrivals (DACA), what those memorandums say, regardless of what our marketing programs are in terms of the danger of the journey, and the Bishop spoke very eloquently about the harm, I mean, the migrants are being abused. It is a dangerous journey. But the reality is if those children, if those families can get into America, they are staying. Since 2009, less than 7 percent have actually been sent back. So by the use of social media, those that are

here are communicating back into Central America, so it is a gamble that pays off.

Now, some people are abused along the journey. That is a tragedy. But the bottom line is they were willing to take that dangerous journey because they are able to stay here. Can you just expand on exactly how they are using social media?

Ms. GIANOPOULOS. Sure. When we traveled to the region, we heard from a number of different children, from U.S. officials in Guatemala and El Salvador that the use of social media has absolutely exploded, not just for the families of the children who are making the journey, but also for the coyotes, that they are actually advertising their immigration services on various social media and getting the word out that way as to what the options are for the various families who want their children, or the families themselves, to make that trek.

So the social media cannot be ignored as a major push factor in getting families to actually consider taking all of these risks and sending their children or themselves to the United States.

Chairman JOHNSON. Mr. Casas-Zamora, you talked about the rule of law. Can you expand on that a little bit in terms of how crucial that is? Let us face it. You are not going to get investment to grow an economy unless you have some stability in terms of the rule of law, lack of corruption. How far are we away from having low enough levels of corruption and a strong enough rule of law to actually provide the type of economic activity, to provide the opportunities that is admittedly lacking in Central America?

Mr. CASAS-ZAMORA. Thank you, Senator. The short answer is very far from that. And the question here is, What is to be done? And my short answer to that would be that there are basic things that need to be put in place before we go on to more sophisticated policies or proposals.

The most basic thing that needs to be in place if these countries are going to be serious about corruption—but also about the impunity that comes with the problems concerning citizen security. I mean, the most basic thing is to protect judicial independence, and to protect the autonomy of overseeing institutions such as the General Accounting Office, the ombudsman, all the institutions that are meant to control the exercise of power. Those institutions are in terrible shape in Central America, and my contention would be that one of the ways in which one can gauge the seriousness of your partners in Central America is by the willingness that they are willing to display in doing those basic things. Then we can go on to other things.

Chairman JOHNSON. Basically I would interpret your remarks, any kind of aid would have to have enormous strings, very strong strings attached to it so that we do not just waste the money.

Mr. CASAS-ZAMORA. Very much so.

Chairman JOHNSON. Dr. Wood, you talked about the increased effort on the part of Mexico to secure their Southern Border. Can you just tell me why they are doing it?

Mr. WOOD. Yes, first, let me just make one quick comment on the last question.

Chairman JOHNSON. Sure.

Mr. WOOD. I think that we are witnessing right now throughout Latin America a civil society awakening over the question of corruption, and that is something that we should celebrate and we should reinforce. I think working only with governments is the wrong way to go. We need to be reinforcing what civil societies throughout the region are doing. We have seen it in Guatemala. We have seen it in Brazil. I think that is one thing that we could do.

Why is the Mexican Government engaging in their Programa Frontera Sur? Well, first of all, this was a preexisting program that had never really had the investment that it required to make it effective. So the question is: Why are they actually investing in it now? Partly it is in reaction to pressure from the United States to try to bring about some order for the migration flows northwards. But there is also very much a Mexican Government interest in this. I think there is a crossover, a very clear crossover, between what we are seeing on trying to control migration flows and trying to control organized crime on Mexico's Southern Border.

When you visit these facilities, both border facilities and facilities that are remote from the border inland, the presence of not only migracion but also the military, the police, health, et cetera, those multimodal interagency facilities are designed to establish the presence of the Mexican State in a territory where it was not really visible before.

This means that the costs of moving through southern Mexico have been increased, not just for migrants but for organized crime as well. It does not mean they do not adapt. Of course they do. But it raises the cost, and it makes it much more complex for them to do that.

Chairman JOHNSON. So the good news is really there is mutual benefit to the United States as well as Mexico for a continued effort to secure the Mexican border there.

Mr. WOOD. There are definitely mutual benefits in terms of homeland security.

Chairman JOHNSON. Agent Cabrera, I do want you to talk a little bit more about—we toured the Southern Border with you—the use of the economic immigrants for diversion for drugs. Can you just expand on that a little bit more? Because I thought that was pretty telling, that when you really thought about it, these children, these families could just walk across the bridge and turn themselves in, and, they would be processed the exact same way, but that is not what happens. They actually do make the more dangerous trip across the river. Just describe some of those stories that you described at the border with us.

Mr. CABRERA. Yes, Senator. In actuality, if these individuals that were crossing would cross through the bridge, it would not be a criminal crossing. It would not be an illegal crossing. They could walk up to the bridge and ask for asylum, much like they do when they come to us. However, when they cross the river, then there is that added charge of illegal entry. So it is more beneficial for them to cross through the bridge as opposed to the river, not to mention the safety factor.

What happens is these kids or these family units or even regular migrants, they are walking up to the bridge to claim asylum, and

they get intercepted by the cartel members, the smugglers. And at that point they take them to a certain area, they charge them and tell them when and where they are going to cross. The reason they do that is once they occupy us, we will have to send multiple agents out there to ensure their security, their safety. And it opens up various holes along the border because our agents are having to come from other areas to secure them, to transport them, to make sure they are OK, make sure they are healthy, make sure they do not have any weapons, and get them into the station.

Chairman JOHNSON. How often does that happen?

Mr. CABRERA. Every time they cross.

Chairman JOHNSON. You have multiple groups every night, every day?

Mr. CABRERA. Every night. It slows down during the week. Maybe Tuesday, Wednesday, it is at its lowest. Thursday it starts to pick up. Friday, Saturday, Sunday, it is just bodies everywhere. At our station we are looking on the weekend 600 to 700 a day. And that is just one station.

Chairman JOHNSON. So it is extremely effective diversion for their drug trafficking.

Mr. CABRERA. Exactly.

Chairman JOHNSON. And potentially the higher value—you mentioned the Middle Eastern——

Mr. CABRERA. Yes, we have the Middle Eastern, you have people that are criminals, whether they come from Mexico or, anywhere in the country, they have criminal charges in the United States, and they know that if they get caught, they are going to face some real jail time. So those guys will pay more so that they can get around different ways. If you have cartel people that are coming back and forth, obviously they cannot cross through the bridge, so they are going to be another one of those high-value illegal aliens that they are going to cross in an area where we are not.

Chairman JOHNSON. Right.

Mr. CABRERA. The drug smuggling, we are seeing an uptick in not just marijuana but of cocaine, of heroin, of methamphetamines coming in. And it is taking its toll. It is spilled into our streets. The violence is spilling into the United States.

Chairman JOHNSON. Thank you. And we have held hearings—and we are going to have more hearings—just on the tragedy of heroin addiction and deaths here in America coming through the Southern Border. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman. I really want to thank each of you for what you do with your lives and for spending part of your lives with us today and testifying and responding to our questions.

Bishop Seitz, you are a dead ringer for my first cousin, Dan Patton, who is a lay minister in a church in Columbus, Ohio. And I have never seen him wear a collar like this. But I walked in and I looked at you, and I said, "What is my cousin doing here?" But he would probably say, to what you have said, "Amen." And I do, too.

Listening to all you testify this morning, I was reminded of something that Winston Churchill once said. I do not know if Senator McCaskill and others will recall this. But he once said, "If you are

young and not liberal, you do not have a heart. If you are old and not conservative, you do not have a brain." And what we need to do in addressing this dilemma, moral dilemma and human dilemma, is we need to act with our hearts and with our brains. And there are a number of things that we need to do, and some of them we need to do I think all at once.

There is the idea of us—a great analogy you used, Bishop, I think you were the one who said, the firemen show up at the house, lock everybody inside, and leave. That is pretty close to what we have done. We have contributed enormously to the misery of the folks who live in these three countries, and then to walk away and say, "Well, do not try to get into our country," that is just morally wrong.

I believe you have outlined for us very nicely ways that we can act with our hearts and with our brains, one, to deter the likelihood, reduce the likelihood that people are going to come, one, by making it clear that it is going to be hard to get into our country, and if you do, you may not get a chance to stay; but, two, to say to the folks who live there, you are going to have a better future, and you are going to have some economic hope and not have to live in the kind of misery that you face today. We need to do both. And we can.

Harry Truman used to say that the only thing that is new in the world is the history we forgot or never learned, and actually I think we learned something from Colombia where, about 20 years ago, a bunch of gunmen rounded up the entire supreme court of the country of Colombia, took them into a room, and shot them to death. And today that country is regarded as a reasonably strong, sound, vibrant democracy. We helped them do it with something called "Plan Colombia." And it is not something that we did by ourselves. It is not something they did entirely by themselves. But there were a number of other folks—it was a shared responsibility. We did our parts; others did their part. Colombians did their part.

What lessons are there for us today from Plan Colombia? I like to say find out what works and do more of that. What did we learn from Plan Colombia that may be transferable and usable here in this situation? Anyone? And just be brief, please. Yes?

Mr. CASAS-ZAMORA. Thank you——

Senator CARPER. Mr. Casas-Zamora.

Mr. CASAS-ZAMORA. That is me, hailing from Central America.

Senator CARPER. Where? Donde?

Mr. CASAS-ZAMORA. Costa Rica.

Senator CARPER. OK. Great place.

Mr. CASAS-ZAMORA. Thanks. Glad to hear that.

I think the single most important lesson that one can draw from Plan Colombia and similar experiences is that unless there is real serious buy-in from the political elite in the country, very little of this will have any success. The lion's share of transforming these countries, of reforming and, establishing real structures, the rule of law, and accountability, really falls on the shoulders of those countries. Unless they get serious about that, no amount of foreign assistance will do the trick.

Senator CARPER. Yes. Bishop Seitz.

Rev. SEITZ. I might also suggest we could learn a lot from Nicaragua. It is very interesting that when you look to the region, you realize that so many of those who are fleeing the Northern Triangle are going to the border countries, also. They are not just——

Senator CARPER. That is right. They are not just coming here.

Rev. SEITZ. They have seen increases of something like 1,200 percent in the last, I do not know, 6, 8 years.

Senator CARPER. And it is a lot easier to get into those countries than into this one.

Rev. SEITZ. Yes. They are going wherever they can go, fleeing the burning house, if you will.

Some of the things that happened there, when a new government entered in, they turned over the police force, and they established a means of community policing. They increased the pay of the police and so on to avoid situations where they could be easily corrupted. Nicaragua is a poorer country than even these countries that we are speaking about, but it is much safer—not without its problems, but most of the country is much safer. We could learn a lot from them.

Senator CARPER. All right. Let us talk a little bit about the Alliance for Prosperity that the Central American countries have launched that our administration has proposed that we fund to the tune of about $1 billion. I think there is some money in the appropriations bill in the Senate that would, I think, fund—maybe not $1 billion, but maybe $600 million. What are some things that that money should be spent on to help address some of the root causes that we are talking about here today? Where might it be well spent? Because I am not interested in wasting money, and I know none of you are either. Mr. Wood.

Mr. WOOD. Yes, and it is kind of in response to your previous question. If you look at what the aid is going to Mexico right now through the Merida Initiative, there is all the traditional stuff, sort of, aiding the military, law enforcement agencies, et cetera. But one of the most interesting aspects is actually the concept of building resilient communities, and this is working with government at the three levels—Federal, State, and local—working with the private sector, working with civil society to really try to help communities to bounce back after violence has broken out. And I would say that some of these community-based approaches at the local level really do provide an opportunity, not to stop the violence but really once a community or a nation has taken the decision to act upon it, to help them recover.

So I would say the community-based approaches are going to be crucial in improving conditions.

Senator CARPER. Thank you.

Others, please? Kevin.

Mr. CASAS-ZAMORA. Thank you, Senator. I have no doubt that helping rebuild law enforcement institutions in these countries should be one of the priorities of the alliance. It should not be only that, but that has to be at the center. And my impression is that foreign assistance in this field can only hope to bring about visible changes if it picks a few urgent institutional programs that can have a catalytic effect in the transformation of the image and the efficacy of law enforcement bodies—things like improving internal

control and anticorruption units within law enforcement bodies; adopting modern information technologies (IT), and that means from regular victimization surveys to the kind of—the CompStat kind of system for data gathering; and to have those information technologies and adopt them as part of the policymaking process; creating vetted units to handle complex multinational investigations; improving investigation and prosecutorial capacities with regards to complex financial crimes; and support CICIG.

Senator CARPER. Tell the folks what CICIG is.

Mr. CASAS-ZAMORA. It is the UN-sponsored International Commission Against Impunity in Guatemala that, on balance, has been extraordinarily successful.

Senator CARPER. Good. Thanks.

Mr. Chairman, this is a timely hearing given the codel that we are going to lead to several of these countries in a couple of weeks. I have been down there any number of times, as you know, and my sense is there is sort of a public uprising that is occurring in some of these countries that led in part to the incarceration of the President of Guatemala. I will close with just a real quick story.

I remember visiting down there a couple of years ago. We were down in Guatemala, and we were meeting with the President of the country. And I said to him, "Mr. President, do you realize that you have in your prisons—like the guards are actually providing cell phones to the inmates so they can continue their illicit criminal business?" And he said, "Really?"

And I said, "Did you know that there is technology that would enable those cell phones not be usable in prisons?" And he said, "Really?"

And I said, "And did you know that you have that technology installed in a number of your prisons?" He said, "Really?"

And I said, "And did you know you do not use it?" And he said, "Really?"

And I said, "And do you know"—the Interior Minister of the country was sitting next to me. And I said, "Do you know the guy who is in charge of this is your Interior Minister?" And he said, "Really?"

Well, that President is in jail today. He is in prison today. I am going to see if I can reach him on the phone later. But the people down there are fed up, and some of them are voting with their feet to try to get out. Others are voting with their feet to try to create a situation where people like the President are arrested and put where they belong—in jail.

Thank you.

Chairman JOHNSON. Thank you, Senator Carper. And let us hope they succeed. Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Mr. Chairman. Senator Johnson, I would like to thank you for holding this important hearing today, and I would like to thank the witnesses for sharing their insights. I will ask questions about this subject matter for the record, but I would like to use my time today to raise concerns regarding your investigation of Secretary Clinton's private email server.

As you know, I am a former prosecutor and a former auditor, so I have decades of experience in conducting investigations. I have also conducted oversight investigations since I first got to the Senate, and I have led Subcommittees focusing on oversight and investigations on this Committee since 2009, including my current position as the Ranking Member on the Permanent Subcommittee on Investigations (PSI).

I think I have shown I am not afraid to go after this administration and my own party when it comes to investigating complicated issues of national public interest. In the last Congress, as you may recall, we worked together to issue document requests, interview witnesses, and release a report related to a former DHS Deputy Inspector General (IG).

It is because of my experience as an investigator that I am troubled by the recent letters you sent regarding Secretary Clinton's email server. I would never quarrel with your right as Chairman to conduct any investigation that is within this Committee's jurisdiction. But the letters, which were sent to companies named Datto and SECNAP, contain substantial quotes and excerpts from documents received during the Committee's investigation. These letters were posted on the Committee's website and received significant press attention.

My concern is that the selective release of information has created a public narrative that prejudices the outcome of the investigation and creates an incomplete and potentially misleading picture for the public of the record before the Committee. I understand that you have sent more than 10 letters asking for information about Secretary Clinton's email server, but so far the documents from Platte River are the only ones that have been received and reviewed by the Committee. Nor has the Committee conducted any interviews or depositions.

Now, generally on this Committee and on PSI and all of the Subcommittees I have chaired, it is our practice and custom of the Senate to conduct interviews, to get information and documents from multiple parties, before making any information public. That is dictated by basic fairness. Context and balance matter.

Nevertheless, you have chosen to release substantial portions of internal emails from Platte River as part of your additional requests to two different companies in a manner which created the impression in the media and the public that the Committee's investigation had found there were shortcomings related to the server backups and its security.

You have also made a substantial number of public statements regarding Secretary Clinton's "reckless disregard" and "wanton disregard" for security. I am concerned that the totality of the record before the Committee, which is currently limited to one set of documents from one company and includes no interviews at all, is not a sufficient basis to draw those dramatic conclusions.

It also appears that Platte River Network documents now before the Committee provide additional relevant information which leads me to further question the accuracy of your statements. I asked my staff to review all of the Platte River Network documents controlled by the Committee, and they were given access to some of those materials late yesterday, although they have not been able to see all

the documents, including many of the documents cited in your letters.

Based on that limited review, I believe there is additional information that the public has a right to know. Right now, the only available information on these topics can be found in your letters and the excerpts from the documents that you have decided to cite. Because those documents and the other materials are not yet public, I am limited in what I can say about them and what they tell us about Secretary Clinton's email server. But I can say that I believe that having already put out selected information that paints one particular picture of what happened, the Committee has an obligation to ensure that the public record is accurate and complete with context and balance.

While an argument can be made that all of the Platte River documents should be released, at a minimum I would now ask unanimous consent to include in the hearing record the documents and emails cited in your letters to Datto, Inc., and SECNAP, including the complete email chains and all attachments.[1] Those are part of the documents that you have already determined should be released in part, so I am asking that the entire documents be made available.

Thank you, Mr. Chairman.

Chairman JOHNSON. Without objection, so ordered.

Did you have questions for—this is a hearing on unaccompanied children, so——

Senator MCCASKILL. I will have questions for the record.

Chairman JOHNSON. I will say, by the way, I appreciated us working together on our investigation of Charles Edwards. Obviously, that investigation was, quite honestly, pushed when we were in the minority. And the reason those things came to light, those revelations, was because of the transparency of the investigation. We are here with GAO, we are here with this Committee deals with Inspector Generals. We have seen the problem of not being transparent, which is exactly how Charles Edwards got in trouble. We saw 140 inspections, reports on inspections, investigations of the Inspector General Office within the Veterans Administration (VA), creating real problems in the VA. So this Committee is all about transparency. We have certainly been working with the minority staff on these things, and they have been aware of the letters we are sending. We have been making many letters public so that we have that type of transparency to put pressure on the political process and on the agencies to comply with, for example, our subpoenas and those types of things.

So if you are truly serious about working with me, I think you probably would have first talked to me privately as opposed to politicizing this in a hearing on unaccompanied children, a really serious problem. But I think you had a couple minutes, if you would like to ask questions here as opposed to——

Senator MCCASKILL. Well, Mr. Chairman, let me just say that I think that the investigations that I have been a part of, there has not been one member who has released selective information from those investigations without any bipartisan buy-in. That has just

[1] The information submitted by Senator McCaskill appears in the Appendix on page 1681.

not occurred. And that is why this is an extraordinary situation, and that is why I did it in this manner and this way today, because I think it is important that if we are going to unilaterally cherrypick information out of a closed investigation and make it public, it is important that the public have context.

Chairman JOHNSON. Do you have questions for the witnesses?

Senator MCCASKILL. I do not.

Chairman JOHNSON. OK.

Senator CARPER. Mr. Chairman, could I just make a very brief comment? You and I discussed this over—I guess last week, and I share the concerns raised by the Senator from Missouri. As Chairman of the Committee—well, frankly, as Ranking Member, we have staff to do investigative work, and we are free to do that investigative work, and it is appropriate for us when the investigations are complete hopefully for us to share information staff to staff. But it is appropriate, as we discussed, to release that information to the public.

What is troubling here is the concern about whether only part of the information was being released, and I think the term used by Senator McCaskill was whether or not it is being cherrypicked.

As I have said to you before, in terms of Secretary Clinton, who I have served with, have great respect for, the person that I will support for President, if he announces, is the Vice President. So I am not in this for, trying to support or promote her candidacy. We talked here several times about the Golden Rule, and it really applies in almost everything that we do. How would we want to be treated if we were in the other person's shoes? And I think we just want to be fair, and what we are really asking for here is just fairness and to treat in this case her or anybody else the way we would want to be treated. That is a good rule to follow.

Chairman JOHNSON. The issues at stake here—and, again, this is very unfortunate that you have politicized this important hearing here. The issues at stake involve national security issues. We need to assume, because in other hearings we have had in this Committee on cybersecurity, we have to assume that everything that was on Secretary Clinton's email is in the hands of our enemies. The purpose of my involvement in this, this is my responsibility. This Committee is charged with national security processes and Federal records. It is the responsibility of this Committee.

I think it is also the responsibility of this Committee to put pressure on the agencies to make sure that they conduct a thorough investigation so that we can, if possible, recover every email—even those deleted that were supposedly personal, because we need to find out what classified information might be on those emails that now may be in the hands of our enemy or enemies so that we can mitigate any kind of harm. This is a very serious effort on the part of this Committee. It is unfortunate that Senator McCaskill had to politicize this particular hearing on a very serious problem in and of its own self.

But, again, I am happy to discuss this. Again, we have had a good working relationship, as you are aware of the fact. Our staffs have been working together. We have not sent out a letter that you have not reviewed first or your staff has not reviewed. But, again, I want to move on to Senator Peters.

Senator CARPER. Let me just say in conclusion, thank you for agreeing to the unanimous consent request. Sunshine is the best disinfectant.

Chairman JOHNSON. I am all about transparency. Senator Peters.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Thank you, Mr. Chairman, and thank you to the panelists for your testimony here today.

As was mentioned, we will be heading to Central America in a couple weeks and have an opportunity to see some of these conditions firsthand and ask questions. Certainly the testimony we are getting here today helps us prepare for that and to make sure that we are asking the right questions, which is usually more important than the answers, to make sure first you ask the right questions to make sure you get the right answers to them.

Ms. Gianopoulos, I want to pick up a little bit on your testimony in relation to what you have seen through your report and, in particular, with the social media as well as the information campaign being done by the coyotes and others who are trying to manipulate information. We know the power of misinformation and how folks could use that to get their way and to make money and to profit. This Committee has had a number of hearings related to the Islamic State of Iraq and Syria (ISIS) and the amount of information that they put out to recruit individuals and the power of that.

If you could speak a little bit from your knowledge and from your report, what is the U.S. Government doing in terms of public information campaigns to get the true information out? And, more importantly, how effective are we in actually doing that? In past hearings, we have been disappointed by our effectiveness versus adversaries. Is it a similar situation here? Are we waging effective campaigns? If you could elaborate on that, please.

Ms. GIANOPOULOS. Thank you, Senator. When we visited the countries, as well as when we spoke with U.S. agency officials here, we learned about a variety of different information campaigns that both DHS and the State Department have engaged in over the past few years to try to counter some of the misinformation that the coyotes have put out there with regard to the dangers of the journey and what is involved and what the immigration policy actually is here in the United States and what the children and the families would be eligible for once they arrived, if they chose to make that journey.

Our recommendations in our report specifically focus on the evaluations that are necessary to ensure that the resources being put into these campaigns are meaningful and useful and are done at the right times.

For example, as I mentioned in my oral statement, in 2013 the public information campaign that was put out there was done in April, which was an appropriate time since it was aligned with the major surge for the year. Or that was what was anticipated. However, in 2014 that effort, that information campaign, actually took place starting in June, which was after the major surge for that year. So the usefulness or the efficacy of that program was brought into question. And then DHS and State did not even do an evalua-

tion of their information campaigns that year, so they did not even know if those campaigns were having any effect or were useful or were using the right format or any of that. So our recommendations were specific to those agencies, and they did agree with those recommendations that in the future they spend some of their resources evaluating the efforts that they have taken and the resources that they have invested to try to counter that misinformation.

Senator PETERS. It sounds as if not a lot is going on as well. Not only are we not evaluating what is happening—I am looking at this report. It says that DHS—and correct me if I am wrong—does not currently have an active campaign, so the Department of Homeland Security is not involved. Then I also see here that the U.S. Embassy in El Salvador is distributing information in the consular waiting area, which—is that the extent of what we are doing? Or is there more? Please tell me we are doing more than just that?

Ms. GIANOPOULOS. When we heard back from the agencies after we had given them a draft report to review, we understood that DHS was going to engage in an additional campaign, and they do expect to do an evaluation of that campaign as they go forward to see how useful it is. So we can follow up with that afterwards and see how useful that was and if they did do an evaluation. But in July, when we issued our report, they had just started the campaign.

Senator PETERS. In your prepared remarks, you also mentioned that State and DHS are collaborating to implement a new in-country refugee and parole processing program that was going to start accepting applications in December 2014, which is an attempt to focus on legal immigration and to address this issue. To the best of your knowledge, how is that program performing?

Ms. GIANOPOULOS. We would have to get back to you with additional information on that.

Senator PETERS. OK. I think that would be important to know how that is progressing, so I would appreciate any information you have in the future.

Ms. GIANOPOULOS. Of course.

Senator PETERS. Mr. Zamora, you mentioned the importance of having the political elite buy into these programs, and I certainly took great interest in your testimony, and the need particularly to increase security, rule of law, and a judiciary free from corruption. Walk us through exactly how we can accomplish that, in your estimation, given the fact that, in your testimony, you also mentioned that I believe up to 20 percent in some countries is from remittances, so the government certainly benefits from folks leaving the country and sending remittances back. Given the corruption there, I would imagine many of those elites also probably profit from the illegal trafficking of individuals as well. What concrete steps should the United States take? What resources should be put into that? And how do you see that working?

Mr. CASAS-ZAMORA. Thank you, Senator. There is a limit to what any foreign actor can do with regards to this. I mean, cleaning up rotten law enforcement institutions is something that the country itself has to do. But the one thing that you can do in a constructive way is to lay out some conditions, and I suppose also, be willing

to say something when certain behavior is done by the political elites in this country.

I have the impression that if you are serious about establishing the rule of law in any of these countries, the idea of introducing indefinite reelection is probably not a good idea. The idea of packing the supreme court with your acolytes is probably not a good idea.

So my humble suggestion is that you measure the seriousness of your partners, of your political partners in Central America by the extent to which they are willing to be serious with regard to judicial independence and the autonomy of overseeing institutions. The rest is really up to them.

And the other thing that I would humbly suggest is that some of the programs that I mentioned before that can be done in the area of law enforcement, they should be done on the basis of matching funds from these countries. I am going to be very blunt about this, but I do not think that it is fair, regardless of the level of responsibility that the United States may have on what is happening in Central America—there is some responsibility, but the elites in these countries should not be left off the hook.

Senator PETERS. And if I may just follow up, and, Mr. Wood, too, if you would add, both of you have mentioned that the way to have that countervailing force—because, you are right, it has to come from within the country—is the strength of civil society and of those organizations in there. How would you assess the strength of civil society? And is that a primary focus for you? How can we best engage that in order to allow that sunshine and accountability to come from within the country? If both of you could briefly mention how we would assess civil society strength and what we need to do to strengthen it.

Mr. CASAS-ZAMORA. It is very difficult to do it in the abstract, but I think you can identify champions of reform. People on the ground will tell you who is serious about these things, and I can give you a few examples of people that defy impossible odds; not just from civil society but also from within institutions, defying impossible odds has managed to promote change: former Attorney General Claudia Paz y Paz in Guatemala, an exceptionally brave woman; police reformer Helen Mack, in Guatemala, another exceptionally brave individual; some of the judges and prosecutors that just recently stood up to President Perez Molina in Guatemala; the judges of the constitutional court in El Salvador that have been willing over the past few years to assert their independence from political power.

All those people are champions of reform, and I think they at least deserve the backing of the international community in what they are trying to do, which is change their countries.

Senator PETERS. Thank you.

Mr. WOOD. First of all, I would just like to say that in all of these cases—and I know everybody understands this, but there is no silver bullet. I mean, these are complex—there have to be complex solutions, and we have to address it at multiple levels.

On your question on civil society, one of the most interesting things I think we have seen in Mexico over the past year or so has been the rise of civil society organizations that are focused on rule

of law but in particular on anticorruption issues. And we have seen a number of very well respected think tanks actually doing active work trying to understand what international best practices are in terms of anticorruption and transparency, and they have worked very closely with the government to design the new national anticorruption system.

That was brought about because the Mexican Government came under intense pressure from civil society to do so, and they engaged with academic institutions and think tanks and civil society to try to create at least a good legal framework. But that is not enough. What you now need is you need the oversight and the vigilance of civil society and from foreign governments to make sure that that happens.

As Kevin just said, it is relatively easy to identify who the reliable local partners are. You just need to spend some time in-country, and the missions, you know, U.S. Government missions in-country, should be able to pick up that information very quickly by talking to universities and to think tanks themselves.

Mr. CASAS-ZAMORA. Can I just say something really quickly? Maybe the takeaway point here is there are people you can work with in Central America, and that is very important. It is not fair just to, throw up our hands in despair and say, well, we are going to waste our money. I think there are good people to work with there. There are not many, but identifying those champions of reform is certainly possible.

Senator PETERS. Thank you.

Chairman JOHNSON. I think the question is can you work with the governments, and it is identifying them. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you. Thank you all for your testimony today and for what you have done already in this process. I, like many others on this panel, have visited the Northern Triangle area, have had the opportunity to be able to ask questions and be able to walk through both with government leaders and see what our government is doing on the ground and be able to visit with people there, watch the repatriation process as it happens in multiple countries, be able to interact, and there is a great deal that can be learned there, and it is incredibly complex in the issues that we face.

I also am one that believes that all people are created in the image of God and have value and worth. I think every individual is to be respected. So the way that we talk about and treat people shows our value for individuals, but also reinforces our value, what we believe, that God has put His unique stamp on every individual. So we speak about people and we treat issues differently when you have that type of perspective.

I do have a couple broad questions. Then I want to take things into some specifics.

We speak often of the Northern Triangle and the complexity of the issues there. We do not see the same flood of migrants coming in from Belize, from Nicaragua, from Costa Rica, no other places in Central America, other places like Belize where it is not any farther to go. Why? What can we learn by saying we are not seeing

this flood from Belize but we are seeing it from Guatemala, Honduras, and El Salvador?

Mr. WOOD. If I can just jump on this, we visited Belize when we were on our recent tour. We had a visit to border management agency facilities on the Mexico-Belize border. What we learned there was that there is a political will on the part of the Belize Government to actually establish not just order but really to gather data. And these are professionals. They actually do not have huge financial resources behind them, but they are willing to cooperate with their Mexican counterparts.

Just to give you one example, there is one point on the border where there are in fact, two Mexican border posts but only one Belize border post. The Belize Government did not want to actually spend to build another border post, which is only a few miles away. So what they did was they worked with the Mexican Government to build a new road that brought both of these Mexican border crossings to the one Belize border management station right there.

The highway is walled in on either side, so you cannot sort of jump off it and enter the country illegally in that way. And when you get to the border crossing on the Belize side, they are making an effort to actually gather biometric data on all people coming in and leaving the country.

This is a political will question, and what you do not see is you do not see that on the side of the Guatemalan authorities. When you cross over from Mexico into Guatemala, you see very minimal presence of the State and an absence of a will to do anything.

I will give you one example there. The Mexican Government paid for an electricity line to go from southern Mexico across the border into Guatemala so the Guatemalan border authorities would have access to electricity rather than burning a dirty diesel generator, as they were doing before. Three years ago, the electricity line was put in place. The Guatemalan Government to date has not paid for the enchufe, the socket to be put in there so the government agencies can actually use that electricity. The Mexican Government is providing that for free. They have done it all. That lack of will and perhaps lack of capacity is one of the crucial elements of it.

Senator LANKFORD. Have you also seen some things in the lack of shared data between the countries in the Northern Triangle and the United States? How are we doing with records and data and individuals that are traveling back and forth? Officer Cabrera, do you want to comment on that?

Mr. CABRERA. Yes, sir. Thank you. We do not really share—we do not get the information from these countries, from any other countries, unless there is an Interpol issue, some type of major international criminal——

Senator LANKFORD. So when individuals are returned back to the country, we are not getting that information from them that is in-country data as far as criminal records or any of that kind of——

Mr. CABRERA. For instance, if we get somebody from, say, Honduras that comes in, we have no idea what crimes he may have committed in his home country.

Senator LANKFORD. Even in the return?

Mr. CABRERA. When we return them back there?

Senator LANKFORD. When we return them back. The key is if we have apprehended someone and we are returning them back to their country, is there no way to be able to complete the records to say that those records, now we know more about this individual, we have apprehended them, we have our records, we obviously are turning that information over to them who we think we have, but they are not sharing their information with us.

Mr. CABRERA. No, they are not. As far as we know, as far as Border Patrol knows, we do not get that information.

Senator LANKFORD. OK. Mr. Zamora.

Mr. CASAS-ZAMORA. Thank you, Senator. I would just go back for a second, if you will allow me to go back for a second to the previous question. I think your question hints at something that is crucial to understand here, which is that the reason why these countries are, say, vulnerable to organized crime is not merely an accident of geography. It is not simply due to the fact that they happen to be between the main producer of drugs and the main consumer of drugs. I mean, there is more to that.

These countries of the Northern Triangle are vulnerable to organized crime primarily because their States are just so anemic that they are not able in some cases to exert effective control over their territory, which is obviously a boon for crime syndicates.

They are vulnerable because their public institutions, which are debilitated by corruption, are incapable of making the investments that would prevent them from having—I mean, one of the tragedies of this story is that these countries have 25 percent, 30 percent of their young people that are neither studying nor working.

Senator LANKFORD. Right.

Mr. CASAS-ZAMORA. And that is a tragedy. I mean, they are vulnerable to organized crime because their law enforcement institutions have all but collapsed. So, I mean, there is more than geography.

Senator LANKFORD. There is a lot more to it, and that is part of the challenge that we have. We have this belief that immigration is only an issue with us. When I was in the region not long ago, I was visiting with some of the officials from Costa Rica, who I will leave unnamed, who in the course of conversation were discussing Nicaraguans will do the jobs that Costa Ricans will not do, and that they have immigrants coming over from Nicaragua into Costa Rica, and they have to manage their border and figure out how to be able to do that and how they are actually trying to increase their enforcement in Costa Rica to be able to protect jobs for Costa Ricans from Nicaraguans coming over.

So this is not unique to the United States. The challenge that we have is to try to find the uniqueness of it. I think that is part of the emphasis right now with dealing with the Northern Triangle, and what we are trying to do as the United States and what we have done for a long time to try to help their legal system through the process that, until we get to that spot, it does not get better.

One thing I do want to be able to highlight, though, is the social media question on it, because it was my understanding when I visited with many families there and individuals over there that it was not just they were posting on social media, "Hey, I made it"; it is that they were holding up their Notice to Appear, taking a pic-

ture with their Notice to Appear and saying, "I have legal paperwork here in the United States, here I am, come join me." Officer Cabrera.

Mr. CABRERA. Yes, sir. In Border Patrol circles, that paperwork is now known as the "Notice to Disappear." Eighty percent, 90 percent of those folks will not show up for that hearing. And when we have our Commissioner come down or go to these countries and say there will be no permisos, yet that same day we release people with the NTAs, technically they are not called a "permiso," but, in effect, that is what they are. We are allowing them to travel further into the country. They hit these sanctuary cities where they will never be seen again.

Senator LANKFORD. Right.

Mr. CABRERA. And that seems to be the issue. We can talk about all these, Ms. Gianopoulos over here, she said there are social media issues, and there are. And when you have this compounded with the NTAs, we will never see these folks again. And unless we are talking about the rule of law in other countries, but we are not enforcing the rule of law in this country, but we are concerned about helping others enforce their rule of law. We need to enforce our rule of law.

Senator LANKFORD. Correct. So we are on the one hand telling people it is very dangerous to come, do not make the trip. On the other hand, individuals that just made the trip are sending the message down, "I made it. And not only did I make it, this government gave me a Notice to Disappear," as you just mentioned, "I am allowed to stay. I am not going to have 2 or 3 years where I carry this paperwork around, where I cannot be stopped, basically, I do have legal status basically for 2 or 3 years until there is a Notice to Appear." Then you do not actually appear, and you blend into society, and no one actually tries to pick you up at that point.

So we are sending this double message. We can put a commercial out that says it is dangerous, but it is not going to compete with someone who says, "Hey, I am with family in the United States and have legal status. What the government said you will not get I just did get, and no one is actually following up with me on us." And the records show from 2012 at this point we have actually removed to date 11.7 percent of the individuals that came in during that time period from 2012. And so we are actually not doing removals, we are not actually following up with people, and it has become a big issue.

So any other final comments on that, Ms. Gianopoulos?

Ms. GIANOPOULOS. Yes, Senator. I wanted to make two quick comments on the line of questioning that you had over the last few moments.

First of all, when we were in-country, a USAID grantee told us they were trying to gather some data on the returnees to the countries at the repatriation centers. This is the International Organization for Migration (IOM). It is one of the grantees who is helping the repatriated folks get back into society and find a person, especially if it is children, to find someone in the country to come and get them and take care of them once they have been returned to one of the Northern Triangle countries.

I also wanted to point out—we talked a little bit about the willingness of the individual countries to be partners in some of these efforts. One of the things that we found in Honduras is that there is a State and the Department of Justice (DOJ) effort to try to train prosecutors in order to effectively put some of these folks behind bars or at least get them into a courtroom and prosecute them.

There is a program where the Honduran Government is supposed to provide prosecutors that would be available for at least 18 months to not only be trained but also to effectively carry out these duties.

When we were in-country, we found that though there has been prosecutors participating in the program prior to our visit, there were no active prosecutors in this program from the Honduran side at the time of our visit. Even though State and DOJ were working together and trying to get this well-intentioned program off the ground, there was nobody to train. So even though we are putting money into these efforts——

Senator LANKFORD. Do we know how much money is being put into that effort?

Ms. GIANOPOULOS. I can get that information for you, Senator. I do not have it off the top of my head.

But some of the information that we got that was very disturbing to us, that even though U.S. agencies are doing their best to make some effort and make some inroads into this big problem, sometimes the lack of sustainability in the country, either by the government or by other factors, is inhibiting our ability to do what we need to do.

Senator LANKFORD. All right.

Senator CARPER. Senator Lankford, I have asked the Chairman if I could just intercede here just for a moment. I am not sure which country it is, but in at least one of the three countries we are talking about, the criminal elements have targeted police and members of police families in an effort to deter them from doing their job. And when you hear about prosecutors that do not prosecute or folks who will not even show up to be trained to be a prosecutor, judges that do not judge, somebody is going to kill you or your family, that is pretty good intimidation.

Senator LANKFORD. OK. Thank you.

Chairman JOHNSON. Thank you, Senator Lankford.

Ms. Gianopoulos, you talked about the marketing efforts on the part of America, talking about, you are not going to be able to stay, it is a dangerous journey, and all those types of things, and the effect of that versus the social media.

I recall at least hearing from the government officials down in Central America that they had their own marketing campaign, or at least slogan: "Hey, these are our kids. These are our children. Let us protect them."

Was that just a message they were telling us here, or did they actually try and convey that? And, again, the fact that there was nobody showing up for that training, are they serious about that, actually trying to keep their citizens in their country?

Ms. GIANOPOULOS. Well, we saw some of the posters when we visited the repatriation centers. We saw some of the posters, not

just those from the U.S. agencies but also from the individual governments themselves trying to deter folks from making that dangerous journey.

But we also saw some issues, as I mentioned, with the Honduran Government without the prosecutors available to fulfill their roles in this program. Also, in El Salvador, we heard a lot about the lack of economic opportunity for kids that either they cannot cross gang territory to go to school once they have reached a certain level or else they will, be either conscripted into the gangs or raped or whatever. But we also heard about some good programs that we saw that the U.S. Government is supporting.

For example, there was a computer training program in El Salvador that we went to visit, a beautiful room full of computers but there was no computer teacher because the El Salvadoran Government had not provided the computer teacher at the time of our visit back in March. And we did not know, was there someone eventually coming? I mean, certainly we heard that there was an intention of someone there to fulfill their role and be the partner to the U.S. agencies who had provided the infrastructure.

Chairman JOHNSON. OK. Again, I am just looking for the willingness of these societies to reform to the point where their citizens actually want to stay in their country.

Mr. Casas-Zamora, I think it was in your testimony, you talked about how much of their GDP is actually derived from remittances from America back to Central America. That is a pretty powerful incentive to have more people leave, take advantage of the wage differential, take advantage of this line of opportunity to fund their economy. Can you speak a little bit more to that?

Mr. CASAS-ZAMORA. Thank you, Senator. That is one of the crucial questions here. It is a powerful incentive. I mean, the only way to counter that is to generate alternative sources of opportunity in the country. And to tell you the truth, that is not easy.

Chairman JOHNSON. Well, that requires the rule of law. Let me just ask you a macro question here. How many people in the world do you think want to come to the United States? Just off the top of your head, just go right down, how many people throughout the world? What is the population now? More than 7 billion people?

Ms. GIANOPOULOS. Despite the fact that I was a math major in college, I am not sure I could give you a number.

Chairman JOHNSON. It is a lot, isn't it? I mean, that is my point.

Mr. CASAS-ZAMORA. I mean, I cannot possibly for the life of me answer that question, but I will give you——

Chairman JOHNSON. I was not expecting an accurate answer. It was a rhetorical point.

Mr. CASAS-ZAMORA. But I will give you a number that really made my jaw fall to the floor a couple of days ago. A recent opinion poll in Honduras said or found that 63 percent of Hondurans are willing to leave their country if given the chance to. So that in itself is a very powerful number.

Chairman JOHNSON. Again, that is not a good State of affairs. It is simply not. Dr. Wood.

Mr. WOOD. Yes, the question is an interesting one, but I would say that if you gave those same people who want to come to the

United States the chance to stay in their own country, many of them would choose that instead—under the right conditions.

Chairman JOHNSON. So that is the gold policy. Stop the flow, but the way you have to stop the flow is you do need to stop incentivizing people to come here.

Mr. WOOD. But look at what has happened in the case of——

Chairman JOHNSON. We need to figure out some way to provide opportunities, and, unfortunately, without a rule of law, with the corruption that is pretty endemic in these nations right now, it is going to be difficult, which kind of gets me to my next question in terms of nongovernmental organizations. I will go to you, Bishop. I have a great deal of respect for the Catholic Church. I am a Missouri Synod Lutheran, worked hard, helping the Catholic school system in Oshkosh to survive to the point were I was actually on the Finance Council of the Diocese of Green Bay. I love what the Catholic Church does in terms of your charities and globally.

Talk to me about the ability of the Non-governmental organizations (NGOs), Catholic Charities, in order to effectively operate without influence, without corruption from those governments. How effective can they be? And can we strengthen their hand in those countries?

Rev. SEITZ. I think that is part of the answer to these difficult problems, is public-private partnerships down there, because some of the agencies that are least subject to influence by the forces of corruption are church agencies, for instance, and other NGO's. We are working very hard in these countries through Catholic Relief Services, for instance. We have a program called "Youth Builders" that tries to provide skills to these young people and, more important than that, hope that gives them a way to see some future and helps to reintegrate those who are returned.

I think one of the most effective programs that we have going is not real visible, but it is the youth programs that every single Catholic parish does in these countries. They have some incredible youth ministry going on. I think there might be some way to connect with these organizations and other NGO's in order to provide a safer——

Chairman JOHNSON. Part of my point is I am trying to point out that Catch-22. I mean, the very people that are leaving the country are the very people those countries need to stay in the country to make it an acceptable society.

Rev. SEITZ. They are losing their best and brightest.

Chairman JOHNSON. Yes, and that is tragic.

Dr. Wood, do you want to speak to those NGO's and what the prospects are of them working effectively within those corrupt systems?

Mr. WOOD. Yes. I think that what we are seeing is—we are in the middle of a learning process right now about how society can hold government accountable. And there is an interesting process that we are seeing where governments are being forced, partly because of civil society, partly because of international media attention, partly because of foreign investors—and I would make that point strongly. What we have in the United States with the Foreign Corrupt Practices Act, U.K. Bribery Act in great Britain, those are very important international norms that can have a big impact.

I have just been witness to the Mexican energy reforms, oil auctions. What they have done there in terms of transparency is extraordinary. Every single step of the way in the contract, in the bidding process, is exposed to sunlight, as it were. You can literally—when they announce the bids, the bid is there on camera, written and signed by the company concerned. It is possible to do these things. The technology exists. What you need to have is you need to force governments to actually have the will to do that.

Chairman JOHNSON. By the way, I do appreciate your use of the word "transparency." We were using it in a different context earlier. Mr. Casas-Zamora.

Mr. CASAS-ZAMORA. Thank you, Senator. This is really the crux of the matter. The paradox that you alluded to is really central. I mean, I think we have to be aware of the risk, the real risk that the economic future of the Northern Triangle ends up hinging on the ability to continue exporting its young people. And that would be enormously sad because truly, as I see it today, in the absence of a dramatic change of heart by the political and economic elites, these countries will have to give up their best hope for the future in order to have any kind of future. And there are no easy ways to prevent this, but I think the question of economic opportunity is really at the heart of this.

Chairman JOHNSON. First of all, my manufacturing background forces me to go to root cause and acknowledge those realities. And it may be counterintuitive, but probably the most compassionate thing we can do—and, again, the goal we should be achieving is to stop the flow because it is—in the long term, it is the most compassionate, it is the best thing to do. To have those countries empty 60-some percent of the populations, on a compassionate basis, flowing to the United States, that would not be good for those countries long term.

So, again, I am just trying to look at that overall macro point that somehow—and it is extremely difficult—somehow we have to try and get those societies to succeed and recognize all the problems.

Bishop, I will let you have the last word before I turn it over to Senator Carper.

Rev. SEITZ. I am glad you are looking at the macro issues. I think we need to. But we also need to look at the root causes if we are going to deal with the macro. We cannot simply say, well, for this overarching goal we have to send children back without due process, without representation, back into situations that they are fleeing from, fleeing for their lives. And that seem very clear to us that is exactly what is happening.

Chairman JOHNSON. I think that is when we start talking about where should aid flow. Maybe it should be flowing into those countries to provide and support those types of—again, this is, obviously, from this hearing an incredibly complex, incredibly difficult problem. Senator Carper.

Senator CARPER. Thank you. I am going to telegraph—in baseball, they say a pitcher telegraphs his pitch or her pitch. That tells you what kind of pitch he is going to throw. I am going to telegraph my pitch and say that the next question, not this first one but the next question I ask, is: Where do you think there is agreement

among members of this panel as to the priorities for us going forward, us, our government, to an extent this Committee? But where do you think there is agreement, consensus? And one of the things I love—this is a great Committee hearing and a great panel, but I want you to think about where is the consensus for us to go forward. So that is going to be my second question.

The first question I would ask, for Mr. Casas-Zamora and for Bishop Seitz, and it has been alluded to, but we know that there has been violence in these countries for years. I was sent down when I was a House Member many moons ago by our Speaker, Jim Wright from Texas, and he sent about half a dozen U.S. Representatives to Costa Rica to attend a summit of Latin American Presidents. And we heard from any number of the Presidents there about the violence in their own countries. So we know that violence in that part of the world is not something that is new.

But if you could, just to help us understand the migration surge over at least the last couple of years, just explain for us the ways in which the violence may have changed in the Northern Triangle. In particular, how is it affecting kids?

Mr. CASAS-ZAMORA. Thank you, Senator. Well, I will start with the obvious. None of these countries has ever been Denmark, right? But I think it is very clear from the figures that at least criminal violence—they used to have a lot of political violence, and that subsided after the peace accords and all that. But the level of criminal violence that we are witnessing today is unparalleled. It is unparalleled. It is unprecedented and unparalleled. It is unprecedented because the homicide rates that we are seeing in countries like Honduras and this particular year in El Salvador really, are of a level that has not been seen even in Colombia in its darkest days. So there is a big difference there, and that you do not see anywhere else in the world. The current intensity of the problem is really beyond doubt.

As to how this affects children, well, in all sorts of ways. I mean, I would guess that a fearful society as these societies are is not a good place to raise children, is not a good place to educate children. And, by the way, States that are anemic in terms of their revenue are not able to do the most basic things. They are not able to provide an education to all these kids. And as long as they do not have an opportunity to get an education, as long as they do not have an opportunity to get proper job training, they are going to fall for the lure of organized criminal syndicates.

So, it is a very difficult situation.

Senator CARPER. Thank you. All right. Where is there consensus for us, for our country, for a path forward? Please, Bishop Seitz.

Rev. SEITZ. If I might at first just add——

Senator CARPER. Just very briefly.

Rev. SEITZ. It was mentioned earlier why is there such a difference between these three countries and the others surrounding them? Nicaragua may be poorer. Again, the violence is the difference, and so we have to be alert to that. It is something we cannot even as Americans really identify with. Even the schools are taken over very often in Honduras and El Salvador by the drug gangs. They are in charge. They can get payments from the teachers and so on. It is just hard to imagine, and not hard to under-

stand why they would flee. And how can we even begin to calculate the economic impact?

Senator CARPER. All right. Thank you.

Rev. SEITZ. So we are certainly in agreement that it is better to create a better situation in these countries so that they do not need to flee. I hope we are also in agreement that we need to make sure that the basic human rights of those who are fleeing and have legitimate asylum claims should be respected.

Senator CARPER. Thank you.

Is it Dr. Wood or Mr. Wood?

Mr. WOOD. I have a Ph.D. Whatever you want to call me.

Senator CARPER. All right, Doc.

Mr. WOOD. Thanks. I think we have come to more or less a consensus here on this panel that this is a very complex problem and it requires a very complex solution, a multidimensional approach. Enforcement alone is not going to do it. Aid alone is not going to do it. Governments alone are not going to do it. And that is the only way that I see is we are actually going to make real progress on this, is by looking at all of the factors and trying to work on a comprehensive solution to this.

Senator CARPER. All right. Thank you. I will just ask this rhetorical question, but I wonder if—you call it the Alliance for Prosperity. I wonder if that is sort of a comprehensive approach. It sounds to me like it is intended to be. Mr. Casas-Zamora.

Mr. CASAS-ZAMORA. Yes, I mean, I would echo what has just been said. I would only hope that we are also in agreement that there has to be buy-in from political elites in these countries——

Senator CARPER. In Colombia. I have been told repeatedly that was one of the keys in Colombia.

Mr. CASAS-ZAMORA. For any external effort to have an impact in the way you want it to have an impact.

Senator CARPER. Thank you.

Mr. Cabrera, one of the things you said, Chris, that really resonated with me—and it was in your testimony; I read it, and then you said it again—is when you have a large group of particularly young people, young families trying to get across the border, they can take—literally, like capture a whole bunch of your people and sort of freeze up—at least on the rest of the border, they are just unprotected, unguarded. That is a really good takeaway from you. Go ahead.

Mr. CABRERA. Yes, Senator. Thank you. I think for me, I think we should all be in agreement on the health and safety of these children that are coming across as well as the preservation of their innocence. I think where we are differing here is how to attack that point right there. It is a very dangerous trip. And I think that is at the core of the problem, at least in my eyes. I am a father. I see these children every day, and, quite frankly, it strikes a nerve with me to see what these children have to go through.

And as the Bishop mentioned a few minutes ago, legitimate asylum claims, I think that is the key, is the legitimate asylum claims. All too often we are seeing people come across with rehearsed stories of asylum claims, and there are a lot of people that have legitimate asylum claims. But when you have so many, you get desen-

sitized, and so many people are claiming it that it is watering down the word "asylum."

Chairman JOHNSON. Let me quickly jump in here, because we went down to the border, and what the Border Patrol has done is really extraordinary in reaction to this. The humanity that you have, having to grapple with an incredibly difficult problem, the agents down there really are doing an extraordinary job, and I am sure Senator Carper would agree with me on that. I just wanted—as long as you were making that point, I wanted to point that out. We truly appreciate that in terms of what you have done.

Mr. CABRERA. Thank you.

Senator CARPER. Ms. Gianopoulos.

Ms. GIANOPOULOS. I would say we have quite a number of different opinions on the mechanisms and factors that would go into a successful campaign. But what I think is consistent is that we all want the campaign to meet its policy goals. And in order to do that, we need to go back and check after we have taken these steps and after we have invested these resources to make sure that the goals that we have established are the right ones, the ones that Congress wants to achieve, and that whatever actions are being taken by the U.S. agencies are actually moving us in the direction of those goals. And if they are not, then we need to change course in order to meet those goals in the future.

Senator CARPER. Sort of a way of saying what you do not measure you cannot manage, and there was a guy named Vince Lombardi—what was that team that he coached? Some team up in Green Bay. He used to say that if you are not keeping score, you are just practicing.

Ms. GIANOPOULOS. And if you do not have a map, you do not know where you are going.

Senator CARPER. We could do this all day. [Laughter.]

Thank you all you have been a terrific panel. Thank you so much.

Chairman JOHNSON. Thank you, Senator Carper. And we may have just done this. We normally give the witnesses a last opportunity to say something to kind of summarize things. But we will do it again because Senator Carper had a little more specific question. So we will start with you, Bishop, and just kind of go right down the line before we close out the hearing.

Rev. SEITZ. Once again, I thank you very much for this opportunity. I am really delighted we have looked at the in-country situation with the focus that it deserves. We have not spoken a whole lot about the situation in Mexico. I am concerned that while this is, in many ways a huge initiative on their part, we really need to look at the potential for abuses in the way that they are responding, because these children deserve an opportunity to tell their story and for due process as offered by international law.

We need to see ourselves, as we have been in the past, a moral beacon in the way that we respond to these refugee situations. There are other countries that have received so many more than what we are looking at here, up to half of their population in refugees in the Middle East. And if we balk at our responsibility in this small case, it is difficult for us to make a claim.

I would also encourage us to look at ways that we can protect the rights of children who arrive here also. I know it is complicated, but they are going to be hesitant to tell the whole story of the violence they have experienced. That has been my experience. You have to get to know them. And a person in a uniform is not necessarily going to be trusted, even though in our country they should ordinarily be. That has not been their experience in their home country. We need to give them a good opportunity to truly assess their situation and give them representation. That is the best way, by the way, that we can assure that they will appear in court.

Chairman JOHNSON. Thank you, Bishop. Dr. Wood.

Mr. WOOD. Thank you. Let me just focus my closing comments on the case of Mexico, because I think the Bishop makes a very good point here. It is an impressive advance that has happened in Mexico. It is a work in progress. Abuses have gone up, obviously. That is in large part, I would argue, because of increased interaction between authorities and migrants, opening the door for those kind of abuses.

I think there is a great deal that can be done in terms of U.S.-Mexico cooperation and sharing the experiences, some of the very positive experiences on the U.S.-Mexico border, showing how migrants are treated in the United States, and basically I would say focus on due process.

One of the incidents that we saw in Mexico at a detention center was that we asked how migrants were registered when they were brought in, and we were told there is no computer system at this holding facility, it occurs at the bigger facility. And I said, "Well, they are in your hands for a couple of hours. How do you actually maintain those records?" They said, "Oh, we have forms that we fill out."

So the guy shows me the form, and the form actually had all the usual questions, name, place of origin, et cetera, et cetera, thumbprints. But there were some questions that were already filled out, that were already answered on that form, on a supposedly blank form. One of them was, "Are you claiming refugee status?" And it said, "No."

Now, those are the kind of things of due process that I think we have to be very vigilant about, and we have to push the Mexican Government to make sure that they are doing what they should be doing to give people fair treatment.

Chairman JOHNSON. Thank you, Dr. Wood. Mr. Casas-Zamora.

Mr. CASAS-ZAMORA. Thank you so much, Senator. It has been a pleasure and an honor to be part of this hearing.

I think the United States can and perhaps should play a very important role in helping these countries help themselves. I think the Alliance for Prosperity is a good way to start. I hope that it leads to a more permanent engagement of the United States, reengagement of the United States with the region. But I would also say that you should not lose sight that it is ultimately the responsibility of the countries themselves to be serious about reform, and that has a very practical implication. Do not let the political elites of these countries, the political and economic elites of these countries off the hook—the political and economic elites that have made

a hash job in running these countries. And that means that the task of nudging them toward enacting robust, progressive tax systems, which they do not have, and the task of making sure that they protect judicial independence and protect the autonomy of overseeing institutions are really essential.

And my humble suggestion is that the United States should not be shy about demanding those structural changes. Thank you.

Chairman JOHNSON. Thank you. And, of course, you are describing the strings I would be talking about for any kind of financial aid. Agent Cabrera.

Mr. CABRERA. Thank you, Senator. As you know, I am a law enforcement officer and I am paid to enforce the law. The taxpayers expect me to enforce the law. However, the powers that be are prohibiting us Border Patrol agents from enforcing those laws.

We keep talking about waging a campaign. If we are waging this campaign, we are not doing a very good job. The only thing we are succeeding in doing is giving credence to the smugglers, the coyotes. We are giving credence to their campaigns by letting people go. And until we can enforce what we have on the books and send a clear message, not a double-sided message, then we are going to continue in the process that we are going.

Chairman JOHNSON. Thank you, Agent, for your service as well.

Mr. CABRERA. Thank you, sir.

Chairman JOHNSON. Ms. Gianopoulos.

Ms. GIANOPOULOS. Thank you for the opportunity to testify today. As I was just mentioning a few moments ago, it is important for us—we talked a lot about social media here today at the hearing. It is important for us as the U.S. Government and our agencies and our practices that we keep in mind that things are changing. They are changing continuously, whether it is the use of social media, the misperceptions about immigration policy, or what have you. So we need to as the U.S. Government continually provide oversight and evaluation for what it is that we are doing to try to combat some of these concerns and the flow of migrants, especially migrant children, into the United States. So continuously looking back to see: Are we doing what we said we wanted to do? Are we reaching the goals, the policy goals, the procedural and program goals that we have established for ourselves? And if not, then we need to change course or make adjustments. And hearings like this and other hearings that the Committee has had are perfect tools and operations to be able to allow the U.S. Government to do that.

Chairman JOHNSON. Thank you. And, again, thank you for the time you have taken, your thoughtful testimony. I think we are looking at the reality. I think we are very seriously exploring these issues and laying out how difficult the problem is. But that is no reason to shy away from making sure we understand what the full extent of the problem is.

Again, thank you all. The hearing record will remain open for 15 days until November 5 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:39 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
Ongoing Migration from Central America: An Examination of FY2015 Apprehensions
Wednesday, October 21, 2015

As submitted for the record:

Last summer, we witnessed a humanitarian crisis, as more than 51,000 unaccompanied minors from Central America, and almost as many family units, came across the U.S.-Mexico border. Earlier this year, the Committee examined the government's response to this crisis, recognizing that even though the 2015 numbers were lower than 2014, the crisis was far from over as we had not addressed the root cause incentives for unlawful UAC migration.

However, just as the Committee was examining this important topic, apprehensions in the Rio Grande Valley sector in South Texas began to increase. In August, 3,610 unaccompanied minors from Central America were apprehended at the southwest border, up from 2,043 in August 2014—representing a more than 75 percent increase. Representatives from the Department of Homeland Security and the State Department have indicated that they expect apprehension numbers to continue to increase this fall.

In the past, apprehensions along the southwest border have been seasonal, with the majority of migrants entering in the spring, largely in response to the agriculture growing season. This year, for the first time ever, this seasonal pattern has changed, as apprehensions did not begin to rise until July. There are several different rationales for this transition. Some observers have suggested that, rather than come to the U.S. to work, migrants are now traveling when their families already in the U.S. send money to reunite with them. Others have rationalized that numbers were down earlier this year due to Mexico's increased enforcement of its southern border but smugglers have finally been able to find their way around these barriers and re-route people to avoid apprehensions in Mexico.

The purpose of this hearing is to assess the causes behind the ongoing migration from Central America, including the recent influx of unaccompanied minors and family units arriving at the southwest border. After this hearing, I will be traveling with several members of the committee to Central America to witness firsthand how both pull and push factors are contributing to this renewed spike in migration from Central America. I encourage all Committee members to join us on this fact-finding trip.

In the meantime, we have an expert panel of witnesses today, many of whom have traveled to Central America themselves, or, work on the frontline at our borders and have personally interviewed those apprehended in South Texas. I thank all of our witnesses for their willingness to share their important experiences and I look forward to their testimony.

Statement of Ranking Member Tom Carper
"Ongoing Migration from Central America: An Examination of FY2015 Apprehensions"
Wednesday, October 21, 2015

A as prepared for delivery:

I want to thank Chairman Johnson for calling this hearing on the ongoing surge of Central American migration we're experiencing at our southwest border. This is an important challenge for the region and for our country, as well. I look forward to working together with the Chairman and the rest of my colleagues toward lasting solutions.

Last summer, we were shocked by the flood of migrants arriving here from Guatemala, Honduras, and El Salvador, particularly the thousands of unaccompanied children and families with young kids. When they arrived, most did not try to evade Border Patrol agents but instead sought them out for protection. Some of their stories – and those of migrants who did not survive the journey – were heartbreaking.

Our government took emergency steps to shelter and process these individuals, but also put into place strategies to stem the flow. These included public information campaigns on the dangers of the journey, expedited court hearings, an increased focus on human smuggling and trafficking rings, and support for Mexico's efforts to better police its own southern border.

I was pleased that these efforts had an impact for a time in slowing migration. But many observers warned that as long as the Northern Triangle countries remained mired in violence and poverty, migration would continue. And that is exactly what appears to have happened. This time, we should not be surprised.

Although for a number of months significantly fewer Central Americans were apprehended at our southern border, the flow never really stopped. In fact, much of the decrease was due not to fewer people fleeing the Northern Triangle, but from unprecedented new enforcement efforts by Mexico on its southern border with Guatemala.

Between July 2014 and June 2015, for example, Mexico reportedly apprehended nearly 157,000 Central American migrants – a 70 percent increase compared to the same period for the previous year.

But since this summer, even this enhanced effort on the part of our Mexican partners has not been enough. Border Patrol apprehensions of Central American children and families began slowly climbing toward last years' levels early in 2015. In August, they surpassed the number of new arrivals in August of 2014.

September arrivals remained relatively high as well. This is particularly striking given that apprehensions usually peak in spring and decline over the summer and early fall. There are different theories as to why we are seeing more Central American migrants again, particularly children and families. Some people point to increased violence in El Salvador, others to drought conditions that have worsened poverty for many in the region. Still another theory is that the

smugglers have found new routes that have allowed them to get around Mexico's enhanced apprehension efforts and our own.

Of course, there are also pull factors, particularly a desire on the part of migrants to reunite with family members who are already here. Smugglers may also be marketing real or perceived changes in our immigration policy – such as current litigation calling into question family detention – to persuade migrants that now is the right time to make the trip. We will discuss some of those factors today, and also what we can do to try to change the dynamic.

I think the increased apprehensions we are seeing this summer and fall are an important reminder that we must – in addition to ongoing efforts to better secure our borders - work with our partners to address the root causes of Central American migration.

The governments of Guatemala, Honduras and El Salvador have joined in an unprecedented regional agreement, called the Alliance for Prosperity, that seeks to change the underlying conditions on the ground that compel so many people to flee.

Our own government has proposed $1 billion in foreign aid in the current fiscal year for initiatives to complement the Alliance for Prosperity. These funds are intended not only to improve security, but also to provide more economic opportunity for the citizens of the Northern Triangle and improve the rule of law in the region.

This is clearly a daunting undertaking that will not yield immediate results, yet we cannot continue to neglect the underlying conditions that have led to the current migration crisis.

It is also worth remembering that it is our appetite for drugs that fuels much of the violence and corruption in this region. As a result, I believe we have a moral obligation to try and help undo that damage.

Several of us on the Committee will be traveling to the Northern Triangle soon to explore more fully what is fueling this ongoing migration and how U.S. engagement in the region might help turn the tide.

I think our efforts and those of others working on this issue are very much in keeping with the valuable message Pope Francis delivered during his recent visit. We need to see these migrants as people, not simply numbers, and work in partnership to try to alleviate the desperate conditions that cause so many to risk life and limb to flee to the United States.

United States Government Accountability Office

Testimony
Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected 9:30 a.m. ET
Wednesday, October 21, 2015

UNACCOMPANIED ALIEN CHILDREN

Improved Evaluation Efforts Could Enhance Agency Programs to Reduce Migration from Central America

Statement of Kimberly Gianopoulos, Director, International Affairs and Trade

GAO-16-163T

GAO Highlights

Highlights of GAO-16-163T, a testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

Since 2012 there has been a rapid increase in the number of apprehensions at the U.S.-Mexican border of UAC from El Salvador, Guatemala, and Honduras. Current data indicate the rate of UAC migration from Central America in 2015 is lower than the record levels of 2014, through apprehensions increased in August 2015. Children from these three countries face a host of challenges, such as extreme violence and persistent poverty.

This testimony summarizes the findings from GAO's July 2015 report, which reviewed U.S. assistance to El Salvador, Guatemala, and Honduras addressing agency-identified causes of UAC migration, (2) how agencies have determined where to locate these assistance efforts, and (3) the extent to which agencies have developed processes to assess the effectiveness of programs seeking to address UAC migration. This testimony also provides updated information on several topics covered in the report. GAO reviewed agency documents and interviewed officials in Washington, D.C., and in Central America for the report.

What GAO Recommends

GAO's July 2015 report included recommendations that DHS and State integrate evaluations into their information campaigns intended to deter migration, and that DHS establish performance targets for its investigative units. DHS concurred with both recommendations, and said that it plans to evaluate its most recent campaign. State also concurred with the recommendation directed to it.

View GAO-16-163T. For more information, contact Thomas Gilbert III at (202) 512-8777 or gilbertiii@gao.gov.

October 21, 2015

UNACCOMPANIED ALIEN CHILDREN

Improved Evaluation Efforts Could Enhance Agency Programs to Reduce Migration from Central America

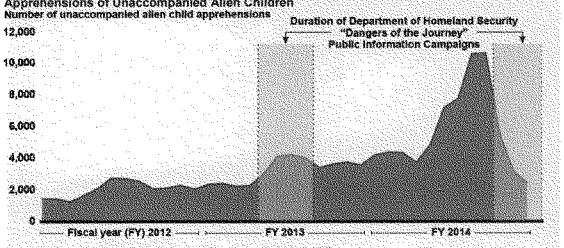
What GAO Found

GAO reported in July 2015 that U.S. agencies had sought to address causes of unaccompanied alien child (UAC) migration through recent programs, such as information campaigns to deter migration, developed in response to the migration increase and other long-standing efforts. The increase in migration since 2012 was likely triggered, according to U.S. officials, by several factors such as the increased presence and sophistication of child smugglers (known as coyotes) and confusion over U.S. immigration policy. Officials also noted that certain persistent conditions such as violence and poverty have worsened in certain countries. In addition to long-standing efforts, such as U.S. Agency for International Development (USAID) antipoverty programs, agencies had taken new actions. For example, Department of Homeland Security (DHS)-led investigative units had increasingly sought to disrupt human smuggling operations.

GAO found that U.S. agencies located programs based on various factors, including long-term priorities such as targeting high-poverty and -crime areas, but adjusted to locate more programs in high-migration communities. For example, Department of State (State) officials in Guatemala said they moved programs enhancing police anticrime capabilities into such communities, and USAID officials in El Salvador said they expanded to UAC-migration-affected locations.

GAO found that most agencies had developed processes to assess the effectiveness of programs seeking to address UAC migration, but weaknesses existed in these processes for some antismuggling programs. For example, DHS had established performance measures, such as arrests, for units combating UAC smuggling, but had not established numeric or other types of targets for these measures, which would enable DHS to measure the units' progress. In addition, DHS and State had not always evaluated information campaigns intended to combat coyote misinformation. DHS launched its 2013 campaign in April, but launched its 2014 campaign in late June after migration levels peaked. Neither agency evaluated its 2014 campaign. DHS has reported that it plans to evaluate its ongoing campaign before the end of this year.

Timing of Department of Homeland Security Public Information Campaigns and Monthly Apprehensions of Unaccompanied Alien Children



Source: GAO analysis of Department of Homeland Security data. | GAO-16-163T

United States Government Accountability Office

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

October 21, 2015

Chairman Johnson, Ranking Member Carper, and Members of the Committee:

I am pleased to be here today to discuss our recent work on U.S. agency efforts to reduce unaccompanied child migration from Central America. As has been well documented, in the past several years, there has been a large increase in the number of apprehensions at the U.S.-Mexican border of unaccompanied alien children (UAC) from El Salvador, Guatemala, and Honduras.[1] Data indicate that fewer children from these three countries were apprehended in fiscal year 2015 than fiscal year 2014; however, apprehensions of children increased in August 2015 compared to previous months this year and exceeded those from August 2014. A number of U.S. agencies provide assistance intended to improve living conditions and strengthen rule of law in the three countries.

My testimony summarizes the findings from our report issued in July 2015, which reviewed (1) U.S. assistance in El Salvador, Guatemala, and Honduras addressing agency-identified causes of UAC migration; (2) how agencies have determined where to locate these assistance efforts; and (3) the extent to which agencies have developed processes to assess the effectiveness of programs seeking to address UAC migration.[2] This testimony also provides updated information on several topics we covered in our July 2015 report. This report is part of a body of work that GAO has conducted on this issue. In February 2015, we reported on agency-identified causes of, and actions taken in response to, the rapid increase in unaccompanied child migration,[3] and in July 2015 we also reported on U.S. efforts to screen and care for UAC migrants who safely arrive at the border.[4] We also have ongoing work on U.S. agency efforts to care for UAC once they are in U.S. custody.

To address the objectives in our July 2015 report, we reviewed documents for programs that agencies identified as addressing causes of UAC migration, including country and program strategies, operational plans, project proposal and appraisal documents, and progress reports, among others. We also interviewed U.S. and nongovernment officials in Washington, D.C., and U.S., host government, and nongovernment officials in El Salvador, Guatemala, and Honduras,

[1]U.S. law defines an unaccompanied alien child, or UAC, as "a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

[2]GAO, *Central America: Improved Evaluation Efforts Could Enhance Agency Programs to Reduce Unaccompanied Child Migration, GAO-15-707 (Washington, D.C.: July 29, 2015).*

[3]GAO, *Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras*, GAO-15-362 (Washington, D.C.: Feb. 27, 2015).

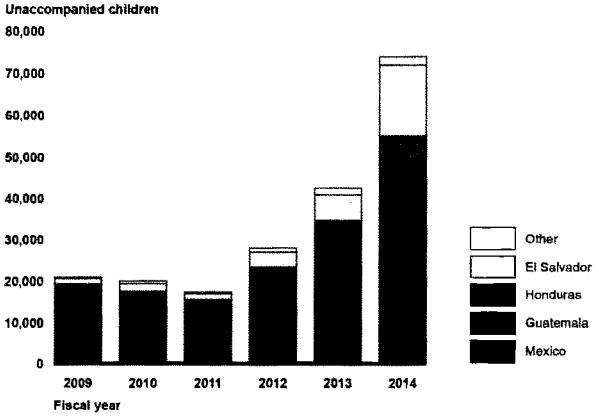
[4]GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521 (Washington, D.C.: July 14, 2015).

where we visited U.S. agency-supported projects and met with children in each country. Further details on our scope and methodology can be found in our July 2015 report. To provide updated information on several topics, we contacted agency officials and reviewed agency documents and studies conducted by nongovernmental organizations. The work upon which this testimony is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

According to the Department of Homeland Security (DHS), the number of UAC from any country apprehended at the U.S. border climbed from nearly 28,000 in fiscal year 2012 to more than 42,000 in fiscal year 2013, and to more than 73,000 in fiscal year 2014. Prior to fiscal year 2012, most UAC apprehended at the border were Mexican nationals.[5] However, as figure 1 shows, starting in fiscal year 2013, the total number of UAC from El Salvador, Guatemala, and Honduras surpassed the number of UAC from Mexico and, in fiscal year 2014, far surpassed the number of UAC from Mexico.

Figure 1: Apprehensions of Unaccompanied Alien Children by Country of Citizenship, Fiscal Years 2009 through 2014



Source: GAO analysis of Department of Homeland Security data. | GAO-16-163T

Recent data and research indicate that, while fewer UAC are being apprehended in the United States in 2015, the pace of migration from Central America remains high. According to DHS, as

[5]Within DHS, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement apprehend, process, temporarily detain, and care for UAC who attempt to illegally enter the United States. For information on how these apprehension data were obtained, see *GAO-15-707*.

of August 2015, apprehensions at the southwest border are down 46 percent compared with last year—with more than 35,000 UAC apprehended in fiscal year 2015 compared with about 66,000 through the same time period in fiscal year 2014. However, analyses of DHS data indicate that apprehensions in the month of August 2015 increased compared to previous months this year and exceeded by nearly 50 percent August 2014 apprehensions. Moreover, research by two nongovernmental organizations indicates that a greater number of Central Americans this year are being apprehended in Mexico. According to the Migration Policy Institute,[6] Mexico has increased its enforcement capacity and is apprehending a greater number of Central American migrants, including children. Specifically, in its study published in September 2015, the institute projected that Mexico's apprehensions of children from El Salvador, Guatemala, and Honduras will increase this year by 9,000.[7] In addition, according to research conducted by the Washington Office on Latin America,[8] Mexico has greatly increased its rate of apprehension of Central American migrants. These studies indicate that many Central American children who in the past may have made it to the U.S. border and been counted in U.S. apprehension statistics, have this year been apprehended in Mexico.

Children from El Salvador, Guatemala, and Honduras face a host of perils both within their countries and along the migration route to the United States. These countries have among the world's highest murder rates, according to the United Nations Office on Drugs and Crime, along with a widespread presence of gangs, high poverty rates, and a number of other persistent problems. Children who migrate can encounter further risks along the journey, including robbery, extortion, abandonment, rape, or murder. A number of U.S. agencies provide assistance to the three countries. The U.S. Agency for International Development (USAID), the Department of State (State), DHS, the Millennium Challenge Corporation (MCC), and the Inter-American Foundation (IAF) have programs providing assistance in areas such as economic development, rule of law, citizen security, law enforcement, education, community development, and others. In fiscal year 2014, USAID, State, DHS, and IAF allocated a combined $44.5 million for El Salvador, $88.1 million for Guatemala, and $78 million for Honduras. In addition, MCC signed a threshold program agreement with Honduras in fiscal year 2013 totaling $15.6 million, a compact agreement with El Salvador in fiscal year 2014 totaling $277 million, and a threshold program agreement with Guatemala in fiscal year 2015 totaling $28 million.[9] Additional information on agency- and program-specific funding is included in our July 2015 report.

In September 2014, the governments of El Salvador, Guatemala, and Honduras issued a regional plan in response to the recent migration increase.[10] The plan, referred to as the *Plan of*

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[6]The Migration Policy Institute is an independent, nonprofit organization dedicated to analyzing the movement of people worldwide.

[7] Migration Policy Institute, *Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile* (Washington, D.C.: September 2015).

[8]The Washington Office on Latin America is a research and advocacy organization focusing on human rights issues in the Americas.

[9]A compact is a multiyear agreement between MCC and an eligible country to fund specific programs targeted at reducing poverty and stimulating economic growth. MCC's threshold program is designed to assist countries that have not yet qualified for compact assistance but have demonstrated a significant commitment to improving their performance on the corporation's eligibility criteria.

[10]*Plan of the Alliance for Prosperity in the Northern Triangle: A Road Map*. Regional Plan Prepared by El Salvador, Guatemala, and Honduras. September 2014.

the Alliance for Prosperity in the Northern Triangle: A Road Map, outlines four strategic actions that seek to stimulate the productive sector to create economic opportunities, develop opportunities for people, improve public safety and enhance access to the legal system, and strengthen institutions to increase people's trust in the state. In addition, in March 2015, the administration issued the U.S. Strategy for Engagement in Central America, with the primary objectives of prosperity, governance, and security, and the goals of an economically integrated Central America that is fully democratic; economic opportunities for its people; more accountable, transparent, and effective public institutions; and a safe environment for its citizens.[11]

Agencies Seek to Address UAC Migration with Recently Developed and Long-standing Efforts

Agency-Identified Causes of Increase in UAC Migration

As we reported in July 2015, according to agency officials a variety of factors likely caused the rapid increase in UAC migration of recent years, including the increased presence of coyotes, perceptions concerning U.S. immigration law, recent improvements in the U.S. economy, the increased use of social media, and the worsening of pervasive problems.

Increased presence of smugglers (or coyotes). Agency officials from all three countries that we spoke to said that smugglers, also known as coyotes, had proliferated and grown more influential and sophisticated in recent years. Officials from USAID and State in all three countries noted that coyotes were often well known and trusted in communities. In addition, agency officials we spoke to in all three countries noted that coyotes had instituted new marketing and messaging tactics, such as offering three attempts to migrate to the United States for one fee—known as a "three-for-one" deal. Coyotes had also intentionally spread rumors and misinformation about U.S. immigration policy. For example, agency officials told us that, in some cases, in an effort to drive smuggling business, coyotes led many people to believe children could migrate to the United States and receive permission to stay indefinitely if they arrived by a certain date.

Perceptions of U.S. immigration policy. According to agency officials, general perceptions concerning U.S. immigration policy had played a growing role in UAC migration. According to State officials in El Salvador and Guatemala, local media outlets had optimistically discussed comprehensive immigration reform efforts in the United States and sometimes failed to discuss the complexity of immigration reform. In addition, according to USAID officials, Honduran youth and coordinators of community centers who were interviewed as part of a USAID focus group indicated they believed the United States would allow migrant minors, mothers traveling with minors, and pregnant women to stay for a period of time upon arrival in the United States.

Improvements in U.S. economy and family reunification. Agency officials also noted that recent improvements in the U.S. economy had fueled increased UAC migration, enabling family reunification in the United States. For example, State and USAID officials in Honduras noted that the improving economy had enabled parents who immigrated to the United States to send money back to their home country to pay coyotes so their children could migrate and reunify the

[11]The White House, *Our Central American Strategy* (posted March 16, 2015), accessed July 14, 2015, https://www.whitehouse.gov/blog/2015/03/16/our-central-american-strategy.

family in the United States. According to officials in El Salvador, as the economy improved there, more Salvadorans have attempted to migrate to the United States to reunify with family.

Increased use of social media. The use of social media can encourage migration, according to some agency officials. For example, officials in Guatemala noted that social media outlets enable migrants who arrive in the United States to share messages and pictures with families in their home countries, an act that can serve as a powerful and influential endorsement of the decision to migrate. Additionally, according to a study performed by State contractors in El Salvador, many people advertise immigration services through social media and offer travel services to ensure safe arrival in the United States.

Worsening of longstanding pervasive challenges. Violence, poverty, and poor access to education and other services have been pervasive development challenges in all three countries, predating the UAC migration increase. However, according to agency officials we spoke to in all three countries, some of these problems had grown worse in recent years and could have contributed to the rise of UAC migration. For example, in Honduras, agency officials noted that levels and perceptions of violence had grown worse, in part because of the rise in extortions. Worsening security concerns also negatively affect access to education. For example, agency officials in El Salvador noted that many children will not attend school after the seventh grade because traveling to some schools requires crossing gang borders, and that girls in particular face the risk of being attacked or raped en route. In Guatemala, agency officials stated that poor economic and social conditions in the Western Highlands—a remote, mountainous area in the western part of Guatemala, inhabited by over 20 different indigenous groups—had declined even further in recent years. In addition, agency officials noted that deteriorating climate conditions, including several consecutive years of drought and a coffee rust blight that has hurt coffee production and cost jobs in Honduras and Guatemala, exacerbated long-standing economic concerns in many communities.

For our July 2015 report, we met with children from all three countries who offered similar insights concerning the causes of migration.[12] For example, children at a USAID outreach center in San Pedro Sula, Honduras, noted the lack of educational and job opportunities in their communities as a reason for migrating. Children from a particularly violent neighborhood told us it was even more difficult for them to obtain a job because potential employers would sometimes choose not to hire them because of where they live. Children at an outreach center in El Salvador also noted that sometimes, even with an education, one cannot find work in El Salvador and that there are more opportunities and chances to succeed in the United States. Children at this same center indicated that the desire to migrate is even stronger for children with parents in the United States.

Prior to this hearing, we asked agency officials for their observations on what factors may have led to the overall decline in UAC apprehensions in fiscal year 2015 and the increase in UAC apprehensions in August 2015. Several DHS offices offered various perspectives for these changes in UAC apprehension numbers. Officials from U.S. Customs and Border Protection's (CBP) U.S. Border Patrol and from U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations stated that most of the decrease in the number of UAC apprehensions in fiscal year 2015 could be attributed to Mexico's increased enforcement of its own southern border. Concerning the uptick in apprehensions in August 2015, officials from

[12]These children do not represent a generalizable sample, but provide important insights into the situations in these countries.

CBP's U.S. Border Patrol and DHS's Office of Intelligence and Analysis stated that the increase could be attributed to the recent U.S. policy change ending the detention of migrant families. According to these officials, the policy change may have created the impression that the United States is allowing family units into the country and then releasing them, which could serve as a motivating factor for migration. Similarly, officials from ICE's Homeland Security Investigations stated that interviews with migrants have indicated that migrants believe that if they arrive in the United States with children, they will not be detained for a long time and will be allowed to stay in the United States. Officials from ICE's Enforcement and Removal Operations stated that there is no definitive answer for what may have caused the increase in apprehensions in August 2015, but that some of the same factors that caused the UAC migration increase in 2014, such as pursuit of economic opportunities, desire for family reunification, and violence, could be considered.

Agency Efforts Seeking to Address UAC Migration

In our July 2015 report, we found that among the various agency actions taken in response to UAC migration, several sought to directly combat coyotes, which agency officials identified as a key emergent factor causing migration. Agencies also had established efforts to increase legal migration and improve migrant return centers, and had identified other longstanding efforts as seeking to address underlying causes of migration.

Antismuggling efforts. In response to the increase in UAC migration, we found that DHS and State had supported several law enforcement and legislative outreach efforts with an increased focus on investigating and dismantling smuggling operations in all three countries. For example, according to DHS officials, in response to the rapid increase in UAC migration in 2014, DHS shifted the investigative priorities of its Transnational Criminal Investigative Units (TCIU)—which include host government police, customs officers, and prosecutors, among others—to target child-smuggling operations in all three countries. A DHS official in Guatemala told us the unit there was able to dismantle two of the seven criminal organizations it was investigating that were actively smuggling children. In addition, State in Honduras is working with a Department of Justice resident legal advisor to assist the Honduran attorney general's office in prosecuting trafficking and alien-smuggling cases, while State support in Guatemala included assistance to reform police training, with a new emphasis on UAC-related issues in the community policing techniques, criminal investigations, and human rights curricula. State also participated in legislative and political outreach efforts to combat smuggling. For example, in Guatemala, State has advocated modifying certain laws that would better enable Guatemalan law enforcement to investigate and prosecute these cases.

Public information campaigns to deter migration. We also found that DHS and State had carried out several public information campaigns between 2013 and 2015 intended to dissuade citizens of El Salvador, Guatemala, and Honduras from migrating to the United States. DHS's campaigns in 2013 and 2014 focused on warning potential migrants of the dangers of the journey. DHS had launched two campaigns in 2015, including one to increase awareness of requirements under the executive action on immigration, which was launched in January 2015 but was stopped February 16, 2015, because of a federal court ruling that granted a preliminary injunction to prevent expansion of Deferred Action for Childhood Arrivals, among other things.[13]

[13]Deferred Action for Childhood Arrivals was announced by the Secretary of Homeland Security on June 15, 2012. Certain people already in the United States who came to the United States before they were 16 and meet guidelines established by DHS may request consideration of deferred action, which defers their removal from the United States for a certain period of time. It does not provide lawful status, but recipients are eligible for work authorization. The

DHS also has an ongoing campaign, "Know the Facts," which was launched in Mexico, El Salvador, Guatemala, and Honduras in late July. According to DHS, the campaign, which was developed with the Department of State and was approved by the White House, is intended to deter individuals from Mexico, El Salvador, Guatemala, and Honduras from entering the United States illegally by increasing awareness of U.S. immigration policies and enhanced border security efforts, as well as the dangers posed by smugglers. The campaign was extended to run through the end of November due to the increase in the number of UACs arriving to the United States, according to DHS. State public affairs officials we spoke to at the U.S embassies in all three countries told us they used the DHS campaign materials and developed their own materials to launch related public information campaigns in-country while also supporting similar host government campaigns.

In-country refugee parole program. In an effort to increase legal migration and reduce the number of children attempting to migrate to the United States, we found that State and DHS had collaborated to implement a new in-country refugee/parole processing program. The program was announced in November 2014 and began accepting applications the following month.

Efforts to strengthen migrant return and repatriation centers. USAID and State also have an interagency agreement to provide assistance to strengthen migrant reception and repatriation efforts in all three countries. Efforts under this program have included providing immediate, basic assistance to returnees; undertaking construction efforts to improve existing facilities; and working with host governments to systemize data gathered from the returned migrants.

Longstanding efforts seeking to address underlying causes of migration. We also reported that USAID, State, IAF, and MCC programs have long sought to address what officials have identified as underlying causes of migration, including persistent development challenges such as violence, poverty, and lack of educational opportunities. For example, USAID supports programs in each country seeking to reduce violence, improve economic opportunities through improved agricultural practices and other efforts, and increase access to education and health services, among others. State supports programs in each of the three countries seeking to reduce violence and improve citizen security by offering training and technical support to prosecutors, the police, and border patrol units, among others. IAF officials said that IAF supports local initiatives in more than 880 communities in El Salvador, Guatemala, and Honduras, with nearly half of its investment in the three countries intended to directly benefit youth through job creation and other community-based activities. MCC's compact in El Salvador and threshold program in Guatemala—each in development prior to the recent migration increase—include programs to improve the quality of secondary education to assist youth in finding employment.

USAID, State, and IAF outlined plans to modify some of these longstanding efforts in response to the rise in UAC migration. For example, in Guatemala, USAID outlined plans to increasingly target youth at risk of migration through various programs and to introduce agricultural programming, including coffee rust-resistant seedlings, and to provide nonagricultural economic opportunities for youth. State and DHS have outlined plans to strengthen border security efforts through their vetted units to stem migration, and to increase the size of antigang units in an effort to reduce violence.

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federal government's most recent motion to stay the preliminary injunction or narrow its scope pending appeal was denied. See Texas v. United States, No. 15-40238, 2015 WL 3386436 (5th Cir., May 26, 2015).

Agencies Aligned Program Locations with Long-Term Strategic Objectives and Made Some Adjustments to Reach More Communities Affected by UAC Migration

Our July 2015 report found that agencies had generally located programs in alignment with long-term objectives for El Salvador, Guatemala, and Honduras, such as addressing areas of high poverty and violence. These objectives are outlined in various strategy and planning documents. In some cases, the development objectives outline priority geographic locations for programs that agencies have identified as addressing underlying causes of UAC migration, such as crime and poverty. USAID's Country Development Cooperation Strategy documents, for example, outline development objectives for each country that focus on specific locations. State country planning documents similarly highlight strategic priorities for the three countries, and in some cases outline priority geographic locations.

Agency officials told us they drew on various sources of information to understand which areas in El Salvador, Guatemala, and Honduras had high levels of UAC migration, including information produced by DHS, USAID, and entities such as the International Organization for Migration, host government agencies, and other local organizations. In particular, they told us a key point of reference was a DHS-produced map that showed the number of UAC by location of origin based upon DHS apprehension data from January 1 to May 15, 2014. DHS officials identified various challenges to obtaining UAC location information, including the inability of children to accurately relay information on their origins, lack of documentation, and inability of border agents interacting with children to collect or record their information accurately. Nonetheless, USAID and State officials in the three countries told us that the top UAC locations of origin identified in the map were generally consistent, with a few exceptions, with their understanding of the top UAC locations of origin.

Further, agency officials stated that their established programs were already located in these areas. In Honduras, where over half of the DHS-identified top 20 municipalities in terms of UAC locations of origin are situated, agency officials told us the DHS map confirmed for them that programs already existed in those locations. In Guatemala, USAID and State officials said that they consulted the DHS map and other available information about UAC origin locations and determined that there was a general overlap between those locations and agency programs. USAID officials in Guatemala noted that about 60 percent of the agency's resources in Guatemala are used for activities in the Western Highlands, which these officials said they have identified as the primary area of UAC migration in that country. In El Salvador, USAID officials stated that, according to their review of the DHS map, their programs were already located in areas of high UAC migration. Finally, according to IAF, the DHS map illustrated a general overlap between the location of its grantees and locations with high levels of UAC migration. We obtained information on the location of USAID and State/INL-funded programs in El Salvador, Guatemala, and Honduras; the location of IAF grantees in these countries; and the top UAC locations of origin in each country, as identified by DHS. Our July 2015 report includes a series of figures that present this information.

In our July 2015 report, we found agencies had outlined plans and taken some steps in the three countries since the recent rise in UAC migration by adding or expanding activities in locations identified as having high levels of UAC migration. For example, according to State's current country plan for Honduras, State plans to expand violence prevention programs, such as the Gang Resistance Education and Training Program, to reach three new police metropolitan areas in Tegucigalpa and six police metropolitan areas in San Pedro Sula, two areas in the country agencies identified as having among the highest levels of UAC migration. In El Salvador, USAID outlined plans to expand educational opportunities to youth in additional

municipalities with high levels of migration. As of June 2015, IAF officials indicated IAF had identified at least 19 new programs in El Salvador, Guatemala, and Honduras that will seek to address underlying causes of migration in areas with high levels of UAC migration.

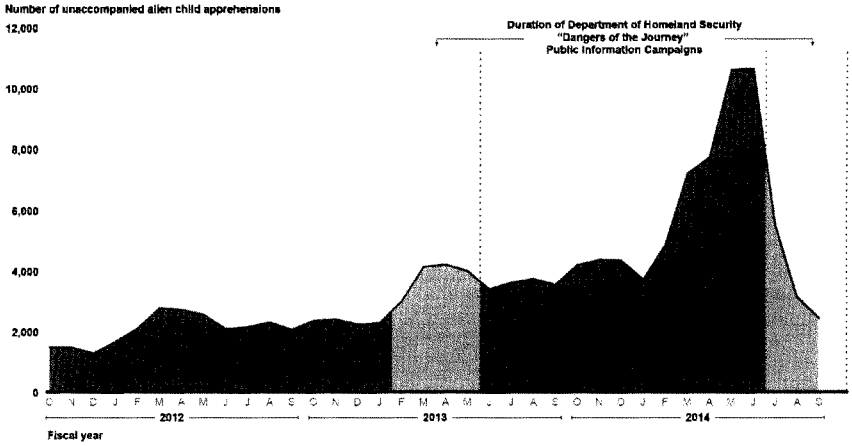
Most Agencies Had Some Evaluation Processes in Place, but Weaknesses Existed in Performance Measurement of Some Antismuggling Programs

As we reported in July 2015, most agencies we reviewed had established processes to measure and evaluate programs agencies identified as addressing underlying causes of migration. For example, USAID had conducted several recent evaluations of its programs developed before the rapid increase in UAC migration but identified as addressing the causes of migration, including programs addressing crime and violence prevention and workforce development. USAID officials and documents indicated that USAID also planned to measure the impact on migration of some future programs, such as whether a program affected a person's decision to migrate. State awarded a contract, which began in September 2014, to evaluate all countries under the CARSI program, including projects that are designed to address causes of UAC migration in El Salvador, Guatemala, and Honduras. IAF also conducts two types of project evaluations, including an end-of-project assessment for all projects, and evaluations of a subset of projects that ended 5 years earlier. According to IAF officials, in 2015, IAF planned to evaluate projects with a focus on youth engagement, including two projects in El Salvador and one in Guatemala. IAF expected these evaluations to be available in 2016.

However, we found that several DHS and State programs intended to reduce migration and counter smugglers had weaknesses in performance measurement. First, DHS had established performance indicators for its TCIUs, but had not established performance targets, making it difficult to track progress of these units' efforts to combat UAC smuggling and other priorities. DHS's Transnational Criminal Investigative Unit Executive Report provides overviews of TCIU efforts by country, including basic performance indicators used to track TCIU success. These measures are divided into three performance categories—enforcement, capacity building, and intelligence—with various types of outputs by category. However, DHS had not set targets for these performance measures. We concluded in our July 2015 report that establishing such targets would enable DHS to compare outputs—such as arrests made—against the pre-established targets, and to better assess TCIU progress. In our July 2015 report, we recommended that DHS establish annual performance targets associated with the performance measures it has established for these units. DHS concurred with our recommendation, and noted that it would work with host nation partners to establish goals to measure TCIU investigative activities and capacity development. Last month, DHS reported to us that it also planned to create additional annual TCIU performance measures in areas such as capacity building, international cooperation, and collaboration. DHS noted it would use these measures, alongside an analysis of host country conditions that can affect TCIU efforts, to determine TCIU successes and inform efforts moving forward.

Second, we found that DHS and State had not consistently evaluated their information campaigns intended to combat the misinformation promoted by smuggling organizations and reduce migration, making it difficult to know the effectiveness of these efforts. DHS evaluated its 2013 campaign but did not evaluate its 2014 campaign. An official from DHS's office of public affairs told us that DHS did not evaluate its 2014 campaign because of funding constraints. Moreover, DHS launched this campaign at the end of June 2014, by which point migration levels had already peaked, reaching record levels, as shown in figure 3.

Figure 3: Timing of Department of Homeland Security Information Campaigns and Apprehensions of Unaccompanied Alien Children at the U.S-Mexican Border, Fiscal Years 2012-2014



Source: GAO analysis of Department of Homeland Security data. | GAO-16-163T

Similarly, we found that while State had collected some information on its public outreach efforts, it had not evaluated the effectiveness of its information campaigns, according to public affairs officers we spoke to in all three Central American countries. These public affairs officers told us they did not know what the impact of the campaigns was and believed it would be difficult to measure their impact. All three of these officers expressed either uncertainty or doubt concerning the effectiveness of past campaigns centered on the dangers of migration, indicating that it is uncertain whether such campaigns resonated with citizens of the three countries since the dangers were already well known or would not dictate a person's decision to migrate.

In our July 2015 report, we concluded that evaluations are an important investment toward ensuring a campaign's success, and that timely feedback is critical as campaigns intended to deter cyclical migration are time-sensitive. Moreover, given the increased presence of children in recent migration cycles, these campaigns need to be timed right and deliver appropriate messages. In our July 2015 report, we recommended that State and DHS integrate evaluation into their planning for, and implementation of, future public information campaigns intended to dissuade migration. DHS and State concurred with our recommendation and indicated they would take steps to strengthen campaign evaluation efforts. DHS has since noted that it will use performance metrics for its ongoing "Know the Facts" campaign in an effort to measure audience recall awareness of the campaign and its impact. DHS noted in particular that its post-campaign research will include face-to-face interviews in the capital cities and some secondary markets in El Salvador, Guatemala, Honduras, and Mexico—totaling about 1,400 interviews in each country—with interviews anticipated to begin at the end of October and a final report published by the end of November or early December.

Aside from challenges in performance measurement, USAID, State, and IAF project documents outline various factors that can hamper the long-term sustainability of projects, such as lack of accountability within government institutions, lack of political will, low tax collection, poor market

conditions, and limited private sector engagement. In our July 2015 review, we observed examples of how some of these factors have the potential to hamper assistance programs. For example, an interagency agreement between the departments of State and Justice outlining efforts to train Honduran prosecutors includes an assumption that the government of Honduras would commit to having a certain number of prosecutors available for at least 18 months to participate in the program. However, at the time of our visit to the country, there were no active prosecutors participating in Tegucigalpa. In El Salvador, where we visited a vocational school that, according to USAID officials, had been established in a joint partnership between USAID and a Salvadoran private company, we observed a computer lab filled with computers recently provided by USAID but with no teacher present. According to USAID officials in El Salvador, the school had asked the Salvadoran Ministry of Education to provide a salary for the teacher, but the ministry had not yet done so at the time of our visit.[14] Agencies have outlined approaches for seeking to ensure program sustainability despite the challenges described above, such as by prioritizing improvements to government institutions; identifying sustainable funding sources, such as the private sector; and advocating for legislative and policy reforms that support program objectives. In addition, agency officials have noted the importance of involving communities, the private sector, and the police in program design to ensure they are invested in and supportive of programs' objectives.

Chairman Johnson, Ranking Member Carper, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff has any questions about this testimony, please contact me at GianopoulosK@gao.gov or 202-512-8612. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

GAO staff who made key contributions to this testimony are Judith Williams, Assistant Director; Joe Carney; Rachel Girshick; Claudia Rodriguez; Dina Shorafa; Ashley Alley; Martin De Alteriis; Seyda Wentworth; John Mingus; Oziel Trevino; and Lynn Cothern.

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[14]Subsequent to our visit, USAID officials in Washington, D.C., noted that while the ministry had not provided the salary for the requested information management teacher, it had provided salary for two other staff that had been requested at the same time, and that the school had drawn on other teachers in an effort to manage the lab and teach basic computer skills.

Testimony of Chris Cabrera
On behalf of the
National Border Patrol Council
In front of United States Senate Homeland Security and Governmental Affairs Committee
October 21, 2015

Chairman Johnson and Ranking Member Carper, thank you for providing me the opportunity to testify on behalf of the National Border Patrol Council (NBPC).

The NBPC represents the interests of 16,500 line Agents at the Border Patrol and my name is Chris Cabrera. I joined the Border Patrol in 2003, after serving 4 years in the U.S. Army as a paratrooper, and have spent my entire Border Patrol career in the Rio Grande Valley of Texas.

Last year the American people were shocked by the massive surge in unaccompanied children (UAC). In FY 2014 Border Patrol apprehended 66,000 UACs primarily in the Rio Grande Valley where I am stationed. Although apprehensions of UACs are down about 50 percent FY 2015, this is no cause for celebration. We will still apprehend 35,000 UACs this year and an additional 34,000 family groups.

Why they come

I would like to spend a few moments discussing why they keep coming and what we can do to solve this problem. There are a number of factors that are driving the UAC crisis. Many point to the endemic violence in Central America. Without a doubt violence and instability in Central America, where the vast majority of the UACs and family groups are coming, is a factor. It is not however the primary factor driving this mass migration at this point in time. Unfortunately, many of these countries have been suffering violence, corruption, and poverty for decades yet they did not leave in large numbers with the exception of Salvadorans during their civil war 30 years ago.

When Border Patrol Agents detain a UAC or family group we interview them and they are typically very forthcoming with us about their motivations for coming. Most believe that they will either not be caught, or even if they are caught, they will not be deported back to their home country. The UACs and family groups we detain are acutely aware of the fact we will not hold them until they are adjudicated. They know that they will be released and issued a Notice to Appear (NTA). What we have right now is essentially a catch and release policy. This coupled with violence and instability in their home country is driving the continued flow of UACs and family groups. Until we hold them until we adjudicate their cases they will continue to come.

The second driver is the idea that they need to get here before some ambiguous deadline. Some of them do not even know when the deadline is, only that they need to beat it if they want to stay permanently in the United States. We call this the myth of the "permisso" and it is most likely being advanced by the drug cartels that control all the illegal alien and drug smuggling along the border.

For the cartels, human smuggling is big business worth hundreds of millions of dollars each year. Most aliens are paying close to $10,000 per person. Higher value aliens, such of those from the Middle East or Asia, pay almost double this figure. The UACs and family units serve another more lucrative purpose. They are human screens that tie up Border Patrol Agents while the cartels smuggle narcotics and higher value aliens behind them, who, if caught, will be deported back to their home country.

When the crisis hit last summer we soon realized why they were doing this. The cartels were driving these kids and families into the middle of nowhere to cross the Rio Grande River. Most of these people cannot swim and crossing the Rio Grande on a little rubber raft is incredibly dangerous. Why didn't they simply march them up to the Port of Entry and have them ask for asylum because Customs could have just as easily detained them. The cartels knew that a group of 30 UACs can literally tie up an entire shift of Agents in my area. All we were doing was tending to the children and the entire border in our area was completely unguarded.

What can we do to solve this problem

If there is one thing that could be done to correct this problem it would be to end the catch and release policy we currently have. The individuals that we apprehend are not foolish. Before investing nearly a lifetime in savings they weigh the costs and benefits of attempting to cross the border. Beyond the money it will cost, they are acutely aware of the potential violence they will encounter along the way.

If they knew that if they were caught they would be detained, adjudicated, and repatriated to their home country, the calculus changes dramatically. I guarantee that if this was the case the numbers would fall dramatically.

The second action deals with resources. I know that the budget is tight, but I would estimate that in Rio Grande Valley at best we are apprehending 40% of the illegal immigrants crossing. This low capture rate again leaves the perception that crossing the border illegally is a viable option. I am happy to discuss this in greater detail during the question and answer period, but I believe we are at least 5,000 Agents below where we need to be to effectively secure the southern border.

United States Senate
Committee on Homeland Security and Governmental Affairs

Hearing on: "Ongoing Migration from Central America:
An Examination of FY2015 Apprehensions"
October 21, 2015

"The roots of Central America's exodus"

Written testimony by Dr. Kevin Casas-Zamora
Senior Fellow and Director of Peter D. Bell Rule of Law Program
Inter-American Dialogue

Over the past five years, slightly over 100,000 unaccompanied migrant children from Guatemala, Honduras and El Salvador have been apprehended at the US southern border. They are but a sub-set –albeit a particularly tragic one—of the approximately three million migrants from the so-called Northern Triangle of Central America that have reached US shores over the past two decades, often after a harrowing journey that could belong in the pages of Dante's *Inferno*.

At the root of this exodus lies a complex brew of structural problems that besets these three small countries. In this mix, factors such as the chronic weakness of the state, the endemic corruption, the glaring economic fragility, and the collapse of public order play decisive roles and reinforce each other. These challenges are unlikely to subside any time soon and will continue to dash the hopes entertained for the region two decades ago, in the wake of the end of civil wars and the emergence of fledgling democratic institutions. More importantly for the purposes of this discussion, these problems are not easily amenable to external solutions. Foreign assistance to Central America's Northern Triangle is useful, even necessary, but will not –irrespective of its generosity—remedy the region's profound development imbalances and institutional shortcomings. Central Americans must accept that, just as only they could put an end to the region's civil conflicts two decades ago they must also take responsibility for building modern states, overhauling law enforcement institutions, and providing opportunities for young people.

The roots of a tragedy. Four factors are at the heart of migration flows from the Northern Triangle and, ultimately, at the heart of the region's travails:

The weakness of the state. The most remarkable feature about states in the Northern Triangle is their extraordinary feebleness by almost any standard. There are many signs of this fragility, but none is more important or far reaching in its effects than the fiscal precariousness of the state in El Salvador, Honduras and, especially, Guatemala. Concerning the tax structure, the situation in the Northern Triangle, as in much of Latin America, is lamentable. At just below 16% of GDP, the average tax burden in Northern Central America is below the Latin American average and stands at less than half the average tax revenue collected by the developed countries of the OECD. The way those taxes are collected is arguably worse – well over half of that revenue is comprised of indirect taxes, i.e. taxes that are unrelated to the wealth of tax payers.

Such fiscal starvation impinges directly on the ability of the state to mitigate the impact of the unacceptably high levels of poverty and inequality that afflict these countries. Poverty affects around two thirds of Hondurans, well over one half of Guatemalans, and 30% of the population of El Salvador. In Honduras, nearly one half of the population lives in extreme deprivation, meaning that they don't even have enough to feed themselves. Moreover, this is a region where the richest 10% of the population is between 18 (El Salvador) and 54 (Honduras) times richer than the poorest 10%. Yet, in Honduras, Guatemala and El Salvador public expenditure on education, healthcare, housing and social security hovers around or barely above $200 per capita per year. In Uruguay it is $1,600. In Finland it is almost $11,000.

The fiscal weakness of states in the Northern Triangle has profound consequences. A society that is unable to do something about deprivation and inequality runs a significant risk of experiencing high levels of violence and a certain kind of politics, where the populist temptation becomes a permanent danger. More fundamentally, fiscally weak states have great problems creating national institutions able to exert effective control over their territory. It is hardly surprising, for instance, that Guatemala, a country that collects barely above 10% of GDP in taxes, faces a peculiarly acute challenge of organized crime. Such a paltry level of tax collection –one of the world's lowest—means, in practice, that state institutions do not travel much beyond urban areas.

Ultimately, the inability of the state to provide adequate public goods and services –including personal safety, the most basic of all public goods—has multiple corrosive effects on democratic stability and development.

Endemic corruption. The deleterious effects of fiscal weakness are compounded in Northern Central America by the presence of widespread corruption, notably in Guatemala and Honduras. The case of *"La Linea"* –the ploy to siphon off custom duties which led to the recent

removal from office of Guatemalan President Otto Pérez-Molina—and the embezzlement of over $335 million from Honduras' Social Security Institute, are but recent examples of the corrupt practices that pervade states in the Northern Triangle. These practices are the result of a toxic combination of factors –the blurring of lines between public and private activities by entrenched elites, the growing penetration of organized crime in political structures, the overlapping of political elites and the media, and, above all, the dire state of judicial institutions, which inexorably leads to widespread impunity. The scale of the problem ought not to be underestimated. Relative to the size of the economy, the irregularities uncovered at Honduras' Social Security system –equivalent to nearly 2% of the country's GDP—dwarf the massive bribery scandal at Brazil's Petrobras by a factor of 20.

This is reflected in the poor scores that Guatemala and Honduras receive in every corruption measurement available. In 2014, Guatemala and Honduras stood at the 115th and 126th places out of 175 countries in Transparency International's Corruption Perception Index. Among Latin American countries, only Nicaragua, Paraguay and Venezuela were ranked below. Similarly, the 2014 World Bank's Worldwide Governance Indicators placed Guatemala and Honduras in the percentiles 28 and 23, respectively, in terms of the ability of their institutions to control corruption. Moreover, their scores on this variable have remained static (Guatemala) or deteriorated (Honduras) since 1998. According to the Latin American Public Opinion Project's Americas Barometer 2014, 20.7% of Guatemalans and 23% of Hondurans were asked for a bribe in the previous year. It is important to note that in all these measurements El Salvador tends to score significantly better than its neighbors and closer to the Latin American norm. For instance, it occupied the 80th position in Transparency International's 2014 ranking, trailing only Costa Rica in the Central American region.

As suggested above, the state of judicial institutions is a crucial explanatory factor in this story. In all three countries, political interference in judicial and, more broadly, overseeing institutions (such as the Attorney General, Comptroller's Office, Ombudsman, etc.) is rife, belying in practice the spirit of the legal processes to appoint these authorities and, more generally, the notion of checks and balances. The premature removal from office of greatly respected Attorney General Claudia Paz y Paz by Guatemala's Constitutional Court in 2014, widely seen as politically motivated; the crass dismissal of four members of Honduras' Supreme Court by the National Congress in 2012, a direct retaliation for rulings objected to by the then Speaker of Congress and now President, Juan Orlando Hernández; and the grave political impasse between El Salvador's National Assembly and Supreme Court over the appointment of the members of the latter in 2012,

are a few examples of the very limited autonomy enjoyed by the institutions entrusted with enforcing the law and controlling the exercise of power. As the current example of Brazil and, more surprisingly, Guatemala vividly show, the presence of independent prosecutors and judges is an essential component of any effort to eradicate malfeasance and hold politicians accountable. The precarious independence of judges is surely one of the reasons why, according to *Latinobarómetro 2015*, a regional survey, levels of trust in the judiciary in the Northern Triangle are exceptionally low. Only 23% of Guatemalans declare having some or a lot of trust in the judiciary, a figure that falls to 22% in the case of Honduras and 16% in El Salvador, the lowest figure in Latin America.

More broadly, the endemic corruption and the chronic weakness of checks and balances that underlies it are surely two key factors that help explain why El Salvador, Honduras and Guatemala are the three countries at the bottom of Latin America when it comes to levels of support for democracy as a political system. According to *Latinobarómetro 2015*, only 41% of Salvadorans, 40% of Honduras and 33% of Guatemalans prefer democracy to any other government system, well below the Latin American average (56%).

That is why the recent removal from office and arrest of Guatemala's President Otto Pérez-Molina marks a watershed in the region's history. It offers a glimmer of hope in a region where corruption and impunity have long doomed institutions to sub-par performance. It also suggests that the convergence of an active civil society and external pressure –in this case embodied by the UN-sponsored International Commission against Impunity in Guatemala (CICIG by its Spanish acronym)—can activate long-dormant accountability mechanisms and checks on power. This is far from sufficient to clean up rotten political systems, but is a crucial step in the right direction. The struggle for democracy and development in Central America's Northern Triangle is, above all, a fight for the rule of law, a battle for accountability and, therefore, against all forms of impunity.

Economic vulnerability. The woeful state of political institutions and the chronic under provision of public goods are accurate predictors of serious economic shortcomings. For the vast majority of migrants from Northern Central America economic reasons underlie the decision to leave their countries. Despite the significant efforts made by all three countries to open up their economies, their economic structures appear unable to generate the kind of growth that could make a real dent in their high levels of poverty and social exclusion. Over the past decade, per capita income growth in Honduras (2.3% on average in 2003-12), El Salvador (1.5%) and, particularly, Guatemala (0.9%) has been mediocre at best. Given their massive distributional problems, it is

hardly surprising that the majority of the population in all three countries remains mired in poverty or economic vulnerability.

For countries in the Northern Triangle, the path towards a successful integration into the global economy is fraught with uncertainty. For all the opportunities that CAFTA-DR has opened up for these small economies, it is obvious than much more than free trade agreements will be needed if they are to thrive economically and significantly increase their development levels. Even CAFTA-DR has proved a mixed blessing –over the past few years, bilateral trade with the United States has grown a lot, but is consistently favorable to the United States. Unlike some of their neighbors to the South, such as Costa Rica and Panama, countries in the Northern Triangle remain stuck in a model of international insertion largely based on cheap labor, an option that has translated into a predominant role for the export of agricultural products and textiles and apparel. For instance, textiles and apparel comprise well over one half of US-bound exports in the case of El Salvador and Honduras. At the very least it is questionable that such a model will be sustainable in light of the economic emergence of China, India and even Vietnam.

If countries in the Northern Triangle are to prosper, they must tackle the truly difficult task of raising the productivity level of their labor force. This calls for a set of very difficult undertakings, including increasing education expenditures that are dismally low and inefficient. Today, almost three quarters of the workforce in the Northern Triangle still lack a complete secondary education, including almost one third that has not finished even the primary education. It also requires improving road and port infrastructure that is among the very worst in Latin America, and bringing research and development investments beyond the pitifully low levels that they have now. This is a point that deserves some emphasis. At 0.3% of GDP, the resources that Costa Rica invests in research and development are far and away the highest in Central America. Yet, that percentage is less than half the figure for Latin America and the Caribbean as a whole, and one-fifteenth the figure for Israel. The number of resident patent filings per million inhabitants in Guatemala is roughly on a par with that of Uganda or Zambia. You don't have to be a fortune-teller to foresee the difficulties that Guatemala will have to keep pace with the 21st Century.

Also, the region must lend a hand in myriad ways to small and medium enterprises that are 97% of firms in Central America and which only rarely sell their products abroad. Ultimately, the Northern Triangle must find a way to drastically reduce the more than 60% of the labor force (over 70% in Guatemala) that currently works in informal jobs with negligible productivity.

All this demands enormous public investments of different kinds and a state that works, which of course takes the discussion back to the question of fiscal robustness. Yet, unless countries in Northern Central America undertake these reforms, integration with the world economy will only consolidate the social and economic segmentation that afflicts them today, and the region's growing propensity to export its people.

For these countries, introducing the structural changes that are needed to enhance productivity, economic dynamism and opportunities is a tall order. It would be so even if they didn't have in remittances an economic shortcut that allows them if not to thrive, then at least to stay afloat. But they do. Today, remittances contribute 10% of GDP in Guatemala, nearly 17% in El Salvador, and over 18% in Honduras, a proportion that hasn't changed much over the past few years. The plain truth is that it is migrants that make the trek north that keep these economies viable. Bar a drastic tightening of migratory rules in the United States, this is unlikely to change for the foreseeable future. Sadly, given the difficulties involved in addressing structural economic weaknesses and the lack of obvious sources of sustainable growth, Northern Central America's economic future will most likely hinge on its ability to continue exporting its young people. In the absence of a dramatic change of heart by its political and economic elite, the region will have to give up its best hope for the future in order to have any kind of future.

Crime and violence: For all the gravity of the political and economic problems laid out in the previous paragraphs, there is little doubt that the most pressing challenge faced by the Northern Triangle and the one that truly sets the region apart concerns the extraordinarily high levels of crime. As has been said often over the past few years, the northern half of the Central American isthmus is now the most violent region in the world outside of active war zones. Homicide rates in the region are among the highest in the world, with recent figures in Honduras (87.3 murders per 100,000 people on average in 2010-13, although it came down slightly in 2013) and El Salvador (expected to approach nearly 100 per 100,000 this year) reaching unprecedented levels in Latin America and the Caribbean, if not the world. More than 120,000 Guatemalans, Hondurans and Salvadorans have died perished in the past ten years as a result of crime. Last year, Honduras alone had far more murders than the 28 member states of the European Union combined.

Murder rates are merely the most visible consequence of the problem. The proportion of households that have been victims of crime in the course of the past year is greater than one third in every country in the Northern Triangle. To this we have to add several other manifestations of violence whose magnitude we can only guess. Different estimates place well above 50,000 the

number of members of youth gangs –known as *maras*— in all three countries. These gangs have a significant incidence in the region's violence levels, as well as a growing participation in supporting organized crime.

Indeed, violence levels in Northern Central America –notably in Guatemala and Honduras, less so in El Salvador-- cannot be understood but in terms of the pervasive presence of organized crime in the region, particularly drug trafficking. Close to 90% of the cocaine destined for the U.S. transits through the Central America and Mexico corridor. It is not coincidental that Central America exhibits the highest murder rates in the world.

The consequences of this tragedy are multifold, and go beyond the obvious human cost. There are economic implications, which become clear when we think that more than half the murder casualties in Central America are young men between 15 and 29 years old, at the peak of their productive and reproductive lives. The World Bank's recent estimation of the direct and indirect cost of violence in Central America put it at nearly 8% of the region's GDP.

Yet, it is the political consequences that I want to emphasize here. The perception that state authorities are unable to protect the citizen's most fundamental rights is visibly damaging the support for democratic institutions in Central America and becoming a breeding ground for authoritarian attitudes. According to a 2008 study by José Miguel Cruz, a scholar at Florida International University, 53% of the population in Guatemala, El Salvador and Honduras was willing to support a coup d'etat if it helped to solve insecurity problems, a reaction that no other social problem elicited. The Central American population –as frightened as it is eager for public order—is heeding carefully and often rewarding at the ballot box populist rhetoric that offers the "iron fist" and a cavalier attitude towards the rule of law to solve the problem.

This is unfortunate, for the record of "iron fist" solutions to crime is poor. Both Honduras and El Salvador offer a poignant reminder of this. In Honduras, the enactment since 2002 of successive legislative packages to deal with crime, with clear repressive overtones, has only made the situation worse. The 56 murders per 100,000 people that the country had in 2002 have climbed to nearly 90 today, the worst figure in the world. The Salvadoran experience is more complex, but equally unfortunate. In that country, the introduction of the "Iron Fist" and "Super Iron Fist" acts in 2003 and 2004 was unable to prevent the massive escalation of violence that preceded the adoption of a semi-official truce between the main youth gangs in 2012 and, later, a precipitous fall in the number of homicides. The collapse of the truce in 2014 has seen the return, with a vengeance, of three ills that seem to march apace – a virtual state of war between the gangs, widespread fear in

society, and a heavy handed response from the government, which appears at a loss as to how to stop the vicious cycle of killings. August of 2015 ended with more than 900 homicides, making it the deadliest month since the end of the Civil War in El Salvador. In all likelihood, the return of the iron fist and, more worryingly, of the militarization of public security will not be more successful than previous iterations of the policy.

A second crucial political consequence is the weakening of the state and its legal powers. As is the case in certain regions of Mexico, in some places in Northern Central America that have been overrun by organized crime, it is debatable whether the state still enjoys the monopoly over legitimate coercion.

The consequences of the weakening of the state's writ are several. One of them is the growing tendency amongst the citizenry in these countries to defect from the public instruments to protect security, whose activation is considered useless or even counterproductive. This defection can take different shapes that range from the reluctance of the population to report crime, to the proliferation of private security firms, and the acceptance of lynching as a valid method to fight crime. Last but not least, many citizens of the Northern Triangle are defecting by leaving their country.

For all the tough talk about "iron fisted" solutions, a sustainable reduction of crime levels in the Northern Central America requires far more than the use of coercion. It demands a comprehensive policy combination that gives priority to reforming notoriously corrupt and inefficient police forces, introducing modern technology and information systems to sustain policy decisions, strengthening social ties and the organization of communities, and, above all, investing a lot more in education, health, housing and opportunities for the youth. Such is the road travelled by successful experiences in Latin American cities like Bogota and Sao Paulo, which have managed to slash violence levels in the past two decades. With 80 murders per 100,000 people, Bogota was one of the world's most dangerous cities in 1994; in 2014, with 17, it was one of the safest capitals in the Western Hemisphere. Balancing "zero tolerance" for crime with "zero tolerance" for social exclusion offers a way forward even in dire circumstances.

What is to be done? As is plain to see, the pathologies that hold back the Northern Triangle of Central America and drive many of its citizens to leave their countries are not just complex but deeply intertwined.

The penetration of organized crime, one of the most serious challenges of the region, provides a vivid example of the toxic interaction between these factors. The vulnerability of the

countries in the Northern half of Central America to the ravages of organized crime is not simply the result of an accident of geography, of the peculiar misfortune of living equidistant from some of the largest drug producing countries as well as the single largest drug-consuming nation. Unfortunate as that may be, these countries are vulnerable to organized crime primarily because their fiscally anemic states are, in some cases, unable to exert effective control over their territory, thus creating an environment for crime syndicates to operate untrammeled. They are vulnerable, also, because their public institutions –starved of resources and debilitated by endemic corruption—are incapable of making the investments required to enhance the dynamism of the economy, prepare their countries for the 21st Century and, above all, enlarge the opportunities of young people to live a long, healthy and productive life. They are unable, that is, to prevent one of the calamities that lie at the core of the region's travails – that 25% of young people that are neither studying nor working, that have no stake in their societies, and that find it difficult to resist the pull of gangs and other criminal organizations. Moreover, these three Central American nations are vulnerable to organized crime because their law enforcement institutions have all but collapsed under the weight of venality and political interference and display a long history of turning a blind eye to the abuses of the powerful. These institutions are attractive to organized crime because they have long been instruments not of justice but of impunity. It is thus impossible to deal successfully with organized crime –or with the causes of large-scale migration, for that matter—unless all these issues are tackled in an integral, genuine, and sustained way.

Solving the predicament of the Northern Triangle requires that truly structural steps are taken, such as creating modern, progressive and robust tax systems; introducing real checks and balances; ending widespread impunity; and abandoning a patrimonial conception of the state, which blurs the lines between public and private interests. Needless to say, the impulse to do all this must come from within the countries, mainly from within political and economic elites that historically have fallen woefully short of their responsibilities. None of this can be corrected by international assistance alone. Yet, given the magnitude of the challenges, none of this can be corrected without international assistance.

The United States, in particular, can and should play an important role in supporting the necessary changes. For Washington paying more attention to the Northern Triangle of Central America is not a favor or an act of charity. In the case of a region that is showing disturbing signs of instability, that is a stone's throw away from the United States and that has already sent three million of its people to the shores of this country it could only be considered enlightened self-interest.

The following are some of the ways in which the United States could play a limited but meaningful role in helping the nations of the Northern Triangle help themselves:

Fund generously the Alliance for Prosperity in the Northern Triangle. The Alliance for Prosperity, whose funding is currently under the consideration of the US Congress, is a valuable and well-conceived program that is worthy of support. Above all, it is a sign that the United States cares about its neighbors and is actively trying to shape the future of a relationship –with Central America—that is doomed to be part of US policy debates, as has happened time and again over the past 150 years. The Alliance's strategic lines (stimulating the productive sector, developing opportunities for people, improving public safety and justice, and strengthening institutions) embody the long-term and integral approach that is essential in order to bring about structural change in Northern Central America and, hopefully, contain migratory flows to the United States. It would be a significant loss, not just to Central America, but also to US taxpayers, if as a result of bureaucratic or political tussles in Washington, the program sheds its holistic conception and winds up as yet another narrow counter narcotics effort. As mentioned above, development problems in the Northern Triangle are complex and mutually reinforcing. It is highly unlikely that any effort designed to tackle any one of them will have any impact if it fails to set in motion changes in other policy areas.

Helping rebuild law enforcement institutions in the Northern Triangle should be one the priorities of the Alliance. While, it ought to be acknowledged that rebuilding them is a generational endeavor, which only the countries themselves can undertake, assistance from the United States, as well as from Mexico, Colombia and other regional partners, can nonetheless play an important role. International assistance in this field can only hope to bring about visible changes if it focuses on a few urgent institutional programs that may exert a catalytic effect on the transformation of the image and efficacy of law enforcement bodies in the region. Particularly urgent tasks on which US assistance could have an impact include:

a. Improving internal control and anti-corruption units within law enforcement bodies;
b. Adopting modern information technologies (from regular victimization surveys to *CompStat*-like crime data gathering systems) as part of the policy making process;
c. Creating vetted units to handle complex multi-national investigations;
d. Improving investigation and prosecutorial capacities with regards to complex financial crimes.

Support Guatemala's CICIG and expand it. The US government played no small part in the

creation of CICIG in 2006. Even before its crucial role in the investigation that led to the resignation of President Pérez-Molina in Guatemala, the Commission had proved a valuable resource to carry out complex investigations that, almost certainly, were beyond the capabilities of Guatemala's law enforcement bodies. After eight years, the Commission can point to real successes in solving high-profile criminal cases, much as its efforts have on occasion been undermined by rulings by the local judiciary. Whatever criticism may be directed against CICIG, it remains a carefully vetted unit in a country in which the penetration of law enforcement institutions by crime syndicates is a serious problem. Despite the obvious displeasure of former President Pérez-Molina, CICIG's mandate was recently extended until September 2017. The international community's continued support –financial as much as political—for CICIG is vital not just for Guatemala, but also for the whole region. The experience of CICIG provides an obvious blueprint for similar bodies that could and perhaps should be adopted in other countries of the Northern Triangle, notably Honduras.

Indeed, the option of expanding CICIG beyond the Guatemalan borders and turning it into a regional body, covering all three countries of Northern Central America, should be considered. Besides economies of scale, such a step could offer a solution to the thorny coordination issues that mar regional efforts against organized crime and diminish the effectiveness of the considerable flows of international assistance that support anti-crime efforts in Central America ($1.7 billion for the whole of Central America since 2003, according to research done by the Inter American Development Bank and the Washington Office for Latin America).

The model of CICIG offers a superior alternative to the plan, currently under consideration, to create an OAS-sponsored Mission of Support against Corruption and Impunity in Honduras (MACCIH by its acronym in Spanish). While not devoid of merits, the latter plan substitutes an elaborate set of functions to advise law enforcement institutions in Honduras for the robust investigation and prosecuting powers that have proved so crucial to CICIG's success in Guatemala. This is a glaring flaw. Nonetheless, if the political will to establish a CICIG-like body in Honduras proves impossible to secure, then the current proposal should be given the benefit of the doubt and its implementation ought to be carefully monitored by the international community.

Help small and medium enterprises (SMEs) take advantage of CAFTA-DR. SMEs are the great engines for the creation of employment in Central America. Yet, they seldom have access to international markets. Helping them make the most of the opportunities opened by free trade with the United States would be a major transformation on many levels. The funds to support such a

program could be disbursed over several years and conditioned on Central American governments raising a matching sum from domestic sources. This exercise in co-responsibility should indeed become a general principle informing US-Central America relations.

Incentivize research and technology transfer in renewable energies. The development of renewable energies offers the promise of fruitful collaboration between the United States and Central America. At the very least, as advocated by the Partnership for the Americas Commission a few years ago, the US government—perhaps in partnership with other governments in the hemisphere—should establish a Renewable Energy Laboratory of the Americas in the isthmus, with the objective of promoting hemispheric cooperation on developing and transferring solar, wind, geothermal and cellulosic-biomass technologies. That would be an important step to help Central America develop one of the few sectors in which it has real long-term economic potential.

Insist on structural reforms. There are clear limits to what even a generous and soundly conceived program of foreign assistance can achieve in Northern Central America. The lion's share of the task of transforming Guatemala, Honduras and El Salvador must be borne by the citizens and, above all, the elites of these countries. It is a legitimate question whether the US Government will find in the current political elites in the Northern Triangle the suitable partners to make the effort of assisting the region worthwhile. There are no easy answers to that question. The case of President Pérez-Molina in Guatemala and the unprecedented popular mobilization against corruption in Honduras suggest that some of the best partners are to he found in the region's increasingly assertive civil societies. One can also point to brave, isolated reformers that are willing to defy impossible odds to bring about institutional change. The examples of Guatemala's former Attorney General Claudia Paz y Paz, police reformer Hellen Mack, and the prosecutors and judges that recently stood up to Otto Pérez-Molina in Guatemala come to mind. Also worth mentioning is the experience of the members of the Constitutional Court in El Salvador, which over the past few years have shown their willingness to assert their political independence and reform the Salvadoran political system. Identifying those champions of reform is difficult but possible. In any case, it is essential if external efforts to help these countries are to have any chance to succeed.

I will submit that when it comes to political partners in the region, the US Government can gauge their seriousness according to two basic criteria: first, their readiness to push for robust and progressive tax systems; and, second, their sincerity about introducing checks and balances and promoting judicial independence, without which any effort against corruption and impunity is doomed to failure. Hence, attempts to pack the Supreme Court or to introduce indefinite reelection,

for instance, ought to be taken for what they are – preludes to the corruption, power abuse and impunity that have sadly been the historical norm in much of Central America. This behavior is simply inimical to any real effort to establish the rule of law in the countries of the isthmus.

Introducing progressive tax reform and real checks and balances on executive power are the crux of the matter in the Northern Triangle. If the United States is serious about helping Guatemala, Honduras and El Salvador, it should not be shy about demanding those structural changes.

Central America needs the generous help of the United States, but it must do its share of the task if it is to have a future, one in which its young people hopefully will choose to build their lives in their own country.

Statement by Duncan Wood, PhD

Director, Mexico Institute

Woodrow Wilson International Center for Scholars

Before the Committee on Homeland Security and Governmental Affairs
United States Senate

"Ongoing Migration from Central America: An Examination of FY2015 Apprehensions"
Wednesday, Oct. 21, 2015, at 9:30 a.m.

Introduction

The dramatic spike in the number of unaccompanied minors arriving at the U.S.-Mexico border in the summer of 2014 raised public awareness in the United States of a tendency that had in fact been underway for a number of years. Since the late 2000s, as Mexican undocumented migration to the United States entered into steady decline, a growing number of Central American migrants have been making their way through Mexico towards the United States. This transmigration phenomenon reflects increasingly harsh and violent conditions in many of the countries of Central America, as well as growing desperation brought about by poverty and the failure of national economies, as noted in previous Senate HSGAC hearings.

Partly in response to this phenomenon, and partly in response to the intense criticism that was aimed at the Mexican government in the wake of ongoing abuses of Central American migrant rights, in July 2014, Mexican President Enrique Peña Nieto launched the *Programa Frontera Sur* (PFS or South Border Program) with two main official objectives: first, to protect migrants who enter Mexico, and second, to manage the ports of entry in a way that promotes the security and prosperity of the region. The PFS involves a massive investment in infrastructure and procedures that represents a credible attempt to impose some sense of order in Mexico's southern region, and gives the Mexican state a highly visible presence in an area that has traditionally been ignored or neglected by Mexico City.

It is important to recognize here the complexity of the task at hand. Mexico's southern border region is a varied and complicated area, with mountains and jungle, extreme poverty but great natural riches, and an extraordinary diversity of indigenous cultures. The border itself is defined by both river and land crossings, with three major rivers on the southern border: the Rio Suchiate and Rio Negro/Usumacinta along the border with Guatemala, and the Arroyo Azul/Rio Hondo with Belize. The topography of the region alone makes complete control of cross-border traffic an impossible task. To complicate matters further, there are a number of small urban centers at the border, with uncontrolled border crossings existing right beside the formal border management facilities.

Indeed the number of formal crossing points that exist along the border is dwarfed by informal crossings. Many of these are crucial for local commerce and support the local economy. One of the most important observations from recent Wilson Center tours of Mexico´s southern border is that official strategies to contain illegal flows need to take into consideration the needs of the local community, so as to not interrupt these economies and trade. In addition to protecting the livelihoods of local families, this is important for two further reasons. First, local communities have a history of protesting projects that damage their interests, and this can force governments to back down. There are stories of this on both sides of the border, in a number of cases. Second, securing the cooperation of the local community is crucial to the effective gathering of intelligence about illicit flows and routes in the vicinity. In these cases, a military or police presence to deter the trafficking of weapons, arms

and people is preferable, as most of the traffic is back and forth, a perfectly natural phenomenon for neighboring communities.

The case of Ciudad Hidalgo-Tecun Uman is illustrative. The presence of both an official border crossing on the Mexican side and multiple informal crossings allows those who wish to cross formally into Mexico to do so, while those who prefer to circumvent Mexican authorities face few barriers. After the devastation of Hurricane Stan in 2005, Mexico's national water commission, CONAGUA, built strong and high levees on the Mexican side of the Rio Suchiate in the Ciudad Hidalgo area. Although appreciative of the protection against the devastation of future natural disasters, the local community protested that their access to the river and its informal crossings had been impeded. In response, the CONAGUA built a pedestrian and small, light vehicle pathway over the levee, so that the informal commerce could continue. This was a story that was repeated several times during the Wilson Center tours of the border regions: if local community concerns are not heeded, then authorities have come to expect that protests and blockades of official crossings and border installations will result.

Furthermore, it is crucial to recognize that Mexico's attempts to begin to assert some control over its southern border are still at a preliminary stage. Although impressive progress has been made over the past few years, the *Program Frontera Sur* is very much a work in progress, and we should not expect it to provide a comprehensive solution to undocumented migration nor flows of illicit goods. However, the work undertaken thus far has delivered significant results, and it is at last possible to talk about meaningful action taking place on North America's southern border.

Mexico eyes its southern border

Until very recently, Mexico's border with Guatemala and Belize was poorly marked, with inadequate attention paid to demarcating the exact border. However, in recent years, the Mexico-Guatemala *Comision Internacional de Limites Y Aguas* (CILA or International Boundary and Waters Commission) has made an impressive effort dedicating resources to tracing and marking the border, building and maintaining border monuments that definitively show the limit of Mexican territory. It is vital to emphasize the central role played by the CILA: not only is it the government agency that handles most of the day-to-day border management in the south, it is a vitally important repository of on-the-ground knowledge and understanding.

In 2013, the CILA carried out an impressive survey of Mexico's southern border that represents the best effort to date at recording both formal and informal border crossings. The survey identified eight formal border crossings with Guatemala, as well as fifty-seven informal crossing points; with Belize, it noted two formal crossings, and one informal (near the Mexican town of La Union). This latter figure is likely inaccurate; the border between the two countries is 288 kilometers in length, and the only formal crossings are near the Mexican city of Chetumal and the Belize city of Corozal at the extreme east of the border. Although the rest of the

border region is sparsely populated, it is likely that there are other informal crossing points that have not been identified to date.

The 2013 CILA survey also gave an estimate of the daily traffic crossing the border at the formal crossing points. Although these figures are based on the best guesses of border personnel, rather than a scientific study, they offer a useful estimate of infrastructure and staffing needs at the official border points. Furthermore, the survey recorded each of the Mexican government agencies that are represented at each official crossing, along with their current staffing levels. Most importantly, the survey identified the most important challenges and problems at each of the formal crossings, on both sides of the border. It is hoped that this survey is taken into consideration when future investment decisions are made.

The *Programa Frontera Sur* focuses on five different goals to be able to assert greater control over the southern border region. These goals are:

- Regular and Ordered Migration
- Improvements in Infrastructure, for border security and migration
- Protecting Migrants
- Regional Shared Responsibility
- Interagency Coordination

The recent Wilson Center tours of the southern border have verified that there has been significant progress in each of these areas, and the result has been a much higher visibility of Mexican government agencies throughout the south.

New efforts to control migration

As part of the PFS, the Mexican migration authorities have been implementing a number of new initiatives to try to impose some order on the transmigration phenomenon. First, two new visas have been issued for Guatemalan and Belizean citizens who wish to visit Mexico. The *Tarjeta de Visitante Regional* (TVR or Regional Visitor Card) allows visitors to cross into border municipalities with an unlimited number of entries, each of which is limited to a 72 hour period and is valid for up to 5 years. Since 2014, this visa has been free of charge (prior to this it cost 295 pesos). For those people who wish to work in the border region, the government issues a *Tarjeta de Visitante Trabajador Fronterizo* (TVTF or Border Worker Visitor Card) which costs 305 pesos. In 2015 thus far, almost 80,000 people were granted the TVR visa, and around 11,000 TVTF visas. The PFS mandated simpler application procedures and new offices for issuing the permits. These permits allow those who wish to cross formally into Mexico to do so in an entirely legal way. More importantly, the regional visa system is an attempt to formalize what had hitherto been a largely unsupervised phenomenon. They do not, however, address the issue of those who are crossing Mexico to get to the United States.

Table 1: Regional Visitor Permits (TVR) issued in 2015 by state and place of issue

País de residencia/ Entidad federativa/ Punto de expedición	Enero	Febrero	Marzo	Abril	Mayo	Junio	Julio	Agosto	Total
Total general	**9 110**	**9 420**	**12 832**	**9 133**	**9 334**	**11 220**	**10 149**	**8 552**	**79 750**
Total Guatemala	**8 808**	**9 238**	**12 599**	**8 943**	**9 084**	**10 994**	**9 930**	**8 345**	**77 941**
Chiapas	**8 177**	**8 717**	**11 915**	**8 445**	**8 580**	**10 313**	**9 408**	**7 807**	**73 362**
Carmen Xhan	435	637	896	597	589	835	448	773	**4 808**
Ciudad Cuauhtémoc	1 499	1 283	1 663	1 558	1 601	1 550	1 828	1 550	**12 532**
Ciudad Hidalgo	2 597	2 818	3 961	2 686	2 701	3 483	2 713	2 421	**23 380**
Talismán	3 159	3 541	5 136	3 241	3 430	4 207	4 161	2 997	**29 872**
Unión Juárez [2/]	487	438	459	383	259	438	260	66	**2 770**
Tabasco	**631**	**521**	**684**	**498**	**504**	**681**	**522**	**538**	**4 579**
El Ceibo	631	521	684	498	504	681	522	538	**4 579**
Total Belice	**302**	**182**	**233**	**190**	**250**	**226**	**219**	**207**	**1 809**
Quintana Roo	**302**	**182**	**233**	**190**	**250**	**226**	**219**	**207**	**1 809**
Chetumal, Subteniente López	302	182	233	190	250	226	219	207	**1 809**

Table 2: Visiting Border Worker Program (TVTF) permits issued 2015 by state and place of issue

País de residencia/ Entidad federativa / Punto de expedición	Enero	Febrero	Marzo	Abril	Mayo	Junio	Julio	Agosto	Total
Total general [2/]	**2 352**	**1 339**	**1 358**	**1 332**	**1 323**	**1 392**	**973**	**773**	**10 842**
Total Guatemala	**2 349**	**1 339**	**1 357**	**1 332**	**1 323**	**1 392**	**973**	**771**	**10 836**
Chiapas	**2 345**	**1 336**	**1 355**	**1 331**	**1 308**	**1 392**	**969**	**769**	**10 805**
Carmen Xhan	-	-	-	-	-	-	-	-	-
Ciudad Cuauhtémoc	462	117	86	198	184	166	204	118	**1 535**
Ciudad Hidalgo	1 034	947	1 092	734	762	807	535	411	**6 322**
Talismán	849	272	177	399	362	419	230	240	**2 948**
Unión Juárez	-	-	-	-	-	-	-	-	-
Tabasco	**4**	**3**	**2**	**1**	**15**	**-**	**4**	**2**	**31**
El Ceibo	4	3	2	1	15	-	4	2	**31**
Total Belice	**3**	**-**	**1**	**-**	**-**	**-**	**-**	**2**	**6**
Quintana Roo	**3**	**-**	**1**	**-**	**-**	**-**	**-**	**2**	**6**
Chetumal, Subteniente López	3	-	1	-	-	-	-	2	**6**

The Mexican government's attempts to address transmigration have focused on building new infrastructure, both at the border itself and at inland locations. Under the PFS, the ten border crossings are being enhanced, and five *Centros de Atención Integral al Tránsito Fronterizo* (Comprehensive Border Crossing Attention Centers), are being built at remote locations, on major routes northward. These new, multimodal, interagency facilities are impressive, with multiple government agencies working side by side. At each facility Mexican customs, immigration, health, agriculture, police and military agencies are represented.

In addition to border-control infrastructure, Mexico has also undertaken the construction of new migrant holding centers (*estaciones migratorias*) where migrants who have been detained in Mexican territory can be processed for

"assisted return" or deportation. The difference between these two categories in Mexico is a legal matter. Migrants are only deported if they have broken Mexican laws, whereas migrants who lack the proper papers are repatriated with the help of Mexican government agencies. The speed of this varies enormously, and much depends on the cooperation of the consuls from Central American states to expedite the process.

Table 3: Central American returns (Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panamá) 2015 Jan-Aug

Deportations	Assisted Returns
780	88636

Source: Government of Mexico, Boletin Mensual de Estadisticas Migratorias 2015, INM

Table 4: Number and percentages of deportations and assisted returns by country of origin 2015 Jan-Aug

Country	Number of deportations	Percentage	Assisted Returns	Percentage
Belice	12	1.54%	19	0.02%
Costa Rica	3	0.38%	1	0.00%
El Salvador	119	15.26%	16996	19.18%
Guatemala	473	60.64%	39851	44.96%
Honduras	171	21.92%	30883	34.84%
Nicaragua	2	0.26%	884	1%
Panama	0	0.00%	2	0.00%
Total	780	100.00%	88636	100.00%

Source: Government of Mexico, Boletin Mensual de Estadisticas Migratorias 2015, INM

Despite many complaints and some damning reports from civil society groups about the conditions and treatment of migrants in these centers, a Wilson Center research group was favorably impressed by a tour of the *Estacion Migratoria Siglo XXI* in March of 2015. However, on a later visit to a smaller processing center at La Trinitaria, Chiapas, there appeared to be a brazen disregard for migrant rights where registration forms were pre-filled before being given to the migrants, including the section of the form that asks whether the individual is requesting refugee status.

Naturally, migrants have learned quickly about the location of these centers, and alternate routes have been identified to circumvent them. Often, these other routes are well known to the authorities, and Mexico is investing in mobile checkpoints that can cover some, but not all, of the alternative paths. As is the case with migration around the world, shutting off one route simply pushes migrants to take different, often more difficult and dangerous paths though southern Mexico.

During our research, we asked both authorities and civil society groups about the unaccompanied minors phenomenon. We were told that the dramatic rise in numbers last year was not being repeated in 2015, but that there are still significant numbers moving northwards.

Table 5: Number of Unaccompanied Central American Minors,2015 Jan-Aug

Country	January	February	March	April	May	June	July	August	Total
Belize	0	0	0	0	0	1	0	0	1
El Salvador	94	155	189	195	263	243	299	308	1746
Guatemala	471	600	629	631	726	751	803	748	5359
Honduras	181	251	321	285	337	351	377	315	2418
Nicaragua	0	3	0	1	2	1	2	1	10
Panama	0	1	1	0	0	0	0	0	2
Total	746	1010	1140	1112	1328	1347	1481	1372	9536

Source: Government of Mexico, Boletin Mensual de Estadisticas Migratorias 2015, INM

The advances that have been made in Mexican border infrastructure are especially impressive when compared with the relative lack of order on the Guatemalan side. At all of the formal crossings between Mexico and Guatemala, the Mexican government is investing heavily in developing border control capacity, while its Guatemalan counterpart appears to be doing nothing to improve its own measures.

The investment in infrastructure and procedures on the part of the Mexican government is indeed impressive, and can be understood both as an attempt to gain control of illicit and licit flows of goods and people north from Central America, as well as a clear effort to deter illicit flows by raising the costs of transportation of drugs and weapons. There is also clearly an effort to diminish the flows of undocumented migrants, and the existence of more, and better-equipped migration stations and offices is surely pushing migrants crossing from Central America to find other routes.

In the case of Guatemala, the Mexican government appears to have placed a heavy bet on its counterpart following through on commitments to complete border infrastructure projects, with little evidence that those commitments will be honored in the near future. However, in the case of Belize, the Mexican government has found a partner that has thus far cooperated ably, and there appears to be a common desire to regularize flows.

Despite this spirit of cooperation and the infrastructure and procedural achievements by the Mexican government, our journey along the border revealed that there are still major challenges to be overcome. First, the sheer number of informal crossings from both Guatemala and Belize almost beggars belief, with trails, roads, and river crossings either policed infrequently by just the military (to impede the flow of weapons and drugs) or not at all. Some informal crossings are

signposted by locals who hope to derive an income by permitting access to paths through the jungle; others are hidden away from view. These informal crossings often thwart the efforts of the Mexican government to control flows as they lead to other routes that circumvent border controls, both at the border itself and inland. In fact, we saw a number of examples where roads provided short cuts that bypassed the largest control centers on major highways. The solution clearly lies in a combination of fixed-location controls and more mobile units that can be used to deter the use of alternative routes.

Overall, the recent Wilson Center tours of Mexico's southern border observed a considerable and increasing formalization of traffic and a much more visible presence of government agencies. This involves multi-million dollar investments in infrastructure, as well as considerable planning. An important recognition is that this is an evolving situation. As Mexico invests more in border infrastructure, and also learns and adapts according to its experience and interaction with foreign governments, migrants, businesses, communities and organized crime, we will see many changes, But there is certainly a strategy in place, one that seeks to assert the authority, and more importantly, the presence, of the State along Mexico´s southern border lands. It is encouraging to see how far Mexico has come, but it is also daunting when one considers how many challenges remain, many of which are outside of Mexico's control, especially when one considers the weakness and many problems facing its southern neighbors.

SECCIÓN MEXICANA DE LA COMISIÓN INTERNACIONAL DE LÍMITES Y AGUAS ENTRE MÉXICO Y GUATEMALA
SIMBOLOGÍA
MÉXICO
GUATEMALA
BELICE
ESTADO DE CAMPECHE
ESTADO DE QUINTANA ROO
ESTADO DE TABASCO
ESTADO DE CHIAPAS
Norte

SECCIÓN MEXICANA DE LA COMISIÓN INTERNACIONAL DE LÍMITES Y AGUAS ENTRE MÉXICO Y BELIZE

Norte

SIMBOLOGÍA
Carretera
Río
Cruce fronterizo formal
Cruce fronterizo informal
Municipios en México
Distritos en Belice
Línea Divisoria Internacional Terrestre
Línea Divisoria Internacional Fluvial
Línea Divisoria Internacional Marítima *
Límite Estatal o Distrital

* La Línea Divisoria Internacional Marítima en la Bahía de Chetumal es sólo ilustrativa.

MÉXICO: MUNICIPIOS ALEDAÑOS A LA LÍNEA DIVISORIA INTERNACIONAL TERRESTRE Y FLUVIAL ENTRE MÉXICO Y BELICE
ESTADO DE CAMPECHE
A - CALAKMUL
ESTADO DE QUINTANA ROO
B - OTHÓN P. BLANCO

BELICE: DISTRITOS ALEDAÑOS A LA LÍNEA DIVISORIA INTERNACIONAL TERRESTRE Y FLUVIAL ENTRE BELICE Y MÉXICO
A - ORANGE WALK
B - COROZAL

CRUCES FRONTERIZOS UBICADOS EN LA LÍNEA DIVISORIA INTERNACIONAL ENTRE MÉXICO Y BELICE

No.	Río		
1	SUBSENDERO LÓPEZ, QUINTANA ROO, MÉXICO - SANTA ELENA, CORozal, BELIZE	FORMAL
2	SUBSENDERO LÓPEZ, QUINTANA ROO, MÉXICO - SANTA ELENA, CORozal, BELIZE	FORMAL
3	LA CADENA, MÉXICO - BLUE CREEK, BELIZE	INFORMAL

MÉXICO
ESTADO DE QUINTANA ROO
MUNICIPIO OTHÓN P. BLANCO
ESTADO DE CAMPECHE
MUNICIPIO DE CALAKMUL
ASENTAMIENTO MENONITA
Vértice de las Aguas Turbias
GUATEMALA
MUNICIPIO MELCHOR DE MENCOS
BELICE
COROZAL DISTRICT
ORANGE WALK DISTRICT
Corozal
Orange Walk
Belmopan
Ambergris Cay
Chetumal
Bahía de Chetumal

LÍNEA DIVISORIA INTERNACIONAL ENTRE MÉXICO Y BELICE

Tramo	Longitud
Mojón de Gadsden	13.7 km
Arroyo Azul - Río Hondo	185.0 km
Bahía de Chetumal	86.3 km
Canal Sara Bladder Creek	3.4 km
Total	288.0 km

Los valores de las distancias geodésicas fueron determinados por el INEGI en el año 2015, en el sistema ETRF93, época 1988.0

Sección mexicana de la Comisión Internacional de Límites y Aguas México - Guatemala - Belice
LÍNEA DIVISORIA INTERNACIONAL TERRESTRE Y FLUVIAL ENTRE MÉXICO Y BELICE
Esc. 1:250 000
Septiembre de 2015

1666

Testimony of

Most Reverend Mark J. Seitz
Bishop of El Paso, Texas

Before

The Senate Committee on Homeland Security & Governmental Affairs

On

Ongoing Migration from Central America: An Examination of FY 2015 Apprehensions

October 21, 2015

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I am Bishop Mark Seitz, the Roman Catholic bishop of El Paso, Texas. I am pleased to have the opportunity to comment today on behalf of the U.S. Conference of Catholic Bishops (USCCB) on the United States government's response to unaccompanied children and families arriving from Central America.

I would like to thank you, Chairman Johnson, and Ranking Member Carper (D-Delaware), for holding this hearing on such a vital issue to our nation. As you know the care of unaccompanied children and families fleeing violence in Central America is of great importance to our Church.

One of Jesus' first experiences as an infant was to flee for his life from King Herod with his family to Egypt. Indeed, Jesus Himself was a child migrant fleeing violence. Jesus, Mary, and Joseph were asylum-seekers and faced the same choice as the one facing thousands of children fleeing to the United States each year. The Holy Family is the archetype of the refugee families we see today, both at our border and around the world.

Mr. Chairman, we are pleased that children and families are no longer languishing in over-crowded Border Patrol facilities for weeks at a time but note that there is still much work to be done to ensure that they are treated with dignity and protected in their home countries, neighboring countries, along migration routes, at international borders, at the U.S. border, and in American communities. I would like to point out that while the volume of unaccompanied children and families arriving into the United States has decreased from last year, the numbers are still high and the protection needs for these children and families are as apparent and important as ever Close to 40,000 unaccompanied children have arrived this recently passed fiscal year, with an equal number of young mothers with children.

Mr. Chairman, USCCB feels that the migration of unaccompanied children and families is a humanitarian and international protection situation that must be viewed regionally. Children and families are facing life-threatening violence and refugee situations and are falling prey to human smuggling and trafficking to escape. As such I organize my testimony today around recommendations for improving the response to these vulnerable populations in Central America, Mexico, the U.S.-Mexico border and in the United States. I recommend the following:

- **IN CENTRAL AMERICA:** The United States should support the efforts of Northern Triangle countries—Guatemala, Honduras, and El Salvador---to strengthen their humanitarian and child protection responses, to include developing and improving education and child welfare systems, increasing opportunities for youth development, and providing safe spaces and alternatives to gang entry and migration. The Administration should work with community-based organizations, the United Nations High Commissioner for Refugees (UNHCR), and country governments to develop a comprehensive strategy, in line with international best practices and standards, to reverse the child protection crisis and ensure access to international protection for those seeking refuge and asylum. Such efforts would build upon and supplement the U.S. Central American Minors (CAM) in-country processing program by ensuring identification of children in need of international protection that might not qualify for CAM and that a durable solution is realized for these children, providing for the safety and well-being of children during CAM processing, and by facilitating emergency transit mechanisms for children who are facing immediate threats. Future U.S. funds should address the root causes of forced migration from Northern Triangle countries and protection for those returning via repatriation and reintegration programs, featuring a community-based and

protection-focused approach to migration. Congress should approve the $1 billion Administration request for aid to these nations and increase funding for community-based programs for youth.

- **REGIONALLY**: The United States, working with the UNHCR, should facilitate international protection in other nearby countries to which Central American children and families have fled, such as Nicaragua, Panama, and Costa Rica. The United Nations has reported that the numbers of children seeking asylum in other Latin American countries has risen by over 1000% over the past several years.

- **MEXICO:** The United States should encourage the Mexican government to end interdiction efforts and establish robust mechanisms for international protection for families and unaccompanied children. A continuum of care should be established for unaccompanied children in their custody, which would include eliminating child detention and implementing Best Interest Determinations (BIDs) that result in the pursuit of durable solutions. The asylum protection regime in Mexico should be improved, with asylum-seekers being released from detention during the adjudication process, and for asylum to connote protection and integration services. Mexican enforcement officials should be held accountable for human rights abuses of migrants. The United States should not provide financial, material, or political support for interdiction efforts.

- **AT U.S.-MEXICO BORDER**: The Administration should develop and implement better screening mechanisms and training for Department of Homeland Security (DHS) staff that encounter and interact with unaccompanied children at the U.S./Mexico border. DHS should deploy child welfare professionals to help with this training and to assess the welfare of the children. As the United States sends experts to train and provide capacity building support to border officials in Central America and Mexico, the Administration should facilitate robust child and refugee protection screening mechanisms and training so that Mexican officials are trained in the implementation of international protection and durable solutions. If our nation is exporting enforcement, it also must export protection. Young mothers with children should not be detained unnecessarily.

- **IN THE UNITED STATES**: Congress should invest more resources in the care of unaccompanied children currently living in the United States, including augmenting child protection and integration services by increasing funding for post-release social services and legal services, specifically case management all children released from federal custody to assure ongoing safe and appropriate placement; referrals for medical and mental health care; enrollment in school; ongoing orientation regarding legal rights and responsibilities; and access to child advocates and appropriate legal representation.

  For families, the Administration, supported by Congress, should institute a community-based case management alternative to detention program instituted by social service providers qualified to ensure that families receive legal representation and appropriate social services. I note that USCCB strongly objects to the detention of migrant families, primarily young women and children, who are arriving in large numbers to the border every day and are being detained in vast institutional detention facilities. USCCB asks that Congress urge the Administration to end this practice. We urge Congress stop appropriating money to detain children and families instead instruct DHS to use more humane and cost-effective community-support alternatives to detention.

I. Catholic Social Teaching

The Catholic Church has a long history of involvement in refugee and asylum protection and child protection, both in the advocacy arena and in welcoming and assimilating waves of immigrants, refugees, and asylum seekers who have helped build our nation. Migration and Refugee Services of USCCB (MRS/USCCB) is the largest refugee resettlement agency in the United States, resettling one million of the three million refugees who have come to our country since1975. MRS/USCCB is a national leader in caring for unaccompanied alien and refugee children. We work with over 100 Catholic Charities across the country to welcome refugees, asylum-seekers and unaccompanied alien children into our communities. The Catholic Legal Immigration Network, Inc. (CLINIC), a subsidiary of USCCB, supports a rapidly growing network of church and community-based immigration programs. CLINIC's network now consists of over 212 members serving immigrants and their families, including asylum seekers and unaccompanied children, in over 300 offices. MRS/USCCB also provides child welfare services to hundreds of unaccompanied children each year.

The Catholic Church's work in assisting asylum seekers and all migrants stems from the belief that every person is created in God's image. In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: "I was a stranger and you welcomed me." (Mt. 25:35).

In modern times, popes over the last 100 years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.[1] Pope Francis defended the rights of asylum-seekers early in his papacy, and has spoken out in concern for these children-stating that his thoughts go to "the tens of thousands of children who migrate alone, unaccompanied, to escape poverty and violence".[2]

In his speech to Congress, Pope Francis also encouraged our nation to welcome those fleeing protection, which is in the nation's best interest: "If we want security, let us give security; if we want live, let us give life; if we want opportunity, we must give opportunity. The yardstick we use for others will be the yardstick which time will use for us."[3] He also encouraged us to listen to the stories of those arriving to our nation.

For these reasons, the Catholic Church holds a strong and pervasive pastoral interest in the welfare of migrants, including asylum seekers and unaccompanied children, and welcome newcomers from all lands.

II. Country Conditions and Push Factors

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[1] Pope Pius XII, Exsul Familia (On the Spiritual Care of Migrants), September, 1952.
[2] Pope Calls for Protection of Unaccompanied Child Migrants, July 15, 2014 available at http://en.radiovaticana.va/news/2014/07/15/pope_calls_for_protection_of_unaccompanied_child_migrants_/1102879
[3] Speech of His Holiness Pope Francis to the U.S. Congress, September 24, 2015.

The root causes inducing the mass migration of unaccompanied children from Central America over the last few years as well as the violent and dangerous migration journey that unaccompanied children take through Mexico are well documented. In November 2013, a USCCB delegation traveled to southern Mexico, El Salvador, Guatemala, and Honduras to examine and understand the flight of unaccompanied children and youth from the region and to stand in solidarity with these children and their families. In January 2014, we issued our findings from the trip in a report entitled, *USCCB: Mission to Central America: Flight of the Unaccompanied Immigrant Children to the United States* (USCCB Central America Report 2014).[4]

The delegation found that a series of interrelated factors have contributed to the dramatic increase in migration and that a "perfect storm" of a number of these root causes coalesced to create the phenomenon. Push factors include the absence of economic opportunity, the lack of quality education and access to education generally and the resulting inability for individuals to financially support themselves in their home countries/local communities. The desire to reunify with family in the United States also has contributed to this increase in migration.

While these factors were omnipresent, the delegation found that one overriding factor has played a decisive and forceful role in recent years: life threatening violence at the state and local levels and a corresponding breakdown of the rule of law have threatened citizen security and created a culture of fear and hopelessness. Often the life-threatening journey north is seen as a family strategy to protect a child, as Central American governments are unable to fully protect their citizens.

Mr. Chairman, it is clear that now that the situation is worse and that over the last year violence has increased in communities in the countries of the Northern Triangle—Guatemala, El Salvador, and Honduras. Over the past year, El Salvador has joined Honduras as one of the most violent countries in the world, with 91 murders per 1,000 persons. This is due primarily to violence between the two primary gangs—the Maras and the 18th Street gang. Children and families have been caught in the crossfire, with 593 children killed this year. While Honduras has experienced a reduction in violence this year because of military intervention, it remains one of the most violent nations in the world. In Guatemala, political instability has led to an inability of the government to protect its population.

Since 2011, the United States has seen an unprecedented increase in the number of unaccompanied migrating children arriving to the country, predominately at the US-Mexico border. Whereas the number of children apprehended averaged 6,800 between federal fiscal years (FY) 2004 and 2011, the total jumped to 24,668[5] in FY 2013 and spiked at 67,339 during the last fiscal year.[6] This fiscal year the numbers of unaccompanied children arriving is 47% lower, with 20,850 children having been apprehended by CBP as of June 1, 2015.[7]

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[4] USCCB: Mission to Central America: Flight of the Unaccompanied Immigrant Children to the United States (USCCB Central America Report 2014).

[5] About Unaccompanied Children Services, ORR/HHS website, http://www.acf.hhs.gov/programs/orr/programs/ucs/about

[6] Southwest Border Unaccompanied Alien Children http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children

[7] Southwest Border Unaccompanied Alien Children http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children

However, later in the summer the number of unaccompanied minors arriving at the southern border has spiked, with 4,652 children apprehended at the southern border in August. This past August exceeded the numbers arriving in August 2014 by 48 percent. The number of members of "family units"—women with children—increased from 4,506 in July to 5,158 in August.[8] Children and families who have recently arrived have confirmed that increased violence has driven them to undertake the dangerous journey at the hands of smugglers.

While the Obama Administration attributes the reduced numbers of unaccompanied children this year to better preparation, weather patterns, and information campaigns advertising the danger of the journey[9], the fact remains that the number of unaccompanied children arriving are down in large part due to the interdiction efforts that are occurring at the Mexico-Guatemala border and within Mexico. To this point, Mexico deported 79% more people from Central America's Northern Triangle in the first four months of 2015 than it did during the same period a year earlier.[10] In El Salvador alone, 4,278 children were deported from Mexico from January to August, 2015, while an equal number of Guatemalan minors were deported from January to May, 2015.[11] The increased military presence coupled with the threat of traffickers, cartels, and smuggling networks has made the already dangerous migration route to the United States from Central America treacherous.

Mr. Chairman, because of these interdictions, abuse of migrants, including children, by enforcement officials is on the rise. Through June 2015, Mexican's National Commission on Human Rights logged 567 complaints of abuse by Mexican enforcement officials, up 39 percent from the previous 12-month period.[12] There have been reports of officials pulling children off the Beast—the train traveling from Guatemala to northern Mexico—using abusive threats and tactics. Most are placed in detention and sent back to their countries, without sufficient screening or an opportunity to pursue asylum.

According to the UNHCR, most of the children from Central America seeking to enter the United States over the last two years, as well as most of the mothers with children making their way to the United States border from that region have valid protection claims. UNHCR found that at least 6 of 10 unaccompanied children fleeing violence had valid asylum claims.

Make no mistake about it, Mr. Chairman, this is a refugee crisis.

Rather than looking at the phenomenon as an immigration crisis, we should be looking at it as a refugee crisis. And if such a crisis was occurring anywhere else in the world, Congress and the President would be imploring neighboring nations to keep their borders open to those children who are fleeing life-and-death danger in their homeland.

We should do no less for these children and families than we demand of other countries when faced with similar situations. To do otherwise would not only imperil the lives of the children at our border, it also would imperil countless other children around the world who seek refuge at a

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[8] Department of Homeland Security Apprehensions Fact Sheet, September, 2015.
[9] See e.g. White House Council for Women and Girls Recent Accomplishments, at 21 March 2015.
[10] Deportations in Mexico up 79% in first four months of 2015 June 11, 2015 available at http://www.theguardian.com/world/2015/jun/11/deportations-mexico-central-americaData from Mexico's National Immigration Institute says that 51,565 immigrants from Guatemala, Honduras and El Salvador were deported between January and April, up from 28,736, during that period in 2014.
[11] Catholic Relief Services, Country Reports, September, 2015.
[12] Mexican National Commission on Human Rights, Report on Abuse Complaints, July, 2015.

neighbor's door. At the same time we urge other nations—such as Lebanon, with more than 1.5 million Syrian refugees—to keep their borders open, we are attempting to deny entry to our country in our own backyard.

III. Recommendations to Respond to the Humanitarian Crisis

Mr. Chairman, the humanitarian and international protection crisis for unaccompanied children and families continues, as many of these vulnerable children and families continue to face serious obstacles to accessing protection and justice. Children are locked out of the child welfare and child protection systems in place here in the United States, experience exploitation and extreme hardship in their migration, and face life-threatening violence in their communities in Central America. Families face detention or electronic monitoring and lack social and legal support.

Mr. Chairman, it is clear that the U.S. response to this crisis should include a robust involvement in the region, including increased funding for protection mechanisms and economic development. To their credit, the Administration asked for $1 billion in aid to the region in their FY 2016 request, but that request has already been drastically reduced in both the House and the U.S. Senate. We urge Congress to revisit this issue and increase funding for youth protection and reintegration programs.

Mr. Chairman, the creation of the Central American minors program (CAM) earlier this year by the Administration was a welcome initiative, as it potentially gives children and families an alternative to taking the dangerous journey north. However, the program has experienced a slow start due to structural and eligibility issues, thus limiting the number of children who can access it. Since it started in December 2014, as of September 1, only 19 children have received asylum out of nearly 120 interviewed—about 12 percent. This is in contrast to the sixty percent finding by UNHCR and 90 percent asylum rate in initial screenings by the United States.

While we support the maintenance of this program, it must be improved and enhanced to become a viable tool for protection. We have several concerns and recommendations for improvement to the program:

Eligibility for the program is restricted. Eligibility for the program is limited to parents of minors who are legally present in the United States. UNHCR has estimated that 64 percent of unaccompanied children from Central America entering the United States have no parent in the United States. Other relatives, including siblings or extended family, should be able to sponsor a child in the program.

Interview process should be amended. We are concerned that children who have experienced trauma may not be able to articulate their fear in one interview. We believe that adjudicators should be trained in child-friendly interview practices that allow the child to feel safe and provide an accurate description of their experiences, and that children should be given more than one interview to articulate their claim.

Information about the program is limited. Catholic partners in Central America that work with migrating children have told us that there is a lack of information about the program and how to access it, particularly for Guatemalan children. Television and the internet are not available to the children most in need. USCCB has helped address this information gap by developing videos, in partnership with the Maya Heritage Foundation, about the program in the six most prominent Mayan languages.

The program does not offer immediate protection for those in need. Children facing imminent threats from organized crime do not have the luxury of traveling to an interview without fear that they will be intercepted by criminal elements before the interview or physically threatened once an interview is completed. In conflict areas, violence is imminent and refugees must flee immediately in order to protect themselves. Absent some sort of safe zone to protect children during the interview and resettlement process, which can take months, children will be placed at risk and not desire to participate in the process.

Those who receive humanitarian parole should be treated as refugees for domestic purposes. While we support the use of humanitarian parole in certain cases, we note that those who may be paroled into the United States do not qualify for refugee resettlement services, including case management services which assist them with integration and reunification, legal representation, school enrollment, and referrals to mental health and medical services. These are critically needed services to ensure that children are protected and cared for in a dignified manner.

Mr. Chairman, the committee should consider reforming the program to address these concerns, plus expanding it in a way that addresses immediate protection concerns, such as the creation of in-country safe zones or humanitarian evacuations.

A. Recommendations for Treatment of Unaccompanied Children and Families in Central America

Congress and the Administration should:

- **Support and enhance the Central American Minors Program (CAM).** This in-country processing program in El Salvador, Honduras, and Guatemala established by PRM/USDOS must be supported so that it can provide safe efficient processing of unaccompanied at-risk children in Central America. As mentioned, reforms in the program should focus upon streamlining the application process, ensuring security in the program, and increasing capacity so more children are processed in a timely manner.

- **Support humanitarian efforts in the region.** These include strengthening the asylum systems and child-welfare systems in El Salvador, Honduras, and Guatemala; and providing best interest determinations and best interest assessments of unaccompanied children in the region when appropriate.

- **Support establishment of an Office of the High Commissioner for Human Rights (OHCHR) in Honduras to address broad human rights concerns**. Honduras has requested such an office and the U.S. should collaborate with other international donors to fund such an office and ensure it has a strong mandate. This will support Honduras in better protecting the rights of people at risk of migrating, decreasing endemic corruption, and addressing widespread impunity.

- **Invest in prevention programs in sending countries.** Through its Youth Builders project, Catholic Relief Services (CRS)-El Salvador and its partners provide at-risk youth with peer support, vocational and entrepreneurial training, job-placement, life skills and leadership development, and community service opportunities. This project targets youth

who are at risk of unemployment, of violence—as victims and as perpetrators, and/or of migration. Through these projects, CRS has served more than 2,500 young people.[13]Other than programs provided by Catholic Relief Services and other NGOs, source countries do not employ programs to encourage youth to remain and not take the journey north. Such a program should include skill-based training and employment services.

- **Make aid to Northern Triangle countries less focused on increased border security measures and more focused on humane migration and protection efforts**. The recent Plan for Alliance for Prosperity in the Northern Triangle is an ambitious aid plan but it is largely security and economic-focused and does not address the need for greater resources to be devoted to child protection, child development, refugee and anti-trafficking protection, and addressing the root causes of forced migration. Additionally the current House of Representative's State and Foreign Operations Appropriations bill for FY16 contains language that conditions U.S. assistance to Central American governments on steps taken to "improve border security" and reduce migration of their citizens to the United States.[14] These conditions would encourage the implementation of policies that violate the right of people to emigrate; a right enjoyed by all people, and would dangerously undermine the right of persecuted people to seek territorial access to a country of asylum. The United States must work to ensure that aid efforts include protection-focused goals and funding.

B. Recommendations for Treatment of Children and Families at the U.S.-Mexico Border

- **Customs and Border Patrol (CBP) should reform its screening procedure for unaccompanied children.** In an effort to comply with the TVPRA[15], CBP currently screens all unaccompanied children who they apprehend for risk of trafficking, fear of return, and the child's capacity to make decisions. CBP should stop screening all unaccompanied children and instead screen only the Mexican unaccompanied children per the TVPRA, as children from countries not contiguous to the United States are sent to ORR for case management and are screened there by child welfare experts. Focusing CBP's screening efforts on just the Mexican unaccompanied children will eliminate redundancies and enable CBP to spend more time devoted to its mission of protecting our borders.

  In addition to streamlining which populations CBP screens, the form that is used to screen unaccompanied children, Form 93, needs to be overhauled. Form 93 is not written in a style that is child-friendly or trauma-informed. At a minimum, it should be retooled with input from child-welfare experts. CBP officers who engage in screening of unaccompanied at-risk children should receive extensive training to conduct such screenings.

- **CBP should place child welfare experts in all border facilities to screen unaccompanied at-risk children.** CBP should hire child welfare experts to assist in the development and implementation of trauma-informed and developmentally appropriate screening mechanisms, which would allow fair and equal access to all unaccompanied

[13] http://crs.org/countries/el-salvador
[14] See "SUSPENSION OF AID" Sec. 7045, page 172, FY 2016 House of Representatives State and Foreign Operations Appropriations Bill
[15] See Section 235 of TVPRA 2008-

children in need of protection irrespective of their country of origin. This would ensure that children are able to tell their stories in a safe environment and increase the likelihood that they receive appropriate protection. As a law enforcement entity, CBP agents are trained to interrogate border crossers using a style that is direct and confrontational not to question vulnerable children who are traumatized. This approach is neither effective nor appropriate when the goal of the interview is to identify victims and those at risk for exploitation. This is particularly true in the case of children, who may be unaware of their victimization and believe that the forced sex, forced labor, or other abuse and exploitation they endure during their journey is the cost of their migration. The child welfare expert should have child welfare experience, possess a child-friendly trauma-informed forensic interview style, and speak Spanish fluently.

- **CBP should implement a juvenile sector coordinator position into its formalized operations and should centralize its unaccompanied at-risk child processing according to sector.** CBP currently has juvenile sector coordinators in certain sectors but the coordinator placement within the sectors is not uniform. Implementing juvenile sector coordinators uniformly within CBP would ensure that the screening and outcomes related to unaccompanied children are consistent and in line with child welfare principles. Additionally a juvenile sector coordinator would also be able to note new trends and outcomes related to unaccompanied children and would enable CBP and, by extension DHS, to be more informed.

- **The screening areas and provision of services to unaccompanied children in CBP facilities need to be improved.** CBP has disparate screening and processing spaces that should be renovated to address the presence of children. All facilities should have discrete areas for screening children that are removed from the general processing area and should have partitions and adequate space to ensure privacy during interviews. Officers, if they are to be conducting the screening, should attempt to be in plain-clothes as to ensure that the children are not overwhelmed and intimidated. Furthermore officers of the same gender as the child they are screening should be used whenever possible. Lastly, children should be consistently informed of their rights to basic amenities such as hot meal, a blanket, and use of the toilet.

C. Recommendations for Treatment of Children and Families in Mexico

- **The United States should end its support of Mexico's interdiction efforts along the Mexico-Guatemala border and throughout Mexico.** Mexico, with U.S. support, has begun interdicting Central American children, particularly at the Mexico-Guatemala border and in Southern Mexico. The interdictions are an effort to prevent the children from reaching the U.S.-Mexico border and accessing legal protection within the United States.

  In response to increased migration from Central America, and at the behest of the U.S. government, the Mexican government launched Programa Frontera Sur (Southern Border Program) on July 14, 2014. The program's objective is to improve border and migrant security by ensuring adequate operation of the 12 official border crossings and transforming customs stations into five new "Centros de Atención Integral al Tránsito

Fronterizo" (Comprehensive Border Crossing Attention Centers).[16] Furthermore, Mexican authorities have also begun patrolling "La Bestia" and carrying out 153 raids as of March 2015.[17] As stated earlier, the number of Central Americans deported in 2015 has been staggering. We are deeply concerned about the efforts of the Mexican government to interdict children and prevent them from migrating- effectively leaving them stranded in Mexico or deporting them back to the violence they are attempting to escape.

- **Mexico, with assistance from the United States and child welfare organizations, must build the capacity of the Mexican child welfare system to protect migrating youth.** This includes training for direct care providers and government officials to employ child-appropriate techniques when interviewing and serving migrating children as well as the development of protocols related to identification of safe placement for children, including, but not limited to, those identified to be eligible for refugee status and those who are victims of human trafficking.

- **Mexico, with the United States' help, must develop a continuum of care for unaccompanied at-risk children.** The Mexican government should establish a continuum of care for unaccompanied children in their custody. Currently, unaccompanied children who are seeking asylum may remain in shelters for as long as six months to years, and children who receive asylum remain in shelter until they are 18. Studies have shown that prolonged stays in restrictive settings impact a child's development and well-being. The higher the capacity of the care arrangement, the more restrictive the environment becomes. Consistent with child welfare best practice, unaccompanied children should be placed in the least-restrictive setting, ideally, in community-based care, such as foster care, which allows children freedom of movement and access to community. Furthermore, care settings should be constructed to ensure minors are not commingled with gangs or other criminals, who often infiltrate these facilities.

- **The United States and Mexico should support the Bureau of Population Refugees and Migration of the U.S. Department of State (PRM/USDOS) in piloting Section 104 of the TVPRA 08 in Mexico.** Sec. 104 of the TVPRA 08 amends Sec. 107 (a) of the TVPA 2000 to require the "Secretary of State and the Administrator of the United States Agency for international development" to "establish and carry out initiatives in foreign countries in cooperation and coordination with relevant organizations, such as the United Nations High Commissioner for Refugees, the International Organization for Migration, and private nongovernmental organizations[18]...for--'(i) increased protections for refugees and internally displaced persons, including outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers; and '(ii) performance of best interest determinations for unaccompanied and separated children who come to the attention of the United Nations High Commissioner for Refugees, its

[16] Pone en marcha el Presidente Enrique Peña Nieto el Programa Frontera Sur, July 2014 available at http://www.presidencia.gob.mx/articulos-prensa/pone-en-marcha-el-presidente-enrique-pena-nieto-el-programa-frontera-sur/

[17] Mexico Raided Migrant Train 'La Bestia' 153 Times Last Year Huffington Post, March 3, 2015 available at http://www.huffingtonpost.com/2015/03/04/mexico-raided-la-bestia_n_6802078.html

[18] http://www.state.gov/documents/organization/10492.pdf

partner organizations, or any organization that contracts with the Department of State in order to identify child trafficking victims and to assist their safe integration, reintegration, and resettlement."[19] Currently, there is no systemic way to identify children who have been trafficked or are at risk of being trafficked, and without a BID, the fate of children who were trafficked or at risk of being trafficked consists of repatriation to their country of origin, often sending them back into the hands of the traffickers. If they receive refugee status in Mexico, remaining in a shelter until they turn 18 years old leaves them vulnerable to exploitation within the shelter and lacking appropriate services to address their trauma and developmental needs.

D. Recommendations for Treatment of Unaccompanied At-Risk Children and Families within the United States:

- **Congress should mandate and fund family reunification and legal orientation programs for all youth to help children integrate into their communities, reunify with their families, and pursue immigration relief.** Often, increased funding to the Office of Refugee Resettlement (ORR), which is responsible for the custody and care of unaccompanied at-risk children, is directed at improving conditions in the temporary shelters in which unaccompanied children reside while waiting for release to their families. There exists little funding for services once children are released, increasing the likelihood for family breakdown, the inability of children to enroll in school and access community resources, and the likelihood that the child will not show up to their immigration hearings. Funding should be directed at increasing the number of home studies provided to sponsors prior to the child's release from custody to assess any potential risks of the placement, including the protective capacity of the sponsor to ensure the safe reunification of the child. Post-release services should be required for all children to assist the family with navigating complex educational, social service, and legal systems. With intensive and short-term case management services and monitoring by child welfare professionals, it is more likely that children will appear at their immigration proceedings, enroll in school, and integrate into their communities—mitigating risk for future entry into the public child welfare system. In addition, when provided by community-based agencies, post-release services help build the capacity of the communities to respond as agencies establish relationships with and educate systems and service providers that will come in contact with unaccompanied children.

  Funding also should be increased for the Department of Justice's Legal Orientation Program for Custodians (LOPC) which was developed to "inform the children's custodians of their responsibilities in ensuring the child's appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation, and trafficking," as provided under the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

- **ORR should continue to expand placement options to include small community-based care arrangements with basic to therapeutic programming.** The Flores Settlement Agreement establishes minimum standards of care for children in the custody of ORR and requires that unaccompanied at-risk children be placed in the least restrictive setting that meets their needs. Save the Children notes in a study: "...recent years have seen an increasing emphasis on the development of community-based approaches... to ensure that children who lose, or become separated from their own families, can have the

[19] http://www.state.gov/j/tip/laws/113178.htm

benefits of normal family life within the community." Placing children in the least restrictive setting that can meet their needs is the policy and practice of the child welfare system in the United States. While many of the children in ORR custody are served in basic shelters, this placement setting may not be the most appropriate for some unaccompanied at-risk children, many of whom have complex trauma needs, and would be better served in foster care placements.

- **Funding for the Unaccompanied Refugee Minor (URM) program should be increased.** As the number of unaccompanied at-risk children referred to the URM program has increased, the funding for the care of URM has remained static. Increasing funding for ORR's Unaccompanied Refugee Minor (URM) program would ensure longer-term care for the increasing number of unaccompanied Central American children who qualify for URM's longer-term foster care services after obtaining asylum, Special Immigrant Juvenile Status (SIJS), T-visas, and other protections.

- **All children and families in adversarial proceedings should have an attorney.** Legal representation is the single strongest indicator that a child will appear for their immigration court proceeding. For example, for fiscal year 2014, 99.33% of represented unaccompanied children appeared for their immigration court case, whereas 67% of unaccompanied children who were pro se appeared for their immigration court hearing.[20] Recently, the rates of legal representation have been falling as nonprofit organizations, law school clinics and pro bono attorneys who have stepped up to represent unaccompanied children for free cannot meet the needs of all the children. A robust mix of government-funded and pro bono representation by the private sector is needed to fill the enormous representation gap that currently exists.

- **The best interest of the child should be applied in legal proceedings involving unaccompanied at-risk children, including creating child-appropriate asylum procedures and unaccompanied child immigration court dockets.** Currently, decisions about the welfare of these children are made separately from the existing U.S. child welfare infrastructure, meaning that court decisions on the welfare of these children are based on their eligibility for immigration relief alone rather than involving a comprehensive assessment of the best interest of the child. Some potential relief for children include asylum, special immigrant visa status (for orphans or abused, abandoned, and neglected children), or status to protect you from human trafficking.

  Whenever possible, policies and procedures should be implemented that help the child progress through the system in a way that takes into account his/her vulnerabilities and age, such as the establishment of immigration court dockets for unaccompanied children and the creation of child-appropriate asylum procedures. Concentrating all cases in a child-focused immigration docket with appropriately-trained arbiters and advocates would streamline these cases while also ensuring a less-threatening model for children.

- **State courts need to receive training about Special Immigrant Juvenile Status (SIJS) and their jurisdictional responsibility and state legislatures should provide better guidance about state court responsibility.** DHS should provide more training to state family courts to enable them to better understand their role in SIJS proceedings. A good example of a state legislature that has issued helpful guidance is California, in which SB

[20] See Juvenile Deportation Proceeding Data Tool, Syracuse University, Transaction Records Access Clearinghouse (TRAC) available at http://trac.syr.edu/immigration/reports/359/

873, signed by Governor Brown has clarified the role of the state courts as it relates to SIJS cases.

- **Families should not be detained and should be released on their own recognizance or placed in a case management alternative to detention program.** It is inhumane to detain young mothers with children who have already been traumatized from their dangerous journey to the United States. Community-based alternatives to detention programs, based on a case management model, have proven to be effective in ensuring that participants receive appropriate legal and social service support and also appear at their hearings. These models have ensured that, on average, 96 percent of participants appear at their hearings.[21]

The situation of forced migration from Central America is a complex one, with no easy answers. While the numbers of unaccompanied at-risk children arriving to the United States has decreased, it is clear that more must be done to address the root causes of this flight and to protect children and youth in the process. This problem is an international humanitarian and international protection problem and it is not going away- instead it continues to represent a challenge to the United States and to the governments of Mexico and Central America and other host countries in the region.

Too often we look at children migrants as adults, but they are still children who are introduced to the injustice and horror of the world at an early age. Anyone who hears the stories of these children would be moved, as they are victims, not perpetrators. Through our work with unaccompanied children and through our delegation trip we have learned that these children long not only for security, but also for a sense of belonging—to a family, a community, and a country. They are often unable to find this belonging in their home country and leave their homes as a last resort.

In evaluating the government's response last year, it is vital to remember that we still have a humanitarian crisis on our hands and more must be done. We must respond to the needs of these children and families, not to turn them away or ostracize them as Americans are a compassionate people.

Mr. Chairman, I again thank you for this opportunity ask that you let me, the USCCB, and the entire Catholic Church charitable network with you to pursue just and humane solutions to the challenge of forced migration.

[21] USCCB/LIRS Fact Sheet, Alternative to Detention programs, July, 2015.

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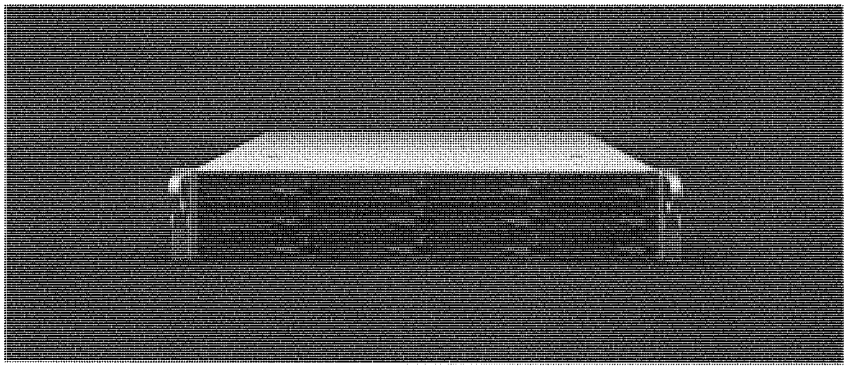
SIRIS 2

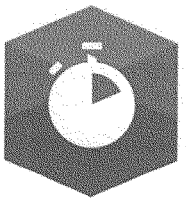
VIRTUAL SIRIS

:p://www.datto.com/siris-virtual)



Thousands of businesses like yours rely on **Datto S**
their data is secure and always available. SIRIS go
backup to provide true business continuity. Count or
business running, even in the face of computer h
malware, or natural disasters.

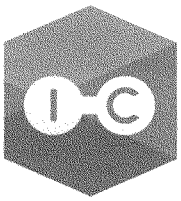
PRODUCT FEATURES



Dramatically reduce downtime

Datto's instant virtualization dramatically reduces downtime. If a server fails for any reason, a virtual version of that server is instantly, automatically created right on the SIRIS device, and your business applications shift to running on the virtual server in as little as six seconds. If the problem is more widespread, your entire network can be up and running in the Datto Cloud in a matter of minutes. It's almost like it never happened.

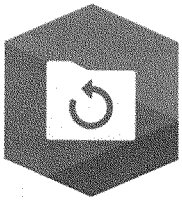
Learn more (/technologies/instant-virtualization)



Back up only what changes

Taking a full backup of your entire system takes time. That's why SIRIS doesn't make you do it every day. Instead, SIRIS takes one full backup when you first install it, and after that, only backs up the data that has changed. These incremental backups are then automatically applied to the last backup, so at any time a full, current backup is ready for fast recovery. This also means there's no need for you to keep storing the oldest backups. Save time and save storage space with SIRIS.

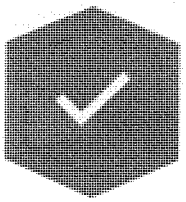
Learn more (/technologies/inverse-chain-technology)



Understand your data

If you'd like to see what specific files have been modified, created or deleted between backup points, SIRIS makes it easy. Quickly find when specific files were lost or emails were deleted with Datto's Backup Insights technology.

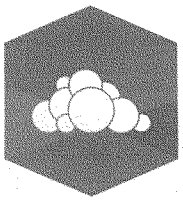
Learn more (/technologies/backup-insights)



Rest assured your data is recovery ready

Just because a backup operation has completed doesn't necessarily mean your applications are recoverable. Network errors or data corruption can happen in any system, but Datto makes sure your backups are good and your applications are ready to recover, every time. Get visual proof that your systems are protected, with Screenshot Backup Verification.

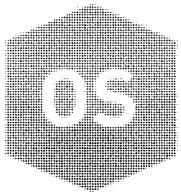
Learn more (/technologies/screenshot-verification)



Seamlessly share & protect files

Datto gives you secure file sync and share capabilities with **ownCloud** on SIRIS. Share and access files stored on your SIRIS device from anywhere, using desktop or mobile devices.

Learn more (/technologies/owncloud)



Protect your entire organization

Whether you run the Windows or Linux operating system, or some of both, Datto SIRIS has you covered. Enjoy powerful business continuity capabilities and benefits, regardless of your computing platform.

Turn your own hardware into SIRIS

If you'd like the benefits of SIRIS without buying a new device, try GENISIS. A simple USB is all it takes to turn the server you already have into a fully functional SIRIS device.

Learn about **GENISIS** (/genisis)

TECH SPECS

500GB-60TB Local Storage Capacity (Per Unit)

Solid-State OS Drives on All Models

IPMI Standard on Rackmount Units

Raid 1 - Raid 10 Storage Configuration

3 Year Hardware Warranty

Hot-Swappable Drive Bays for Easy Field Upgrades

Available 2x2.4 Ghz Xeon Six Core Processor

End-to-End Encryption

Unlimited Server, Workstation and Desktop Licensing

RELATED CONTENT

David's Soundview Catering: A CryptoLocker Success Story (/resources/davids-soundview-catering-a-cryptolocker-success-story)

Learn how **Datto SIRIS** saved a company's server from CryptoLocker and recovered in under an hour.

Platte River Networks

[redacted]

Invoice

Date	Invoice #
5/31/2013	7942

PAID 05/01/2013

Bill To:

Marcum LLP
Marcum LLP Partner
[redacted]

Project	P.O. No.	Terms	Due Date
		Due on receipt	5/31/2013

Description	Units	Rate	Amount
PowerEdge R620 PowerEdge R620 Intel Xeon E5-2630 2.30GHz, 15M Cache, 7.2GT/s QPI, Turbo, 6C, 95W, Max Mem 1333MHz Intel Xeon E5-2630 2.30GHz, 15M Cache, 7.2GT/s QPI, Turbo, 6C, 95W (4) 16GB RDIMM, 1333 MT/s, Low Volt, Dual Rank, x4 Data Width Additional Riser with x16 PCIe Slot for x8, 2 PCIe Chassis with 2 Processors No Operating System iDRAC7 Enterprise Broadcom 5720 QP 1Gb Network Daughter Card Chassis with up to 8 Hard Drives and 2 PCIe Slots (Requires Additional Riser) Bezel - 4/8 Drive Chassis Power Saving Dell Active Power Controller RAID 10 for H710P/H710/H310 (4-10 HDDs in pairs) PERC H710 Integrated RAID Controller, 512MB NV Cache (8) 300GB 10K RPM SAS 6Gbps 2.5in Hot-plug Hard Drive DVD ROM, SATA, Internal ReadyRails Sliding Rails Without Cable Management Arm Dual, Hot-plug, Redundant Power Supply (1+1), 750W (2) NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10 Feet (3m), Power Cord 3 Year ProSupport 4HR 7x24 Onsite: Non Mission Critical	1	7,958.40	7,958.40T
Shipping Server	1	40.00	40.00
PowerConnect 2824, 24 1GbE Ports, 2 Ports with SFP option, Web Managed Switch includes Lifetime Warranty repair. Choose Dell ProSupport for advanced technical support.	2	342.75	685.50T

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	
+ Sales Tax (0.0%)	
Total	
- Payments/Credits	
Balance Due	

Platte River Networks

[redacted]

Invoice

Date	Invoice #
5/31/2013	7942

PAID 05/01/2013

Bill To:

Marcum LLP
Marcum LLP Partner
[redacted]

Project	P.O. No.	Terms	Due Date
		Due on receipt	5/31/2013

Description	Units	Rate	Amount
Datto SIRIS S2000 S2000 Storage Capacity - 2TB Storage Configuration - 3X 1TB RAID 5 Processor - 3.0 Ghz Intel i7Quad Core System Memory - 24GB Form Factor - 2U Rackmount Number of Simultaneous VM's - 5-9	1	3,399.00	3,399.00T
Shipping Peripherals	1	99.00	99.00
Fortinet FortiGate 80C Security Appliance FORTIGATE 80C WITH 1YR 24X7 COMPREHENSIVE SUPPORT BDL 6 x 10/100Base-TX LAN, 2 x 10/100/1000Base-T WAN, 1 x 10/100Base-TX DMZ - 1 x Expansion Slot	2	1,246.00	2,492.00T

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$14,673.90
+ Sales Tax (0.0%)	$0.00
Total	$14,673.90
- Payments/Credits	-$14,673.90
Balance Due	**$0.00**

Request Demo
(/request)

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ABOUT DATTO

Industry Leader

Datto is an innovative provider of comprehensive backup, recovery and business continuity solutions used by thousands of managed service providers worldwide. Datto's 140+ PB purpose-built cloud and family of software and hardware devices provide Total Data Protection everywhere business data lives. Whether your data is on-prem in a physical or virtual server, or in the cloud via SaaS applications, only Datto offers end-to-end recoverability and single-vendor accountability.

Datto's innovative technologies include Instant Virtualization, Screenshot Backup Verification™, Inverse Chain Technology™, Backup Insights™, and end-to-end encryption. All Datto solutions are supported by 24/7/365 in-house technical support (/support) and selected products offer time-based cloud data retention, for predictable billing and budget management.

The Datto product line consists of the Datto SIRIS Family (/siris), Datto ALTO Family (/alto), Datto Backupify Family (/backupify), Datto DNA Router (/dna), and Datto NAS (/nas).

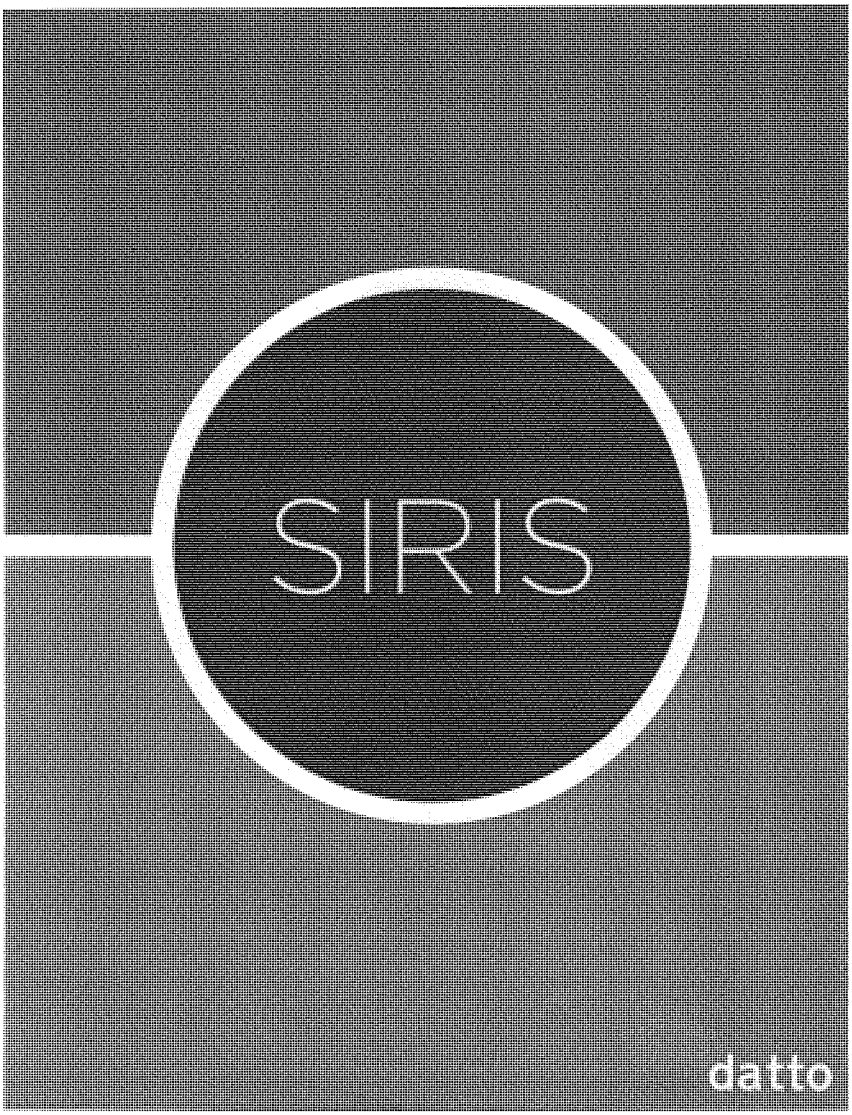
Founded in 2007 by Austin McChord, Datto is privately held and profitable. In 2013, General Catalyst Partners invested $25M in growth capital, and in 2015 McChord was named to the Forbes "30 under 30" ranking of top young entrepreneurs.

Seamless Integration

Datto partners with the best technology providers in the industry to deliver the most robust and seamless BDR and business continuity solutions available, including: AutoTask, ConnectWise, Kaseya, AVG and StorageCraft.

Explore Datto's Solutions
(/compare)

EXECUTIVE LEADERSHIP


SIRIS
datto

The Only Backup and Disaster Recovery Solution That Offers Instant On- and Off-Site Virtualization, Backup Verification and True Business Continuity

The SIRIS Difference

SIRIS utilizes a new technology that dramatically simplifies the backup and recovery process. By employing inverse chain technology, SIRIS eliminates the traditional backup chain, taking data directly from the server and turning it into virtual machines (.vmdk files) that can be booted instantly from a remote web interface. This new way of storing data allows for instant on- and off-site recovery and can prevent businesses from having to experience costly downtime in the event of a catastrophe. Following every backup, a test virtualization is performed and confirmation is sent via email. SIRIS is a true business continuity solution that provides companies with an insurance policy against loss of data and downtime.

Screenshot Verification of Backup

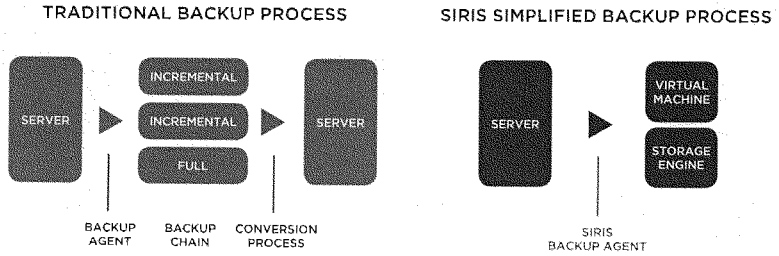
SIRIS contains another industry-first feature: verification of backup, bootability and hardware independent restore. After a backup, the image file is test booted and a screenshot of the booted VM is emailed as confirmation that the backup occurred, that it's bootable and can be recovered instantly. Flexible scheduling for screenshot verifications allows you to set the parameters for the frequency of screenshot verifications, which can happen as often as every hour. When the automated verification occurs, the screenshot is emailed as part of your backup report. These screenshots are not only a useful resource to confirm data integrity, but also reveal server damage or corruption before it is readily apparent to users.

Supported Operating Systems for Screenshot Verifications:

Windows XP, Server 2003, Windows Vista, Server 2008, Windows 7

Break Free from the Chain

The SIRIS backup process eliminates the area where problems arise in the traditional backup process: the backup chain. SIRIS takes your data and converts it directly into a .vmdk file each time a backup occurs. Your most recent backup image is always the full (base) image and does not rely on past incrementals to restore data. Since each backup is a virtual machine, there is no need for a conversion process to occur before performing a restore. Finally, inverse chain technology means data is always available immediately. Users never have to worry about an incremental being damaged or a complicated roll up process.



SIRIS

SIRIS Specifications

	S250	S500	S1000	S2000	S3000	S5000	S10000	S20000	S40000
Storage Capacity	250GB	500GB	1TB	2TB	3TB	5TB	10TB	20TB	40TB
Storage configuration	1 x 500GB HD	1 x 1TB HD	2 x 1TB RAID 1	3 x 1TB RAID 5	6 x 1TB RAID 10	10 x 1TB RAID 10	12 x 1TB RAID 6	12 x 2TB RAID 6	20 x 2TB RAID 10
Processor	2.8 Ghz 64 Bit AMD Quad core	2.8 Ghz 64 Bit AMD Quad core	2.8 Ghz 64 Bit AMD Quad core	2.8 Ghz 64 Bit Intel Quad core	2.8 Ghz 64 Bit Intel Quad core	2 x 2.4 Ghz 64 Bit Intel Quad core	2 x 2.4 Ghz 64 Bit Intel Quad core	2 x 2.4 Ghz 64 Bit Intel Quad core	2 x 2.4 Ghz 64 Bit Xeon Quad core
System Memory	6GB	8GB	8GB	12GB	16GB	24GB	36GB	48GB	96GB
Gigabit Ethernet	2	2	2	2	4	4	4	4	4
Form Factor	Micro ATX Tower	Micro ATX Tower	Micro ATX Tower	2U Rackmount	2U Rackmount	3U Rackmount	3U Rackmount	3U Rackmount	4U Rackmount

Remote Web Management Interface

SIRIS is designed to be fully managed both locally and over the web via Datto's secure web interface. The interface provides easy access and control over the full range of SIRIS' new features and diagnostics. There is no need to RDP into a server or core.

Instant Local Virtualization

Because SIRIS backup files are .vmdk files, they can be booted instantly for virtualization on the local appliance for rapid on-site restore. In addition, the backups can be virtualized outside of the SIRIS device though the web management interface.

Ideal Testing Environment

The SIRIS virtualized environment is the ideal testbed for patches and new applications. In this virtual environment, you can identify conflicts or problems without impacting production resources. This is also a useful tool for employee training.

Instant Off-site Virtualization

SIRIS is the only solution available that offers instant off-site virtualization. SIRIS transmits redundant .vmdk backups to two secure bi-costal data centers located in the US. The offsite .vmdk files are ready to be booted or mounted at anytime, so no time is spent waiting for file conversion. The process is entirely automated and takes only a moment.

Loaded With Features

- 5 Minute Setup
- Certificate-Based Authentication
- Powerful Scheduling
- Enhanced Security
- Detailed Reporting
- Improved Deduplication
- Local Compression
- Multiple Domain Support
- Completely New Backup Engine
- Automatic Retry/Repair of Failed Backups
- Improved Network Transfer Performance
- Lower CPU Overhead
- Disk I/O Scheduling
- Licensing Controls
- Linux System Backups & Instant Virtualization

datto
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datto product comparison

SIRIS

Features	G Series	Viridian	SIRIS	Aurora
ON-SITE BACKUP	●	●	●	●
OFF-SITE BACKUP AT 2 DATA CENTERS	●	●	●	●
FREE US BASED TECHNICAL SUPPORT	●	●	●	●
3 YEAR HARDWARE WARRANTY	●	●	●	●
NO RECOVERY FEES	●	●	●	●
FTP ACCESS TO OFF-SITE DATA	●	●	●	●
POINT TO POINT REPLICATION	OPTIONAL	OPTIONAL	OPTIONAL	OPTIONAL
BARE METAL RESTORE CAPABILITIES	OPTIONAL	●	●	●
SECURE LINUX BASED OS	●	●	●	●
DATA DEDUPLICATION	●	●	●	●
ZFS SNAPSHOTS		●	●	●
ON-SITE VIRTUALIZATION		●	●	●
OFF-SITE VIRTUALIZATION		●	●	●
INSTANT ON-SITE VIRTUALIZATION			●	●
MESSAGE-LEVEL EXCHANGE RECOVERY			●	●
ADVANCED OFF-SITE IMAGE VERIFICATION			●	●
SCREEN SHOT VERIFICATION OF BACKUPS			●	
INSTANT OFF-SITE VIRTUALIZATION			●	
LIVE REPLAY				●
GRANULAR SHAREPOINT RECOVERY				●
GRANULAR SQL OBJECT RECOVERY				●
ADVANCED FILE-LEVEL RESTORE				●

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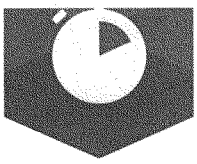


Instant Virtualization

{inverse-chain-technology}

{backup-insights}

{hybrid-cloud}

{image-based-backup}

{instant-virtualization}

{screenshot-verification}

{owncloud}

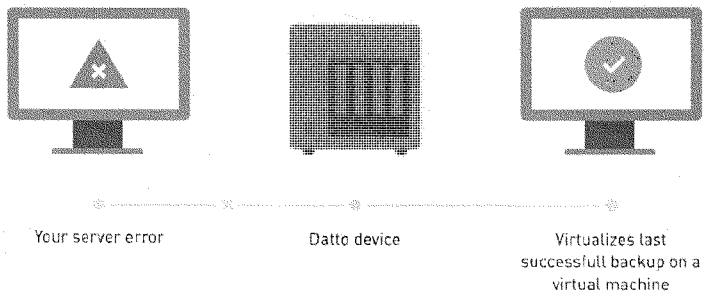
Instant Virtualization

Virtualization refers to the process of creating a virtual version of something, whether it's a server, storage device, network or application. The "virtual" version acts completely separate from the physical device.

With Datto, backups can be virtualized either locally on the Datto appliance or remotely in Datto's secure cloud, in mere seconds, with the click of a button. The advanced web interface allows for configuration of CPU and memory resources. Network resources can also be configured dynamically, allowing for changes to be made without restarting the virtual machine. Even while virtualized, systems can continue a normal backup schedule to both the Datto appliance and Datto's secure cloud. Business continuity has never been as easy or as reliable.

The advantages to Instant Virtualization are many. Should a business experience server failure, or the like, its systems may be virtualized instantly to the Datto device or the secure Datto cloud, to avoid data loss. With the systems now virtualized in the Cloud, the business may operate "business as usual" and have the time and resources to fix its server issue without compromising any data or incurring any downtime.

Instant Virtualization is available with Datto SIRIS 2 (/siris).



From	[redacted] InfoGrate Executive
Sent time	04/17/2013 08:13:58 PM
To	PRN Executive 2
Subject	Fwd: Going Forward - Con't
Attachments	Mailbox Sizes.bmp

[redacted]

Begin forwarded message:

From: Clinton Staff Server Lead Technical Advisor
To: InfoGrate Executive [redacted]
Subject: Re: Going Forward - Con't

Here are the answers:

[redacted]

In order to finalize the agreement and project details, we will be getting a bunch of these questions:

- How many BlackBerrys? Between 20 and 25 (things change often) but no more than 25 that is our max license count
- Are they using Blackberry 10s? No
- How many domains? 2 email domains presidentclinton.com<http://presidentclinton.com> and clintonemail.com<http://clintonemail.com>. The active directory domain is clinton.local
- How will we access the existing exchange infrastructure for migration purposes? Unclear if onsite will work. We have a ASA 5000 series that we could use to give VPN access. While transfer may be slower it will give 24/7 access to the engineers.
- What version of Exchange are they running now? 2007? yes as part of SBS server. It is service pack3
- Can we get remote access in advance to do a Discovery? I don't see why not, but I am not the decision maker on that one.
- How big are their mailboxes? I know two are big, but we need to start to get to exact details. --Attached is a screen shot of all the mailbox sizes (output of the exchange console). I have cropped out the mailbox names for security purposes.

We have rough planning answers to all of these, but we need to get to the final true access and details with patches, versions etc.

Should we give them access or how are they going to get the data for conversion? I don't understand this question.

[redacted]

On Tue, Apr 16, 2013 at 4:49 PM, [redacted] wrote:
[redacted]:

In order to finalize the agreement and project details, we will be getting a bunch of these questions:

- How many BlackBerrys?
- Are they using Blackberry 10s?
- How many domains?
- How will we access the existing exchange infrastructure for migration purposes?
- What version of Exchange are they running now? 2007?
- Can we get remote access in advance to do a Discovery?
- How big are their mailboxes? I know two are big, but we need to start to get to exact details.

We have rough planning answers to all of these, but we need to get to the final true access and details with patches, versions etc.

Should we give them access or how are they going to get the data for conversion?

[redacted]

From: [redacted] Clinton Staff Server Sponsor
Sent: Tuesday, April 16, 2013 4:25 PM
To: [redacted]
Cc: [redacted] Marcum LLP Partner

Subject: Re: Going Forward - Con't

same as [redacted] but adding her to confirm that.

[redacted]

On Tue, Apr 16, 2013 at 4:18 PM, [redacted] wrote:
Super. What is the billing address for that. Perfect.

From: [redacted] Clinton Staff Server Sponsor
Sent: Tuesday, April 16, 2013 3:33 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Going Forward - Con't

yes CESC (which stands for Clinton Executive Services Corporation)

On Tue, Apr 16, 2013 at 2:36 PM, [redacted] wrote:
Do they have a family office name. Sometimes families have a family office company- like you do for the foundation. I was hoping they had a family office that was a LLC or Inc that we could use that did not have their name in it. How do they pay non foundation staff- directly in their name? Do they have a trust?

From: [redacted] Clinton Staff Server Sponsor
Sent: Tuesday, April 16, 2013 2:33 PM

To: [redacted]
Cc: [redacted]
Subject: Re: Going Forward - Con't

I think that has to be them, doesn't it?

[redacted]

On Tue, Apr 16, 2013 at 2:18 PM, [redacted] wrote:
Her name? I can use her address. This is the person that has the legal rights to the facility and hardware.

From: [redacted] Clinton Staff Server Sponsor
Sent: Tuesday, April 16, 2013 2:18 PM

To: [redacted]
Cc: [redacted]
Subject: Re: Going Forward - Con't

[redacted]
On Tue, Apr 16, 2013 at 2:11 PM, [redacted] wrote:
I am generating the PO for the hardware order.

I am generating the agreement for the co-location agreement. It should be in your name, so if you wanted to fire Platte and keep the servers at the facility you can do that.

We want the client to be the owner of this, so these have to be generated in the clients name and address.

Obviously, it would not be the clients full name or home address. What name and billing address do you want me to use so I can get these generated and make them the owner.

[redacted]

From: [redacted] Clinton Staff Server Sponsor
Sent: Tuesday, April 16, 2013 2:04 PM
To: [redacted]
Cc: [redacted]

Subject: Re: Going Forward - Con't

HUH?
On Tue, Apr 16, 2013 at 11:08 AM, [redacted] InfoGrate Executive [redacted] wrote:
Who do you want to be on the po and colo agreements. To generate them we need the name. Do you want the one that we use for my SOW? It is good as it is initials. Like the server domain, we want this to be fairly generic and not obvious to draw any attention to it (more so for the colo agreement)

Also, what address should we use for it.

Sent from my iPad

On Apr 15, 2013, at 5:02 PM, [redacted] Clinton Staff Server Lead Technical Advisor [redacted] wrote:
My conf call is going long, will join shortly.

Sorry.

On Fri, Apr 12, 2013 at 12:23 PM, [redacted] Clinton Staff Server Lead Coordinator [redacted] wrote:
yes

From: [redacted] State Dept Special Assistant [redacted]
Sent: Friday, April 12, 2013 12:23 PM
To: [redacted] Clinton Staff Server Sponsor [redacted]
Cc: [redacted] InfoGrate Executive [redacted]
Subject: Re: Going Forward - Con't
[redacted]

4:00 doesn't work for [redacted] Can you do 5:00? Should only be about 30 minutes
-----Original Message-----
From: [redacted]
[redacted]
To: [redacted]
[redacted] Clinton Staff Server Sponsor [redacted] Clinton Staff Server Lead Technical Advisor [redacted]
Cc: InfoGrate Executive [redacted] >, [redacted]
Sent: Fri, Apr 12, 2013 11:41 am
Subject: RE: Going Forward - Con't
I can do 4 but absolutely have to be off the phone and out the door by 6 (Trustee dinner)
From: [redacted]
[redacted]
Sent: Friday, April 12, 2013 11:35 AM
To: [redacted]
Cc: [redacted] InfoGrate Executive [redacted] State Dept Special Assistant [redacted]
Subject: Re: Going Forward - Con't

Can we al do 5pm - I can do that too.

[redacted]
On Apr 12, 2013, at 11:30 AM, [redacted]
[redacted] wrote:
Sorry, Monday at 4pm does not work for me, I have 5pm -6pm

[redacted]
On Apr 12, 2013, at 8:28 AM, [redacted]
[redacted] wrote:
[redacted] - can you do this time?

cdm
On Apr 12, 2013, at 7:25 AM [redacted]
[redacted] wrote:
Works for me. Monday 4pm.

[redacted]
On Apr 12, 2013, at 5:19 AM, [redacted]
[redacted] wrote:
Dear [redacted] and [redacted]

Thanks for connecting, here is where I believe we are:

1. we are moving forward with Platte.

2. [redacted], you are going to negotiate with Platte and are going to send something re finalizing the contract, formal due diligence, SLA and third party security system. As you need specific information in that process, as of our hand-off call, you will be reaching to [redacted] and [redacted] (on technical matters) -- I will be copied for continuity we will transition this process to accountable party which will be [redacted] who will have to oversee implementation.

3. We will have a virtual server as best practice to separate iphone and bb -- the office can continue their discipline to support one or the other device and this additional virtual server does not impact their operational options in that regard.

4. you are moving to an 8 digit validation for iphones (to the extent they are supported by one of the offices on the servers)

5. you are doing the additional authentications you suggested - the one I would flag is on the email recipient one that you tried with me where I have to put in the phrase to get the email - I see the value but also experienced the slowness and challenge (tried it on amtrak) - i can tell you i would delete the message and send the person a message saying i can't open it - sorry. So I would not add that as a required feature for folks emails - would do it as an option if it doesn't already exist as one on their email. I might do that for her emails as folks will always be desirous to take whatever steps they need to open it - but it begs the question of does she have to send a first one giving them the password? and can her emails automatically be that way or would she have to encrypt them each time she sends them? and could she send some not encrypted? In general, the user experience, while not bad, is enough of a hassle that I question its value as folks will work around it.

6. we don't need additional hours from Platte to be negotiated for availability for HRC devices, [redacted] and I will work this through separately.

7. on the server name, I get that it will have testyy or something but won't someone be able to tell after they see clintonemail, owjc, presidentclinton and hillaryclintonoffice all pointing there that this is the server?

8. if this is it, let's find a time now for monday so [redacted] can join and we can go forward. I am going to start the bidding FOR MONDAY CALL FOR 30 MINUTES AT 4pm. - please advise if that works.

Thank you all.

best..

[redacted]
On Thu, Apr 11, 2013 at 6:04 PM, [redacted]
[redacted] wrote:
Below are your answers.4
From: [redacted]
[redacted]
Sent: Thursday, April 11, 2013 9:12 AM
To: [redacted]
Cc: [redacted]
Subject: GOING FORWARD

Dear [redacted] (and [redacted])

I am following up - I left you both message this am.

First, I want to make sure we pull the trigger and go forward.

Second, I need a briefing on the notes from the call before (see my questions below).

Third, I want to introduce [redacted] to taking over and pushing this forward as she will be accountable for the implementation.

I would love to try to do all that today so let please give me a call when you have a moment at [redacted]>.

Thank you both so much.

See notes below.

[redacted]
On Apr 3, 2013, at 7:04 PM, [redacted]
[redacted] wrote:
Hi:

Ok- here is what we talked about and agreed on for your approval.

We need to support both the blackberry and ipad which increase maintenance as another virtual server is required. Is that right? [BOTH NEED TO BE SUPPORTED BUT I AM UNCLEAR RE WHY THAT REQUIRES ANOTHER SERVER.]

it is another virtual server, not physical server. it is best to not have the BB and Iphone on the same one. Best practice. Don't play as well in the same sandbox. We could try it, but not recommended.

Will clients be ok with use of the good application on the ipad and iphones. We strongly recommend it. [WE NEED TO HAVE A PERSON IN DC AND ONE IN NYC TO SUPPORT THE CLIENT ON THEIR DEVICES - NAMELY HRC ON HER BB AND IPAD - SO THAT WHEN IT IS NOT WORKING, SHE CAN CALL AT ANYTIME AND GET HELP, OR THEY CAN COME OVER AT REASONABLE TIMES AND FIX THEM - SHOULD WE DO THAT BY RETAINER WITH AN INDIVIDUALS AS OPPOSED TO AS PART OF ANY DEVICE/DESKTOP SOLUTION SUPPORT? WHAT IS THE DESKTOP/DEVICE SOLUTION SUPPORT BEING RECOMMENDED?]

I think [redacted] had a person in NY that he thought would work. I did not know about DC for physcail requirements. We can do a person in NY then we keep it separate and then they can always call Platte for issues. I just wont worry as much about the SLA and hours as they will be the second line of defense/
8 digit password on iphones [ARE WE SWITCHING FOLKS TO IPHONES? BECAUSE THE OFFICE AS I RECALL USES BB AND I WOULD BE INCLINED TO KEEP THAT DISCIPLINE]
yup to you. Also, we need to consider the ipad with email too. HRC used an ipad with email right?
change the server domain name [DOES THIS MEAN EVERYONE SHE JUST GAVE A NEW EMAIL TO HAS TO GET ANOTHER EMAIL FOR HER? AND IS THAT TRUE FOR ALL OF THE OWJC OFFICE TOO? CAN THEY HAVE DIFFERENT DOMAIN NAMES ON SAME SERVER - E.G., KEEP PRESIDENT CLINTON AND OWJC; CHANGE HERS TO SOMETHING - LIKELY HRCO.COM<http://HRCO.COM><http://HRCO.COM> IF THAT IS AVAILABLE OR SOMTHING; AND DON'T FORGET WE HAVE CHELSEA WHO USES CHELSEA OFFICE SO NEED TO UNDERSTAND WHAT IS BEING RECOMMENDED IN DOMAIN CHANGE REFERENCE HERE]
ideally I recommend something for the server and then lots of email domain addresses can point to the server address. So we make the server address something like testyyy or something nobody cares about. Then email address can have pretty ones that you redirect to the server one basically.
can users use secure email...needs explanation, but basically do not make much or any work for them, but it does for the users reading their emails from them. [NOT FOLLOWING]
we should talk about this. It requires nothing for a user sending an email but some work for the person getting the email. I will send you an email from me- see this image. In the upper right, you see Send Secure. I will send you and email by clicking that vs send. You get a note saying that you have an email, but it does not give you the email. I have to give you a password to get the email. It means that if your gmail account was hacked, they would not get my doctors report or pictures or whatever it was I sent you. It is "technically" not in your email system.
<image001.png>
2 level authentication for admin
2 level authentication for all outside the us
1 firewall, 2 not required
dual processor
use of cloud jacket or alike for security monitoring and ids with extra ability to control and block
no desktop support- that will be local or reconsidered later [SEE MY COMMENTS ABOVE]
I think [redacted] has a person. I know lots of folks locally that are able to help, and Platte can help too. This depends on if we are talking about email only or full desktops and printers and firewalls. I spoke to [redacted] about it. Too hard to write in email. Happy to talk tomorrow afternoon.
Negotiate the table I sent you to be a bit tighter/stricter
keep desktop/mobile email access support at normal levels since they won't be the first line of defense [HOW DOES THIS CONNECT WITH TWO ABOVE?]

TotalItemSize	ItemCount
395380452B	5149
4549781546B	155619
8107372380B	166524
3213379478B	100693
315461443B	7814
3018206870B	26168
9311151B	1228
1604100726B	36633
1356985792B	28528
675B	4
1727039198B	42436
293254491B	4318
9148375884B	215601
27836B	6
8691417034B	226915
741851441B	21950
9689725462B	103419
1462376070B	19817
0B	0
2767596377B	30338
2035565658B	31164
563950170B	1565
146144785B	268
524865605B	1837
369231B	402
13195449269B	231719
695764328B	7389

Platte River Networks

[redacted]

Invoice

Date	Invoice #
6/15/2013	33427

PAID 07/05/2013

Bill To:

CESC
Marcum LLP c/cMarcum LLP Partner
[redacted]

Project	P.O. No.	Terms	Due Date
		Net 15	6/30/2013

Serviced	Description	Units	Rate	Amount
6/12/2013	Task Title: Project Planning Project Name: CESC Datacenter migration 2013 Summary Notes: 6/12/2013 - [redacted]/PRN (8:00a - 9:30a) - 1.5 hours * Data center call with [redacted] (client service manager) to go over datacenter info, shipping requirements, physical access rules etc * Complete project plan excel sheet, sent to [redacted] and CESC team for review and updates Resource Name: PRN Project Manager 2 T20130607.0001	1.5	125.00	187.50
6/12/2013	Task Title: Preconfigure hardware Project Name: CESC Datacenter migration 2013 Summary Notes: 6.12.13 [redacted]/PRN (1:30p - 5:00p) 3.5hrs Project * Received all the networking hardware and began unboxing all of it. * Setup the FW's in 'Active-Active' mode for HA. * Configured all the new management access on the FW's. * Configured the switches for all ports and appropriate usage. * Created separate networks for management and production. * Created a new VPN connection to their existing location. * Will configure the remaining network steps tomorrow. Resource Name: PRN Project Manager 1 T20130612.0039	3.5	125.00	437.50

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in collections efforts.

Please direct all billing inquiries and requests to the Accounting Department
[redacted] :: [redacted]

Subtotal	
Sales Tax (0.0%)	
Total	
Payments/Credits	
Balance Due *	

Platte River Networks

[redacted]

Invoice

Date	Invoice #
6/15/2013	33427

PAID 07/05/2013

Bill To:

CESC
Marcum LLP c/o [redacted]
[redacted]

Project	P.O. No.	Terms	Due Date
		Net 15	6/30/2013

Serviced	Description	Units	Rate	Amount
6/13/2013	Task Title: Preconfigure hardware Project Name: CESC Datacenter migration 2013 Summary Notes: 6.13.13 [redacted]/PRN (11:00a - 5:00p) 6hrs Project * Arrived back at the office and picked up where we left off yesterday. * Was able to get the site to site VPN up from the FortiGate to the Cisco. * We are having an issue with one way traffic though. * Took some time, and was able to get it working both ways. * Server has arrived, began setting that up too. * Installed ESXi 5.1 and configure the networking. * Once complete, was able to copy ISO's to the local datastore. * Deployed a new vCenter appliance and configured accordingly. * Configured all vCenter settings for the new environment. * Created a new Server 2008R2 VM and converted it to a template. * Deployed a new server from the template and made our management server for our work over the next few weeks. * Was able to test the connection over the VPN successfully. * Will continue tomorrow. Resource Name: [redacted] T20130612.0039	6	125.00	750.00

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the Accounting Department
[redacted] :: [redacted]

Subtotal	
Sales Tax (0.0%)	
Total	
Payments/Credits	
Balance Due *	

Platte River Networks
[redacted]

Invoice

Date	Invoice #
6/15/2013	33427

PAID 07/05/2013

Bill To:

CESC
Marcum LLP c/o [redacted]
[redacted]

Project	P.O. No.	Terms	Due Date
		Net 15	6/30/2013

Serviced	Description	Units	Rate	Amount
6/14/2013	Task Title: Preconfigure hardware Project Name: CESC Datacenter migration 2013 Summary Notes: 6.14.13 [redacted]/PRN (8:00a - 3:30p) 7.5hrs Project * Logged into the system and configured all temporary remote access for our use. * Installed our basic monitoring software. * Deployed 2 new servers (domain controller and exchange server). * [redacted] will install the application and promote the DC. * Plugged in the Datto device and got it online for [redacted] to configure. * Finished the networking configuration and tested the failover functionality. * Worked with [redacted] on timing and next steps. * Configured the iDRAC card for remote control. * Configured SNMP for all networking devices and the ESXi host. * Setup alerts for monitoring, so we know what is happening during the migration. * Worked with the team on timing and scheduling. * Booked flight/hotel/car accordingly. Resource Name: [redacted] T20130612.0039	7.5	125.00	937.50

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in collections efforts.

Please direct all billing inquiries and requests to the Accounting Department
[redacted] :: [redacted]

Subtotal	$2,312.50
Sales Tax (0.0%)	$0.00
Total	$2,312.50
Payments/Credits	-$2,312.50
Balance Due *	$0.00

Platte River Networks
[redacted]

Invoice

Date	Invoice #
6/22/2013	33488

PAID 07/05/2013

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Project	P.O. No.	Terms	Due Date
		Net 15	7/7/2013

Serviced	Description	Units	Rate	Amount
6/17/2013	Task Title: Preconfigure hardware Project Name: CESC Datacenter migration 2013 Summary Notes: 6/17/2013 - [redacted]/PRN (7:00a - 12:00p) - 5 hours - Project * Worked on the following tasks: Preconfigure servers, conference calls with CESC team, work with [redacted] on planning for VPN, cutover, and server co-existence phases Resource Name: [redacted] T20130612.0039	5	125.00	625.00
6/17/2013	Task Title: Preconfigure hardware Project Name: CESC Datacenter migration 2013 Summary Notes: 6.17.13 [redacted]/PRN (9:00a - 5:00p) 8hrs Project * Arrived at the office and continued work on the server setup. * Configured additional networking security and redundancy. * Now that we have the servers on the domain, we can cut the temporary VPN. * Once removed, we put the same 192.168.42.0/24 network on the firewalls to host. * Created the new vlan on the firewalls as well as both switches. * Verified connectivity and will wait to configure firewall rules until we are in the datacenter. * Changed IP's on all servers and equipment to match that of the .42.x network. * Reattached the Datto device to these IP's and setup the new backups. * Verified all was ready for delivery, and shut everything down. Resource Name: [redacted] T20130612.0039	8	125.00	1,000.00

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the Accounting Department
[redacted] :: [redacted]

Subtotal	
Sales Tax (0.0%)	
Total	
Payments/Credits	
Balance Due *	

PLATTE RIVER networks

Platte River Networks
[redacted]

Invoice

Date	Invoice #
6/22/2013	33488

PAID 07/05/2013

Bill To:

CESC
Marcum LLP c/o [redacted]
[redacted]

Project	P.O. No.	Terms	Due Date
		Net 15	7/7/2013

Serviced	Description	Units	Rate	Amount
6/18/2013	Task Title: Preconfigure hardware Project Name: CESC Datacenter migration 2013 Summary Notes: 6.18.13 [redacted]/PRN (8:30a - 11:30a) 3hrs Project * Shutdown the remaining network equipment and packaged up for delivery. * Gathered cables and boxed everything up together. * Drop shipped them for overnight delivery. * Will track the package to ensure delivery to the datacenter. Resource Name: [redacted] T20130612.0039	3	125.00	375.00
6/20/2013	Task Title: Project Planning Project Name: CESC Datacenter migration 2013 Summary Notes: 6/20/2013 - [redacted]/PRN (9:00a - 9:30a) - .5 hours - Project * Planning call with [redacted] and [redacted] about project overview, expected challenges, task list, etc Resource Name: [redacted] T20130607.0001	0.5	125.00	62.50

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in collections efforts.

Please direct all billing inquiries and requests to the Accounting Department
[redacted] :: [redacted]

Subtotal	$2,062.50
Sales Tax (0.0%)	$0.00
Total	$2,062.50
Payments/Credits	-$2,062.50
Balance Due *	$0.00

From: [redacted]
Sent time: 06/06/2013 12:59:59 PM
To: PRN Executive 2
Cc: CRC
Subject: RE: CESC

Ok??? I'll just build the contract based on normal pricing.

From PRN Executive 2
Sent: Thursday, June 06, 2013 11:59 AM
To: [redacted]
Cc: CRC
Subject: Re: CESC

Whatever u told me it would be
100? Cannot remember

Sent from my iPad

On Jun 6, 2013, at 10:57 AM, [redacted] PRN Executive 3 [redacted] wrote:

> There will still be a monthly fee. What are they expecting on that?
>
> **From** PRN Executive 2
> **Sent:** Thursday, June 06, 2013 11:56 AM
> **To:** [redacted]
> **Cc:** CRC
> **Subject:** Re: CESC
>
> Using datto but only onsite
> Turning off cloud
> They do not want it
>
> Sent from my iPad
>
> On Jun 6, 2013, at 10:50 AM, [redacted] PRN Executive 3 [redacted] wrote:
>
> > [redacted] – I know you are out. I just need a quick answer. What's the story with the Datto for CESC? Are we going to be pushing backups to the cloud? Did we present a monthly price to them? I can't find anything and Datto wants to know before they finalize the order.
> >
> > [redacted]
> > PLATTE RIVER NETWORKS

From: PRN Project Manager 2
Sent time: 01/26/2015 12:51:57 PM
To: PRN Staff 1 PRN Executive 3 PRN Staff 2
Cc: Procurement
Subject: RE: Datto

What is the proper channel for this? Should stuff like this go to [redacted] Doesn't seem like the realm of a tech support ticket

From: PRN Staff 1
Sent: Monday, January 26, 2015 1:51 PM
To: PRN Project Manager 2, PRN Executive 3, PRN Staff 2
Cc: Procurement
Subject: RE: Datto

Ok, I'm showing that there is not a cap. We may want to get clarification.

Billing Policy	[redacted]
Included offsite(before overage):	Unlimited
Total Cloud:	1.5 TB

PRN Staff 1 | [redacted]

PLATTE RIVER networks

From: PRN Project Manager 2
Sent: Monday, January 26, 2015 11:48 AM
To: PRN Staff 1 PRN Executive 3 PRN Staff 2
Cc: Procurement
Subject: RE: Datto

They had privacy concerns of course. The cloud storage is still through Datto, I think the private cloud feature just puts it in a different datacenter or something?

From: PRN Staff 1
Sent: Monday, January 26, 2015 1:47 PM
To: PRN Project Manager 2, PRN Executive 3, PRN Staff 2
Cc: Procurement
Subject: RE: Datto

CESC is on Private Cloud. The don't use Datto's storage space. There is not a cap on Datto's end. Do they have another provider?

PRN Staff 1 | [redacted]

PLATTE RIVER networks

From: PRN Project Manager 2
Sent: Monday, January 26, 2015 11:37 AM
To: PRN Executive 3 PRN Staff 2
Cc: Procurement PRN Staff 1
Subject: RE: Datto

Offsite retention at CESC is only 2 months

From: PRN Executive 3
Sent: Monday, January 26, 2015 1:35 PM
To: PRN Project Manager 2; PRN Staff 2
Cc: Procurement
Subject: RE: Datto

You may want to reach out to PRN Staff I believe that when this happens there is an old "full" that needs to be trimmed off the cloud backup. It may require a support ticket.

From: PRN Project Manager 2
Sent: Monday, January 26, 2015 11:33 AM
To: PRN Staff 2
Cc: Procurement
Subject: RE: Datto

What is the cap on CESC? I show 1.5 TB offsite, and it's listed as green in the Datto console

From: PRN Staff 2
Sent: Monday, January 26, 2015 1:31 PM
To: PRN Project Manager 2
Cc: Procurement
Subject: Datto

Have you made any changes to CESC and [redacted] They are both over.

PRN Staff 2 [redacted]

PLATTE RIVER networks

PLATTE RIVER networks

Platte River Networks
[redacted]

Invoice

Date	Invoice #
7/1/2013	IS.1307006

PAID 07/20/2013

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 15	7/16/2013

Serviced	Description
7/1/2013	Datto Month of Private Cloud Service (auto-recurring) [Jul 01, 2013 - Jul 31, 2013]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	$249.00
Sales Tax (0.0%)	$0.00
Total	$249.00
Payments/Credits	-$249.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
8/5/2013	IB.1308057

PAID
09/16/2013

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	9/4/2013

Serviced	Description
8/1/2013	Help Desk NOC-HD12 24x7 [Aug 01, 2013 - Aug 31, 2013]
8/1/2013	LPI NOC Support L2 Device [Aug 01, 2013 - Aug 31, 2013]
8/1/2013	LPI NOC Support L2 Server [Aug 01, 2013 - Aug 31, 2013]
8/1/2013	LPI NOC Support L2 Virtual Server [Aug 01, 2013 - Aug 31, 2013]
8/1/2013	Managed Services Maintenance [Aug 01, 2013 - Aug 31, 2013]
8/1/2013	Datto Month of Private Cloud Service (auto-recurring) [Aug 01, 2013 - Aug 31, 2013]
8/1/2013	Intuition Alert Management [Aug 01, 2013 - Aug 31, 2013]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
9/4/2013	IB.1309050

PAID 11/02/2013

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	10/4/2013

Serviced	Description
9/1/2013	Help Desk NOC-HD12 24x7 [Sep 01, 2013 - Sep 30, 2013]
9/1/2013	LPI NOC Support L2 Device [Sep 01, 2013 - Sep 30, 2013]
9/1/2013	LPI NOC Support L2 Server [Sep 01, 2013 - Sep 30, 2013]
9/1/2013	LPI NOC Support L2 Virtual Server [Sep 01, 2013 - Sep 30, 2013]
9/1/2013	Managed Services Maintenance [Sep 01, 2013 - Sep 30, 2013]
9/1/2013	Datto Month of Private Cloud Service (auto-recurring) [Sep 01, 2013 - Sep 30, 2013]
9/1/2013	Intuition Alert Management [Sep 01, 2013 - Sep 30, 2013]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
10/3/2013	IB.1310031

PAID 10/15/2013

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	11/2/2013

Serviced	Description
10/1/2013	Help Desk NOC-HD12 24x7 [Oct 01, 2013 - Oct 31, 2013]
10/1/2013	LPI NOC Support L2 Device [Oct 01, 2013 - Oct 31, 2013]
10/1/2013	LPI NOC Support L2 Server [Oct 01, 2013 - Oct 31, 2013]
10/1/2013	LPI NOC Support L2 Virtual Server [Oct 01, 2013 - Oct 31, 2013]
10/1/2013	Managed Services Maintenance [Oct 01, 2013 - Oct 31, 2013]
10/1/2013	Datto Month of Private Cloud Service (auto-recurring) [Oct 01, 2013 - Oct 31, 2013]
10/1/2013	Intuition Alert Management [Oct 01, 2013 - Oct 31, 2013]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

PLATTE RIVER networks

Invoice

Date	Invoice #
11/5/2013	IB.1311027

PAID 11/22/2013

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	12/5/2013

Serviced	Description
11/1/2013	Help Desk NOC-HD12 24x7 [11/01/2013 - 11/30/2013]
11/1/2013	Managed Services Maintenance [11/01/2013 - 11/30/2013]
11/1/2013	Intuition Alert Management [11/01/2013 - 11/30/2013]
11/1/2013	LPI NOC Support L2 Server [11/01/2013 - 11/30/2013]
11/1/2013	LPI NOC Support L2 Device [11/01/2013 - 11/30/2013]
11/1/2013	LPI NOC Support L2 Virtual Server [11/01/2013 - 11/30/2013]
11/1/2013	Datto Month of Private Cloud Service (auto-recurring) [11/01/2013 - 11/30/2013]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
12/4/2013	IB.1312009

PAID
01/01/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	1/3/2014

Serviced	Description
12/1/2013	Help Desk NOC-HD12 24x7 [12/01/2013 - 12/31/2013]
12/1/2013	LPI NOC Support L2 Device [12/01/2013 - 12/31/2013]
12/1/2013	LPI NOC Support L2 Server [12/01/2013 - 12/31/2013]
12/1/2013	LPI NOC Support L2 Virtual Server [12/01/2013 - 12/31/2013]
12/1/2013	Managed Services Maintenance [12/01/2013 - 12/31/2013]
12/1/2013	Datto Month of Private Cloud Service (auto-recurring) [12/01/2013 - 12/31/2013]
12/1/2013	Intuition Alert Management [12/01/2013 - 12/31/2013]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
1/6/2014	IB.1401012

PAID
01/21/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	2/5/2014

Serviced	Description
1/1/2014	Help Desk NOC-HD12 24x7 [01/01/2014 - 01/31/2014]
1/1/2014	LPI NOC Support L2 Device [01/01/2014 - 01/31/2014]
1/1/2014	LPI NOC Support L2 Server [01/01/2014 - 01/31/2014]
1/1/2014	LPI NOC Support L2 Virtual Server [01/01/2014 - 01/31/2014]
1/1/2014	Managed Services Maintenance [01/01/2014 - 01/31/2014]
1/1/2014	Datto Month of Private Cloud Service (auto-recurring) [01/01/2014 - 01/31/2014]
1/1/2014	Intuition Alert Management [01/01/2014 - 01/31/2014]

Thank you for your business!

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Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Invoice

Date	Invoice #
2/3/2014	IB.1402022

PAID 02/18/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	3/5/2014

Serviced	Description
2/1/2014	Help Desk NOC-HD12 24x7 [02/01/2014 - 02/28/2014]
2/1/2014	LPI NOC Support L2 Device [02/01/2014 - 02/28/2014]
2/1/2014	LPI NOC Support L2 Server [02/01/2014 - 02/28/2014]
2/1/2014	LPI NOC Support L2 Virtual Server [02/01/2014 - 02/28/2014]
2/1/2014	Managed Services Maintenance [02/01/2014 - 02/28/2014]
2/1/2014	Datto Month of Private Cloud Service (auto-recurring) [02/01/2014 - 02/28/2014]
2/1/2014	Intuition Alert Management [02/01/2014 - 02/28/2014]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
3/3/2014	IB.1403010

PAID 03/15/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	4/2/2014

Serviced	Description
3/1/2014	Help Desk NOC-HD12 24x7 [03/01/2014 - 03/31/2014]
3/1/2014	LPI NOC Support L2 Device [03/01/2014 - 03/31/2014]
3/1/2014	LPI NOC Support L2 Server [03/01/2014 - 03/31/2014]
3/1/2014	LPI NOC Support L2 Virtual Server [03/01/2014 - 03/31/2014]
3/1/2014	Managed Services Maintenance [03/01/2014 - 03/31/2014]
3/1/2014	Datto Month of Private Cloud Service (auto-recurring) [03/01/2014 - 03/31/2014]
3/1/2014	Intuition Alert Management [03/01/2014 - 03/31/2014]

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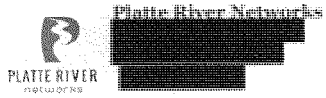
Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**



Platte River Networks
[redacted]

Invoice

Date	Invoice #
4/1/2014	IB.1404011

PAID
04/12/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	5/1/2014

Serviced	Description
4/1/2014	Help Desk NOC-HD12 24x7 [04/01/2014 - 04/30/2014]
4/1/2014	LPI NOC Support L2 Device [04/01/2014 - 04/30/2014]
4/1/2014	LPI NOC Support L2 Server [04/01/2014 - 04/30/2014]
4/1/2014	LPI NOC Support L2 Virtual Server [04/01/2014 - 04/30/2014]
4/1/2014	Managed Services Maintenance [04/01/2014 - 04/30/2014]
4/1/2014	Datto Month of Private Cloud Service (auto-recurring) [04/01/2014 - 04/30/2014]
4/1/2014	Intuition Alert Management [04/01/2014 - 04/30/2014]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
5/1/2014	IB.1405011

PAID
05/12/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	5/31/2014

Serviced	Description
5/1/2014	Help Desk NOC-HD12 24x7 [05/01/2014 - 05/31/2014]
5/1/2014	LPI NOC Support L2 Device [05/01/2014 - 05/31/2014]
5/1/2014	LPI NOC Support L2 Server [05/01/2014 - 05/31/2014]
5/1/2014	LPI NOC Support L2 Virtual Server [05/01/2014 - 05/31/2014]
5/1/2014	Managed Services Maintenance [05/01/2014 - 05/31/2014]
5/1/2014	Datto Month of Private Cloud Service (auto-recurring) [05/01/2014 - 05/31/2014]
5/1/2014	Intuition Alert Management [05/01/2014 - 05/31/2014]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
6/1/2014	IB.1406011

PAID
06/16/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	7/1/2014

Serviced	Description
6/1/2014	Help Desk NOC-HD12 24x7 [06/01/2014 - 06/30/2014]
6/1/2014	LPI NOC Support L2 Device [06/01/2014 - 06/30/2014]
6/1/2014	LPI NOC Support L2 Server [06/01/2014 - 06/30/2014]
6/1/2014	LPI NOC Support L2 Virtual Server [06/01/2014 - 06/30/2014]
6/1/2014	Managed Services Maintenance [06/01/2014 - 06/30/2014]
6/1/2014	Datto Month of Private Cloud Service (auto-recurring) [06/01/2014 - 06/30/2014]
6/1/2014	Intuition Alert Management [06/01/2014 - 06/30/2014]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
7/1/2014	IB.1407012

PAID
07/14/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	7/31/2014

Serviced	Description
7/1/2014	Help Desk NOC-HD12 24x7 [07/01/2014 - 07/31/2014]
7/1/2014	LPI NOC Support L2 Device [07/01/2014 - 07/31/2014]
7/1/2014	LPI NOC Support L2 Server [07/01/2014 - 07/31/2014]
7/1/2014	LPI NOC Support L2 Virtual Server [07/01/2014 - 07/31/2014]
7/1/2014	Managed Services Maintenance [07/01/2014 - 07/31/2014]
7/1/2014	Datto Month of Private Cloud Service (auto-recurring) [07/01/2014 - 07/31/2014]
7/1/2014	Intuition Alert Management [07/01/2014 - 07/31/2014]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
8/4/2014	IB.1408012

PAID
08/18/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	9/3/2014

Serviced	Description
8/1/2014	Help Desk NOC-HD12 24x7 [08/01/2014 - 08/31/2014]
8/1/2014	LPI NOC Support L2 Device [08/01/2014 - 08/31/2014]
8/1/2014	LPI NOC Support L2 Server [08/01/2014 - 08/31/2014]
8/1/2014	LPI NOC Support L2 Virtual Server [08/01/2014 - 08/31/2014]
8/1/2014	Managed Services Maintenance [08/01/2014 - 08/31/2014]
8/1/2014	Datto Month of Private Cloud Service (auto-recurring) [08/01/2014 - 08/31/2014]
8/1/2014	Intuition Alert Management [08/01/2014 - 08/31/2014]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
9/3/2014	IB.1409013

PAID 09/13/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	10/3/2014

Serviced	Description
9/1/2014	Help Desk NOC-HD12 24x7 [09/01/2014 - 09/30/2014]
9/1/2014	LPI NOC Support L2 Device [09/01/2014 - 09/30/2014]
9/1/2014	LPI NOC Support L2 Server [09/01/2014 - 09/30/2014]
9/1/2014	LPI NOC Support L2 Virtual Server [09/01/2014 - 09/30/2014]
9/1/2014	Managed Services Maintenance [09/01/2014 - 09/30/2014]
9/1/2014	Datto Month of Private Cloud Service (auto-recurring) [09/01/2014 - 09/30/2014]
9/1/2014	Intuition Alert Management [09/01/2014 - 09/30/2014]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
10/1/2014	IB.1410015

PAID
10/18/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	10/31/2014

Serviced	Description
10/1/2014	Help Desk NOC-HD12 24x7 [10/01/2014 - 10/31/2014]
10/1/2014	LPI NOC Support L2 Device [10/01/2014 - 10/31/2014]
10/1/2014	LPI NOC Support L2 Server [10/01/2014 - 10/31/2014]
10/1/2014	LPI NOC Support L2 Virtual Server [10/01/2014 - 10/31/2014]
10/1/2014	Datto Month of Private Cloud Service (auto-recurring) [10/01/2014 - 10/31/2014]
10/1/2014	Managed Services Maintenance [10/01/2014 - 10/31/2014]
10/1/2014	Intuition Alert Management [10/01/2014 - 10/31/2014]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

PLATTE RIVER networks

Platte River Networks
[redacted]

Invoice

Date	Invoice #
11/3/2014	IB.1411016

PAID 11/17/2014

Bill To:

CESC
Marcum LLP c/o Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	12/3/2014

Serviced	Description
11/1/2014	Help Desk NOC-HD12 24x7 [11/01/2014 - 11/30/2014]
11/1/2014	LPI NOC Support L2 Device [11/01/2014 - 11/30/2014]
11/1/2014	LPI NOC Support L2 Server [11/01/2014 - 11/30/2014]
11/1/2014	LPI NOC Support L2 Virtual Server [11/01/2014 - 11/30/2014]
11/1/2014	Datto Month of Private Cloud Service (auto-recurring) [11/01/2014 - 11/30/2014]
11/1/2014	Managed Services Maintenance [11/01/2014 - 11/30/2014]
11/1/2014	Intuition Alert Management [11/01/2014 - 11/30/2014]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted] : [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
12/2/2014	IB.1412015

PAID
01/27/2015

Bill To:

Marcum LLP
Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	1/1/2015

Serviced	Description
12/1/2014	Help Desk NOC-HD12 24x7 [12/01/2014 - 12/31/2014]
12/1/2014	LPI NOC Support L2 Device [12/01/2014 - 12/31/2014]
12/1/2014	LPI NOC Support L2 Server [12/01/2014 - 12/31/2014]
12/1/2014	LPI NOC Support L2 Virtual Server [12/01/2014 - 12/31/2014]
12/1/2014	Datto Month of Private Cloud Service (auto-recurring) [12/01/2014 - 12/31/2014]
12/1/2014	Managed Services Maintenance [12/01/2014 - 12/31/2014]
12/1/2014	Intuition Alert Management [12/01/2014 - 12/31/2014]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
1/6/2015	IB.1501015

PAID 01/27/2015

Bill To:

Marcum LLP
Marcum LLP Partner
[redacted]

Terms	Due Date
Net 30	2/5/2015

Serviced	Description
1/1/2015	Help Desk NOC-HD12 24x7 [01/01/2015 - 01/31/2015]
1/1/2015	LPI NOC Support L2 Device [01/01/2015 - 01/31/2015]
1/1/2015	LPI NOC Support L2 Server [01/01/2015 - 01/31/2015]
1/1/2015	LPI NOC Support L2 Virtual Server [01/01/2015 - 01/31/2015]
1/1/2015	Datto Month of Private Cloud Service (auto-recurring) [01/01/2015 - 01/31/2015]
1/1/2015	Managed Services Maintenance [01/01/2015 - 01/31/2015]
1/1/2015	Intuition Alert Management [01/01/2015 - 01/31/2015]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
2/2/2015	IB.1502014

PAID
02/09/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	3/4/2015

Serviced	Description
2/1/2015	Help Desk NOC-HD12 24x7 [02/01/2015 - 02/28/2015]
2/1/2015	LPI NOC Support L2 Device [02/01/2015 - 02/28/2015]
2/1/2015	LPI NOC Support L2 Server [02/01/2015 - 02/28/2015]
2/1/2015	LPI NOC Support L2 Virtual Server [02/01/2015 - 02/28/2015]
2/1/2015	Datto Month of Private Cloud Service (auto-recurring) [02/01/2015 - 02/28/2015]
2/1/2015	Managed Services Maintenance [02/01/2015 - 02/28/2015]
2/1/2015	Intuition Alert Management [02/01/2015 - 02/28/2015]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
3/3/2015	IB.1503016

PAID
03/12/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	4/2/2015

Serviced	Description
3/1/2015	Help Desk NOC-HD12 24x7 [03/01/2015 - 03/31/2015]
3/1/2015	LPI NOC Support L2 Device [03/01/2015 - 03/31/2015]
3/1/2015	LPI NOC Support L2 Server [03/01/2015 - 03/31/2015]
3/1/2015	LPI NOC Support L2 Virtual Server [03/01/2015 - 03/31/2015]
3/1/2015	Datto Month of Private Cloud Service (auto-recurring) [03/01/2015 - 03/31/2015]
3/1/2015	Managed Services Maintenance [03/01/2015 - 03/31/2015]
3/1/2015	Intuition Alert Management [03/01/2015 - 03/31/2015]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
4/1/2015	IB.1504014

PAID
04/09/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	5/1/2015

Serviced	Description
4/1/2015	Help Desk NOC-HD12 24x7 [04/01/2015 - 04/30/2015]
4/1/2015	LPI NOC Support L2 Device [04/01/2015 - 04/30/2015]
4/1/2015	LPI NOC Support L2 Server [04/01/2015 - 04/30/2015]
4/1/2015	LPI NOC Support L2 Virtual Server [04/01/2015 - 04/30/2015]
4/1/2015	Datto Month of Private Cloud Service (auto-recurring) [04/01/2015 - 04/30/2015]
4/1/2015	Managed Services Maintenance [04/01/2015 - 04/30/2015]
4/1/2015	Intuition Alert Management [04/01/2015 - 04/30/2015]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

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Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

PLATTE RIVER networks

Platte River Networks
[redacted]

Invoice

Date	Invoice #
5/1/2015	IB.1505016

PAID 05/11/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	5/31/2015

Serviced	Description
5/1/2015	Help Desk NOC-HD12 24x7 [05/01/2015 - 05/31/2015]
5/1/2015	LPI NOC Support L2 Device [05/01/2015 - 05/31/2015]
5/1/2015	LPI NOC Support L2 Server [05/01/2015 - 05/31/2015]
5/1/2015	LPI NOC Support L2 Virtual Server [05/01/2015 - 05/31/2015]
5/1/2015	Datto Month of Private Cloud Service (auto-recurring) [05/01/2015 - 05/31/2015]
5/1/2015	Managed Services Maintenance [05/01/2015 - 05/31/2015]
5/1/2015	Intuition Alert Management [05/01/2015 - 05/31/2015]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

PLATTE RIVER networks

Platte River Networks
[redacted]

Invoice

Date	Invoice #
6/1/2015	IB.1506014

PAID 06/09/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	7/1/2015

Serviced	Description
6/1/2015	Help Desk NOC-HD12 24x7 [06/01/2015 - 06/30/2015]
6/1/2015	LPI NOC Support L2 Device [06/01/2015 - 06/30/2015]
6/1/2015	LPI NOC Support L2 Server [06/01/2015 - 06/30/2015]
6/1/2015	LPI NOC Support L2 Virtual Server [06/01/2015 - 06/30/2015]
6/1/2015	Datto Month of Private Cloud Service (auto-recurring) [06/01/2015 - 06/30/2015]
6/1/2015	Managed Services Maintenance [06/01/2015 - 06/30/2015]
6/1/2015	Intuition Alert Management [06/01/2015 - 06/30/2015]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
7/1/2015	IB.1507017

PAID
07/13/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	7/31/2015

Serviced	Description
7/1/2015	Help Desk NOC-HD12 24x7 [07/01/2015 - 07/31/2015]
7/1/2015	LPI NOC Support L2 Device [07/01/2015 - 07/31/2015]
7/1/2015	LPI NOC Support L2 Server [07/01/2015 - 07/31/2015]
7/1/2015	LPI NOC Support L2 Virtual Server [07/01/2015 - 07/31/2015]
7/1/2015	Datto Month of Private Cloud Service (auto-recurring) [07/01/2015 - 07/31/2015]
7/1/2015	Managed Services Maintenance [07/01/2015 - 07/31/2015]
7/1/2015	Intuition Alert Management [07/01/2015 - 07/31/2015]

Thank you for your business!

Your prompt payment is appreciated. A late fee of $25.00 and a monthly finance charge of 1 1/2% (18% annually) may be assessed for invoices not paid within terms.

Any disputes should be reported to Platte River Networks within 15 days of the invoice date or all charges will be deemed as acceptable by the client. In the event of non-payment, the client will also be responsible for collection and attorney fees incurred in associated collections efforts.

Please direct all billing inquiries and requests to the accounting department
[redacted] :: [redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

Platte River Networks
[redacted]

Invoice

Date	Invoice #
8/1/2015	IB.1508019

PAID 08/10/2015

Bill To:

CESC
[redacted]

Terms	Due Date
Net 30	8/31/2015

Serviced	Description
8/1/2015	Help Desk NOC-HD12 24x7 [08/01/2015 - 08/31/2015]
8/1/2015	LPI NOC Support L2 Device [08/01/2015 - 08/31/2015]
8/1/2015	LPI NOC Support L2 Server [08/01/2015 - 08/31/2015]
8/1/2015	LPI NOC Support L2 Virtual Server [08/01/2015 - 08/31/2015]
8/1/2015	Datto Month of Private Cloud Service (auto-recurring) [08/01/2015 - 08/31/2015]
8/1/2015	Managed Services Maintenance [08/01/2015 - 08/31/2015]
8/1/2015	Intuition Alert Management [08/01/2015 - 08/31/2015]

Thank you for your business!

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Please direct all billing inquiries and requests to the accounting department
[redacted]

Subtotal	$2,744.00
Sales Tax (0.0%)	$0.00
Total	$2,744.00
Payments/Credits	-$2,744.00
Balance Due	**$0.00**

From: [redacted]
Sent time: 06/06/2013 01:08:45 PM
To: [redacted]
Subject: FW: SIRIS 2000
Attachments: DattoInvoice482547.pdf

From: [redacted]
Sent: Thursday, June 06, 2013 12:07 PM
To: [redacted]
Subject: Re: SIRIS 2000

Here is a copy of the invoice. Let me know if you have any questions. Thanks.

On Thu, Jun 6, 2013 at 2:01 PM, [redacted] wrote:

> Sounds good. Consider it done.
>
> On Thu, Jun 6, 2013 at 2:01 PM, [redacted] wrote:
>
> > They are going private cloud on this one. Can you order it up please? PO#7942-6276
> >
> > **From:** [redacted]
> > **Sent:** Thursday, June 06, 2013 11:56 AM
> >
> > **To:** [redacted]
> > **Subject:** Re: SIRIS 2000
> >
> > I have the invoice put together so I am ready whenever you are. Take your time.
> >
> > On Thu, Jun 6, 2013 at 1:55 PM, [redacted] wrote:
> >
> > > Asked... hang tight, sales guy is in Mexico.
> > >
> > > **From:** [redacted]
> > > **Sent:** Thursday, June 06, 2013 11:40 AM
> > >
> > > **To:** [redacted]
> > > **Subject:** Re: SIRIS 2000

If you could find out for me before I order that would be good. Finance doesn't want to have to worry about any crediting down the road.

On Thu, Jun 6, 2013 at 1:35 PM, [redacted] PRN Executive 3 [redacted] wrote:

Just place it... although sales didn't tell me if they were considering private cloud as an alternative. Can that be decided later?

From: [redacted] Datto Staff [redacted]
Sent: Thursday, June 06, 2013 11:35 AM
To: [redacted] PRN Executive 3 [redacted]
Subject: Re: SIRIS 2000

Not a problem. a problem. Would you like me to place it or send you the quote first?

On Thu, Jun 6, 2013 at 12:47 PM, [redacted] PRN Executive 3 [redacted] wrote:

[redacted] – need you to order me up an S2000 and have it shipped to our office here in Denver ([redacted]). Can you make that happen for me?

End User:

CESC

Marcum LLP c/o [redacted] Marcum LLP Partner [redacted]

[redacted]

[redacted]

(P) [redacted]

[redacted]

Let me know if you need anything additionally from me.

[redacted] PRN Executive 3 [redacted]

[redacted]

PLATTE RIVER NETWORKS

IT SERVICES FOR BUSINESS

--

Best regards,

Datto Staff
[redacted]
Datto Inc.
[redacted]
Phone: [redacted]
Support: [redacted]
E-Mail: [redacted]
Web: www.dattobackup.com

http://www.bdrfacts.com/compare.html BDR Comparison

--

Best regards,

Datto Staff
[redacted]
Datto Inc.
[redacted]
Phone: [redacted]
Support: [redacted]
E-Mail: [redacted]
Web: www.dattobackup.com

http://www.bdrfacts.com/compare.html BDR Comparison

--

Best regards,

Datto Staff
[redacted]
Datto Inc.
[redacted]
Phone: [redacted]
Support: [redacted]
E-Mail: [redacted]
Web: www.dattobackup.com

http://www.bdrfacts.com/compare.html BDR Comparison

--

Best regards,

Datto Staff
[redacted]
Datto Inc.
[redacted]
Phone: [redacted]
Support: [redacted]
E-Mail: [redacted]
Web: www.dattobackup.com

http://www.bdrfacts.com/compare.html BDR Comparison

--

Best regards,

Datto Staff
[redacted]
Datto Inc.
[redacted]
Phone: [redacted]
Support: [redacted]
E-Mail: [redacted]
Web: www.dattobackup.com

http://www.bdrfacts.com/compare.html BDR Comparison

PO: 7942-6276
Ordered By: PRN Executive 3 - PlatteRiver
Phone: 3032551941 sales rep: [redacted]

ATTN: PRN Executive 3
Platte River Networks
[redacted]

Item	Quantity	Price	Subtotal
Siris 2000 BDR Device	1	2,999.00	3,198.00
Included Licenses	Unlimited	0.00	
S2000 - Month of Private Cloud Service (auto-recurring)	1	199.00	

Retail Device Cost: $2,999.00
Service Cost Total: $199.00
FedEx Ground $68.16
Total: $3,266.16
Payment Info
Card Name: PRN Manager 2
Card Type: [redacted]
Card Num: [redacted]

Status: The customers Credit Card has not yet been charged

Notes: This is an S2000 with a month of private cloud service. If you have any questions, ask Datto.

Copyright Datto Inc.2013

From: [redacted]
Sent time: 08/01/2013 11:58:10 AM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted] server replacement

I thought we specifically had Datto options without offsite backup? That's what we got for CESC I believe

From: [redacted]
Sent: Thursday, August 01, 2013 12:53 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted] server replacement

They all have to have offsite, if they don't it will void all warranty and support. Maybe go with another backup solution? A Synology perhaps?

[redacted]
PLATTE RIVER NETWORKS
IT SERVICES FOR BUSINESS

From: [redacted]
Sent: Thursday, August 01, 2013 10:51 AM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted] server replacement

Looks good, can we just change the Datto to one of the units that doesn't have the offsite backup? I don't think they're going to go for the 300/mo pricetag

From: [redacted]
Sent: Thursday, August 01, 2013 12:45 PM
To: [redacted]; CRC; [redacted]
Subject: RE: [redacted] server replacement

This was done back in May. Take a look at the quotes and let me know what changes need to be made before I update it please.

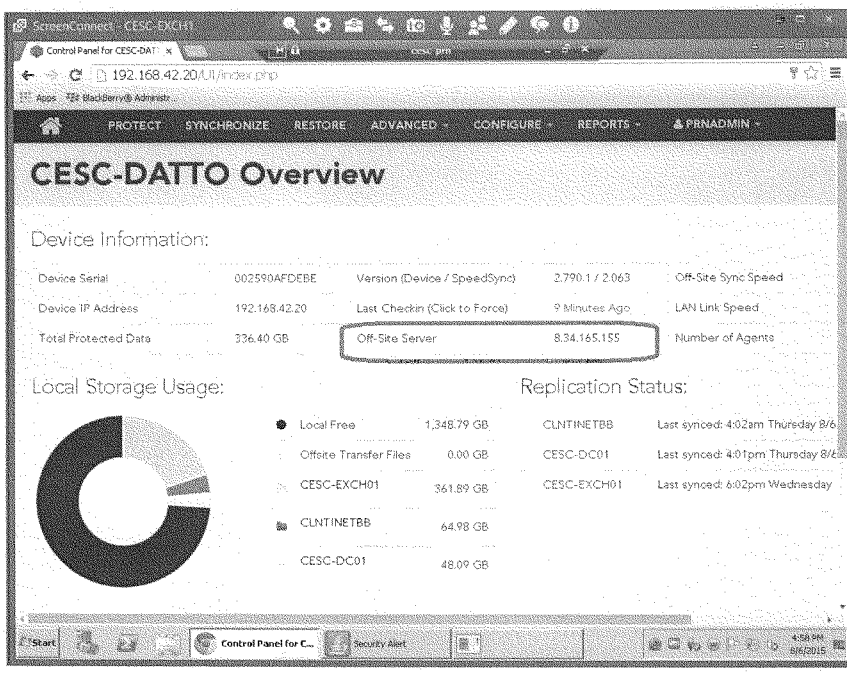
[redacted]
PLATTE RIVER NETWORKS
IT SERVICES FOR BUSINESS

From: [redacted]
Sent: Thursday, August 01, 2013 10:38 AM
To: CRC; [redacted]
Subject: [redacted] server replacement

Can we get this quoted? I think we started but then stopped at some point

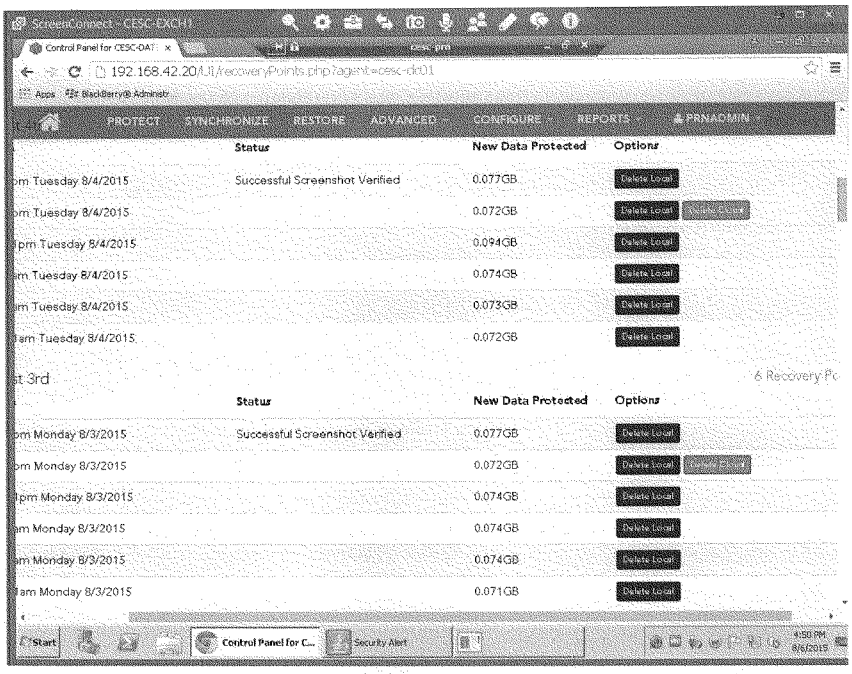
From [redacted]
Sent time 08/06/2015 04:01:07 PM
To [redacted]
Subject RE: Private cloud

They're sycing with something at Datto. There's an offsite sync server IP listed on the main status page of 8.34.165.155 which is an IP belonging to Datto:



From: [redacted]
Sent: Thursday, August 6, 2015 16:53
To: [redacted]
Subject: RE: Private cloud

Why do I show cloud recovery points on their datto then?



From: [redacted]
Sent: Thursday, August 6, 2015 16:50
To: [redacted]
Subject: RE: Private cloud

I can although I think it is pretty clear that it is simply backing up the environment and not replicating anywhere.

From: [redacted]
Sent: Thursday, August 6, 2015 2:49 PM
To: [redacted]
Subject: RE: Private cloud

[redacted], do you just want to give him the serial # of the CESC datto so he can pull it up and see how it's set up ?

From: [redacted]
Sent: Thursday, August 6, 2015 16:47
To: [redacted]
Cc: [redacted]
Subject: Re: Private cloud

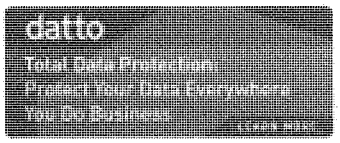
That is not something different. With the Siris device the private cloud means that the data is not going to our data center. This can occur in one of two ways. First, you can just keep the local functionality of the device like you guys have done. The second way would be to not use the cloud but point the data to the private cloud. The difference

between option 1 and 2 is that you are buying Datto Hardware to put in your cloud and point the Siris to. You are also paying a monthly on that second piece of hardware.

Best regards,

Datto Staff [redacted]
Datto, Inc
Direct Line: [redacted]

www.datto.com



Join the conversation!

On Thu, Aug 6, 2015 at 4:33 PM, [redacted] PRN Executive 3 [redacted] > wrote:

[redacted] – we have a device on "private cloud" but no node. When we made the purchase, it was under the understanding that we didn't want to backup to Datto's datacenter. Is that something different?

[redacted]

From [redacted] Datto Staff [redacted]
Sent: Thursday, August 6, 2015 2:20 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Private cloud

So the Private Cloud is a way for you to create your own cloud with some data center infrastructure that you guys may use. You have the ability to purchase Nodes from Datto, and set them up in your cloud to back up to and create your own private cloud infrastructure. You must purchase the node through us, and the nodes are used to preform the offsite functionality of the Siris device. So you have the local virtualization through the Siris and the offsite through the Node.

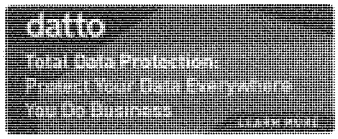
The benefit of this is that you are not required to pay for the cloud storage. You pay the local only price for the Siris which is a reduced monthly, and you pay the monthly for the node (A small monthly service). The way the nodes work well is if you purchase multiple large nodes (96 TB) and you pay one low monthly on each of those and then you back up many Siris devices to those nodes with reduced monthlies. It is a good way to save on the monthly cost. The thing you have to keep in mind is that you are responsible for the monitoring and management of the Nodes.

Attached you can find both a pricing sheet as well as a Node Overview. Take a look and let me know if this provides you guys with the answers that you need. If not, I am more than happy to provide some additional insight for you. Let me know. Thanks.

Best regards,

Datto Staff [redacted]
Datto, Inc
Direct Line [redacted]

www.datto.com



Join the conversation!

On Thu, Aug 6, 2015 at 4:10 PM, [redacted] PRN Executive 3 [redacted] wrote:

[redacted] – can you give [redacted], [redacted] and I a brief overview on the private cloud offering? Maybe a decent datasheet or one page sales brochure?

[redacted]

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit http://www.mimecast.com

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit http://www.mimecast.com

From: [redacted]
Sent time: 08/06/2015 04:44:34 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Private cloud

The offsite and local retention are both set to 60 days on all of the agents

From: [redacted]
Sent: Thursday, August 6, 2015 17:41
To: Datto Staff; [redacted]
Cc: [redacted]
Subject: RE: Private cloud

[redacted]

This is a problem. This data should not be stored in the Datto Cloud, but because the backup data exists, we cannot delete it, so the first step for us is to have it moved to the Private Cloud. Can you tell me how much retention we have on this customer for this backup?

[redacted]

[redacted]

PLATTE RIVER NETWORKS

[redacted]

[redacted] | PLATTERIVER.COM

From [redacted]
Sent: Thursday, August 6, 2015 3:24 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Private cloud

So for some reason this device does appear to be syncing with the Datto Cloud. Now it does not look like you have been billed for this but it does look like it has data in our cloud. Is this a device that you have on private cloud to cut down on costs, or do you have them on private cloud because of compliancy requirements? It appears that although this device is set to private cloud, there is a syncing schedule set for this device, and for some unknown reason, the device is following the syncing schedule rule as opposed to the private cloud rule. This is a problem, and I want to have my team look into this issue if we can. If you are doing this for a cost cutting perspective, I would ask that we keep this device the way it is so I can have development look into the issue. If you are doing this for compliance purposes, I want to make sure we put you in the confines of your requirements so we can work at deleting this data. Let me know, and we can adjust accordingly. Thanks.

Best regards,

Datto Staff [redacted]
Datto, Inc.
Direct Line: [redacted]

www.datto.com

datto
Total Data Protection.
Protect Your Data Everywhere
You Do Business.
LEARN MORE

Join the conversation!

On Thu, Aug 6, 2015 at 5:08 PM, [redacted] PRN Project Manager 2 [redacted] wrote:

[redacted] - The console of the unit in question says that its offsite sync server is 8.34.165.155, which is a Datto IP address

From: [redacted] PRN Executive 3 [redacted]
Sent: Thursday, August 6, 2015 17:05
To: Datto Staff [redacted]
Cc: [redacted] PRN Executive 1 [redacted]; [redacted] PRN Project Manager 2 [redacted]
Subject: RE: Private cloud

[redacted] – any idea why would be seeing cloud recovery points on S/N: 002590AFDEBE?

[redacted]

From: [redacted] Datto Staff [redacted]
Sent: Thursday, August 6, 2015 2:51 PM
To: [redacted] PRN Executive 3 [redacted]
Cc: [redacted] PRN Executive 1 [redacted]; [redacted] PRN Project Manager 2 [redacted]
Subject: Re: Private cloud

No problem, let me know if any other questions come up.

Best regards,

Datto Staff [redacted]

Datto, Inc.
Direct Line: [redacted]

www.datto.com

Join the conversation!

On Thu, Aug 6, 2015 at 4:49 PM, [redacted] wrote:

I think that makes sense. Thanks for the insight.

From: [redacted]
Sent: Thursday, August 6, 2015 2:47 PM

To: [redacted]
Cc: [redacted]
Subject: Re: Private cloud

That is not something different. With the Siris device the private cloud means that the data is not going to our data center. This can occur in one of two ways. First, you can just keep the local functionality of the device like you guys have done. The second way would be to not use the cloud but point the data to the private cloud. The difference between option 1 and 2 is that you are buying Datto Hardware to put in your cloud and point the Siris to. You are also paying a monthly on that second piece of hardware.

Best regards,

[redacted]
Datto, Inc.
Direct Line: [redacted]

www.datto.com

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Join the conversation!

On Thu, Aug 6, 2015 at 4:33 PM, [redacted] PRN Executive 3 wrote:

[redacted] – we have a device on "private cloud" but no node. When we made the purchase, it was under the understanding that we didn't want to backup to Datto's datacenter. Is that something different?

[redacted]

From: [redacted] Datto Staff
Sent: Thursday, August 6, 2015 2:20 PM
To: [redacted] PRN Executive 3
Cc: [redacted] PRN Execu ive 1 ; [redacted] PRN Project Manager 2
Subject: Re: Private cloud

So the Private Cloud is a way for you to create your own cloud with some data center infrastructure that you guys may use. You have the ability to purchase Nodes from Datto, and set them up in your cloud to back up to and create your own private cloud infrastructure. You must purchase the node through us, and the nodes are used to preform the offsite functionality of the Siris device. So you have the local virtualization through the Siris and the offsite through the Node.

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Attached you can find both a pricing sheet as well as a Node Overview. Take a look and let me know if this provides you guys with the answers that you need. If not, I am more than happy to provide some additional insight for you. Let me know. Thanks.

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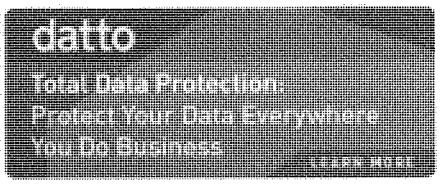
Direct Line: [redacted]

www.datto.com



Join the conversation!

On Thu, Aug 6, 2015 at 4:10 PM, [redacted] PRN Executive 3 [redacted] wrote:

[redacted] – can you give [redacted], [redacted] and I a brief overview on the private cloud offering? Maybe a decent datasheet or one page sales brochure?

[redacted]

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From: PRN Project Manager 2
Sent time: 08/07/2015 04:12:09 PM
To: PRN Executive 1; PRN Executive 2
Cc: PRN Executive 3; PRN Executive 4
Subject: RE: Private cloud

I spoke with [redacted] We still have a lot of unknowns, and we won't be able to answer the main question (how did this happen?) until sometime next week, as [redacted] is going to have to work with their development department to figure out what happened.

The important parts of the call:

The unit was ordered correctly as far as PRN is concerned – [redacted] pulled up the original email chain with [redacted] from June 2013, and it's clear that we asked specifically for no offsite sync.

Offsite sync appears to have been in place from the beginning

Since the device should not be syncing at all to the cloud, [redacted] is not sure of the implications of disabling the offsite sync. It might retain the last 60 days of restore points, it might delete them as they age past the 60 day limit, or it might just wipe them all

[redacted] also stated that we could get the data out of the cloud while still staying compliant with the "don't delete anything" directive by doing a reverse RoundTrip. They'd load the cloud restore points onto a USB Drive/NAS, ship it to us (or wherever), then wipe them from the cloud. The data would still be preserved, but it wouldn't be in the hands of a third party any longer

[redacted] said he would reach out to us on Monday to let us know when we could expect a more thorough explanation from the development team.

Please let me know if anyone else has other questions to pass along.

[redacted]

From: PRN Executive 1
Sent: Friday, August 7, 2015 16:23
To: Datto Staff
Cc: PRN Executive 3; PRN Project Manager 2; PRN Executive 4
Subject: RE: Private cloud

[redacted]

[redacted] will be contacting you to discuss.

PRN Executive 1

[redacted]

PLATTE RIVER NETWORKS

[redacted]

[redacted] | PLATTERIVER.COM

From: [redacted] Datto Staff
Sent: Thursday, August 06, 2015 4:21 PM
To: [redacted] PRN Executive 1
Cc: [redacted] PRN Executive 3 | PRN Project Manager 2 | PRN Executive 4
Subject: RE: Private cloud

Sounds good. A call would be the right forum to address any and all questions as well as get to the bottom of what might have happened here. Let me know when works for you and we can get something on the books.

Best, [redacted]

On Aug 6, 2015 6:18 PM, [redacted] PRN Executive 1 [redacted] wrote:

> Sorry [redacted] I'm still trying to wrap my head around this (I was thinking private cloud was separate storage at your facility, but realized it's a separate piece of hardware "the node" that is either the customers or could be a node PRN has). Probably makes sense to get on a call. Let me get back to you.
>
> [redacted] PRN Executive 1
>
> [redacted]
>
> **PLATTE RIVER NETWORKS**
>
> [redacted]
>
> [redacted] | PLATTERIVER.COM
>
> **From:** [redacted] Datto Staff
> **Sent:** Thursday, August 6, 2015 4:11 PM
> **To** [redacted] PRN Executive 1
> **Cc:** [redacted] PRN Executive 3 ; PRN Executive 4 | PRN Project Manager 2
> **Subject:** RE: Private cloud
>
> I am not sure I am following what you are asking. Can we connect for a call tomorrow to go over this. Do you have any free time?
>
> Best, [redacted]
>
> On Aug 6, 2015 5:41 PM, [redacted] PRN Executive 1 [redacted] wrote:
>
> > [redacted]
> >
> > This is a problem. This data should not be stored in the Datto Cloud, but because the backup data exists, we cannot delete it, so the first step for us is to have it moved to the Private Cloud. Can you tell me how much retention we have on this customer for this backup?

PRN Executive 1

[redacted]

PLATTE RIVER NETWORKS

[redacted]

[redacted] | PLATTERIVER.COM

From: Datto Staff
Sent: Thursday, August 6, 2015 3:24 PM
To: PRN Project Manager 2
Cc: PRN Executive 3 ; PRN Executive 1
Subject: Re: Private cloud

So for some reason this device does appear to be syncing with the Datto Cloud. Now it does not look like you have been billed for this but it does look like it has data in our cloud. Is this a device that you have on private cloud to cut down on costs, or do you have them on private cloud because of compliancy requirements? It appears that although this device is set to private cloud, there is a syncing schedule set for this device, and for some unknown reason, the device is following the syncing schedule rule as opposed to the private cloud rule. This is a problem, and I want to have my team look into this issue if we can. If you are doing this for a cost cutting perspective, I would ask that we keep this device the way it is so I can have development look into the issue. If you are doing this for compliance purposes, I want to make sure we put you in the confines of your requirements so we can work at deleting this data. Let me know, and we can adjust accordingly. Thanks.

Best regards,

Datto Staff
[redacted]
Datto, Inc.
Direct Line: [redacted]

www.datto.com

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Datto Staff
Datto, Inc.
Direct Line: [redacted]

Join the conversation!

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www.datto.com

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www.datto.com

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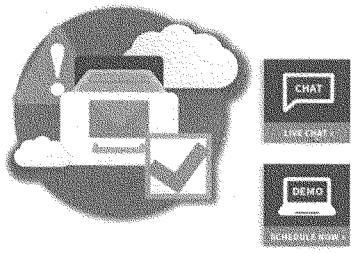
Archiving, Risk & Compliance

Keep corporate data safe for instant search and retrieval



The **Challenge**

With employees keeping an ever-increasing number of messages and attachments in their archive, storing this data is both costly and difficult to manage. Applying retention policies for regulatory and legal compliance to departments, groups and even individual mailboxes is essential. In the event of litigation, email is often relied on for evidence so you will need to respond quickly without dedicating precious IT resources.

Email archives are a primary record of business communication and a highly valuable corporate information asset – data that needs to be accessible and searchable, not locked away in a vault.

Mimecast **Solution**

Mimecast Enterprise Information Archiving provides the secure, perpetual storage and policy management necessary with the predictable costs and scalability of a true cloud architecture. With an industry-leading 7 second search SLA, archived information is instantly accessible, making it easy for employees or administrators to find a single email or to support a larger e-discovery case.

Mimecast solves important archiving challenges by:

- **ARCHIVING EMAIL IN THE CLOUD**
- **RESPONDING QUICKLY TO LITIGATION REQUESTS**
- **RETAINING IMPORTANT COMPANY FILES**
- **ARCHIVING LYNC IM CONVERSATIONS**

A single, unified archive in the Mimecast cloud delivers scalability, rapid information access and data assurance — without the spiraling expense of hardware and software typical of legacy on-premises solutions.

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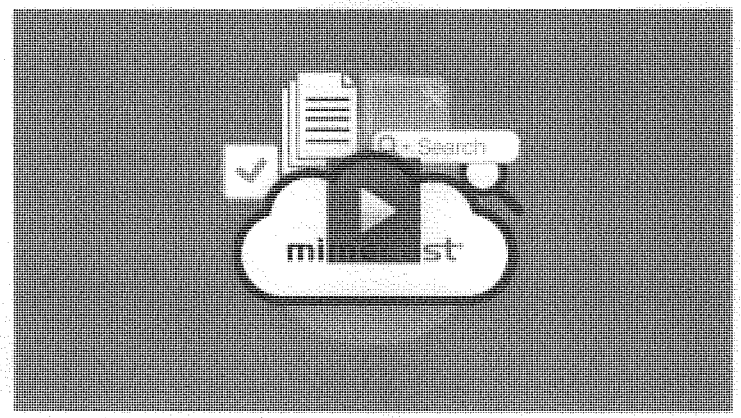
Archiving and Searching Email

Flexible storage for your most important communications.

Mailboxes get bloated over time as employees hold onto a growing number of messages and

attachments. With **Mimecast Enterprise Information Archiving**, centrally managed policies keep mailboxes small and offload long-term email storage to the cloud. And archives are instantly accessible to employees on any device, anywhere.

LEARN MORE ABOUT MIMECAST ENTERPRISE INFORMATION ARCHIVING



BLOG POST

Empower Your Mobile Users with an Active Archive

by Orlando Scott-Cowley

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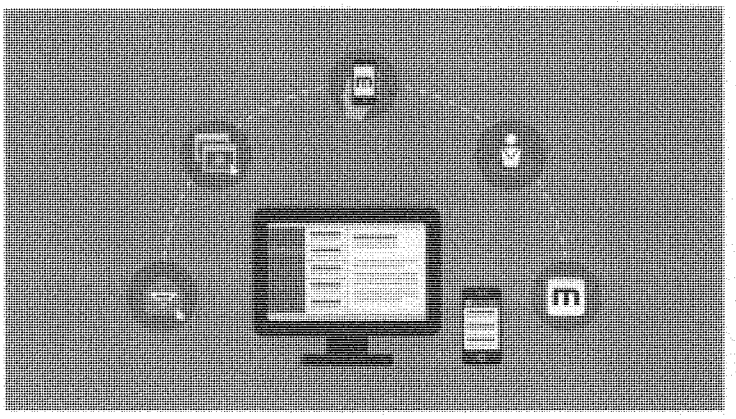
Mimecast End User Applications - Solution Overview



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CASE STUDY

Bottomless Archive and Ease of Use Brings US$70,000 Annual Cost Saving to Dubai's Lals Group

Founded in Dubai in 1979 by Lal Ganwani, Lals Group has earned itself a reputation as being a beacon of retail ...

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E-discovery

Quickly identify important evidence – without the usual painful manual effort.

Responding to litigation requests can be a Herculean task with a large number of resources dedicated to finding specific content. With Mimecast Enterprise Information Archiving, critical corporate information is combined into a single, central data store that's easily searchable by administrators, cutting search times from days to seconds.

LEARN MORE ABOUT MIMECAST ENTERPRISE INFORMATION ARCHIVING

WHITEPAPER

White Paper: Inbox on Trial

If you are struggling to come to terms with a complex set of regulations governing email archiving and …

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Analyst Report: Microsoft® Office 365® for the Enterprise: How to Strengthen Security, Compliance and Control

Office 365, like any cloud-based offering, cannot be all things to all customers. There are some missing …

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WEBINAR

Webinar: Office 365^{TM} Email Migration Surprises – Rhetoric vs. Reality

You can't afford downtime and losing key security, continuity and archiving support when moving your email to …

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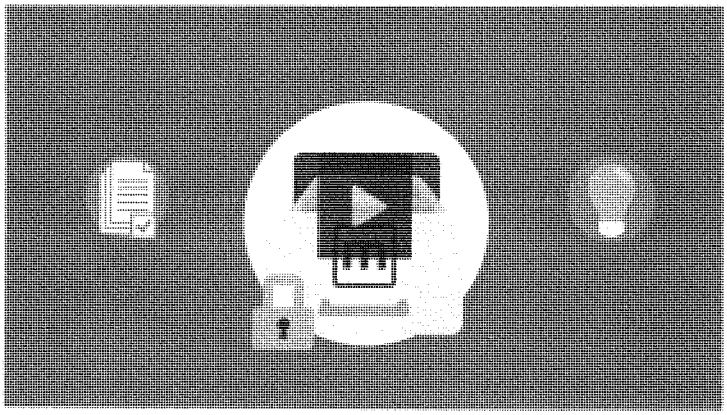
Adding File Archiving to Email Storage

Store files along with email and other corporate information for a more complete archive.

Silos of information frustrate employees and make it difficult to get at the information you need. With **Mimecast File Archiving**, files from shared folders and network drives are stored alongside email and Lync IM conversations. All the data is in one place making it really easy to search.

LEARN MORE ABOUT MIMECAST FILE ARCHIVING



From: PRN Project Manager 2
Sent time: 08/18/2015 11:21:05 AM
To: PRN Project Manager 1
Subject: RE: email

No, think it was all phone comms

From: PRN Project Manager 1
Sent: Tuesday, August 18, 2015 12:16
To: PRN Project Manager 2
Subject: Re: email

You ever find an email about them cutting the backups?

Sent from my iPhone

On Aug 18, 2015, at 10:09, PRN Project Manager 2 wrote:

> That is a LOT of emails, on my part anyway, going back 2 years. I will have all of my sent items, but not incoming items. I only keep deleted items for 6 months
>
> **From:** PRN Executive 1
> **Sent:** Tuesday, August 18, 2015 12:08
> **To:** PRN Project Manager 2; PRN Project Manager 1; PRN Executive 2
> **Cc:** PRN Executive 4; PRN Executive 3
> **Subject:** email
>
> Please collect all email communications regarding CESC whether it's internal or external communications. We may have to produce that information and I think it's best to have that ready.
>
> Thanks,
>
> PRN Executive 1
> | PLATTERIVER.COM
> <image001.jpg>
> <image002.jpg>

From: [redacted]
Sent time: 08/19/2015 10:02:39 PM
To: [redacted]
Subject: RE: CESC DATTO

I guess this is our "welcome to the big leagues" moment ☺

From: [redacted]
Sent: Wednesday, August 19, 2015 22:44
To: [redacted]
Subject: RE: CESC DATTO

Pisses me off. We were half a day away from signing a [redacted] deal with [redacted], and today I get an email saying we are going to hold off for a little bit due to their parent company is public, and their afraid of any backlash with their involvement and its impact to the shareholders / stock price.

[redacted]

PLATTE RIVER networks

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COLORADO TECHNOLOGY PARTNERS

From: [redacted]
Sent: Wednesday, August 19, 2015 8:40 PM
To: [redacted]
Subject: RE: CESC DATTO

I'll look again, but I'm almost positive we don't have anything about the 60 day cut.

They're on MXL not Mimecast, but don't have archiving

It's up to lawyer crap now, so just sit back and enjoy the silly headlines ☺

It wasn't the law to be required to use government email servers at the state dept until john Kerry believe it or not. Colin Powell used an AOL address for communicating with staff believe it or not ☺

From: [redacted]
Sent: Wednesday, August 19, 2015 22:37
To: [redacted]
Subject: CESC DATTO

Any chance you found an old email with their directives to cut the backups back in Oct-Feb. I know they had you cut it once in Oct-Nov, then again to 30days in Feb-ish. If we had that email, we are golden. Would Mimecast have archived it by chance? Wondering how we can sneak an email in now after the fact asking them when they told us to cut the backups and have them confirm it for our records. Starting to think this whole thing really is covering up some shaddy shit.... I just think if we have it in writing that they told us to cut the backups, and that we can go public with our statement saying we have had backups since day one, then we were told to trim to 30days, it would make us look a WHOLE LOT better. Maybe we can draft something up to whomever you worked with over the phone to have them verify it. They would have to have it in there inbox somewhere I would imagine. Maybe it is now time to start reading some of their emails, LOL. Maybe not....

[redacted]

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PARTNERS

UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON

Cheryl

NOV 12 2014

Dear Ms. Mills:

The Department of State has a longstanding and continuing commitment to preserving the history of U.S. diplomacy, established in authorities under the Federal Records Act of 1950. I am writing to you, the representative of Secretary of State Hillary Clinton, as well as to representatives of other former Secretaries (principals), to request your assistance in further meeting this requirement.

The Federal Records Act of 1950, as amended, 44 U.S.C. chapters 29, 31 and 33, seeks to ensure the preservation of an authoritative record of official correspondence, communications, and documentation. Last year, in *Bulletin 2013-03*, the National Archives and Records Administration (NARA) clarified records management responsibilities regarding the use of personal email accounts for official government business. NARA recommended that agencies refer to its guidance when advising incoming and departing agency employees about their records management responsibilities. This bulletin was followed by additional NARA guidance on managing email issued on September 15, 2014. See enclosed.

We recognize that some period of time has passed since your principal served as Secretary of State and that the NARA guidance post-dates that service. Nevertheless, we bring the NARA guidance to your attention in order to ensure that the Department's records are as complete as possible. Accordingly, we ask that should your principal or his or her authorized representative be aware or become aware in the future of a federal record, such as an email sent or received on a personal email account while serving as Secretary of State, that a copy of this record be made available to the Department. In this regard, please note that diverse Department records are subject to various disposition schedules, with most

Enclosures - 3

Ms. Cheryl Mills,
[redacted]

Secretary of State records retained permanently. We ask that a record be provided to the Department if there is reason to believe that it may not otherwise be preserved in the Department's recordkeeping system.

The Department is willing to provide assistance to you in this effort. In the meantime, should you have any questions regarding this request, please do not hesitate to contact William Fischer, A/GIS/IPS/RA, Agency Records Officer, at [redacted]

We greatly appreciate your consideration of and assistance with this matter.

Sincerely,

Patrick F. Kennedy

From: PRN Executive 1
Sent time: 08/18/2015 11:04:56 AM
To: PRN Executive 3; PRN Executive 4
Cc: PRN Executive 2
Subject: RE: Datto

Overnight please

PRN Executive 1
[redacted] | PLATTERIVER.COM

From: PRN Executive 3
Sent: Tuesday, August 18, 2015 10:04 AM
To: PRN Executive 1; PRN Executive 4
Cc: PRN Executive 2
Subject: RE: Datto

Overnight? 3-5 day ground?

From PRN Executive 1
Sent: Tuesday, August 18, 2015 10:01 AM
To: PRN Executive 3; PRN Executive 4
Cc: PRN Executive 2
Subject: RE: Datto

That would be great [redacted]. If they need approval for you to set this up, just let me know.

PRN Executive 1
[redacted] | PLATTERIVER.COM

From: PRN Executive 3
Sent: Tuesday, August 18, 2015 9:52 AM
To: PRN Executive 1; PRN Executive 4
Cc: PRN Executive 2
Subject: RE: Datto

[redacted] – I'm not sure. I certainly can help. I believe [redacted] orchestrated all of the datacenter piece on our initial project.
I found a shipping address from when we ordered stuff:

[redacted]
Phone – [redacted] (USA or Canada) or [redacted] (outside USA or Canada)
Email – [redacted]

And this:

Please address all shipments as follows:
CESC – [redacted]

I can call the data center if we are starting from scratch.

[redacted]

From: PRN Executive 1
Sent: Tuesday, August 18, 2015 9:46 AM
To: PRN Executive 4 ; PRN Executive 3
Cc: PRN Executive 2
Subject: RE: Datto

Who can make that happen? What ability do we have for the Data Center to install and connect?

PRN Executive 1
| PLATTERIVER.COM

From: PRN Executive 4
Sent: Tuesday, August 18, 2015 9:05 AM
To: PRN Executive 1 ; PRN Executive 3
Cc: PRN Executive 2 >
Subject: RE: Datto

We can have it sent over just in case and then determine next steps once we hear from the Clinton staff.

From PRN Executive 1
Sent: Tuesday, August 18, 2015 8:33 AM
To: PRN Executive 4 ; PRN Executive 3
Cc: PRN Executive 2
Subject: Datto

Do we want to go ahead and overnight the Datto device we received to the Data Center? Do we have hands there to plug it in and connect it? This is to turn encryption on for the backups and then to power down the old device. I know we don't have the go ahead yet, but it would be nice to have it there and ready.

Who has information and access to the Data Center?

PRN Executive 1
| PLATTERIVER.COM

PLATTE RIVER networks

From: SECNAP Network Security [redacted]
Sent time: 02/08/2014 01:21:19 AM
To: [redacted]
Subject: [Ticket#1411909] SECNAP Security Incident Report for NY-CESC IPS Alert

115.238.101.45 in China was found running an attack against your network . Abuse has been reported to their ISP. Your intrusion prevention system has automatically blocked this traffic

Notes: snort:1:2012936:ET SCAN ZmEu Scanner User-Agent Inbound:

Events listed in GMT timezone

GET /w00tw00t.at.blackhats.romanian.anti-sec:) HTTP/1.1

Accept: */*

Accept-Language: en-us

Accept-Encoding: gzip, deflate

User-Agent: ZmEu

Host: 64.94.172.146

Connection: Close

length = 186

```
000 : 47 45 54 20 2F 77 30 30 74 77 30 30 74 2E 61 74 GET /w00tw00t.at
010 : 2E 62 6C 61 63 6B 68 61 74 73 2E 72 6F 6D 61 6E .blackhats.roman
020 : 69 61 6E 2E 61 6E 74 69 2D 73 65 63 3A 29 20 48 ian.anti-sec:) H
030 : 54 54 50 2F 31 2E 31 0D 0A 41 63 63 65 70 74 3A TTP/1.1..Accept:
040 : 20 2A 2F 2A 0D 0A 41 63 63 65 70 74 2D 4C 61 6E */*..Accept-Lan
050 : 67 75 61 67 65 3A 20 65 6E 2D 75 73 0D 0A 41 63 guage: en-us..Ac
060 : 63 65 70 74 2D 45 6E 63 6F 64 69 6E 67 3A 20 67 cept-Encoding: g
070 : 7A 69 70 2C 20 64 65 66 6C 61 74 65 0D 0A 55 73 zip, deflate..Us
080 : 65 72 2D 41 67 65 6E 74 3A 20 5A 6D 45 75 0D 0A er-Agent: ZmEu..
090 : 48 6F 73 74 3A 20 36 34 2E 39 34 2E 31 37 32 2E Host: 64.94.172.
0a0 : 31 34 36 0D 0A 43 6F 6E 6E 65 63 74 69 6F 6E 3A 146..Connection:
0b0 : 20 43 6C 6F 73 65 0D 0A 0D 0A Close....
```

[2014-02-08 07:16:16] | 1 | 115.238.101.45:40181 -> 192.168.42.22:80 | TCP | ACK[1] | snort:1:2012936

–

>|SECNAP Network Security

US:+[redacted]

EU:+[redacted]

AU:+[redacted]

IL:+[redacted]

From: [redacted]
Sent time: 06/26/2013 04:49:43 PM
To: [redacted]
Cc: [redacted]
Subject: FW:
Attachments: 20130626174001503.pdf

Ok- after many many emails....we got it!

Let me know if this is good enough and how we will work this coming into the colocation center now that [redacted] has already done his onsite.

I can go out if we need too.

CLOUDJACKET
360° Active Network Protection

Service Order Form

Check One:

Form completed by company _____ Form completed by SECNAP Partner on behalf of Company _____

Contact Name	Clinton Staff Server Lead Coordinator Marcum LLP Partner PRN Project Manager 2
Email Address	[redacted]
Company/Organization Name	CESC
Title	[redacted]
Office Phone & Extension	[redacted]
Company Billing Address	c/o Marcum LLP, [redacted]
Suite, Room, Floor Number	[redacted]
City, State, Zip	[redacted]
Name of SECNAP Partner	
Ship to (If different from above)	CESC - [redacted]
Name of Individual to ship to	PRN Project Manager 1
Individual Phone Number & Extension	[redacted]
Company Shipping Address	[redacted]
Suite, Room, Floor Number	
City, State, Zip	[redacted]
Product to be shipped (CloudJacket Model)	SMB X 10Mb ___ 50Mb ___ 250Mb ___ 1Gb___ 10Gb ___
Total Contract Service Price Per Year	$2400 ($200 monthly with one time set up of $750)
Term of Contract (Length)	24 months

Company/Organization:		SECNAP Network Security Corp:
Print Name:	Clinton Staff Server Lead Coordinator	Print Name:
Title:	[redacted]	Title:
Signature:	[redacted]	Signature:
Date:	6/26/13	Date:

CLOUDJACKET SERVICES AGREEMENT

THIS CLOUDJACKET SERVICES AGREEMENT (this "**Agreement**") is effective as of this day of , 2013 (the "**Effective Date**") by and between **SECNAP NETWORK SECURITY CORPORATION (DBA CLOUDJACKET)**, a Delaware corporation, having a place of business at [redacted] ("**SECNAP**"), and [redacted] CESC (**Company name**) a (**State**) corporation, having a place of business at [redacted] ("**Client**" or "**Company**").

WHEREAS, Client desires to use SECNAP's CloudJacket services and products; and

WHEREAS, this Agreement sets forth the terms and conditions by which SECNAP will provide CloudJacket services and products for Client.

NOW THEREFORE, in consideration of the mutual agreements and respective promises contained herein, the parties agree as follows:

Section 1. Services

A. **Services Provided.** During the Term of this Agreement (as specified in Section 3 of this Agreement), and subject to the terms and conditions of this Agreement, SECNAP will provide to Client the following CLOUDJACKET services and products (collectively, the "**Services**"):

(a) CloudJacket inline device(s) ("**CLOUDJACKET Equipment**");

(b) 24x7x365 monitoring and escalation of network intrusion alarms and events;

(c) Real-time security incident response and forensics;

(d) Real-time notification, via Worldwide Edge Attack Sensor Network, of any attack directed at specific Client network versus regional or more general attack;

(e) Escalation in accordance with Client preference (PDA, pager, email, telephone);

(f) Automatic back-tracing of events;

(g) First-Alert priority vulnerability email service;

(h) Reporting via email daily, weekly and/or monthly;

(i) Real-time metrics available on demand through robust customer dashboard; and

(j) Technical consultation as needed regarding the Services.

B. **Other Matters related to the Services.**

(a) **Cooperation.** Client acknowledges that the ability of SECNAP to provide efficient Services depends on Client's cooperation with SECNAP and compliance with SECNAP's instructions and procedures on installation and use (e.g. pre-installation questionnaire), which shall be provided to Client prior to Client use of the Services. Client agrees to accommodate SECNAP's reasonable requests for cooperation to comply with Client's specific duties and specific instructions and procedures established by SECNAP with respect to receipt of the Services. Client consents to SECNAP's use of third party subcontractors in connection with the performance of the Services; however, SECNAP shall manage and remain responsible for performance of any subcontractors.

(b) **Provided Equipment.** Any malfunction or manufacturer's defects of equipment provided by SECNAP to Client or purchased directly by Client used in connection with SECNAP's Services provided hereunder will not be deemed a breach of SECNAP's obligations under this Agreement. Client shall not resell, transfer, export or re-export any CLOUDJACKET Equipment or other SECNAP equipment, or any technical data derived therefrom. Client shall not use or transfer any CloudJacket Equipment, other SECNAP Equipment or any technical data derived therefrom in a manner that would violate any applicable United States or foreign law.

(c) **Scope of Use.** Subject to the terms and conditions of this Agreement, SECNAP hereby grants Client a limited license to install and use the Services and CLOUDJACKET Equipment. Client's use of the Services and CLOUDJACKET Equipment shall be for Client's internal business purposes only. Client specifically acknowledges and agrees that it shall not sell, resell, act as a service bureau or otherwise use the Services or the CLOUDJACKET Equipment to compete with SECNAP or to provide substantially similar services and products to third parties in competition with SECNAP.

(d) **Place where the CLOUDJACKET Equipment will be installed.** Prior to the delivery and installation of the CLOUDJACKET Equipment, Client and SECNAP will mutually agree on the exact location where the CLOUDJACKET Equipment will be installed and connected to Client's network (the "**Client's Data Center**").

(e) **Service Order Form.** In order to effect the delivering of the CLOUDJACKET Equipment to Client and the provision of the Services, the parties will execute the services order form attached hereto as Exhibit A, for the order of such products and services provided by SECNAP, which shall incorporate, and be subject to, all of the terms and conditions of this Agreement (the "**Service Order Form**"). In the event of any conflict or inconsistency between this Agreement and the Services Order Form, the terms of this Agreement shall prevail with respect to SECNAP products or services provided under such Services Order Form.

Section 2. Fees and Billing.

(a) *Fees.* Client will pay SECNAP the fees listed in the Service Order Form. If fees are not stated on the Service Order Form for a certain class of services that Client requests or requires, those additional services shall be the subject of a separate written agreement between Client and SECNAP.

(b) *Billing.* Charges for fees indicated in the Service Order Form as being due at the commencement of the Term shall be due and payable when billed on the execution and delivery of this Agreement ("Effective Date"). All other fees for Services rendered and expenses incurred shall be payable as indicated in the Service Order Form, and shall be invoiced by SECNAP on a periodic basis as

described in the Service Order Form. Payments shall be due upon receipt within fifteen (15) days of the date of each SECNAP invoice. All payments shall be made in U.S. dollars. Invoices not paid when due shall be subject to a late charge of 1.5% per month or the highest rate permitted by law, whichever is less.

(c) *Taxes.* SECNAP may invoice and Client shall pay all taxes, fees or assessments and other charges imposed on or required to be collected by SECNAP by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder. Client shall also be responsible for paying all taxes, fees or assessments and other charges imposed on Client by any governmental agency that may result from this Agreement or any of the activities contemplated hereunder.

Section 3. Term, Termination.

(a) **Term of the Agreement.** This Agreement shall commence on the "Service Commencement Date" (as defined below) and, unless earlier terminated in accordance with section 3 (b) hereof, shall continue for the minimum term set forth in the Service Order Form (the "Term").

(b) **Termination.** This Agreement may be terminated in any of the following ways (which also automatically will terminate the Service Order Form):

(i) Client may, in its sole discretion, terminate this Agreement in the event that SECNAP has materially breached a material provision of this Agreement and not cured such default within 30 days after receipt of written notice of such default. In this event, SECNAP shall be entitled: to retain any fees that previously have been paid; and to be paid for all work performed through the date of termination for which fees were not previously paid. Client shall not be entitled to any refund of fees previously paid in the event of termination of this Agreement or the Service Order Form under this Section 3(b)(i).

(ii) SECNAP may, in its sole discretion, discontinue performance hereunder or terminate this Agreement on written notice to Client in the event: (A) that Client is in default of its payment obligations hereunder; or (B) that Client has materially breached a material provision of this Agreement or the Service Order Form, and such breach is not cured within thirty (30) days after written notice thereof.

(c) **Effectiveness of Agreement.** Notwithstanding any termination of this Agreement or reaching the end of the Term, this Agreement shall continue to govern the rights and duties of the parties hereto with respect to the subject matter of this Agreement, until six months after the latest to occur of: the end of the Term; termination of this Agreement in accordance with subparagraph (b) above; or the date on which all CloudJacket Equipment and other SECNAP Equipment has been returned to SECNAP. Notwithstanding the foregoing, the confidentiality provisions of this Agreement, and the matters described under the paragraph entitled "Survival" below, shall each continue in full force and effect for the time periods stated therein.

(d) **"Service Commencement Date"** means that date that is identified in the Service Order Form as the initial date as of which the Services are provided.

(e) **Return of Equipment on Termination of Agreement.** In the event Client terminates this Agreement under Section 3(b) , then Client shall return the CloudJacket Equipment (and any other

SECNAP Equipment in its possession) no later than 15 days after the date of termination. If Client fails to timely return the CloudJacket Equipment (together with any other SECNAP Equipment in its possession), then Client shall pay SECNAP the sum of $15,000.00 as liquidated damages, which amount shall be due and payable on the 30th day after the date of termination of the Agreement.

Section 4. Representations and Warranties.

(a) **Client Warranties.** Client represents and warrants to SECNAP: (i) that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority during the term of this Agreement, to install and use the SECNAP CloudJacket Equipment in the Client's Data Center; (ii) that Client will not use the CLOUDJACKET Equipment in any manner that would violate any applicable law or regulation.

(b) **SECNAP Warranties.** SECNAP represents and warrants to SECNAP that it possesses the right to license the Services.

(c) **Disclaimers by SECNAP.** THE SERVICES ARE PROVIDED "AS IS." EXCEPT FOR THOSE WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, SECNAP DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THOSE WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, SECNAP DOES NOT WARRANT THAT THE SERVICES WILL BE AVAILABLE UNINTERRUPTED, ERROR-FREE OR ON A COMPLETELY SECURE BASIS. SECNAP MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT WITH RESPECT TO, ANY EQUIPMENT OWNED, LEASED OR USED BY CLIENT, OR OTHER HARDWARE OR SOFTWARE DELIVERED IN CONNECTION HEREWITH. CLIENT HEREBY WAIVES ALL RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE TO MAKE REPAIRS OR ALTERATIONS TO THE CLOUDJACKET EQUIPMENT AND ANY OTHER SOFTWARE OR HARDWARE PROVIDED TO CLIENT BY SECNAP.

Section 5. Limitation of Liability. CLIENT'S RIGHTS AND REMEDIES HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES. IN NO EVENT WILL SECNAP BE LIABLE TO CLIENT, ANY EMPLOYEE, AGENT OR CONTRACTOR OF CLIENT, OR ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, IN RELATION TO THE CLIENT'S DATA CENTER, ANY EQUIPMENT, ANY SERVICES, CLIENT'S BUSINESS OR OTHERWISE, WHICH CLAIMS INVOLVE PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT FOR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, SECNAP'S LIABILITY TO CLIENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT TO SECNAP DURING THE PRECEDING TWELVE (12) MONTHS.

Section 6. Indemnity.

(a) **Client Indemnity**. Client shall indemnify, defend and hold harmless SECNAP and its affiliates' and their respective officers, employees, directors, shareholders and agents from and against any and all claims, demands, actions, damages, liability, judgments, expenses and costs of third parties (including, but not limited to, reasonable attorneys' fees) arising from or relating to: (i) Client's use of Client's equipment, the CloudJacket Equipment or the Services, (ii) claims asserted by third parties with whom Client has a contractual or other relationship, including, without limitation, Client's customers and licensors, (iii) Client's acts or omissions, (iv) claims relating to Client's (A) infringement or misappropriation of intellectual property rights, defamation, libel, slander, obscenity, pornography or violation of rights of privacy or publicity, or (B) spamming, or any other offensive, harassing or illegal conduct, (v) any breach by Client of any warranty, covenant or obligation hereunder, (vi) any injury to or death of any person or damage to any property occurring upon the Client's Data Center and/or the building or the land of which it is a part claimed to arise out of (or in connection with) Client's negligent acts or omissions, or (vii) the violation of any law or regulation by Client; provided, however, that the indemnification provided under this Section 6 (a) shall not cover that portion of any claims that: arise from the gross negligence, willful misconduct or fraud of SECNAP; or that constitute a breach or violation of this Agreement by SECNAP.

(b) **SECNAP Indemnity**. SECNAP shall indemnify, defend and hold harmless the Client and its affiliates' and their respective officers, employees, directors, shareholders and agents from and against any and all claims, demands, actions, damages, liability, judgments, expenses and costs of third parties (including, but not limited to, reasonable attorneys' fees) arising from or relating to (i) claims asserted by third parties with whom SECNAP has a contractual or other relationship, including, SECNAP's customers and licensors, (ii) claims relating to SECNAP's (A) infringement or misappropriation of intellectual property rights, defamation, libel, slander, obscenity, pornography or violation of rights of privacy or publicity, or (B) spamming, or any other offensive, harassing or illegal conduct; provided, however, that the indemnification provided under this Section 6 (b) shall not cover that portion of any claims that: arise from the gross negligence, willful misconduct or fraud of Client; or that constitute a breach or violation of this Agreement by Client.

Section 7. Confidentiality. Each party acknowledges that, in the course of the performance of this Agreement, it ("receiving party") may have access to the "Confidential Information" (as defined below) of the other party ("disclosing party"). The receiving party agrees to use reasonable efforts to prevent the disclosure to any other person, firm or corporation of any Confidential Information that it receives from the disclosing party, and shall protect such Confidential Information by using the same degree of care (which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving party uses to protect its own confidential information of a like nature. Receiving party shall not, without the prior written consent of the disclosing party, disclose the Confidential Information in any manner whatsoever, in whole or in part, except to such of receiving party's officers, directors, shareholders, employees, attorneys, agents, accountants or subcontractors who: (i) have a valid need to know the Confidential Information, but Confidential Information shall be revealed to each such person only to the extent necessary for legitimate business uses in connection with the performance of this Agreement (the "**Purpose**"); (ii) are informed of this Agreement, and (iii) acknowledge their responsibility to be bound by the terms of this Agreement as if a party hereto. Receiving party also agrees not to use the Confidential Information for any purpose other than for the Purpose. Confidential Information does not include information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is already known to the receiving party, and such prior knowledge can be demonstrated through physical evidence that pre-dates this Agreement; (c) is disclosed to the receiving party without

confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is the subject of a written permission to disclose provided by the disclosing party; (e) is required to be disclosed pursuant to court order or subpoena, or similar process issued by a governmental authority; or (f) is necessary to perform hereunder or to enforce this Agreement; provided however, that if such information is disclosed pursuant to either subsection (e) or (f), then the party proposing to make the disclosure shall, if allowed by law, first provide notice to the disclosing party and an adequate opportunity to the disclosing party to object to such disclosure, at disclosing party's expense. Upon request of either party or on termination or expiration of this Agreement, each party shall return the Confidential Information of the other party then in its possession. The confidentiality obligations hereunder with respect to any disclosure of information made within the term of this Agreement, shall survive the termination or expiration of this Agreement for a period of three (3) years. The term **"Confidential Information"** shall mean any proprietary or confidential information, trade secrets or other information, whether or not marked "Confidential" furnished during the term of this Agreement, whether tangible or intangible, disclosed directly or indirectly in writing or orally, and in whatever form or medium provided, that constitute any or all of the following: technical information, technical data, research, products, software services, software code, development, macros, source code, algorithms, formulas, inventions, ideas, concepts, processes, specifications, designs, drawings, engineering, methods, techniques, marketing, customer information, business plans and forecasts or financial information, current products or services, future products or services, and any and all derivative works of any of the foregoing and any all patents and copyrights therein or any improvements thereof.

Section 8. General Provisions.

(a) **No Third-Party Beneficiary.** It is the explicit intention of the parties hereto, that no person or entity other than the parties to this Agreement and their respective successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties.

(b) **Relationship of the Parties.** Neither party will have the authority to make any representations, claims or warranties of any kind on behalf of the other party or on behalf of such party's licensors or suppliers. Neither party hereto is an employee, agent, joint venturer or partner of the other party. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either SECNAP or any employee or agent of SECNAP. Neither party shall have the power or authority to bind or obligate the other.

(c) **Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, act of terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, facilities, telecommunications services or supplies or any other cause beyond the reasonable control of such party.

(d) **Assignment.** This Agreement and the rights and obligations hereunder shall not be assigned (including, without limitation, by way of merger, consolidation, sale of assets or change in control involving Client or SECNAP, or otherwise) or otherwise transferred by either party without the prior written consent of the other party, which consent may be unreasonably withheld, and no assignment shall relieve the assigning party of its obligations hereunder. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

(e) **Notices.** All notices required hereunder shall be delivered by one or more of the following methods:

i. personally;
ii. by overnight courier (e.g. Federal Express or UPS);
iii. by certified or registered mail, return receipt requested; or
iv. sent by telecopy or facsimile transmission, answer back requested;

in each such case addressed to the party to be notified at the respective addresses set forth above, and to the attention of the person or persons who have executed this Agreement on page 8 hereof.

(f) **Waiver.** Any waiver of any right or default hereunder shall be effective only if given in writing and shall not operate as or imply a waiver of any similar right or default on any subsequent occasion.

(g) **Severability.** No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall operate to invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms.

(h) **Counterparts and Signatures.** This Agreement and any amendment thereto may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same single document, and any such counterpart containing an electronically scanned or facsimile signature will have the same effect as original manual signatures.

(i) **Governing Law.** This Agreement will be governed by and construed under, and the legal relations between the parties hereto will be determined in accordance with, the laws of the State of Florida, without giving effect to such state's conflict of law principles. The parties agree that any litigation regarding the interpretation, breach or enforcement of this Agreement will be exclusively filed in and heard by the Circuit Court for Broward County, Florida, and the parties hereby submit to the personal jurisdiction of such court.

(j) **Headings.** The section headings are for reference and convenience only and will not be considered in the interpretation of this Agreement.

(k) **Entire Agreement.** This Agreement, including any other attachments, exhibits and schedules hereto, which are hereby incorporated by reference into this Agreement, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other agreements, oral or written, relating to its subject matter. There are no other representations, understandings or agreements between the parties relative to such subject matter. This Agreement may not be amended, altered or modified except by a writing signed by the parties.

(l) **Due Authority.** Each party represents to the other that it is duly authorized to execute this Agreement and to perform its obligations hereunder according to the terms set forth herein. Each party further represents that its execution of this Agreement and performance of its obligations hereunder are not and will not be in violation of any obligations it may have to any third party.

(m) **SECNAP Intellectual Property.** Client covenants, represents and warrants, notwithstanding any other provision of this Agreement, that it shall in no way interfere with, impair, disseminate or cause dissemination of, or decompile, disassemble or reverse engineer, copy, modify or translate any SECNAP Intellectual Property (as defined below). Client shall have no right, title, claims or interest

in or to the SECNAP Intellectual Property and no license of SECNAP Intellectual Property is intended or implied, beyond the limited use license and restrictions on use stated herein. Client may not use the SECNAP Intellectual Property or related documentation, other than in connection with the Services and in accordance with this Agreement, or grant any other person or entity the right to do so. Upon the expiration or termination of this Agreement for any reason, Client shall deliver, or cause to be delivered or returned, to SECNAP all physical property and electronic media that contains any of SECNAP's Intellectual Property. "**SECNAP Intellectual Property**" means any and all "Inventions" (as defined below) and other information (whether conveyed visually, orally or in writing) owned by SECNAP or in which SECNAP has "Rights" (as defined below), about algorithms, trade secrets, computer software, designs, technology, ideas, know-how, show-how, products, services, processes, data, techniques, improvements, inventions (whether or not patentable), works of authorship, and other information concerning SECNAP's actual or anticipated business, technologies, research or development, or which is received in confidence by or for SECNAP from any third party. "**Rights**" means any and all patent rights, copyright rights, trade secret rights, sui generis database rights and all other intellectual property, industrial property and proprietary rights recognized anywhere in the world, now or in the future. "**Inventions**" means any and all improvements, inventions (whether or not patentable), works of authorship, derivative works, trade secrets, technology, computer software, algorithms, formulas, compositions, ideas, designs, processes, techniques, know-how and data made, conceived, reduced to practice or developed (in whole or in part, either alone or jointly with others).

(n) **Survival.** The parties agree that the provisions herein regarding intellectual property ownership, confidentiality, indemnification and limitation on liability shall survive any termination, expiration or cancellation of either this Agreement or the license to use the Services and equipment granted herein.

(o) **Certain Interpretations.** The Section and Paragraph headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of this Agreement or of any particular Section or Paragraph. Pronouns, wherever used, and whatever gender, shall include natural persons, companies, partnerships, trusts, corporations, and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Whenever the terms "hereof", "hereby", "herein", "hereunder" or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to a particular section, paragraph or provision. References in this Agreement to articles, sections, paragraphs, subsections, schedules or exhibits are to articles, sections, subsections, paragraphs, schedules or exhibits in or to this Agreement unless otherwise stated. The term "person" shall mean any governmental authority or any individual, firm, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization or other entity or organization. In construing this Agreement, a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place where it is defined. The language used in this Agreement shall be deemed language chosen by the parties to express their mutual intent, each having an equal opportunity to participate in the drafting of the provisions hereof; accordingly, in construing this Agreement, no party shall be presumed or deemed to be the "drafter" or "preparer" hereof and no rule of strict construction shall be applied against any party.

(p) **NO JURY TRIAL.** EACH PARTY HERETO WAIVES HIS, HER OR ITS RIGHT TO A JURY TRIAL IN THE EVENT OF ANY DISPUTE OR LITIGATION ARISING HEREUNDER OR UNDER ANY RELATED TRANSACTION OR DOCUMENT EXECUTED IN CONNECTION HEREWITH.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

SECNAP Network Security Corporation

By: _____

Date: _____/_____/_____

Print Name: _____

Print Title: _____

CESC _____ **[Print Name of Client]**

By: [redacted]

Date: 6 / 26 / 13

Print Name: Clinton Staff Server Lead Coordinator

Print Title: [redacted]

EXHIBIT A

The ability to make rule changes to this account will be limited to our [redacted] SECNAP Manager 2 and our [redacted] SECNAP Manager 3 Additionally, alert monitoring will be limited to the minimum number of employees (four) to provide around the clock coverage and support. The SOC personnel with access to alerts will be [redacted] SECNAP Staff All employees have been screened and background have been run in accordance with SECNAP policy.

From: SECNAP Network Security [redacted]
Sent time: 02/17/2014 08:30:45 PM
To: [redacted]
Subject: [Ticket#1412425] SECNAP Security Incident Report for NY-CESC IPS Alert

---

122.49.0.220 in China was found running an attack against your network . Abuse has been reported to their ISP. Your intrusion prevention system has automatically blocked this traffic

Notes: snort:1:2012936:ET SCAN ZmEu Scanner User-Agent Inbound:

Events listed in GMT timezone

GET /w00tw00t.at.blackhats.romanian.anti-sec:) HTTP/1.1

Accept: */*

Accept-Language: en-us

Accept-Encoding: gzip, deflate

User-Agent: ZmEu

Host: 64.94.172.148

Connection: Close

length = 186

000 : 47 45 54 20 2F 77 30 30 74 77 30 30 74 2E 61 74 GET /w00tw00t.at

010 : 2E 62 6C 61 63 6B 68 61 74 73 2E 72 6F 6D 61 6E .blackhats.roman

020 : 69 61 6E 2E 61 6E 74 69 2D 73 65 63 3A 29 20 48 ian.anti-sec:) H

030 : 54 54 50 2F 31 2E 31 0D 0A 41 63 63 65 70 74 3A TTP/1.1..Accept:

040 : 20 2A 2F 2A 0D 0A 41 63 63 65 70 74 2D 4C 61 6E */*..Accept-Lan

050 : 67 75 61 67 65 3A 20 65 6E 2D 75 73 0D 0A 41 63 guage: en-us..Ac

060 : 63 65 70 74 2D 45 6E 63 6F 64 69 6E 67 3A 20 67 cept-Encoding: g

070 : 7A 69 70 2C 20 64 65 66 6C 61 74 65 0D 0A 55 73 zip, deflate..Us

080 : 65 72 2D 41 67 65 6E 74 3A 20 5A 6D 45 75 0D 0A er-Agent: ZmEu..

090 : 48 6F 73 74 3A 20 36 34 2E 39 34 2E 31 37 32 2E Host: 64.94.172.

0a0 : 31 34 38 0D 0A 43 6F 6E 6E 65 63 74 69 6F 6E 3A 148..Connection:

0b0 : 20 43 6C 6F 73 65 0D 0A 0D 0A Close....

[2014-02-18 02:25:30] | 1 | 122.49.0.220:54359 -> 192.168.42.2:80 | TCP | ACK[1] | snort:1:2012936

–

>|SECNAP Network Security

US:+[redacted]

EU:+[redacted]

AU:+[redacted]

IL:+[redacted]

From: SECNAP Network Security [redacted]
Sent time: 03/04/2014 09:25:39 PM
To: [redacted]
Subject: [Ticket#1413193] SECNAP Security Incident Report for NY-CESC IPS Alert

---

211.115.89.124 in the Korea, Republic of was found running an attack against your network . Abuse has been reported to their ISP. Your intrusion prevention system has automatically blocked this traffic

Notes: snort:1:2012936:ET SCAN ZmEu Scanner User-Agent Inbound:

Events listed in GMT timezone

GET /w00tw00t.at.blackhats.romanian.anti-sec:) HTTP/1.1

Accept: */*

Accept-Language: en-us

Accept-Encoding: gzip, deflate

User-Agent: ZmEu

Host: 64.94.172.148

Connection: Close

length = 186

```
000 : 47 45 54 20 2F 77 30 30 74 77 30 30 74 2E 61 74 GET /w00tw00t.at
010 : 2E 62 6C 61 63 6B 68 61 74 73 2E 72 6F 6D 61 6E .blackhats.roman
020 : 69 61 6E 2E 61 6E 74 69 2D 73 65 63 3A 29 20 48 ian.anti-sec:) H
030 : 54 54 50 2F 31 2E 31 0D 0A 41 63 63 65 70 74 3A TTP/1.1..Accept:
040 : 20 2A 2F 2A 0D 0A 41 63 63 65 70 74 2D 4C 61 6E */*..Accept-Lan
050 : 67 75 61 67 65 3A 20 65 6E 2D 75 73 0D 0A 41 63 guage: en-us..Ac
060 : 63 65 70 74 2D 45 6E 63 6F 64 69 6E 67 3A 20 67 cept-Encoding: g
070 : 7A 69 70 2C 20 64 65 66 6C 61 74 65 0D 0A 55 73 zip, deflate..Us
080 : 65 72 2D 41 67 65 6E 74 3A 20 5A 6D 45 75 0D 0A er-Agent: ZmEu..
090 : 48 6F 73 74 3A 20 36 34 2E 39 34 2E 31 37 32 2E Host: 64.94.172.
0a0 : 31 34 38 0D 0A 43 6F 6E 6E 65 63 74 69 6F 6E 3A 148..Connection:
0b0 : 20 43 6C 6F 73 65 0D 0A 0D 0A Close....
```

[2014-03-05 03:23:30] | 1 | 211.115.89.124:42658 -> 192.168.42.2:80 | TCP | ACK[1] | snort:1:2012936

–

>|SECNAP Network Security

US:+[redacted]

EU:+[redacted]

AU:+[redacted]

IL:+[redacted]

From: SECNAP Network Security [redacted]
Sent time: 06/18/2014 10:48:38 PM
To: [redacted]
Subject: [Ticket#1418524] SECNAP Security Incident Report for NY-CESC IPS Alert

---

ns.km20603-05.keymachine.de[84.19.188.40] in Germany was found running an attack against your network . Abuse has been reported to their ISP. Your intrusion prevention system has automatically blocked this traffic

Notes: snort:1:2006402:ET POLICY Incoming Basic Auth Base64 HTTP Password detected unencrypted :

http://doc.emergingthreats.net/bin/view/Main/2006402

Events listed in GMT timezone

POST /admin/assets/themes/case.php?act=tools&d=%2Ftmp HTTP/1.1

host: 64.94.172.146

content-type: application/x-www-form-urlencoded

charset=utf-8

authorization: Basic dmFtcGlyZTpldmlsQGFjY2Vzcw==

content-length: 322

Connection: keep-alive

length = 247

```
000 : 50 4F 53 54 20 2F 61 64 6D 69 6E 2F 61 73 73 65 POST /admin/asse
010 : 74 73 2F 74 68 65 6D 65 73 2F 63 61 73 65 2E 70 ts/themes/case.p
020 : 68 70 3F 61 63 74 3D 74 6F 6F 6C 73 26 64 3D 25 hp?act=tools&amp;d=%
030 : 32 46 74 6D 70 20 48 54 54 50 2F 31 2E 31 0D 0A 2Ftmp HTTP/1.1..
040 : 68 6F 73 74 3A 20 36 34 2E 39 34 2E 31 37 32 2E host: 64.94.172.
050 : 31 34 36 0D 0A 63 6F 6E 74 65 6E 74 2D 74 79 70 146..content-typ
060 : 65 3A 20 61 70 70 6C 69 63 61 74 69 6F 6E 2F 78 e: application/x
070 : 2D 77 77 77 2D 66 6F 72 6D 2D 75 72 6C 65 6E 63 -www-form-urlenc
080 : 6F 64 65 64 3B 20 63 68 61 72 73 65 74 3D 75 74 oded; charset=ut
090 : 66 2D 38 0D 0A 61 75 74 68 6F 72 69 7A 61 74 69 f-8..authorizati
0a0 : 6F 6E 3A 20 42 61 73 69 63 20 64 6D 46 74 63 47 on: Basic dmFtcG
0b0 : 6C 79 5A 54 70 6C 64 6D 6C 73 51 47 46 6A 59 32 lyZTpldmlsQGFjY2
0c0 : 56 7A 63 77 3D 3D 0D 0A 63 6F 6E 74 65 6E 74 2D Vzcw==..content-
```

0d0 : 6C 65 6E 67 74 68 3A 20 33 32 32 0D 0A 43 6F 6E length: 322..Con

0e0 : 6E 65 63 74 69 6F 6E 3A 20 6B 65 65 70 2D 61 6C nection: keep-al

0f0 : 69 76 65 0D 0A 0D 0A ive....

[2014-06-19 03:40:35] | 1 | 84.19.188.40:38463 -> 192.168.42.22:80 | TCP | ACK[1] | snort:1:2006402

--

>|SECNAP Network Security

US:+[redacted]

EU:+[redacted]

AU:+[redacted]

IL:+[redacted]

From: [redacted]
Sent time: 10/05/2013 07:21:08 PM
To: [redacted]
Subject: RE: CESC cloudjacket unit

[redacted],

It's up and running, I can log in.

You can reach the dashboard by creating a host entry:
192.168.42.200 ny-cesc.hackertrap.net

Once saved, you can access https://ny-cesc.hackertrap.net

Username: [redacted]
Password: [redacted]

Please let me know if you have any trouble.

Thanks,

--
[redacted]
>|SECNAP Network Security
Office: [redacted]

-----Original Message-----
From: [redacted]
Sent: Saturday, October 05, 2013 7:55 PM
To: [redacted]
Subject: RE: CESC cloudjacket unit

Hi [redacted] - I just spoke to the datacenter guy, he is going to grab a cable and head to our cage to plug in the console port and power cycle the unit. He should be calling me back soon

-----Original Message-----
From: [redacted]
Sent: Friday, October 04, 2013 2:29 PM
To: [redacted]
Cc: [redacted]
Subject: RE: CESC cloudjacket unit

I will be sure to be available.

Feel free to contact me on my cell: [redacted]. I never leave home without my laptop anyway :)

--
[redacted]
>|SECNAP Network Security
Direct: [redacted]

-----Original Message-----
From: [redacted]
Sent: Friday, October 04, 2013 2:27 PM
To: [redacted]
Cc: [redacted]
Subject: RE: CESC cloudjacket unit

[redacted] we are looking at possibly getting this installed tomorrow (Sat) afternoon/evening (awaiting confirmation from CESC), could you be available in that timeframe if we run into problems?

-----Original Message-----
From: [redacted] SECNAP Manager 2
Sent: Thursday, October 03, 2013 11:57 AM
To: SECNAP Manager 1 PRN Project Manager 2 InfoGrate Executive
Cc: PRN Executive 2
Subject: RE: CESC cloudjacket unit

Hello [redacted]

The machine you have should be labeled relatively well. The pertinent ports on the back should be marked WAN, LAN and Console.

Connection should be like this:

WAN: take cable from firewall to switch. Unplug from switch, move to this port.
LAN: Take a new cable from this port and connect to switch where firewall cable was.

This should restore network connectivity.

Console: Connect to switch where the specified IP (or DHCP) is available.

I'd be happy to make myself available when this installation is happening.
Feel free to contact me any time.

Thanks,

--
SECNAP Manager 2
[redacted]
>|SECNAP Network Security
Office: [redacted]

-----Original Message-----
From: SECNAP Manager 1
Sent: Thursday, October 03, 2013 10:18 AM
To: PRN Project Manager 2 InfoGrate Executive
Cc: PRN Executive 2 SECNAP Manager 2
Subject: RE: CESC cloudjacket unit

Hi [redacted],

I'm going to let SECNAP Manager 2 answer this as he is the Tech contact.

Thank you, were looking forward to getting this up and going.

[redacted]

SECNAP Manager 1
[redacted]
www.secnap.com

From: [redacted] PRN Project Manager 2
Sent: Thursday, October 03, 2013 10:16 AM
To: SECNAP Manager 1 InfoGrate Executive
Cc: PRN Executive 2 SECNAP Manager 2
Subject: CESC cloudjacket unit

Hi [redacted] -

We are hopefully making another attempt at getting this installed in the next week or two- Can you check your notes again and let me know what interfaces should be plugged into what? The tech I worked with at the datacenter the first time we tried said that there were no labels in the box or on the unit.

Thanks!

[redacted]

This email has been scanned and certified safe by SpammerTrap(r).
For Information please see http://www.spammertrap.com/

Russia-Linked Hackers Tried to Access Clinton Server, Emails Show

abcnews.go.com/Politics/wireStory/6000-pages-clinton-emails-published-wednesday-34149824

Russia-linked hackers tried at least five times to pry into Hillary Rodham Clinton's private email account while she was secretary of state, emails released Wednesday show. It is unclear if she clicked on any attachments and exposed her account.

Clinton received the infected emails, disguised as speeding tickets from New York, over four hours early the morning of Aug. 3, 2011. The emails instructed recipients to print the attached tickets. Opening an attachment would have allowed hackers to take over control of a victim's computer.

Security researchers who analyzed the malicious software in September 2011 said that infected computers would transmit information from victims to at least three server computers overseas, including one in Russia. That doesn't necessarily mean Russian intelligence or citizens were responsible.

Nick Merrill, a spokesman for Clinton's Democratic presidential campaign, said: "We have no evidence to suggest she replied to this email or that she opened the attachment. As we have said before, there is no evidence that the system was ever breached. All these emails show is that, like millions of other Americans, she received spam."

Practically every Internet user is inundated with spam or virus-riddled messages daily. But these messages show hackers had Clinton's email address, which was not public, and sent her a fake traffic ticket from New York state, where she lives. Most commercial antivirus software at the time would have detected the software and blocked it.

The phishing attempts highlight the risk of Clinton's unsecure email being pried open by foreign intelligence agencies, even if others also received the virus concealed as a speeding ticket from Chatham, New York. The email misspelled the name of the city, came from a supposed New York City government account and contained a "Ticket.zip" file that would have been a red flag.

Clinton has faced increasing questions over whether her unusual email setup offered proper secrecy protection and records retention. The emails themselves — many redacted heavily before public release — have provided no shocking disclosures thus far and Clinton has insisted the server was secure.

During Clinton's tenure, the State Department and other U.S. government agencies faced their own series of hacking attacks. U.S. counterterrorism officials have linked them to China and Russia. But the government has a large staff of information technology experts, whereas Clinton has yet to provide any information on who maintained her server and how well it was secured.

The emails released Wednesday also show a Clinton confidant urging her boss and others in June 2011 not to "telegraph" how often senior officials at the State Department relied on their private email accounts to do government business because it could inspire hackers to steal information. The discussion never mentioned Clinton's own usage of a private email account and server.

The exchange begins with policy chief Anne-Marie Slaughter lamenting that the State Department's technology is "so antiquated that NO ONE uses a State-issued laptop and even high officials routinely end up using their home email accounts to be able to get their work done quickly and effectively." She said more funds were needed and said an opinion piece might make the point to legislators.

Clinton said the idea "makes good sense," but her chief of staff, Cheryl Mills, disagreed: "As someone who attempted to be hacked (yes I was one), I am not sure we want to telegraph how much folks do or don't do off state mail b/c it may encourage others who are out there."

The hacking attempts were included in the 6,300 pages the State Department released, covering a period when U.S. forces killed Osama bin Laden and the Arab Spring rocked American diplomacy.

New York State police warned as early as July 2011 about emails containing warnings of traffic tickets that actually contained computer viruses.

Clinton received five copies between 1:44 am and 5:26 a.m. on Aug. 3, 2011. They appeared to come from "New York State — Department of Motor Vehicles," warning that a car registered to Clinton was caught speeding "over 55 zone" on July 5. Clinton had no public events in Washington that day, following the July 4 holiday. The email instructed the recipient to "print out the enclosed ticker and send it to town court, Chatam Hall, PO Box 117."

The former first lady and New York senator had maintained that nothing was classified in her correspondence, but the intelligence community has identified messages containing "top secret" information. Clinton had insisted that all of her work emails were being reviewed by the State Department, but Pentagon officials recently discovered a new chain of messages between Clinton and then-Gen. David Petraeus dating to her first days in office that she did not send to the State Department.

As part of Wednesday's release, officials upgraded the classification level of portions of 215 emails, State Department spokesman John Kirby said. Almost all were "confidential," the lowest level of classification. Three emails were declared "secret," a mid-tier level for information that could still cause serious damage to national security, if made public.

"The information we upgraded today was not marked classified at the time the emails were sent," Kirby stressed.

+1 844-NET-SECURE (844-638-7328) support@secnap.com

SECNAP NETWORK SECURITY CLOUDJACKET

Corporate Overview

Who We Are

SECNAP Network Security develops and provides next-generation information technology solutions that enable business to be conducted securely and privately on the Internet. Our security technologies are significantly ahead of the industry in intelligence, performance and ease of deployment—effectively detecting, analyzing and preventing cyber threats as they develop. The level at which our solutions perform has essentially obsoleted the zero-day threat for SECNAP clients.

Among our innovations are a patented Intrusion Detection and Prevention System (IDS/IPS) that leverages highly advanced anomaly, trending, rules and other engines in concert with expert monitoring 24/7/365 to deliver unrivaled protection of network and information assets. Award-winning SECNAP Email Security and Email Privacy solutions provide government-grade encryption as well as protection from all forms of mail-borne malware. Our full suite of Security Audits and Assessments ensures information security and regulatory compliance.

Protecting Client Revenues and Reputations

SECNAP is the perfect choice for businesses who don't want to risk buying from a new start-up with unproven technologies, and who don't want to get lost in the shuffle with a giant vendor. Our diverse client list includes complex global enterprises and mid-range businesses in the .com, .org, .edu, .net and many other domains. One thing they all have in common: revenues and reputations that rely on faultless security.

A Decade at the Forefront

Founded in 2001, SECNAP Network Security has occupied a strategic position on the leading edge of the information security industry for more than a decade, with a singular focus on research and development of effective security solutions that are able to adapt as cyberthreats evolve. Today we are a full-service Internet security provider with exceptional expertise in tracking, trending and preventing, in real-time, computer attacks, network intrusions, negligent insider actions, data leakage, and exploitation of vulnerabilities in networks, email systems and web applications.

Our Security Mission

SECNAP Network Security is dedicated to protecting clients against the loss of intellectual property (IP), personally identifiable information (PII), personal health information (PHI) and other sensitive data. We continue to develop and deploy innovative security solutions and best security practices to prevent organizations from being victimized by network attacks, viruses, Trojans, phishing and spear-phishing schemes, and other cybercrime. Unlike reactive solutions, SECNAP delivers proactive, first-strike protection based on advanced technologies that enable threats to be detected at the edge of the Internet.

Why SECNAP Network Security is Right for You

Because you're looking for the most advanced security available today, at rates you can afford today. Because our security solutions leverage next generation technologies that consistently exceed expectations, providing unparalleled protection and convenience. Because the SECNAP engineering team remains laser-focused on taking security to the next level while keeping it accessible to you. Because exceptional security delivers an unexpected benefit: complete peace of mind.

Our clients call us their favorite secret weapon in the war on cybercrime. We'd like to be yours.

Doing Our Share

While we're providing flawless information security, SECNAP also makes every effort to conserve natural resources by lowering energy consumption in our daily operations and in the products we provide for our customers. In addition, SECNAP employees contribute to a variety of environmental conservation organizations.

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SECNAP NETWORK SECURITY CLOUDJACKET

CloudJacket™

Patented Technology

Only the SECNAP Intrusion Detection and Intrusion Prevention solution integrates a patented Edge Attack Sensor Network and Smart Alert Filter, an extensive and robust database of rules and signatures, and an expert, experienced team of certified security engineers. The result is superior protection of your network and network devices from both external and internal threats.

Our solution performs deep packet inspection of all incoming and outgoing packets and their contents, of course. But it goes a vital step further by profiling the sender and sender's patterns–a unique value-add that effectively blocks even the most determined hackers from accessing your network. As a result of this powerful combination of tools, we're able to protect our clients more cost-effectively than any other Managed Network Security Services Provider. And we prove it day in and day out, year after year (plus nights, weekends and holidays).

CloudJacket 360 IPS Appliance

The CloudJacket 360 Intrusion Prevention system lies at the heart of our layered network security solution, incorporating a host of powerful components to protect client network and information assets with exceptional effectiveness.

Worldwide Edge Attack Sensor Network

The patented SECNAP Edge Network integrates thousands of intelligent network security sensors that identify potential threats the instant they are launched at the edge of the Internet. This early warning system enables our security engineers to respond immediately,

and virtually eliminates the nefarious zero-day attack.

SmartAlert Filter

This patented software enables us to provide you with precise attack prevention services at the lowest possible cost. The intelligent filter eliminates more than 98% of the false alarms generated by typical intrusion detection and intrusion prevention systems, dramatically reducing the number of events our security team must investigate and resolve. Which makes them efficient and highly effective on a 24/7/365 basis.

Other Integrated Components

The CloudJacket device integrates a number of other modules to ensure the most effective protection you can buy–from a smart anomaly engine and powerful correlation engine to trend analysis and advanced signature matching. Plus other optional elements you may request as needed.

Expert Security Team

Just as we augment your existing network security infrastructure with state-of-the-art intrusion detection and intrusion prevention technologies, SECNAP also augments your own IT team with a full staff of some of the brightest network security engineers in the industry. SECNAP engineers have extensive hands-on experience combating complex network attacks and leveraging the very latest security technologies–so that our clients don't have to.

Explore

CloudJacket

Managed Benefits

Optimal Deployments

Patented Technology

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SECNAP NETWORK SECURITY CLOUDJACKET

CloudJacket™

Managed Benefits

Cybercrime is advancing at a record pace, and today's enterprises face targeted, real-time attacks that are increasingly more sophisticated. As a result, IT professionals are highly sensitized to the importance of securing their infrastructure. For most, however, security is not their primary responsibility—and vigilance is often diluted in the mix of competing priorities. As an expert extension of your IT organization, SECNAP has your back 24/7/365 with vigilance that never rests.

Advanced Solutions Augmented by Expert Management

Appliances and software can detect and prevent most attacks successfully, but not alone. Expert, highly experienced professionals monitoring and managing the installed IDS/IPS systems are a vital component of high-level security solutions. Only by combining cutting-edge IDS/IPS technology with 24/7/365 expert monitoring and support can clients ensure truly effective protection from evolving security threats.

One of the most significant challenges to any IT department is to verify that security measures are working as intended, everywhere, all the time. A strong managed service partner is able to do much of the heavy lifting—becoming an extension of the client's team and enabling client IT staff to be on top of security at all times. A good partnering strategy is delivered at much lower total cost of ownership than the alternative—which is to hire and manage three shifts of skilled security employees or outsource to inconvenient, insecure offshore centers.

Before you choose an IDS/IPS solution, consider these factors:

SECNAP Managed Service	Do It Yourself Strategy

• Provides 24/7/365 network monitoring by a team of certified, expert Security Engineers in redundant Secure Operations Centers (SOCs) in the U.S.
• Leverages full redundancy, advanced technology, and extensive signatures/rules databases updated in real time.
• Provides comprehensive, layered protection including:
  • Detection—to identify intrusions, and intruders, as attacks are attempted
  • Prevention—to keep intruders out of network and to prevent data leakage
  • Response—to proactively combat threats as they are occurring, and report new threats.
• Expert customer technical support is always just a phone call or email away.
• Provides access to detailed pre-defined and customizable reports via dashboard interface.
• Simplifies budgeting with one annual subscription fee. (We can invoice semi-annually or quarterly if you prefer.)
• Includes management of properly-scaled appliance, deployment of patented technology, 24/7/365 network monitoring, and real-time updates.	

Explore

CloudJacket

Managed Benefits

Optimal Deployments

Patented Technology

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From: [redacted] Clinton Staff Server Lead Coordinator
Sent time: 08/19/2015 03:16:06 PM
To: [redacted]
Cc: [redacted] Clinton Staff Server Sponsor [redacted] Marcum LLP Partner [redacted] PRN Project Manager 2 PRN Executive 2
Subject: Re: CESC CloudJacket Renewal Agreement

---

approved

> On Aug 19, 2015, at 4:03 PM, [redacted] InfoGrate Executive [redacted] wrote:

>

> All:

>

> Attached is the Cloud Jacket renewal. This is for our Intrusion Detection System and Monitoring. It sits in front of our email server to protect it. I don't want this to lapse at all. Nothing changed- just renewal needed.

>

> Thanks

>

> [redacted]

> <CESCMNSSRenewalAgreementAugust 2015.pdf>

From: PRN Executive 2
Sent time: 04/16/2013 03:47:45 PM
To: InfoGrate Executive
Subject: RE: Name and Address

Do we have a phone number?

PRN Executive 2
[redacted]
PLATTE RIVER NETWORKS
[redacted]
WWW.PLATTERIVER.COM

From: [redacted] InfoGrate Executive
Sent: Tuesday, April 16, 2013 2:46 PM
To: PRN Executive 2
Subject: Name and Address

Here is the name and address we should be using for the PO and Co-LO and all agreements.

CESC
C/o Marcum LLP Partner
Marcum LLP
[redacted]

From: [redacted]
Sent time: 09/27/2013 02:06:31 PM
To: [redacted] PRN Executive 2 [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

The certificate one didn't affect anyone, we got it resolved before the old one expired. The email bounce one affected a few, but it was just some addresses that needed to be whitelisted

From: [redacted] InfoGrate Executive [redacted]
Sent: Friday, September 27, 2013 2:58 PM
To: [redacted], PRN Executive 2, [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

Super- can we email those monthly to me, [redacted] and [redacted] We can move to quarterly in 3 months or so. I think it might help them see the service.

Can you add the person on them who had the issue- what was the end user affected.

Also- what are the two yellows below. How did those impact users.

From: [redacted]
Sent: [redacted]
To: [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

[redacted] - These are our time entries for CESC for the last month. Nothing out of the ordinary. We had to jump through some hoops with Network Solutions to get their SSL certificate renewed, but everything was fine in the end.

9.23.13 [redacted] /PRN (7:30p – 8:30p) 1hr Remote
* Received a call from the help desk about an escalated issue for a Blackberry.
* Checked with the team and logged into the BES server.
* [redacted] updated us with the user that needs the new activation password set.
* Logged in and set the activation password.
* Emailed [redacted] the new activation password.
* He will call the user and give them the info.

9/17 - [redacted] - 30 min - Intuition
* Set up new distribution list for the Chelseaoffice.com team
* Password reset for Clinton Staff 1
* Finalize old cert cancellation with Network Solutions
* Followup with Datto about failed backup- working again

9/13 - [redacted] - 1 hour
* Found that Network Solutions would not issue the certificate for the email server without a lengthy address/company verification process. Since the certificate expires on the 15th, issued a cancellation request for the Network Solutions cert and set up a new cert on GoDaddy
* Configured and applied new certificate, informed [redacted] and CESC support staff that the new cert would become active this weekend

9/11 - [redacted] - 30 min
* Further work with Network Solutions and Clinton Staff 1 to re-issue cert. Needed to do a rollback to provide correct information
* Recreated CSR and submitted, should verify by tomorrow

9/10 - [redacted] - 30 min
* Work with Network Solutions support to re-issue security certificate for the email server

9/6 - [redacted] - 30 min
* Troubleshoot email bounces - whitelisted several domains, put in ticket with MX Logic to determine if any other system issues might be at fault
* Reprovision [redacted] Blackberry password per [redacted]

9/5 - [redacted] - 2 hours
* Buy and configure certificate renewal for the email server

9/5 - [redacted] - 30 min
* Reconfigure email forwarding per [redacted] most recent instructions

9/4 - [redacted] - 30 min
* Set up email forwarding for [redacted] account per [redacted]
* Reset [redacted] BB activation password

8/27 - [redacted] - 15 min
* New account setup for Chelsea Staff 2

From: [redacted] InfoGrate Executive
Sent: Friday, September 27, 2013 2:24 PM
To: PRN Project Manager 2 [redacted]; PRN Executive 2; PRN Manager 1 [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

How about how many in the last month or two? Who, How many etc.

From: [redacted] PRN Project Manager 2
Sent: Friday, September 27, 2013 2:23 PM
To: [redacted] PRN Executive 2; [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

We've had zero helpdesk tickets this week as far as I know, except for one password reset at the very beginning

---

From: [redacted] InfoGrate Executive
Sent: Friday, September 27, 2013 2:22 PM
To: PRN Executive 2; PRN Manager 1 [redacted]
Cc: PRN Project Manager 2 [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

Are there any help desk tickets? Are they happy.

From: [redacted] PRN Executive 2
Sent: Friday, September 27, 2013 1:12 PM
To: InfoGrate Executive [redacted]; PRN Manager 1 [redacted]
Cc: PRN Project Manager 2 [redacted]
Subject: RE: How is the Pres? Did we get cloud jacket in?

We still don't have the cloud jacket device installed for CESC because no one will reply to our emails about scheduling it.
The Help Desk is live and working.
I'll hit [redacted] on Cloud Jacket again today and stress the urgency.

From: [redacted] InfoGrate Executive
Sent: Friday, September 27, 2013 10:31 AM
To: PRN Executive 2; Craig Papke
Subject: How is the Pres? Did we get cloud jacket in?

From: [redacted]
Sent time: 08/19/2013 09:55:00 AM
To: PRN Executive 2
Subject: FW: CloudJacket

Ugh. Don't take any shit on this- I don't appreciate them complaining about service when I reply to all of their emails within minutes, and almost never get replies back.

From: [redacted]
Sent: Monday, August 19, 2013 10:49 AM
To: [redacted]
Cc: PRN Executive 2
Subject: RE: CloudJacket

Honestly, it seems like user error or lack of user communication to me most of the time. For example I've had instances twice where [redacted] says that Chelsea can't get to outlook web access from the UK, or her blackberry wasn't getting email for a while, then I'll reply within minutes asking for a detail or two, and then there's no reply until the next day saying it went away- if I get a reply at all. They just don't follow up on communications when things fix themselves or when I'm trying to find out more information about a problem.

I think we just need the process formalized so we can actually track things (which is what we're going to be doing once this helpdesk stuff is finalized). Having a ticket open for each issue makes things pretty ironclad since we can put in notes about followup emails and calls, etc.

From: [redacted]
Sent: Monday, August 19, 2013 10:42 AM
To: [redacted]
Cc: PRN Executive 2
Subject: Re: CloudJacket

I wonder if they are going to say they never had this before.

Could it be the ISP we have at the colo? What could we do to reduce it?

[redacted]

On Aug 19, 2013, at 10:41 AM, [redacted] wrote:

> Travel, moving between home and office, random wireless or phone provider signal strength stuff. Pretty standard
>
> **From:** [redacted]
> **Sent:** Monday, August 19, 2013 10:40 AM
> **To:** [redacted]
> **Cc:** PRN Executive 2
> **Subject:** Re: CloudJacket
>
> Why would people be dropped and need to restart?
>
> [redacted]
>
> On Aug 19, 2013, at 10:39 AM, [redacted] wrote:
>
> > News to me. I've had very few support requests. Most of them are temporary can't connect to my

email sort of things that go away as soon as they restart or try again. Our biggest problem with them right now is that they very rarely reply to emails or take forever to do so.

I've only had a small handful of support requests in the last month

---

From: [redacted] InfoGrate Executive
Sent: Monday, August 19, 2013 10:36 AM
To: [redacted] PRN Executive 2
Subject: Fwd: CloudJacket

[redacted]

Begin forwarded message:

> **From:** Clinton Staff Server Lead Coordinator
> **Date:** August 19, 2013, 10:24:56 AM EDT
> **To:** [redacted] InfoGrate Executive
> **Subject: RE: CloudJacket**
>
> I need to talk to you – I have calls until 12. When you are available. Lots of complaints about service.
>
> ---
>
> **From:** [redacted] InfoGrate Executive
> **Sent:** Monday, August 19, 2013 10:24 AM
> **To:** [redacted]
> **Cc:** [redacted] PRN Executive 2
> **Subject:** Re: CloudJacket
>
> [redacted]
>
> We really really need to do this and get you on board. We are left in a bad state.
>
> 1- We want to add in this extra security. We are paying for it and now using the security.
>
> 2- we need to get you all fully on boarded so they can service you properly in case you have an issue.
>
> Can we make time for it? I know there is never a good time, but we really don't want to be here another month.
>
> Thanks
>
> [redacted]
>
> On Aug 19, 2013, at 10:19 AM, [redacted] PRN Project Manager 2 [redacted] wrote:
>
> > [redacted] checking in on this
> >
> > **From:** [redacted]
> > **Sent:** Thursday, August 15, 2013 4:13 PM
> > **To:** [redacted], PRN Executive 2, [redacted]
> > **Subject:** RE: CloudJacket
> >
> > Hi [redacted] Following up on this

From: [redacted]
Sent: Monday, August 12, 2013 11:12 AM
To: [redacted]; PRN Executive 2; [redacted]
Subject: RE: CloudJacket

Yes we could arrange this with the datacenter folks. Which would you prefer?

From: Clinton Staff Server Lead Coordinator
Sent: Saturday, August 10, 2013 8:34 AM
To: [redacted] PRN Executive 2; [redacted]
Subject: Re: CloudJacket

Is it possible to do on a weekend or after hrs?

From: PRN Project Manager 2
Sent: Friday, August 09, 2013 04:39 PM
To: [redacted] PRN Executive 2; [redacted]
Subject: CloudJacket

Hi [redacted]

I hope you had a great trip. I need to schedule some time with you to install the CloudJacket device since the first go-around didn't work. It may require 10-20 minutes of downtime, since I need to direct the tech at the datacenter over the phone how to plug the cables in. When can we schedule this for?

[redacted]

From: [redacted]
Sent time: 10/17/2013 09:59:17 AM
To: [redacted]
Subject: RE: [Ticket#134804] SECNAP Security Incident Report for NY-CESC IPS Alert

---

Please block

-----Original Message-----

From: SECNAP Network Security[redacted]

Sent: Thursday, October 17, 2013 8:57 AM

To: [redacted]

Subject: [Ticket#134804] SECNAP Security Incident Report for NY-CESC IPS Alert

The host at 193.107.16.111 Appears to be scanning your network, this traffic should be blocked, unless expected.

Notes: snort:1:2003616:ET WEB_SERVER DataCha0s Web Scanner/Robot :

http://www.internetofficer.com/web-robot/datacha0s.html

http://doc.emergingthreats.net/2003616

Events listed in GMT timezone

[2013-10-17 14:51:46] | 1 | 193.107.16.111:40968 -> 192.168.42.22:80 | TCP | ACK[1] | snort:1:2003616

--

>|SECNAP Network Security

US:+[redacted]

EU:+[redacted]

AU:+[redacted]

IL:+[redacted]

From: [redacted] InfoGrate Executive
Sent time: 06/17/2013 12:14:20 PM
To: [redacted] Clinton Staff Server Lead Coordinator
Cc: [redacted] Clinton Staff Server Sponsor [redacted] Clinton Staff Server Lead Technical Advisor [redacted] Chelsea Staff 1 [redacted] PRN Project Manager 2 [redacted] PRN Executive 2 [redacted] PRN Project Manager 1
Subject: IDS for Cloud Jacket
Attachments: BACKGROUND CHECKS.pdf CJ SMB Quote for [redacted].docx CloudJacket Service Order Form and Purchase Agreement 05-2013 - [redacted].docx

---

Hi:

Behind our firewalls at the colocation facility, we are adding an Intrusion Detection System. It is a piece of hardware that sits behind the firewalls and monitors all traffic for strange patterns and known security issues. We will give us greater control of our security on our emails- limit people outside the US from accessing it other than via blackberries etc. [redacted] already did a call with them to check it. These folks will NOT have access to emails. One team monitors the alerts. They have access only to the header records- to, from, date subject. Then they call you (aka Platte) if they have a question on if it is valid and/or they can call you- either way. They do not have access to our servers. They don't have access to change anything on the IDS- just allow/block traffic. Then a second team, only 2 people, have access to change the IDS rules. But even they don't have access to the server or emails. If the system should fail, we will be still be able to get emails. Likewise, if the main firewall fails, the second firewall that we have for backup will not have this in place. We would not be out for long (few hours to few days), so I do not think we need the extra complexity for the small amount of time we might be down in a disaster. We could add it if you feel it is needed. It is certainly nice to have. I feel very good about the security of this system and its benefit for our security. Therefore, attached are three things:

1- details on the background checks that Cloud Jacket does on its employees. This is just an FYI for due diligence.
2- A price quote. As you can see it is in budget and basically slightly under what we expected. [redacted] Please APPROVE.
3- A service form that we sign that explains the service a bit. [redacted] Please REVIEW AND APPROVE

Thanks

[redacted]

backgrounds online

CHAT WITH SUPPORT | CALL US [redacted]

? FAQ'S | Business Account: Logout

Logged in as: SECNAP

Search for a Report

Search for reports older than 6/1/10 >>

Report Details: | Dates: 6/1/2010 to 6/17/2013 | Report Type: All Report Types | Report Status: Completed | Search >

Reports from: 6/1/2010 to 6/17/2013

Reports Completed: 29 Reports In Process: 0 Reports Needing Attention: 0 Sort by: Order ID: Newest

Name	Order ID	Position / Notes	Order Date	Report Status	View Report	View Release	Complete Date	Report Options
[+] [redacted]	[redacted]	[redacted]	02/14/2013 01:59 PM	100%			02/20/2013	Choose Action
[+] [redacted]	[redacted]	[redacted]	12/24/2012 06:13 AM	100%			12/28/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	12/18/2012 08:17 AM	100%			12/20/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	08/24/2012 08:07 AM	100%			08/28/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	08/22/2012 03:56 PM	100%			08/28/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	08/13/2012 07:42 AM	100%			08/15/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	08/10/2012 11:35 AM	100%			08/16/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	08/03/2012 08:55 AM	100%			08/07/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	06/14/2012 08:16 AM	100%			06/14/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	04/25/2012 08:59 AM	100%			05/02/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	04/25/2012 08:04 AM	100%			04/30/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	04/13/2012 12:48 PM	100%			04/19/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	04/13/2012 12:16 PM	100%			04/19/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	04/13/2012 12:09 PM	100%			04/18/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	03/20/2012 12:41 PM	100%			04/03/2012	Choose Action
[+] [redacted]	[redacted]	[redacted]	03/22/2012 12:50 PM	100%			03/26/2012	Choose Action

[+]	[redacted]	[redacted]	[redacted]	03/20/2012 07:54 AM	100%	04/02/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	03/15/2012 12:21 PM	100%	03/27/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	02/03/2012 02:16 PM	100%	02/06/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	01/23/2012 10:44 AM	100%	01/26/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	01/23/2012 10:36 AM	100%	01/25/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	01/13/2012 07:58 AM	100%	01/19/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	01/13/2012 07:52 AM	100%	01/19/2012 Choose Action
[+]	[redacted]	[redacted]	[redacted]	11/15/2011 05:51 AM	100%	11/15/2011 Choose Action
[+]	[redacted]	[redacted]	[redacted]	11/07/2011 12:11 PM	100%	11/08/2011 Choose Action

1 2 Reports Displayed: 25

backgrounds online

CHAT WITH SUPPORT › | CALL US [redacted]

? FAQ'S › Business Account: Logout

Logged in as: SECNAP

Search for a Report

Report Details: | Dates: 6/1/2010 to 6/17/2013 | Report Type: All Report Types | Report Status: Completed | Search >

Search for reports older than 6/1/10 >>

Reports from: 6/1/2010 to6/17/2013

Reports Completed: 29 Reports In Process: 0 Reports Needing Attention: 0 Sort by: Order ID: Newest

Name	Order ID	Product Name	Order Date	Report Status	View Report	View Release	Completed Date	Report Options
[+] [redacted]	[redacted]	[redacted]	08/30/2011 12:57 PM	100%			08/31/2011	Choose Action
[+] [redacted]	[redacted]	[redacted]	08/29/2011 09:30 AM	100%			08/30/2011	Choose Action
[+] [redacted]	[redacted]	[redacted]	01/17/2011 10:00 AM	100%			01/17/2011	Choose Action
[+] [redacted]	[redacted]	[redacted]	12/30/2010 02:02 PM	100%			02/01/2011	Choose Action

1 2 Reports Displayed: 25

SECNAP NETWORK SECURITY CORP

SECNAP Network Security Corporation
[redacted]

Quote

Date	Quote#
6/17/13	RG020513001
Terms	**Due Date**
24 mo.	

Service Location

P.O Number

Date	Activity	Quantity	Rate	Amount
6/17/13	CloudJacket SMB Network Security Service – Single Location up to 20 mbps	1	$200.00mo	$750.00
			Set Up	$750.00
			Monthly	$200
			Initial Due	$950.00

[redacted] SECNAP NETWORK SECURITY

Service Order Form

Check One:

Form completed by company _____ Form completed by SECNAP Partner on behalf of Company _____

Contact Name	
Email Address	
Company/Organization Name	
Title	
Office Phone & Extension	
Company Billing Address	
Suite, Room, Floor Number	
City, State, Zip	
Name of SECNAP Partner	
Ship to (If different from above)	
Name of Individual to ship to	
Individual Phone Number & Extension	
Company Shipping Address	
Suite, Room, Floor Number	
City, State, Zip	
Product to be shipped (CloudJacket Model)	SMB X 10Mb ___ 50Mb ___ 250Mb ___ 1Gb___ 10Gb ___
Total Contract Service Price Per Year	$2400 ($200 monthly with one time set up of $750)
Term of Contract (Length)	24 months

Company/Organization:	SECNAP Network Security Corp:
Print Name:	Print Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

CLOUDJACKET SERVICES AGREEMENT

THIS CLOUDJACKET SERVICES AGREEMENT (this "**Agreement**") is effective as of this ___day of _____, 2013 (the "**Effective Date**") by and between **SECNAP NETWORK SECURITY CORPORATION (DBA CLOUDJACKET),** a Delaware corporation, having a place of business at [redacted] ("**SECNAP**"), and _____ _____ **(Company name) a** _____ **(State)** corporation, having a place of business at _____ _____ ("**Client**" or "**Company**").

WHEREAS, Client desires to use SECNAP's CloudJacket services and products; and

WHEREAS, this Agreement sets forth the terms and conditions by which SECNAP will provide CloudJacket services and products for Client.

NOW THEREFORE, in consideration of the mutual agreements and respective promises contained herein, the parties agree as follows:

Section 1. Services

A. **Services Provided.** During the Term of this Agreement (as specified in Section 3 of this Agreement), and subject to the terms and conditions of this Agreement, SECNAP will provide to Client the following CLOUDJACKET services and products (collectively, the "**Services**"):

(a) CloudJacket inline device(s) ("**CLOUDJACKET Equipment**");

(b) 24x7x365 monitoring and escalation of network intrusion alarms and events;

(c) Real-time security incident response and forensics;

(d) Real-time notification, via Worldwide Edge Attack Sensor Network, of any attack directed at specific Client network versus regional or more general attack;

(e) Escalation in accordance with Client preference (PDA, pager, email, telephone);

(f) Automatic back-tracing of events;

(g) First-Alert priority vulnerability email service;

(h) Reporting via email daily, weekly and/or monthly;

(i) Real-time metrics available on demand through robust customer dashboard; and

(j) Technical consultation as needed regarding the Services.

B. **Other Matters related to the Services.**

(a) **Cooperation.** Client acknowledges that the ability of SECNAP to provide efficient Services depends on Client's cooperation with SECNAP and compliance with SECNAP's instructions and procedures on installation and use (e.g. pre-installation questionnaire), which shall be provided to Client prior to Client use of the Services. Client agrees to accommodate SECNAP's reasonable requests for cooperation to comply with Client's specific duties and specific instructions and procedures established by SECNAP with respect to receipt of the Services. Client consents to SECNAP's use of third party subcontractors in connection with the performance of the Services; however, SECNAP shall manage and remain responsible for performance of any subcontractors.

(b) **Provided Equipment.** Any malfunction or manufacturer's defects of equipment provided by SECNAP to Client or purchased directly by Client used in connection with SECNAP's Services provided hereunder will not be deemed a breach of SECNAP's obligations under this Agreement. Client shall not resell, transfer, export or re-export any CLOUDJACKET Equipment or other SECNAP equipment, or any technical data derived therefrom. Client shall not use or transfer any CloudJacket Equipment, other SECNAP Equipment or any technical data derived therefrom in a manner that would violate any applicable United States or foreign law.

(c) **Scope of Use.** Subject to the terms and conditions of this Agreement, SECNAP hereby grants Client a limited license to install and use the Services and CLOUDJACKET Equipment. Client's use of the Services and CLOUDJACKET Equipment shall be for Client's internal business purposes only. Client specifically acknowledges and agrees that it shall not sell, resell, act as a service bureau or otherwise use the Services or the CLOUDJACKET Equipment to compete with SECNAP or to provide substantially similar services and products to third parties in competition with SECNAP.

(d) **Place where the CLOUDJACKET Equipment will be installed.** Prior to the delivery and installation of the CLOUDJACKET Equipment, Client and SECNAP will mutually agree on the exact location where the CLOUDJACKET Equipment will be installed and connected to Client's network (the "**Client's Data Center**").

(e) **Service Order Form.** In order to effect the delivering of the CLOUDJACKET Equipment to Client and the provision of the Services, the parties will execute the services order form attached hereto as Exhibit A, for the order of such products and services provided by SECNAP, which shall incorporate, and be subject to, all of the terms and conditions of this Agreement (the "**Service Order Form**"). In the event of any conflict or inconsistency between this Agreement and the Services Order Form, the terms of this Agreement shall prevail with respect to SECNAP products or services provided under such Services Order Form.

Section 2. Fees and Billing.

(a) ***Fees***. Client will pay SECNAP the fees listed in the Service Order Form. If fees are not stated on the Service Order Form for a certain class of services that Client requests or requires, those additional services shall be the subject of a separate written agreement between Client and SECNAP.

(b) ***Billing***. Charges for fees indicated in the Service Order Form as being due at the commencement of the Term shall be due and payable when billed on the execution and delivery of this Agreement ("Effective Date"). All other fees for Services rendered and expenses incurred shall be payable as indicated in the Service Order Form, and shall be invoiced by SECNAP on a periodic basis as

described in the Service Order Form. Payments shall be due upon receipt within fifteen (15) days of the date of each SECNAP invoice. All payments shall be made in U.S. dollars. Invoices not paid when due shall be subject to a late charge of 1.5% per month or the highest rate permitted by law, whichever is less.

(c) ***Taxes***. SECNAP may invoice and Client shall pay all taxes, fees or assessments and other charges imposed on or required to be collected by SECNAP by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder. Client shall also be responsible for paying all taxes, fees or assessments and other charges imposed on Client by any governmental agency that may result from this Agreement or any of the activities contemplated hereunder.

Section 3. Term, Termination.

(a) **Term of the Agreement.** This Agreement shall commence on the "Service Commencement Date" (as defined below) and, unless earlier terminated in accordance with section 3 (b) hereof, shall continue for the minimum term set forth in the Service Order Form (the "Term").

(b) **Termination.** This Agreement may be terminated in any of the following ways (which also automatically will terminate the Service Order Form):

(i) Client may, in its sole discretion, terminate this Agreement in the event that SECNAP has materially breached a material provision of this Agreement and not cured such default within 30 days after receipt of written notice of such default. In this event, SECNAP shall be entitled: to retain any fees that previously have been paid; and to be paid for all work performed through the date of termination for which fees were not previously paid. Client shall not be entitled to any refund of fees previously paid in the event of termination of this Agreement or the Service Order Form under this Section 3(b)(i).

(ii) SECNAP may, in its sole discretion, discontinue performance hereunder or terminate this Agreement on written notice to Client in the event: (A) that Client is in default of its payment obligations hereunder; or (B) that Client has materially breached a material provision of this Agreement or the Service Order Form, and such breach is not cured within thirty (30) days after written notice thereof.

(c) **Effectiveness of Agreement.** Notwithstanding any termination of this Agreement or reaching the end of the Term, this Agreement shall continue to govern the rights and duties of the parties hereto with respect to the subject matter of this Agreement, until six months after the latest to occur of: the end of the Term; termination of this Agreement in accordance with subparagraph (b) above; or the date on which all CloudJacket Equipment and other SECNAP Equipment has been returned to SECNAP. Notwithstanding the foregoing, the confidentiality provisions of this Agreement, and the matters described under the paragraph entitled "Survival" below, shall each continue in full force and effect for the time periods stated therein.

(d) "**Service Commencement Date**" means that date that is identified in the Service Order Form as the initial date as of which the Services are provided.

(e) **Return of Equipment on Termination of Agreement.** In the event Client terminates this Agreement under Section 3(b) , then Client shall return the CloudJacket Equipment (and any other

SECNAP Equipment in its possession) no later than 15 days after the date of termination. If Client fails to timely return the CloudJacket Equipment (together with any other SECNAP Equipment in its possession), then Client shall pay SECNAP the sum of $15,000.00 as liquidated damages, which amount shall be due and payable on the 30th day after the date of termination of the Agreement.

Section 4. Representations and Warranties.

(a) **Client Warranties.** Client represents and warrants to SECNAP: (i) that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority during the term of this Agreement, to install and use the SECNAP CloudJacket Equipment in the Client's Data Center; (ii) that Client will not use the CLOUDJACKET Equipment in any manner that would violate any applicable law or regulation.

(b) **SECNAP Warranties.** SECNAP represents and warrants to SECNAP that it possesses the right to license the Services.

(c) **Disclaimers by SECNAP.** THE SERVICES ARE PROVIDED "AS IS." EXCEPT FOR THOSE WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, SECNAP DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THOSE WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, SECNAP DOES NOT WARRANT THAT THE SERVICES WILL BE AVAILABLE UNINTERRUPTED, ERROR-FREE OR ON A COMPLETELY SECURE BASIS. SECNAP MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT WITH RESPECT TO, ANY EQUIPMENT OWNED, LEASED OR USED BY CLIENT, OR OTHER HARDWARE OR SOFTWARE DELIVERED IN CONNECTION HEREWITH. CLIENT HEREBY WAIVES ALL RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE TO MAKE REPAIRS OR ALTERATIONS TO THE CLOUDJACKET EQUIPMENT AND ANY OTHER SOFTWARE OR HARDWARE PROVIDED TO CLIENT BY SECNAP.

Section 5. Limitation of Liability. CLIENT'S RIGHTS AND REMEDIES HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES. IN NO EVENT WILL SECNAP BE LIABLE TO CLIENT, ANY EMPLOYEE, AGENT OR CONTRACTOR OF CLIENT, OR ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, IN RELATION TO THE CLIENT'S DATA CENTER, ANY EQUIPMENT, ANY SERVICES, CLIENT'S BUSINESS OR OTHERWISE, WHICH CLAIMS INVOLVE PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT FOR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, SECNAP'S LIABILITY TO CLIENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT TO SECNAP DURING THE PRECEDING TWELVE (12) MONTHS.

Section 6. Indemnity.

(a) **Client Indemnity**. Client shall indemnify, defend and hold harmless SECNAP and its affiliates' and their respective officers, employees, directors, shareholders and agents from and against any and all claims, demands, actions, damages, liability, judgments, expenses and costs of third parties (including, but not limited to, reasonable attorneys' fees) arising from or relating to: (i) Client's use of Client's equipment, the CloudJacket Equipment or the Services, (ii) claims asserted by third parties with whom Client has a contractual or other relationship, including, without limitation, Client's customers and licensors, (iii) Client's acts or omissions, (iv) claims relating to Client's (A) infringement or misappropriation of intellectual property rights, defamation, libel, slander, obscenity, pornography or violation of rights of privacy or publicity, or (B) spamming, or any other offensive, harassing or illegal conduct, (v) any breach by Client of any warranty, covenant or obligation hereunder, (vi) any injury to or death of any person or damage to any property occurring upon the Client's Data Center and/or the building or the land of which it is a part claimed to arise out of (or in connection with) Client's negligent acts or omissions, or (vii) the violation of any law or regulation by Client; provided, however, that the indemnification provided under this Section 6 (a) shall not cover that portion of any claims that: arise from the gross negligence, willful misconduct or fraud of SECNAP; or that constitute a breach or violation of this Agreement by SECNAP.

(b) **SECNAP Indemnity**. SECNAP shall indemnify, defend and hold harmless the Client and its affiliates' and their respective officers, employees, directors, shareholders and agents from and against any and all claims, demands, actions, damages, liability, judgments, expenses and costs of third parties (including, but not limited to, reasonable attorneys' fees) arising from or relating to (i) claims asserted by third parties with whom SECNAP has a contractual or other relationship, including, SECNAP's customers and licensors, (ii) claims relating to SECNAP's (A) infringement or misappropriation of intellectual property rights, defamation, libel, slander, obscenity, pornography or violation of rights of privacy or publicity, or (B) spamming, or any other offensive, harassing or illegal conduct; provided, however, that the indemnification provided under this Section 6 (b) shall not cover that portion of any claims that: arise from the gross negligence, willful misconduct or fraud of Client; or that constitute a breach or violation of this Agreement by Client.

Section 7. Confidentiality. Each party acknowledges that, in the course of the performance of this Agreement, it ("receiving party") may have access to the "Confidential Information" (as defined below) of the other party ("disclosing party"). The receiving party agrees to use reasonable efforts to prevent the disclosure to any other person, firm or corporation of any Confidential Information that it receives from the disclosing party, and shall protect such Confidential Information by using the same degree of care (which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving party uses to protect its own confidential information of a like nature. Receiving party shall not, without the prior written consent of the disclosing party, disclose the Confidential Information in any manner whatsoever, in whole or in part, except to such of receiving party's officers, directors, shareholders, employees, attorneys, agents, accountants or subcontractors who: (i) have a valid need to know the Confidential Information, but Confidential Information shall be revealed to each such person only to the extent necessary for legitimate business uses in connection with the performance of this Agreement (the "**Purpose**"); (ii) are informed of this Agreement, and (iii) acknowledge their responsibility to be bound by the terms of this Agreement as if a party hereto. Receiving party also agrees not to use the Confidential Information for any purpose other than for the Purpose. Confidential Information does not include information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is already known to the receiving party, and such prior knowledge can be demonstrated through physical evidence that pre-dates this Agreement; (c) is disclosed to the receiving party without

confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is the subject of a written permission to disclose provided by the disclosing party; (e) is required to be disclosed pursuant to court order or subpoena, or similar process issued by a governmental authority; or (f) is necessary to perform hereunder or to enforce this Agreement; provided however, that if such information is disclosed pursuant to either subsection (e) or (f), then the party proposing to make the disclosure shall, if allowed by law, first provide notice to the disclosing party and an adequate opportunity to the disclosing party to object to such disclosure, at disclosing party's expense. Upon request of either party or on termination or expiration of this Agreement, each party shall return the Confidential Information of the other party then in its possession. The confidentiality obligations hereunder with respect to any disclosure of information made within the term of this Agreement, shall survive the termination or expiration of this Agreement for a period of three (3) years. The term **"Confidential Information"** shall mean any proprietary or confidential information, trade secrets or other information, whether or not marked "Confidential" furnished during the term of this Agreement, whether tangible or intangible, disclosed directly or indirectly in writing or orally, and in whatever form or medium provided, that constitute any or all of the following: technical information, technical data, research, products, software services, software code, development, macros, source code, algorithms, formulas, inventions, ideas, concepts, processes, specifications, designs, drawings, engineering, methods, techniques, marketing, customer information, business plans and forecasts or financial information, current products or services, future products or services, and any and all derivative works of any of the foregoing and any all patents and copyrights therein or any improvements thereof.

Section 8. General Provisions.

(a) **No Third-Party Beneficiary.** It is the explicit intention of the parties hereto, that no person or entity other than the parties to this Agreement and their respective successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties.

(b) **Relationship of the Parties.** Neither party will have the authority to make any representations, claims or warranties of any kind on behalf of the other party or on behalf of such party's licensors or suppliers. Neither party hereto is an employee, agent, joint venturer or partner of the other party. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either SECNAP or any employee or agent of SECNAP. Neither party shall have the power or authority to bind or obligate the other.

(c) **Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, act of terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, facilities, telecommunications services or supplies or any other cause beyond the reasonable control of such party.

(d) **Assignment.** This Agreement and the rights and obligations hereunder shall not be assigned (including, without limitation, by way of merger, consolidation, sale of assets or change in control involving Client or SECNAP, or otherwise) or otherwise transferred by either party without the prior written consent of the other party, which consent may be unreasonably withheld, and no assignment shall relieve the assigning party of its obligations hereunder. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

(e) **Notices.** All notices required hereunder shall be delivered by one or more of the following methods:

i. personally;
ii. by overnight courier (e.g. Federal Express or UPS);
iii. by certified or registered mail, return receipt requested; or
iv. sent by telecopy or facsimile transmission, answer back requested;

in each such case addressed to the party to be notified at the respective addresses set forth above, and to the attention of the person or persons who have executed this Agreement on page 8 hereof.

(f) **Waiver.** Any waiver of any right or default hereunder shall be effective only if given in writing and shall not operate as or imply a waiver of any similar right or default on any subsequent occasion.

(g) **Severability.** No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall operate to invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms.

(h) **Counterparts and Signatures.** This Agreement and any amendment thereto may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same single document, and any such counterpart containing an electronically scanned or facsimile signature will have the same effect as original manual signatures.

(i) **Governing Law.** This Agreement will be governed by and construed under, and the legal relations between the parties hereto will be determined in accordance with, the laws of the State of Florida, without giving effect to such state's conflict of law principles. The parties agree that any litigation regarding the interpretation, breach or enforcement of this Agreement will be exclusively filed in and heard by the Circuit Court for Broward County, Florida, and the parties hereby submit to the personal jurisdiction of such court.

(j) **Headings.** The section headings are for reference and convenience only and will not be considered in the interpretation of this Agreement.

(k) **Entire Agreement.** This Agreement, including any other attachments, exhibits and schedules hereto, which are hereby incorporated by reference into this Agreement, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other agreements, oral or written, relating to its subject matter. There are no other representations, understandings or agreements between the parties relative to such subject matter. This Agreement may not be amended, altered or modified except by a writing signed by the parties.

(l) **Due Authority.** Each party represents to the other that it is duly authorized to execute this Agreement and to perform its obligations hereunder according to the terms set forth herein. Each party further represents that its execution of this Agreement and performance of its obligations hereunder are not and will not be in violation of any obligations it may have to any third party.

(m) **SECNAP Intellectual Property.** Client covenants, represents and warrants, notwithstanding any other provision of this Agreement, that it shall in no way interfere with, impair, disseminate or cause dissemination of, or decompile, disassemble or reverse engineer, copy, modify or translate any SECNAP Intellectual Property (as defined below). Client shall have no right, title, claims or interest

in or to the SECNAP Intellectual Property and no license of SECNAP Intellectual Property is intended or implied, beyond the limited use license and restrictions on use stated herein. Client may not use the SECNAP Intellectual Property or related documentation, other than in connection with the Services and in accordance with this Agreement, or grant any other person or entity the right to do so. Upon the expiration or termination of this Agreement for any reason, Client shall deliver, or cause to be delivered or returned, to SECNAP all physical property and electronic media that contains any of SECNAP's Intellectual Property. "**SECNAP Intellectual Property**" means any and all "Inventions" (as defined below) and other information (whether conveyed visually, orally or in writing) owned by SECNAP or in which SECNAP has "Rights" (as defined below), about algorithms, trade secrets, computer software, designs, technology, ideas, know-how, show-how, products, services, processes, data, techniques, improvements, inventions (whether or not patentable), works of authorship, and other information concerning SECNAP's actual or anticipated business, technologies, research or development, or which is received in confidence by or for SECNAP from any third party. "**Rights**" means any and all patent rights, copyright rights, trade secret rights, sui generis database rights and all other intellectual property, industrial property and proprietary rights recognized anywhere in the world, now or in the future. "**Inventions**" means any and all improvements, inventions (whether or not patentable), works of authorship, derivative works, trade secrets, technology, computer software, algorithms, formulas, compositions, ideas, designs, processes, techniques, know-how and data made, conceived, reduced to practice or developed (in whole or in part, either alone or jointly with others).

(n) **Survival.** The parties agree that the provisions herein regarding intellectual property ownership, confidentiality, indemnification and limitation on liability shall survive any termination, expiration or cancellation of either this Agreement or the license to use the Services and equipment granted herein.

(o) **Certain Interpretations.** The Section and Paragraph headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of this Agreement or of any particular Section or Paragraph. Pronouns, wherever used, and whatever gender, shall include natural persons, companies, partnerships, trusts, corporations, and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Whenever the terms "hereof", "hereby", "herein", "hereunder" or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to a particular section, paragraph or provision. References in this Agreement to articles, sections, paragraphs, subsections, schedules or exhibits are to articles, sections, subsections, paragraphs, schedules or exhibits in or to this Agreement unless otherwise stated. The term "person" shall mean any governmental authority or any individual, firm, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization or other entity or organization. In construing this Agreement, a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place where it is defined. The language used in this Agreement shall be deemed language chosen by the parties to express their mutual intent, each having an equal opportunity to participate in the drafting of the provisions hereof; accordingly, in construing this Agreement, no party shall be presumed or deemed to be the "drafter" or "preparer" hereof and no rule of strict construction shall be applied against any party.

(p) **NO JURY TRIAL.** EACH PARTY HERETO WAIVES HIS, HER OR ITS RIGHT TO A JURY TRIAL IN THE EVENT OF ANY DISPUTE OR LITIGATION ARISING HEREUNDER OR UNDER ANY RELATED TRANSACTION OR DOCUMENT EXECUTED IN CONNECTION HEREWITH.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

SECNAP Network Security Corporation

By: _____

Date: _____/_____/_____

Print Name: _____

Print Title: _____

_____ **[Print Name of Client]**

By: _____

Date: _____/_____/_____

Print Name: _____

Print Title: _____

EXHIBIT A

SERVICE ORDER FORM

[to be attached]

+1 844-NET-SECURE (844-638-7328) support@secnap.com

SECNAP NETWORK SECURITY CLOUDJACKET

SpammerTrap™

Email Encryption

This popular feature enables email messages to travel safely over the Internet, protected from hackers and other prying eyes. In doing so, it facilitates compliance with corporate policies and government regulations such as GLBA, HIPAA, HITECH and others.

Organizations concerned about transmitting privileged or proprietary information (such as client, patient, student or employee data) can easily prevent the inadvertent or deliberate compromise of that data by using email encryption.

A study by The Ponemon Institute (April 2010) indicated that the cost of data breaches is highest in the United States, due to the requirements of various laws and regulations. Further, a breach costs the average U.S. business $6.75 million, two-thirds of that due to customer churn. Encryption of incoming and outgoing emails is a vital step in safeguarding your sensitive data and communications.

Features of SECNAP Email Encryption include:

- Enables email messages to be sent and received securely via TLS (Transport Layer Security) encryption
- Transparent to senders and recipients—operates in the background
- Email header key contains code indicating proof of encryption
- Requires only that the sending and receiving email servers be TLS-compatible
- Enables bulk import or export of domain names
- Three options include Attempt Encryption, Force Encryption, and Encryption Off
- All options are specifiable for inbound emails, outbound emails, or both

- Attempt Encryption enables email to be encrypted if destination server is TLS-compatible, and delivers the message unencrypted if it is not
- Force Encryption will only send encrypted messages, which will only be delivered if receiving server is TLS-compatible; the client site administrator is notified of failed deliveries. If 'Force Encryption' is selected as the default for Inbound messages, only emails that were TLS-encrypted by the sending location will be received
- Encryption Off disables encryption

- Any option may be set as the default for all Outbound messages, all Inbound messages, or both
- Any selected default option may be overridden by a different selection, per recipient domain, for Outbound email encryption
- Available with all appliance models and all Virtual Private SpammerTrap hosted services (Standard and Premier), integrated into the security software—no additional hardware or software required.

Explore

SpammerTrap

Content Filtering

Email Archiving

Email Encryption

Proactive Monitoring

Robust Reporting

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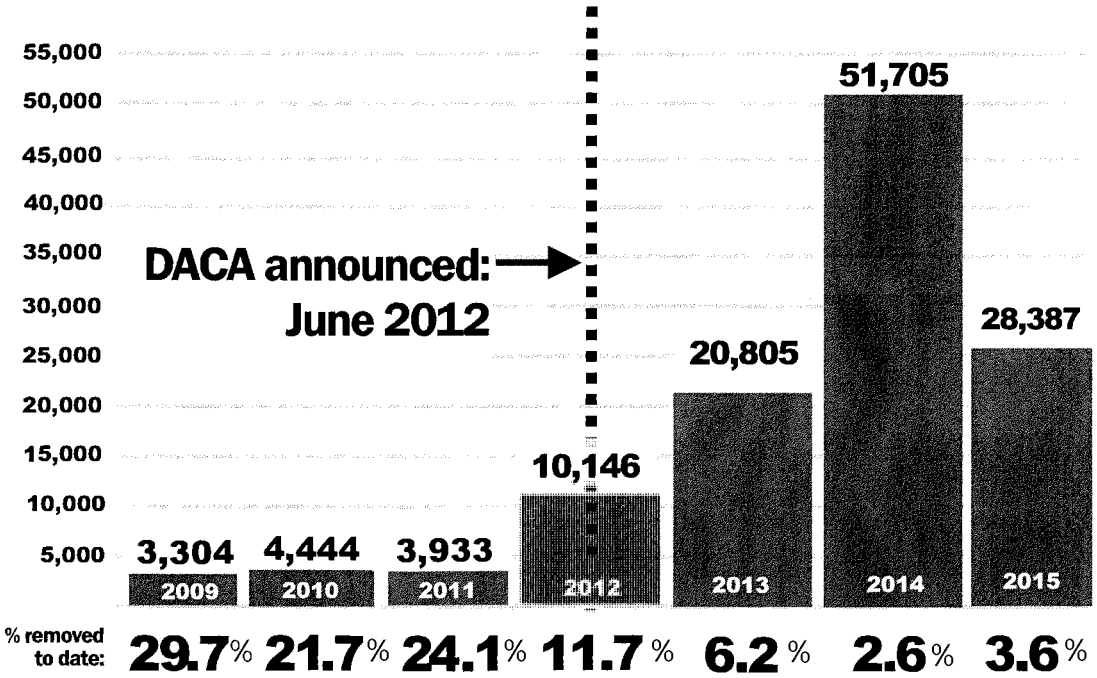
UAC APPREHENSIONS

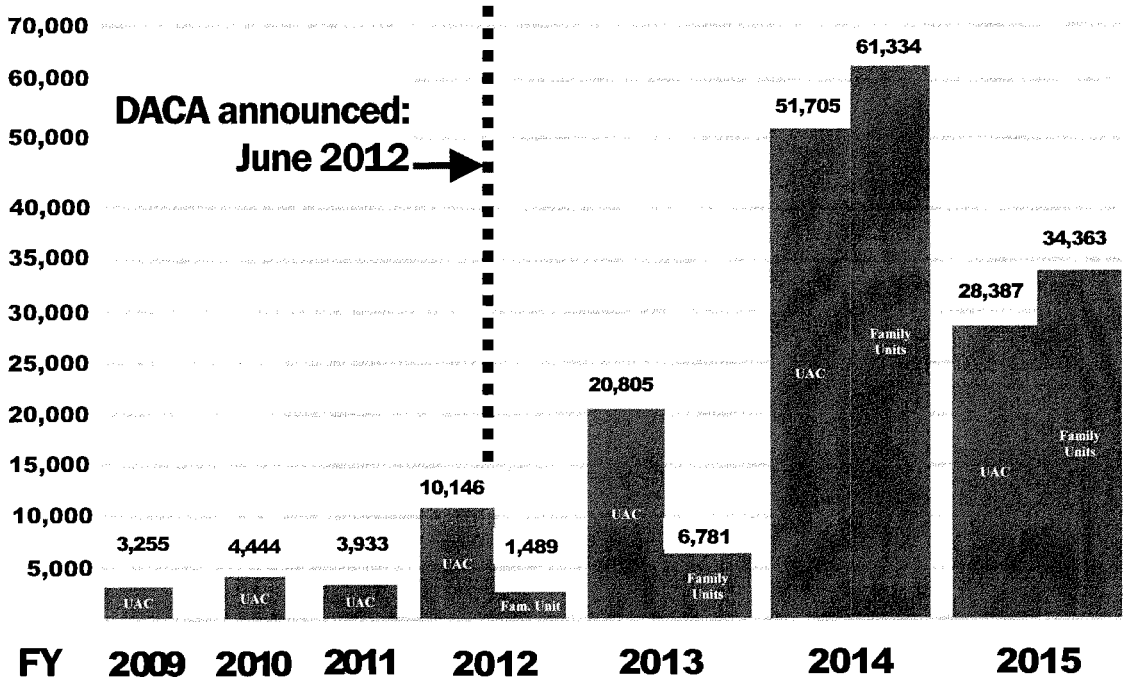
UNACCOMPANIED CHILDREN: HONDURAS, GUATEMALA, EL SALVADOR



U.S. Border Patrol, U.S. Customs and Border Protection.

RON JOHNSON
U.S. SENATE

UAC AND FAMILY UNITS APPREHENSIONS



Figures only include nationals from El Salvador, Guatemala, and Honduras.

U.S. Border Patrol, U.S. Customs and Border Protection.

RON JOHNSON
U.S. SENATE

U.S. Conference of Catholic Bishops: Stories from Central American children

The following are stories from unaccompanied children who have fled violence in Central America and are currently being considered for asylum in the United States. They all have arrived in the last six months.

Served by our Foster Care programs:

Maria, a 14-year old female from El Salvador (she is now 15) was harassed by a gang member in her community who wanted to be her boyfriend. After multiple refusals to be his girlfriend, she was kidnapped by this gang member and held captive, raped and drugged. Her older brother was physically assaulted by the gang when trying to find out where she was. After 15 days, she escaped. Shortly thereafter, she fled to the United States.

Louisa, a 17-year-old Honduran female was abandoned by both parents and was forced to have sex with gang members in lieu of not having money for " la renta" so she and her sisters would not be harmed. After several months of being trafficked, she fled Honduras and made the journey to the United States to seek safety and protection. While in the custody of ORR she was granted a trafficking eligibility letter and placed in the URM program.

Manuel, a 17-year-old Honduran male indicated that through the years he made friends with individuals who he knew were part of the MS-13 gang but was never asked to join until he was 14-years-old. Due to his refusal to join the gang, he was severely beaten and was forced to partake in gang activities, particularly carrying and selling drugs. At one point when the expressed a desire to leave the gang, he was threatened with death. He eventually escaped to the United States. While in the custody of ORR he was granted a trafficking eligibility letter and was placed in the URM program.

Served by our Family Reunification programs:

Ana, a 16-year old girl from Honduras came to the US when she was 15-years old and was released to her mother in Houston, TX. She had been abandoned by her father and suffered physical abuse by an uncle while she was living with her grandparents. She was pregnant as a result of a rape in her home country, and soon after she fled the country seeking safety in the US. During her journey, she was kidnapped by the Zetas in Mexico, during which time she was forced into prostitution and also forced to witness the decapitation of 10 children. She is currently living with her mother in Houston and working with an attorney to apply for SIJ.

Served by our Child Advocate programs:

Graci, a 14-year old girl from El Salvador, who is living with her aunt in Maryland, was targeted for persecution by a gang member, who eventually raped her as a result of which she became pregnant. The gang member threatened to kill her and her son if she did not stay with him. She fled to the United States and is pursuing asylum.

STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

HEARING ON "ONGOING MIGRATION FROM CENTRAL AMERICA: AN EXAMINATION OF FY2015 APPREHENSIONS"

OCTOBER 21, 2015

Contact:
Beth Werlin, Director of Policy
bwerlin@immcouncil.org
Phone: 202/507-7522

1331 G Street, NW, Suite 200
Washington, DC 20005
Fax: 202/742-5619

The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the children and families that have fled Central American violence to the United States.

Our recently revised report, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 2015) (Attachment A), provides information about the tens of thousands of children—some traveling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. It also seeks to explain the basic protections the law affords them, what happens to the children once they are in U.S. custody, and what the government has done in response.

As described in the *Guide*, unaccompanied children and families are still fleeing Central American violence in large numbers. As explained in the paper *No Childhood Here: Why Central American Children Are Fleeing Their Homes* (July 2014) (Attachment B), organized crime, gangs, and violence are driving children, families, women, and men out of their home towns and countries. Of more than 300 children interviewed in the first five months of 2014 for *No Childhood Here*, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls cited these factors as a reason for their emigration. El Salvador's murder rate has only grown since 2014. In August 2015 alone, there were 911 murders in El Salvador—a number not seen since the country's civil war ended in 1992.[1] Moreover, these children, families, women, and men are encountering a fierce enforcement crackdown in Mexico, which only increases the risks they face in seeking protection.[2]

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[1] http://www.theguardian.com/world/2015/sep/02/el-salvador-gang-violence-murder-rate-record.
[2] http://www.nytimes.com/2015/10/11/opinion/sunday/the-refugees-at-our-door.html?_r=1

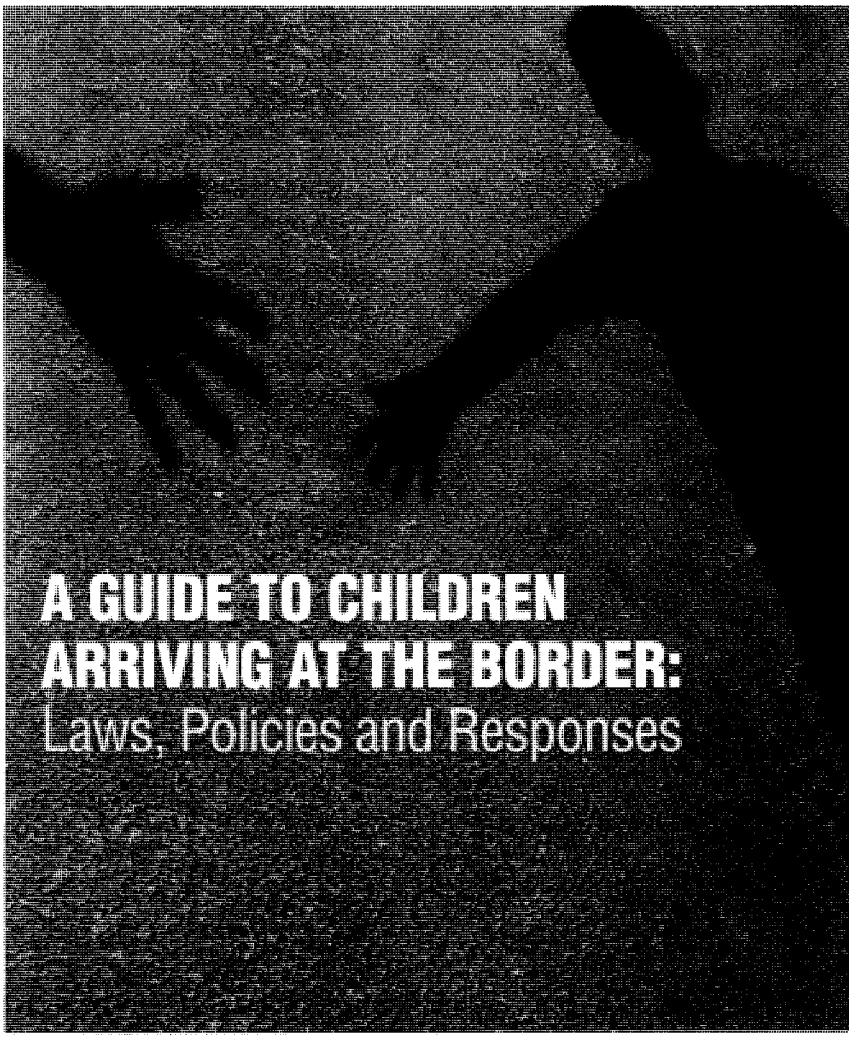
This current situation demonstrates how essential it is for the United States to uphold its obligations to protect vulnerable populations. Many legal protections for children are codified in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA). Indeed, the influx of children since last summer shows the need to better implement and even strengthen TVPRA protections. Several proposals to strengthen those protections passed the Senate in 2013 with bipartisan support, including proposals to complement Border Patrol officers with child welfare experts, require Border Patrol to consider the "best interests" of a child, and provide lawyers to unaccompanied children.[3] With respect to adults fleeing these conditions, they must navigate the complex asylum application and credible fear process in the United States, described in the May 2014 report *Mexican and Central American Asylum and Credible Fear Claims: Background and Context* (Attachment C).

* * *

We continue to urge Congress to strengthen protections for vulnerable populations, and to work to comprehensively reform our outdated immigration system, in a way that meets our needs and reflects our proud history as a nation of immigrants.

[3] Attachment A, pp. 13-14.

ATTACHMENT A



A GUIDE TO CHILDREN ARRIVING AT THE BORDER:
Laws, Policies and Responses

American Immigration Council

Special Report | June 2015

A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at *www.immigrationpolicy.org* and our blog at *www.immigrationimpact.com*.

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1 PREFACE AND BACKGROUND

7 PROCEDURES AND POLICIES

11 U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

15 ENDNOTES

PREFACE

The American Immigration Council is updating this Guide which was first issued in summer 2014. It provides information about the tens of thousands of children—some travelling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. This Guide seeks to explain the basics. Who are these children and why are they coming? What basic protections does the law afford them? What happens to the children once they are in U.S. custody? What have the U.S. and other governments done in response? What additional responses have advocates and legislators proposed? The answers to these questions are critical to assessing the U.S. government's responses and understanding the ongoing debate about whether reforms to the immigration laws and policies involving children are needed.

BACKGROUND: WHO ARE THE CHILDREN, WHY ARE THEY COMING, AND WHAT OBLIGATIONS DO WE HAVE?

What does "unaccompanied children" mean?

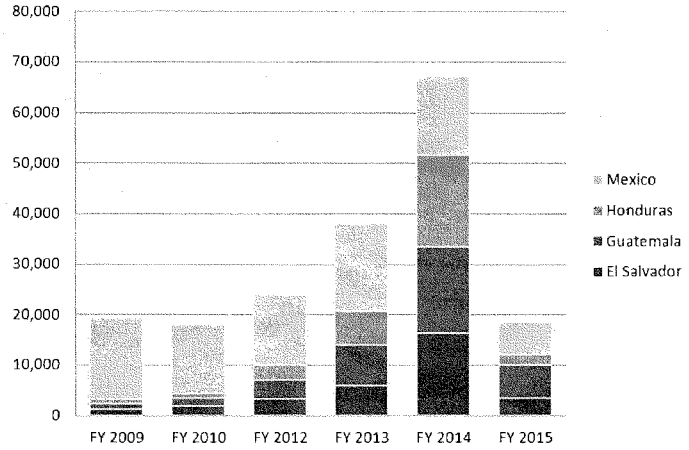
Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. "Unaccompanied alien child" (UAC) is a technical term defined by law as a child who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."[1] Due to their vulnerability, these young migrants receive certain protections under U.S. law. The immigration laws do not define the term "accompanied" children, but children arriving in the United States with a parent or guardian are considered accompanied.

Where are these children and families coming from?

The vast majority of unaccompanied children and families arriving at the southwest border come from Mexico, Guatemala, Honduras, and El Salvador, although unaccompanied children may arrive from any country. Over the past few years, increasing numbers of children and families have been fleeing violence in Guatemala, Honduras, and El Salvador—a region of Central America known as the "Northern Triangle." According to U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), between October 1, 2013 and September 30, 2014, CBP encountered 67,339 unaccompanied children. The largest number of children (27 percent of the total) came from Honduras, followed by Guatemala (25 percent), El Salvador (24 percent), and Mexico (23 percent).[2] The number of unaccompanied children arriving at the southern border has decreased since its peak in the summer and fall of 2014. Between October 1, 2014 and April 30, 2015, CBP apprehended 3,514 unaccompanied minors from El Salvador, 6,607 from Guatemala, 1,977 from Honduras, and 6,519 from Mexico.[3] This represents approximately a 45 percent decrease from the same time period the prior year.[4] The apprehensions of "family units" (children with a parent or legal guardian) also declined. There were 16,997 family unit apprehensions from October 1, 2014 to April 30, 2015, a 35 percent decrease from 26,341 apprehensions during the same time frame the year before.[5]

As discussed below, this decrease in apprehensions likely is tied to increases in apprehensions in Mexico and increased security measures along Mexico's southern border.

Unaccompanied Migrant Children Encountered FY 2009-FY 2015*



Source: CBP.
*FY 2015 through April 30, 2015.

Why are children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary motivation for recent migration, while identifying additional causes including poverty and family reunification.[6] A report by the Assessment Capacities Project (ACAPS), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively.[7] A 2014 analysis conducted by Tom Wong, a University of California-San Diego political science professor, took the UNDOC data and compared it to the data on unaccompanied children provided by CBP. Wong found a positive relationship between violence and the flow of children: "meaning that higher rates of homicide in countries such as Honduras, El Salvador, and Guatemala are related to greater numbers of children fleeing to the United States."[8]

While a child may have multiple reasons for leaving his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a primary motivation for fleeing. Research conducted in El Salvador on child migrants who were returned from Mexico found that 60 percent listed crime, gang threats, and insecurity as a reason for leaving.[9] In a United Nations High Commissioner for Refugees (UNHCR) survey of 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico, 48 percent of the children "shared experiences of how they

had been personally affected by the...violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors."[10] Furthermore, the violence frequently targets youth. Recruitment for gangs begins in adolescence—or younger—and there are incidents of youth being beaten by police who suspected them of gang membership.[11]

Are children coming to the United States because of DACA?

No. U.S. immigration enforcement policy, including deferred action programs that would allow certain undocumented immigrants to remain in the United States temporarily, is not a primary cause of the migration. Notably, the rise in violence and corresponding increase in unaccompanied child arrivals precede both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of an immigration reform bill S.744—positive developments that are sometimes cited as pull factors by Obama Administration critics. In fact, in its 2012 report, the Office of Refugee Resettlement (ORR) stated that "in a five month period between March and July 2012, the UAC program received almost 7,200 referrals—surpassing FY2011's total annual referrals," showing that the rise in UACs predated the implementation of the DACA program. Furthermore, individuals who arrived in the country after January 1, 2007 would not be eligible for DACA.

Would more Border Patrol resources deter border crossers?

There is little evidence to support the proposition that the border must be further fortified to deter an influx of children and families. Treating the current situation as simply another wave of unauthorized immigration misses the broader policy and humanitarian concerns driving these children and families' migration. In fact, many women and children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.[12]

Furthermore, CBP's resources along the southwest border are already significant. There were 18,156 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2014.[13] The annual Border Patrol budget stood at $3.6 billion in FY 2014.[14] The Border Patrol has at its command a wide array of surveillance technologies: ground radar, cameras, motion detectors, thermal imaging sensors, stadium lighting, helicopters, and unmanned aerial vehicles.[15]

What are our obligations under international law?

The United States has entered into treaties with other countries to ensure the protection and safe passage of refugees.[16] Among the most important are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture, prohibits the return of people to a country where there are substantial grounds to believe they may be tortured.[17]

The United States has implemented these treaties in various laws and regulations. They form the basis for both our refugee program and asylum program. (An asylee is simply a refugee whose case is determined in the United States, rather than outside it.) In fact, under our laws, anyone in the United States may seek asylum, with some exceptions, or protection from torture with no exceptions. It can be difficult and complicated to determine whether an individual has a valid claim for asylum

or protection from torture. To meet its protection obligations, the United States should ensure that children ore sofe, have an understanding of their situation ond their rights, and have adequate representation when they tell their stories to a judge.

Do Central American children qualify for protections under international and U.S. law?

Many of the children fleeing to the United States have international protection needs and could be eligible for humanitarian relief. According to UNHCR's survey of 404 unaccompanied children from Mexico, El Salvador, Honduras, and Guatemala, 58 percent "were forcibly displaced because they suffered ar faced harms that indicated a potential or actual need for international protection." Notably, of those surveyed, UNHCR thought 72 percent of the children from El Salvador, 57 percent from Honduras, and 38 percent from Guatemala could merit protection.[18] While international protection standards are in some cases broader than current U.S. laws, the fact that over 50 percent of the children UNHCR surveyed might qualify as refugees suggests that a thorough and fair review of these children's claims is necessary to prevent them from being returned to danger.

Moreover, children may qualify for particular U.S. forms of humanitarian relief for victims of trafficking and crime, or for children who have been abused or abandoned by their parents. A 2010 survey conducted by the Vera Institute of Justice indicated that 40 percent of children screened while in government custody could be eligible for relief from removal under U.S. laws.[19] Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining whether these children qualify for some form of protection can be a time-consuming process.

What types of U.S. immigration relief do children potentially qualify for?

The most common types of U.S. immigration relief for which children potentially are eligible include:

Asylum: Asylum is a form af international protection granted ta refugees who are present in the United States. In order to qualify for asylum, a person must demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinian, or membership in a particular social group.

Special Immigrant Juvenile Status (SIJS): SIJS is a humanitarian form of relief available to noncitizen minors who were abused, neglected, or abandoned by ane or both parents. To be eligible for SIJS, a child must be under 21, unmarried, and the subject of certain dependency orders issued by a juvenile court.

U visas: A U visa is available to victims of certain crimes. To be eligible, the person must have suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

T visas: A T visa is available to individuals who have been victims of a severe form of trafficking. To be eligible, the person must demonstrate that he or she would suffer extreme hardship involving unusual or severe harm if removed from the United States.

What is the Trafficking Victims Protection Reauthorization Act (TVPRA)?

The original Trafficking Victims Protection Act was signed into law in 2000 to address human trafficking concerns. It was subsequently reauthorized during both the Bush and Obama Administrations in 2003, 2005, 2008, and 2013.

The TVPRA of 2008, signed by President Bush, responded to concerns that unaccompanied children apprehended by the Border Patrol "were not being adequately screened" for eligibility for protection or relief in the United States.[20] The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated. At the outset, unaccompanied children must be screened as potential victims of human trafficking.[21] However, as described further below, procedural protections for children are different for children from contiguous countries (i.e., Mexico and Canada) and non-contiguous countries (all others). While children from non-contiguous countries are transferred to the Department of Health and Human Services (HHS) for trafficking screening, and placed into formal immigration court removal proceedings, Mexican and Canadian children are screened by CBP for trafficking and, if no signs of trafficking or fear of persecution are reported, may be summarily returned home pursuant to negotiated repatriation agreements.[22] The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (e.g., a one-year filing deadline).[23] It also required HHS to ensure "to the greatest extent practicable" that unaccompanied children in HHS custody have counsel, as described further below—not only "to represent them in legal proceedings," but to "protect them from mistreatment, exploitation, and trafficking."[24]

Can new arrivals obtain a grant of Temporary Protected Status?

Although Salvadorans and Guatemalans in the United States have been eligible for Temporary Protected Status (TPS) in the past, there currently is no category that would include children or families arriving today or at any point since the spring of 2014. TPS is a limited immigration status that allows an individual to remain temporarily in the United States because of civil war, natural disasters, or other emergency situations that make it difficult for a country to successfully reintegrate people. TPS requires a formal designation by the Secretary of Homeland Security, in consultation with the Secretary of State, and requires, among other things, that a country formally request this designation from the U.S. government.

How have other countries in the region responded to the increase in child migrants?

Mexico, with support from the United States, has responded to the increasing number of children and families fleeing Central America by expanding its security measures along its southern border as well as its internal enforcement. Part of the Mexican government's southern border security plan is funded through the Mérida Initiative and as of October 2014, about $1.3 billion dollars in U.S. assistance went to Mexico through this initiative.[25]

According to the Migration Policy Institute, migrants report an "increased presence of immigration officials in pickup trucks patrolling the roads and bus stations en route to the train line. Raids on hotels and restaurants where migrants shelter in traditional cities [i.e., cities along previously established migrant routes] have occurred. And immigration agents, in raids supported by federal

police and the military, are targeting the trains, removing migrants from the train cars and detaining them.[26] The companies that run the cargo trains on whose roofs migrants travel (referred to as "La Bestia") also are working with the Mexican government to increase train speed in order to prevent migrants from riding on them.[27]

Deportations from Mexico to the Northern Triangle countries increased significantly over the course of 2014, and this trend has continued into 2015. Mexico apprehended more than 15,795 minors between January and August of 2014, compared to 9,727 minors for all of 2013.[28] According to a Pew Research Center analysis of data from the Mexican government, Mexico deported 3,819 unaccompanied minors from Central America during the first five months of FY 2015—a 56% increase over the same period from FY 2014.[29]

A report by the Human Rights Institute at Georgetown Law School found that while "Mexican officials are supposed to screen unaccompanied children for international protection needs, they often fail to meet this responsibility."[30] The report also found that the detention conditions deterred children from accessing the asylum process and that the Mexican government is failing to consistently inform children of their rights or screen them for international protection eligibility.[31] Without these practices, the report argued, "current practices place a burden on migrant children to investigate the law and procedures and affirmatively apply for asylum."[32]

What is in-country processing?

In November 2014, the U.S. Department of State announced the launch of its in-country refugee processing program in El Salvador, Guatemala, and Honduras. The program is intended "to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States."[33] The new program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to submit an application to have their children join them in the United States if they qualify for refugee status or humanitarian parole.

Parents may submit applications for this program to the State Department. Once the application is submitted, the International Organization for Migration (IOM) will work with the child in country and invite them to pre-screening interviews. Both the child and the parent will have to submit to DNA testing to ensure the biological relationship, and DHS will conduct an interview for refugee eligibility. As with all refugees, the children will have to submit to and pass security checks to be eligible for refugee status.[34] If they do not qualify for refugee status, it is possible that they may qualify for humanitarian parole on a case-by-case basis. Although humanitarian parole permits a person to travel safely to the United Sates to reunite with a parent, unlike refugee status, it does not provide a path to citizenship.

While this program will help some eligible children and a parent, its impact is expected to be limited. Any refugees admitted under this program would count against the current limit of 4,000 refugee admissions for Latin America and the Caribbean. In contrast, 68,541 children crossed the border in FY 2014. The program itself is rigorous, and its requirements—a parent with legal status and DNA and security checks—will limit who qualifies. Eleanor Acer of Human Rights First argued that "[p]ractically speaking, the program will need to actually extend protection in a timely manner to a meaningful number of applicants if it is to be viewed as a credible alternative to some families with at-risk children." Additionally, Acer note that in the past, U.S. officers have used "the existence of in-country resettlement…to limit access to protection."[35]

PROCEDURES AND POLICIES: WHAT HAPPENS TO CHILDREN AND FAMILIES WHEN THEY ARRIVE AT THE BORDER?

How are unaccompanied children treated compared to adults and children arriving in families?

How a noncitizen is treated upon apprehension depends on where the person is apprehended (near the border or in the interior), what country he or she is from (a contiguous country or a noncontiguous country), and whether he or she is an unaccompanied minor.

Adults and families, when apprehended in the interior, typically are placed in removal proceedings before an immigration judge.[36] However, that is not necessarily the case for adults or families apprehended at or near the border. In FY 2013, 83 percent of adults removed by the U.S. were deported through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.[37] The most common summary removal processes are expedited removal, used when a noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents,[38] and reinstatement of removal, used when a noncitizen unlawfully reenters after a prior removal order.[39]

As discussed in detail below, unaccompanied children receive greater protections under U.S. law.

What happens to unaccompanied children once they are in U.S. custody?

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP.[40] Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings.[41]

Children from non-contiguous countries, such as El Salvador, Guatemala, or Honduras, are placed into standard removal proceedings in immigration court. CBP must transfer custody of these children to Health and Human Services (HHS), Office of Refugee Resettlement (ORR), within 72 hours, as described below.

Each child from a contiguous country—Mexico or Canada—must be screened by a CBP officer to determine if he or she is unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these conditions apply, CBP will immediately send the child back to Mexico or Canada through a process called "voluntary return." Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process.[42]

Non-governmental organizations (NGOs) have expressed concern that CBP is the "wrong agency" to screen children for signs of trauma, abuse, or persecution.[43] The public justice group Appleseed issued a report that stated, "as a practical matter" CBP screening "translates into less searching inquiries regarding any danger they are in and what legal rights they may have."[44] Appleseed also expressed concern that the U.S.-Mexico repatriation agreement has been geared towards "protocols of repatriations logistics," rather than best practices for child welfare.[45]

Do children get attorneys?

In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the "privilege" of being represented "at no expense to the Government."[46] This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel to represent them free of charge are represented in immigration court. And, although Congress has directed the Secretary of Health and Human Services (HHS) to ensure the provision of counsel to unaccompanied children "to the greatest extent practicable," Congress further explained that the Secretary "shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge."[47]

A vast network of pro bono legal service providers has responded to the call, and during the past year, the Obama Administration provided some funding to legal service providers in order to increase representation for unaccompanied children. The justice AmeriCorps program, announced in June 2014, awarded $1.8 million for representation of certain children in immigration court,[48] and HHS subsequently provided an additional $9 million for representation in FY 2014 and FY 2015.[49]

But while pro bono legal service providers represent many children nationwide, they still are unable to meet the need. As of April 2015, children in over 38,000 pending cases remained unrepresented.[50] These children are forced to appear before an immigration judge and navigate the immigration court process, including putting on a legal defense, without any legal representation. In contrast, DHS, which acts as the prosecutor in immigration court and argues for the child's deportation, is represented in every case by a lawyer trained in immigration law. As a result, advocates, including the American Immigration Council, filed a nationwide class-action lawsuit challenging the federal government's failure to provide children with legal representation in immigration court. The case, *JEFM v. Holder*, is currently pending before a federal district court in Washington State.

How have immigration courts responded to the increased volume of cases?

In the summer of 2014, the Executive Office for Immigration Review (EOIR), the division within the Department of Justice which houses the immigration courts, adopted a new policy with respect to prioritizing cases for adjudication. The stated goal of this new policy was to "[f]ocus the department's immigration processing resources on recent border crossers" (i.e., individuals who arrived on or after May 1, 2014). Under the policy, the immigration courts are to prioritize the following cases: (1) unaccompanied children who recently crossed the southwest border; (2) families who recently crossed the border and are held in detention; (3) families who recently crossed the border but are on "alternatives to detentian" and (4) other detained cases.[51] Immigration courts now schedule a first hearing for unaccompanied children within 21 days of the court's receiving the case.[52] Given the speed at which these cases progress, the expedited children's dockets often are referred to as "rocket dockets." Children on the rocket dockets may be provided with less time to find attorneys before immigration courts move forward with their cases—and, as a result, may be required to explain why they should not be deported without the help of an attorney. If they are unable to do so, unrepresented children may be ordered removed or required to "voluntarily" depart from the United States.[53]

Can unaccompanied children be detained?

Yes, but special laws govern the custody of children based on child welfare standards that take the "best interests" of the child into account. Unaccompanied children must be transferred by DHS to the custody of HHS within 72 hours of apprehension, under the Homeland Security Act of 2002 and TVPRA of 2008.[54] HHS's Office of Refugee Resettlement (ORR) then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.

Under the TVPRA of 2008, HHS is required to "promptly place" each child in its custody "in the least restrictive setting that is in the best interests of the child."[55] As such, children in ORR care are generally housed through a network of state-licensed, ORR-funded care providers, who are tasked with providing educational, health, and case management services to the children.[56]

Under international law, children "should in principle not be detained at all," according to UNHCR.[57] Detention, if used, should only be a "measure of last resort" for the "shortest appropriate period of time," with an overall "ethic of care."[58] Detention has "well-documented" negative effects on children's mental and physical development,[59] including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.[60]

Children who arrive with a parent may be detained by DHS in family detention centers, described below.

Can unaccompanied children be released from custody?

Yes. ORR seeks to reunify children with family members or release them to other individual or organizational sponsors whenever possible, on the grounds that children's best interests are served by living in a family setting. ORR also is required to ensure that individuals taking custody of the children are able to provide for their well-being.[61] Federal regulations, following a court settlement in the case *Flores v. Reno*, outline the following preferences for sponsors: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child's parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.[62] The sponsor must agree to ensure that the child attends immigration court.

As of May 2014, ORR reported that the average length of stay in its facilities was approximately 35 days and that about 85 percent of the children served are released while their deportation proceedings are in progress.[63]

Does the Government detain families?

Yes. The increase in families fleeing violence and arriving at the southwest border—frequently mothers with children—has reignited a debate over the appropriate treatment of families in the immigration system. Family immigration detention has a complicated and troubled history in the U.S.[64]

Prior to 2006, ICE commonly detained parents and children separately. In FY 2006 appropriations language, however, Congress directed ICE to either "release families," use "alternatives to detention

such as the Intensive Supervised Appearance Program," or, if necessary, use "appropriate" detention space to house families together.[65] ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. But, as the Women's Refugee Commission explained, the "Residential Center" was a "former criminal facility that still look[ed] and [felt] like a prison."[66] The Hutto detention center became the subject of a lawsuit, a human rights investigation, multiple national and international media reports, and a national campaign to end family detention.[67] In 2009, ICE ended the use of family detention at Hutto, withdrew plans for three new family detention centers, and said that detention would be used more "thoughtfully and humanely."[68]

Yet, in the summer of 2014, in response to the increase in families fleeing violence and arriving at the southwest border, the federal government established a makeshift detention center on the grounds of the Federal Law Enforcement Training Center in Artesia, New Mexico, a remote location more than three hours' drive from the nearest major city. According to the DHS Secretary, the detention and prompt removal of families was intended to deter others from coming to the United States.[69]

Over the course of the summer and fall 2014, over hundreds of women and children were detained in Artesia. The facility was ultimately closed several months later, but the government has continued its policy of detaining women and children. Currently families are housed in three facilities: the South Texas Family Residential Center in Dilley, Texas, Karnes County Residential Center in Karnes City, Texas, and Berks Family Residential Center in Leesport, Pennsylvania. Both the Dilley and Karnes facilities are owned and operated by private prison companies. By the end of May 2015, Dilley's capacity will be 2,400, making it by far the largest family detention center in the United States.

Family detention is rarely in the "best interests of the child," as opposed to community-based alternatives.[70] Detaining children leads to serious mental health problems and chronic illnesses, and detaining families can have long-lasting effects on the psychological well-being of both parents and children.[71]

In 2014 and 2015, several detained families filed lawsuits to challenge various aspects of family detention. One case challenges the government's policy of detaining families as a means to deter others from coming to the United States. In this case, *RILR v. Johnson*, a federal court issued a preliminary injunction to prevent the government from using deterrence as a factor in making a bond determination.[72] In a second case, lawyers for children held in family detention facilities have claimed that the government is violating the terms of the settlement agreement in *Flores*, discussed above. This settlement established national standards for the detention, release and treatment of children detained by DHS for deportation.

Can alternatives to detention be used for families?

Yes. ICE operates two alternatives to detention (ATD) programs for adult detainees—a "full service" program with case management, supervision, and monitoring (either by GPS or telephone check-in), and a "technology-only" program with monitoring only.[73] According to U.S. government data, 95 percent of participants in ICE's full service program appeared at scheduled court hearings from fiscal years 2011 to 2013.[74] Further, in FY 2012 only 4 percent were arrested by another law enforcement agency.[75] ICE's alternatives program, as well as being more humane, is also less expensive than detention—$10.55/day as opposed to $158/day.[76] As to asylum seekers, a prior

U.S. government-commissioned study found that "asylum seekers do not need to be detained to appear," and "[t]hey also do not seem to need intensive supervision."[77] Bipartisan support has emerged for alternatives to immigration detention.[78] ICE, in early 2015, issued requests for proposals for "family case management services" for up to 300 families apiece in Baltimore/Washington, NYC/Newark, Miami, Chicago and Los Angeles.[79]

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

During the summer of 2014, the Obama Administration's response to Central American children and families arriving in the U.S. focused largely on enforcement measures, rather than humanitarian measures that had previously received legislative support, and would have been more tailored towards the vulnerable arriving population.

The Administration requested significant funding to support an "aggressive deterrence strategy" and implemented family detention and "rocket dockets" for children and families. Its in-country refugee processing program has been expected to assist relatively few people. Congressional legislative proposals, at the time and since, have largely focused on rolling back procedural protections for children. That said, proposals also exist to more holistically protect children and families reaching the United States, several of which passed the Senate in 2013 as part of its comprehensive immigration reform bill.

U.S. Government Response—Administration's and Congress' Actions

The following table summarizes the Administration's and Congress' major actions since summer 2014:

Date	Who	Action Taken
June 2, 2014	President Obama	Declared "urgent humanitarian situation" and directed a coordinated federal response under emergency homeland security authorities.[80]
June 20, 2014	DHS	Announced intention to detain families at the Border Patrol training center in Artesia, NM.[81] Detainees arrived in Artesia around the beginning of July.[82]
June 30, 2014	President Obama	Sent letter to Congressional leaders declaring intent to seek emergency funding for "an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers."[83]
July 8, 2014	President Obama	Sent letter to Speaker Boehner (attaching OMB analysis) requesting $3.7 billion in emergency appropriations.[84] Request included:[85] • **HHS**: $1.8 billion for care of unaccompanied children • **DHS-ICE**: $1.1 billion (incl. $879 million for detention and removal) • **DHS-CBP**: $432 million (incl. $364 million for additional apprehensions) • **State**: $295 million in Central American foreign aid • **DOJ-EOIR**: $45 million for additional immigration judges, $15 million to provide lawyers for children.
July 9, 2014	DOJ-EOIR	Immigration courts prioritized cases of recent border crossers who are unaccompanied children, families in detention, and families on alternatives to detention.[86]

July 11, 2014	DHS	Modified contract with Karnes County, TX to detain families at ICE's existing detention facility for adults there.[87]
July 31, 2014	Senate	Bill to provide $2.7 billion in emergency appropriations failed in procedural vote.[88]
August 1, 2014	House of	• Passed legislation to repeal DACA.[89] • Also passed legislation to provide $694 million in emergency appropriations,[90] and the "Secure the Southwest Border Act" to roll back procedural protections for Central American unaccompanied children.[91]
August 1, 2014	DHS	• Announced intent to transfer $405 million from other DHS programs to address humanitarian challenge. Congressional Appropriations Committees finished approving transfers to ICE on August 6.[92] • ICE began to detain families at Karnes, TX detention facility.[93]
September 22, 2014	DHS	Agreed to pay town of Eloy, AZ to modify its existing agreement with ICE so that the private company CCA can build a new family detention facility in Dilley, TX.[94] DHS publicly confirmed the opening of Dilley the next day.[95]
November 18, 2014	DHS	Announced ICE will close the Artesia, NM family detention facility and transfer the detainees to the new Dilley, TX family detention facility.[96]
December 3, 2014	State Dep't	Launched in-country refugee processing program in El Salvador, Guatemala, and Honduras.[97]
December 16, 2014	Congress and President Obama	FY 2015 "Cromnibus" appropriations bill, signed by President, provided:[98] • **HHS**: $80 million increase to care for unaccompanied children[99] • **State**: $260 million to implement a "prevention and response strategy" in Central America[100] • **DOJ-EOIR**: $35 million increase for immigration courts[101] • **Education**: $14 million to assist state and local educational agencies experiencing increases in immigrant youth.[102]
February 2, 2015	President Obama and DHS	The Administration's request for DHS funding for FY 2016 included:[103] • **DHS-ICE**: $893 million for salaries and expenses over FY '15 request, incl. $615 million increase for detention ($435 million for family detention) • **DHS-CBP**: $743 million increase for salaries and expenses over FY '15 request.
March 4, 2015	Congress and President Obama	FY 2015 DHS Appropriations bill, signed by President, provided:[104] • **DHS-ICE**: $703 million increase for salaries and expenses, incl. $539 million increase for detention ($362 million for family detention)[105] • **DHS-CBP**: $314 million increase for salaries and expenses over FY '14.
May 27 and June 1, 2015	House and Senate	136 Representatives and 33 Senators wrote letters asking DHS Secretary Johnson to end family detention.[106]

Recent Legislative Proposals

Since the summer of 2014, most legislative proposals have focused on rolling back the procedural protections that the TVPRA affords to Central American unaccompanied children. For example, the House's 2014 "Secure the Southwest Border Act" would have amended the TVPRA to (1) treat children from non-contiguous countries similarly to Mexican and Canadian children, but (2) strike the current requirement that the child be able to make an "independent decision to withdraw the child's application for admission" before proceeding with voluntary return; (3) require those children who may have been trafficked or fear return [or require the remaining children] to appear before an immigration judge for a hearing within 14 days of screening; and (4) impose mandatory detention until that hearing.[107]

Other proposals have offered variations on these themes. For example, the "Protection of Children Act of 2015," which the House Judiciary Committee moved forward on March 4, 2015, would enact the above four changes—but additionally, expand from 72 hours to 30 days the time limit for CBP to transfer remaining unaccompanied children to HHS custody.[108] That bill, among others, also proposes restricting HHS' ability to provide counsel to unaccompanied children.[109] Or, the "HUMANE Act," sponsored by Sen. John Cornyn (R-TX) and Rep. Henry Cuellar (D-TX) in 2014,[110] would have gone further to place children with a fear of return into a new 7-day expedited process, during which the child would be required to prove her eligibility for immigration relief to an immigration judge while mandatarily detained, before moving on to a standard removal proceeding in immigration court.[111]

Proposed Solutions

Before summer 2014, bipartisan support existed for legislative reforms to more holistically protect children and families reaching the United States. Since then, NGOs and advocacy groups have reiterated support for those reforms, as well as for aid to address root causes of child and family migration from Central America.

These reforms include:

Incorporating a "best interests of the child" standard into all decision-making, not just custody decisions.[112] Bipartisan immigration reform legislation which passed the Senate in 2013 (S. 744) would have required the Border Patrol, in making repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."[113] Amendment 1340 to S. 744, which was not voted on as part of a compromise, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.[114] Organizations have also recommended adopting more child-specific procedures.[115]

Child welfare screening to replace or augment Border Patrol screening. Border Patrol agents are currently tasked with screening Mexican and Canadian children for trafficking and persecution and preventing their return to persecutors or abusers. NGOs have uniformly questioned Border Patrol's ability to do so adequately,[116] and reform proposals have ranged from improved training for CBP officers (included in S. 744),[117] to pairing CBP screeners with child welfare experts (also in S. 744)[118] or NGO representatives,[119] to replacing CBP screeners with USCIS asylum officers.[120] CBP Commissioner Kerlikowske recently expressed openness towards similar proposals.[121]

Due process protections and resources. NGOs have advocated for a system that provides procedural protections and resources to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.[122] Proposals include appointed counsel,[123] additional resources to legal orientation programs[124] and additional resources to backlogged immigration courts (all included in S. 744).[125] More recent proposals also include additional U.S. Citizenship and Immigration Services (USCIS) asylum officers,[126] and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.[127]

Detention reforms. NGOs have proposed that children be detained as little as possible,[128] released to families or other sponsors whenever appropriate,[129] and if detained, supervised in a community-based setting[130] because of detention's severe impact on children.[131] At least one Senator has promised legislation to end the detention of asylum-seeking families if no family member poses a threat to the public or a flight risk.[132] Along these lines, organizations and legislators have recommended improving detention conditions,[133] and expanding alternatives to detention (as S. 744 proposed),[134] by reallocating detention funding to those cheaper alternatives.[135]

Aid to sending countries. NGOs have proposed aid to sending countries and Mexico, to invest in systems that protect and care for children, help youth live productive lives, and ultimately reduce violence and address root causes of flight.[136] In January 2015, the White House announced it was seeking $1 billion in Central American assistance in its FY 2016 budget.[137]

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[39] 8 U.S.C. § 1231(a)(5) (2012), https://www.law.cornell.edu/uscode/text/8/1231; 8 C.F.R. § 1241.8 (2014), https://www.law.cornell.edu/cfr/text/8/1241.8.

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[41] Pub. L. No. 110-457, 122 Stat. 5044.

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[43] Appleseed, *Letter to Congressional Research Service* (on file with American Immigration Council), May 23, 2014 [hereinafter Appleseed 2014], p. 2; Appleseed, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf, p. 6, 32; Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009), https://womensrefugeecommission.org/component/zdocs/document/196-halfway-home-unaccompanied-children-in-immigration-custody.

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[55] 8 U.S.C. § 1232(c)(2).

[56] U.S. Department of Human Services, Administration for Children and Families, "Fact Sheet," May 2014, https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

[57] UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, http://www.unhcr.org/505b10ee9.html, p. 34.

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[59] Ibid.

[60] PHR (Physicians for Human Rights) Punishment before Justice: Indefinite Detention in the US, 2011, https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf, p. 2, 11; Alice Farmer, "The impact of immigration detention on children," *Forced Migration Review*, September 2013, http://www.fmreview.org/detention/farmer.

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[62] 8 C.F.R. § 1236.3(b) (2014), https://www.law.cornell.edu/cfr/text/8/1236.3; see also CRS, UAC Overview, note 20, p. 8.

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[74] Ibid., p. 30-31.

[75] U.S. Department of Homeland Security, Office of Inspector General, "U.S. Immigration and Customs Enforcement Alternatives to Detention (Revised)," OIG-15-22, Feb. 4, 2015, https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf, pp. 6-7, 23.

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[82] U.S. DHS Secretary Jeh Johnson, "Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations," July 10, 2014, http://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations.

[83] Barack Obama, Letter, "Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation's Southwest Border," June 30, 2014, [hereinafter "June 30 Letter to Congress"], https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle.

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[85] Ibid., p. 5-6.

[86] Department of Justice, "EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S.," July 9, 2014, http://www.justice.gov/iso/opa/resources/2142014791124449 59.pdf; Department of Justice, "EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S.," July 9, 2014, http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us.

[87] U.S. DHS, "South Texas ICE Detention Facility to House Adults With Children," July 31, 2014, http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children.

[88] The bill did not include DACA repeal or rollbacks of procedural protections. "Emergency Supplemental Appropriations Act, 2014," S. 2648, 113th Cong., https://www.congress.gov/bill/113th-congress/senate-bill/2648. This bill appropriated $1.2 billion to HHS, $763 million to ICE (with no limit on detention funding), $343 million to CBP, over $60 million for immigration judges, $50 million for lawyers for unaccompanied children, $212.5 million to the President's "Economic Support Fund" to address root causes of Central American migration, and $85 million to the Department of State for "International Narcotics Control and Law Enforcement." U.S. Senate Committee on Appropriations, "Chairwoman Mikulski Releases Summary of Emergency Supplemental Funding Bill," July 23, 2014, http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill. The bill died in a cloture vote, with 50 Senators voting to continue and 44 opposed. Democratic Sens. Mary Landrieu of Louisiana and Joe Manchin of West Virginia joined with Republicans in opposing the bill. Elise Foley, "Senate Fails on Border Control Funding," *Huffington Post*, July 31, 2014, at http://www.huffingtonpost.com/2014/07/31/senate-border-crisis_n_5639727.html.

[89] "An Act to prohibit certain actions with respect to deferred action for aliens. . . .," H.R. 5272, 113th Cong. (2014), https://www.congress.gov/bill/113th-congress/house-bill/5272. The bill passed 216 to 192, largely along party lines. "Four Democrats -- Reps. John Barrow (D-Ga.), Nick Rahall (D-W.Va.) Mike McIntyre (D-N.C.) and Collin Peterson (D-Minn.) -- voted with Republicans. A larger group of 11 Republicans voted with Democrats against the bill: Reps. Jeff Denham (R-Calif.), David Valadao (R-Calif.), Cory Gardner (R-Colo.), Mike Coffman (R-Colo.), Ileana Ros-Lehtinen (R-Fla.), Mario Diaz Balart (R-Fla.), Dave Reichert (R-Wash.), Adam Kinzinger (R-Ill.), Joe Heck (R-Nev.), Mark Amodei (R-Nev.) and Fred Upton (R-Mich.)." Elise Foley, "House Votes To Strip Deportation Relief From Dreamers," *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-bill-daca_n_5643287.html.

[90] "An Act making supplemental appropriations. . . .," H.R. 5230, 113th Cong., https://www.congress.gov/bill/113th-congress/house-bill/5230. That bill appropriated $197 million to HHS, $334 million to ICE ($262 million for detention), $71 million to CBP, $70M to various National Guard units, $40 million in Central American aid, and $22 million for temporary immigration judges and video technology. Ibid., Division A, "Supplemental Appropriations and Rescissions." The bill also expanded waivers of other federal laws (such as environmental laws) for CBP activities on federal land, but prohibited placing unaccompanied alien children at military installations if it would "interfere with activities of the Armed Forces." Ibid., Division B, Title III. The bill passed 223 to 189. One Democrat, Rep. Henry Cuellar of Texas, joined Republicans voting for the bill, while four Republicans joined Democrats in opposition: Reps. Stephen Fincher of Tennessee, Paul Broun of Georgia, Thomas Massie of Kentucky and Walter Jones of North Carolina. Elise Foley, "House Passes Dead-On-Arrival Bill to Address Border Crisis," *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-border-bill_n_5643259.html.

[91] "Secure the Southwest Border Act of 2014," H.R. 5230, 113th Cong., Division B, Title I, at https://www.congress.gov/bill/113th-congress/house-bill/5230. Other sections in this Title would have prioritized removal hearings for unaccompanied children for those children whom had "most recently arrived" (i.e., "last in, first out") (Sec. 102); directed EOIR to designate up to 40 temporary immigration judges for the duration of the humanitarian crisis (Sec. 103); tightened screenings for custodians of unaccompanied children to require "a mandatory biometric criminal history check" based on fingerprints, and prohibit as custodians whom had been convicted of a sex offense or human trafficking (Sec. 104); and unrelated to unaccompanied children, barred from asylum any individual who had committed "any drug-related offense punishable by a term of imprisonment greater than 1 year" before arriving in the United States (Sec. 105).

[92] Mark Felsenthal, "U.S. administration transferring $405 million for border operations," Reuters (Aug. 1, 2014) (DHS notified Congress on August 1 that it would "reprogram" funds), at http://news.yahoo.com/u-administration-transferring-405-million-border-operations-024645833.html. Ultimately, DHS reprogrammed $333.8 million from other DHS agencies into ICE—$267.6 million from the Federal Emergency Management Agency's (FEMA's) disaster relief fund, $31.5 million from the Coast Guard, and $34.7 million from the Transportation Security Administration (TSA) into (1) ICE's Custody Operations account ($261.1 million), which operates ICE detention, and (2) ICE's Transportation and Removal Programs account ($72.7 million), which operates planes that deport individuals. U.S. DHS, "Budget-in-Brief Fiscal Year 2016," p. 54, February 5, 2015, http://www.dhs.gov/publication/fy-2016-budget-brief. The Senate Appropriations Committee approved that transfer on August 4, and the House Appropriations Committee approved that transfer on August 6. Ibid. Reuters also reported on August 1 that CBP would internally move $70.5 million from other activities to "meet increased demands from the border situation." It is not clear from public budget documents if and from where that transfer occurred.

[93] U.S. DHS, "South Texas ICE Detention Facility to House Adults With Children," July 31, 2014, http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children.

[94] John Burnett, "How Will A Small Town In Arizona Manage An ICE Facility In Texas?," NPR, Oct. 28, 2014, http://www.npr.org/2014/10/28/359411980/how-will-a-small-town-in-arizona-manage-an-ice-facility-in-texas; "City of Eloy Request for Council Action," requested Sept. 17, 2014 (obtained through the Freedom of Information Act, on file with American Immigration Council).

[95] Daniel González, "Feds detaining migrant families despite criticism,"

Arizona Republic, Sept. 24, 2014, http://www.azcentral.com/story/news/politics/immigration/2014/09/24/migrant-family-detentions-expanded-despite-criticism/16139209/.

[96] Amanda Peterson Beadle, "DHS Announces the Transfer of Immigrant Families from Artesia to New Facility," *Immigration Impact*, Nov. 18, 2014, http://immigrationimpact.com/2014/11/18/dhs-announces-transfer-immigrant-families-artesia-new-facility/#sthash.6kRqlvWw.dpuf.

[97] U.S. Department of State, "Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States," Dec. 3, 2014, http://www.state.gov/r/pa/prs/ps/2014/12/234655.htm.

[98] "Consolidated and Further Continuing Appropriations Act, 2015," H.R. 83, Pub. L. No. 113-235, 113th Congress, Dec. 16, 2014, https://www.congress.gov/bill/113th-congress/house-bill/83/text.

[99] Ibid., Division G, Title II, "Administration for Children and Families, Refugee and Entrant Assistance"; *see also* U.S. Senate Committee on Appropriations, "Summary: Fiscal Year 2015 Omnibus Appropriations Bill," Dec. 9, 2014, p. 34 [hereinafter "Senate Cromnibus Summary"], http://www.appropriations.senate.gov/news/summary-fiscal-year-2015-omnibus-appropriations-bill.

[100] Ibid., Division J, Title VII, Sec. 7045(a) ("Central American Migration Prevention and Response,") and (d) "Guatemala," (f) "Honduras," and (g) "Mexico." *See also* Senate Cromnibus Summary, note 99, p. 53. Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83, Cong. Record H9307-H10003, at p. H9951-52, H9956-57 (Dec. 11, 2014) [hereinafter "Cromnibus Explanatory Statement"], available at https://www.congress.gov/crec/2014/12/11/CREC-2014-12-11-pt2-PgH9307.pdf.

[101] Ibid., Division B, Title II, "Administrative Review and Appeals." See also U.S. DOJ, "Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2015 Budget Request At a Glance," accessed May 31, 2015, p. 1-2 (requesting $35 million increase for FY 2015, from $312.2 million to $347.2 million), http://www.justice.gov/sites/default/files/jmd/legacy/2014/07/09/eoir.pdf; Cromnibus Explanatory Statement, note 100, p. H9345. The Explanatory Statement states, "The agreement includes funding for 35 new Immigration Judge Teams Allowing EOIR to adjudicate up to 39,000 more cases annually." Ibid. The Explanatory Statement also provides generally supportive language regarding legal orientation programs and lawyers for children, although it does not provide specific funding amounts. Ibid. ("Within the amounts provided, EOIR shall take steps as specified in the House and Senate reports to expand adjudication capacity, enhance the Legal Orientation Program, improve court efficiency and better serve vulnerable populations such as children through continuation of fiscal year 2014 pilot programs.").

[102] Ibid., Division G, Title III, "English Language Acquisition."

[103] U.S. DHS, "Congressional Budget Justification FY 2016," Feb. 2, 2015, http://www.dhs.gov/publication/congressional-budget-justification-fy-2016.

[104] Department of Homeland Security Appropriations Act, 2015, H.R. 240, Pub. L. No. 114-4, Mar. 4, 2015, https://www.congress.gov/bill/114th-congress/house-bill/240/text. See *also* Mark Noferi, "DHS Funding Controversy Over, But Enforcement-First Approach Remains," *Immigration Impact*, Mar. 6, 2015, http://immigrationimpact.com/2015/03/06/dhs-funding-controversy-enforcement-first-approach-remains/.

[105] Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding H.R. 240, Department of Homeland Security Appropriations Act, 2015, Jan. 15, 2015, http://docs.house.gov/billsthisweek/20150112/114-HR240-ES.pdf. pp. 25-26.

[106] Raque Planos, "House Democrats Tell Obama Administration to End Family Detention," *Huffington Post*, May 27, 2015, http://www.huffingtonpost.com/2015/05/27/democrats-family-detentio_n_7453008.html; Elise Foley, "Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On," *Huffington Post*, June 2, 2015, http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495282.html.

[107] "Secure the Southwest Border Act of 2014," note 91, Sec. 101, *amending* U.S.C. § 1232(a)(2), (5).

[108] "Protection of Children Act of 2015," H.R. 1149, 114th Cong., Sec. 2, https://www.congress.gov/bill/114th-congress/house-bill/1149/text.

[109] Ibid., Sec. 2(a)(3)(b), amending 8 U.S.C. § 1132(c)(5), to change the statutory direction to HHS from ensuring that children "have counsel" to "have access to counsel" (emphasis added), and clarifying that such access will be "at no expense to the Government." See also "Asylum Reform and Border Protection Act of 2015," H.R. 1153, 114th Cong., Sec. 2 ("Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in removal proceedings"), https://www.congress.gov/bill/114th-congress/house-bill/1153/text.

[110] "Helping Unaccompanied Minors and Alleviating National Emergency Act" (HUMANE Act), S. 2611, 113th Cong., https://www.congress.gov/bill/113th-congress/senate-bill/2611/text.

[111] Ibid. at Secs. 101(1)-(2), 102.

[112] The "best interests of the child" standard is internationally recognized. In the U.S. child welfare system, it applies special importance to "family integrity, health, safety, protection of the child, and timely placement." The United States Conference of Catholic Bishops (USCCB) has thus recommended a "transnational family approach," with a holistic assessment of all family members for potential reunification, performed by child welfare professionals. United States Conference of Catholic Bishops (USCCB), Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee, June 25, 2014, [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-usc-hearing-testimony.pdf, p. 12.

[113] "Border Security, Economic Opportunity, and Immigration Modernization Act," S. 744, 113th Cong., Sec. 1115(b)(1)(B), http://www.lawandsoftware.com/bsapima/bsapima-senate-1115.html. If repatriation occurs, the ABA first recommends screening by a legal advocate, and the involvement of a formal intercountry child welfare agency. James Silkenat, President, American Bar Association, Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014, [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014june25_unaccompaniedalienminors_1_authcheckdam.pdf, p. 3.

[114] S. 744, 113th Cong., Amt. 1340, https://beta.congress.gov/amendment/113th-congress/senate-amendment/1340/text. See *also* The Young Center for Immigrant Children's Rights, http://theyoungcenter.org/news/historic-senate-bill-protecting-

childrens-safety-in-immigration-legislation/.

[115] USCCB and others have thus recommended procedures reflecting this paradigm—an appointed lawyer and child advocate in the process, repatriation only after screening by a child welfare advocate, the development of child-appropriate asylum procedures, and separate children's dockets in immigration court, with specialized training for judges. USCCB HJC Testimony, note 112, p.11-12; National Immigrant Justice Center (NIJC), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014 [hereinafter NIJC HJC Statement], http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf, p. 8. S. 744 would also have instituted a multi-year program to ensure "safe and sustainable repatriation." S. 744, 113th Cong., Sec. 3612 (j), http://www.lawandsoftware.com/bsegima/bsegima-senate-3612.html.

[116] Appleseed, *Children at the Border*, 2011, note 43, p. 6, 32. As one organization put it, children "do not divulge their complex histories of abuse and neglect during a first meeting with strangers," let alone "armed strangers in uniform." Center for Refugee and Gender Studies, *Calling on President Obama to Protect Child Migrants*, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), http://cgrs.uchastings.edu/our-work/june-2014-policy-statement-children. Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, "Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers.... That's not our job." David Nakamura, "Border agents decry 'Diaper Changing, Burrito Wrapping' with influx of children," *Washington Post*, June 20, 2014, http://www.washingtonpost.com/politics/border-agents-decry-diaper-changing-burrito-wrapping-with-influx-of-children/2014/06/20/1a6b6714-f579-11e3-8aa9-dad2ec039789_story.html.

[117] S. 744, 113th Cong., Sec. 3611 (requiring training by child welfare professionals of CBP officials "likely to come into contact with unaccompanied alien children"), http://www.lawandsoftware.com/bsegima/bsegima-senate-3611.html; Sec. 1115(c) (requiring training on preserving children's best interests), http://www.lawandsoftware.com/bsegima/bsegima-senate-1115.html; *see also* Women's Refugee Commission, *Halfway Home*, Feb. 2009, note 43, p. 2; American Immigration Lawyers Association (AILA), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014 [hereinafter AILA HJC Statement], http://www.aila.org/content/default.aspx?docid=49015, p. 6.

[118] "Child Trafficking Victims Prevention Act," S. 744, 113th Cong., Sec. 3612(d), (e), (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), http://www.lawandsoftware.com/bsegima/bsegima-senate-3612.html; USCCB HJC Testimony, note 112, p. 10.

[119] Lutheran Immigration and Refugee Service (LIRS), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014, p. 2 [hereinafter LIRS HJC Statement] (on file with American Immigration Council).

[120] Appleseed, *Children at the Border*, 2011, note 43, p. 6.

[121] Mark Noferi, "Commissioner Kerlikowske Offers Vision of Change at CBP," *Immigration Impact*, Apr. 24, 2015, at http://immigrationimpact.com/2015/04/24/commissioner-kerlikowske-offers-vision-of-change-at-cbp/, citing House Committee on Appropriations, "Budget Hearing - United States Customs and Border Protection" (Apr. 23, 2015), http://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394143.

[122] Conversely, USCCB and other organizations have stated that "subjecting these families to expedited removal procedures, as intended by the Administration, could undercut their due process rights." USCCB HJC Testimony, note 112, p. 10.

[123] S. 744, 113th. Cong, Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and the particularly vulnerable), http://www.lawandsoftware.com/bsegima/bsegima-senate-3502.html. The Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others in the 113th and 114th Congresses, would provide counsel to unaccompanied children and the mentally disabled. https://www.congress.gov/bill/114th-congress/house-bill/1700/text; Richard Simon, "Lawmakers seek legal aid for youths caught crossing Southwest border," Los Angeles Times, June 23, 2014, http://www.latimes.com/nation/nationnow/la-na-nn-immigrants-legal-aid-20140623-story.html. Those bills would not provide counsel in DHS expedited removal processes, were Congress to change the law to allow DHS expedited removal or summary return of unaccompanied children.

Organizations have uniformly recommended counsel for unaccompanied children. See American Immigration Council, *Two Systems of Justice*, March 2013, http://www.immigrationpolicy.org/sites/default/files/docs/aic_twosystemsofjustice.pdf, p. 12 ("Counsel should be appointed in cases where an immigrant is unable to retain a lawyer, beginning with minors"). See also, e.g., USCCB HJC Testimony, note 112, p. 12; AILA HJC Statement, note 117, p. 6; NIJC HJC Statement, note 115, pp. 5-7; ABA HJC Statement, note 113, p. 3. Children fleeing abuse and violence are often particularly incapable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony, note 112, p. 11.

Organizations have also reported that counsel assists in ensuring children attend court proceedings. American Immigration Council, Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court (July 2014) (92.5 percent of children represented in immigration proceedings appear), http://immigrationpolicy.org/sites/default/files/docs/taking_attendance_new_data_finds_majority_of_children_appear_in_immigration_court_final_1.pdf; Safe Passage Project, Statement to the House Judiciary Committee, June 25, 2014, ("Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel."), http://www.safepassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/, p. 2.

Organizations have also called the "justice AmeriCorps" program of pro bono lawyers it a "step in the right direction," but "not adequate to meet overwhelming need." See, e.g., NIJC HJC Statement, note 115, p. 6 ("given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant children remains.")

[124] Organizations also have recommended increasing Legal Orientation Program funding to provide know-your-rights presentations to all detainees nationwide. Lutheran Immigration and Refugee Service (LIRS) and Women's Refugee Commission (WRC), *Locking Up Family Values Again*, October 2014, http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf, p. 17; Human Rights First, *How to Manage the Increase in Families at the Border*, June 2014, http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf. S. 744 would have

provided such an increase. S. 744, 113th Cong., Sec. 3503, http://www.lawandsoftware.com/bseqoima/bseqoima-senate-3503.html.

[125] Bipartisan support has emerged for providing additional resources to backlogged immigration courts, even before the recent children's crisis. See American Immigration Council, *Empty Benches: Underfunding of Immigration Courts Undermines Justice*, May 2015, http://immigrationpolicy.org/just-facts/empty-benches-underfunding-immigration-courts-undermines-justice, p. 1 & n. 10. Recently, the House of Representatives passed appropriations legislation that would provide the largest increase in immigration judges in history—$74 million for 55 new immigration judge teams. H.R. 2578, 114th Cong., https://www.congress.gov/bill/114th-congress/house-bill/2578/text; Mark Noferi, "Bi-Partisan House Bill Recommends Largest Increase Ever in Immigration Judges," *Immigration Impact*, May 21, 2015, http://immigrationimpact.com/2015/05/21/bi-partisan-house-bill-recommends-largest-increase-ever-in-immigration-judges/#.sthash.4lkzFDxk.dpuf. S. 744 would have added 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. S. 744, 113th Cong., Sec. 3501(a). S. 744 did not include extra funding for USCIS asylum officers.

[126] Human Rights First, *How to Manage the Increase*, June 2014, note 124, p. 2.

[127] USCCB HJC Testimony, note 112, p. 10-11 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services); LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22. USSCB also recommended improving background checks for sponsors, as well as increased funding to the Legal Orientation Program for Custodians (LOPC), to inform sponsors of their responsibilities. USCCB HJC Testimony, note 112, p. 11.

[128] UNHCR Detention Guidelines, note 57, "Guideline 9.2, Children," ¶¶ 51-57, 2012; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 2-3.

[129] USCCB HJC Testimony, note 112, p. 11.

[130] More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. Women's Refugee Commission, *Halfway Home*, 2009, note 43, p. 37-38; USCCB HJC Testimony, note 112, p.13.

[131] UNHCR Detention Guidelines, ¶ 52; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 7-8.

[132] Senator Richard Blumenthal, "Stop locking up child refugees," *The Hill*, Feb. 25, 2015, http://thehill.com/opinion/op-ed/233659-stop-locking-up-child-refugees.

[133] In particular, groups have criticized conditions in CBP's short-term detention facilities. ABA HJC Statement, note 113, p. 2; AILA HJC Statement, note 117, p. 5; WRC, *Halfway Home*, note 43, p. 5-12. On June 11, 2014, a group of civil, immigrant, and human rights organizations filed an administrative complaint on behalf of 116 children who had reported abuse and mistreatment while in CBP custody, such as shocking, inhumane conditions, inadequate access to medical care, and verbal, sexual, and physical abuse. ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention*, June 11, 2014, https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during. Additionally, the American Immigration Council released a report detailing the lack of accountability for complaints filed against CBP officials by individuals in custody. American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014 (of 809 complaints of alleged abuse, 97 percent resulted in "no action taken"), http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse.

Several legislative proposals have been introduced to address short-term CBP detention conditions. These include H.R. 3130, the Protect Family Values at the Border Act, introduced by Rep. Lucille Roybal-Allard (D-CA) in the 113th Congress, http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3130; and Amendment 1260 to S. 744, introduced by Sen. Barbara Boxer (D-CA) in the 113th Congress, https://beta.congress.gov/amendment/113th-congress/senate-amendment/1260/text. Additionally, H.R. 4303, the Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, introduced by Rep. Steve Pearce (R-NM) and Rep. Beto O'Rourke (D-TX) in the 113th Congress, would have established an ombudsman over border-related concerns. https://beta.congress.gov/bill/113th-congress/house-bill/4303/.

[134] S. 744, 113th Cong., Sec. 3715 (establishing "secure alternatives programs that incorporate case management services," with "nongovernmental community based organizations"); United States Conference of Catholic Bishops and Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System* (Washington, DC: May 2015), http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf, p. 28; Human Rights First, How to Manage the Increase, June 2014, note 124.

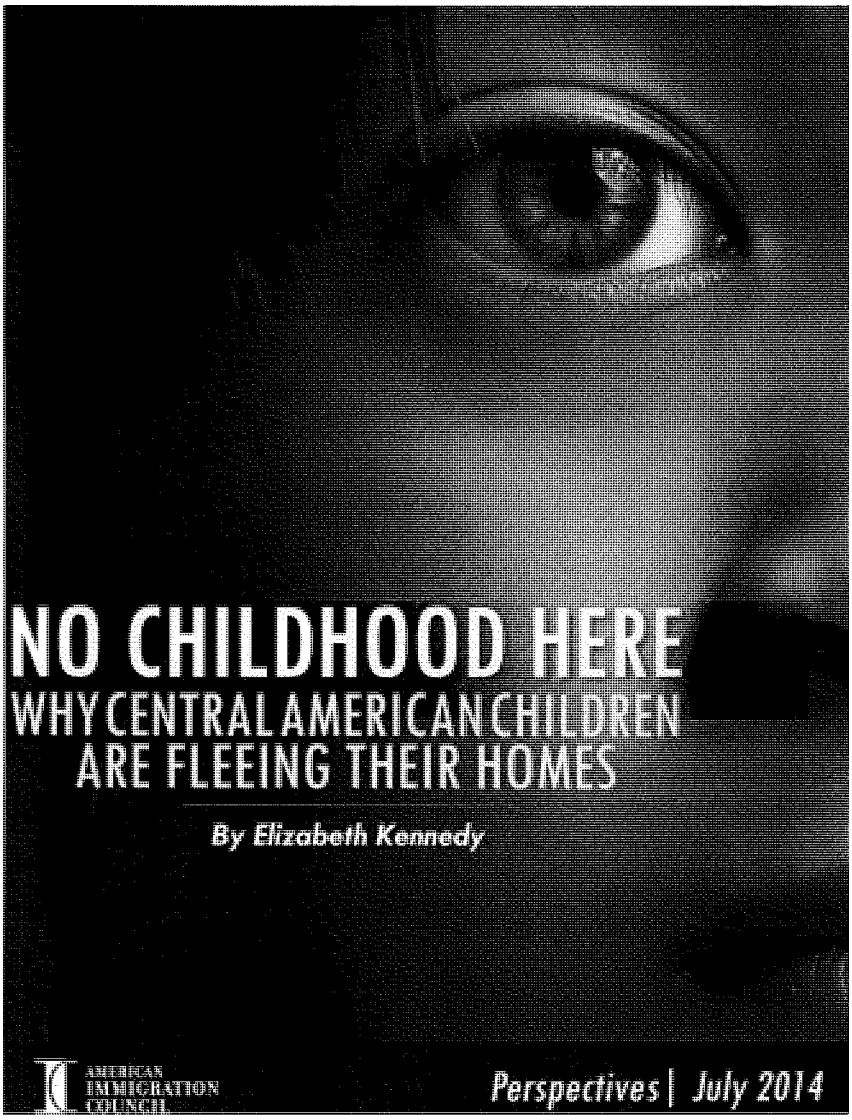
[135] ICE requested $122 million for alternatives to detention in fiscal year 2016—an increase of $28 million over the President's budget for FY 2015, to increase the daily population in ATD from 27,219 participants at the end of FY 2014 to 53,000 participants. U.S. DHS, "U.S. Immigration and Customs Enforcement Salaries and Expenses," 45, 64-67, February 2015, http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification_15_0325.pdf.

[136] LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22; Council on Foreign Relations, *Independent Task Force Report No. 63*, pp. 106-107.

[137] USCCB HJC Testimony, note 112, p. 13-15.

[138] Joseph R. Biden Jr., "Joe Biden: A Plan for Central America," N. Y. Times, Jan. 29, 2015, http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html; The White House, Office of the Vice President, "FACT SHEET: Promoting Prosperity, Security and Good Governance in Central America," Jan. 29, 2015, http://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame. Some have criticized the White House aid request as overly focused on security. Alexander Main, "Will Biden's Billion Dollar Plan Help Central America?" *North American Congress on Latin America*, Feb. 27, 2015, https://nacla.org/news/2015/02/27/will-biden%27s-billion-dollar-plan-help-central-america.

ATTACHMENT B


NO CHILDHOOD HERE
WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES
By Elizabeth Kennedy
AMERICAN IMMIGRATION COUNCIL
Perspectives | July 2014

NO CHILDHOOD HERE: WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES

ABOUT THE AUTHOR

Elizabeth Kennedy is a Fulbright Fellow currently working with returned child and youth migrants from Mexico and the United States in El Salvador. Her work and research focuses on the experiences and needs of child, youth, and forced migrants. She has over a decade's experience in youth programming and organizing and co-founded and directs an internship program for undergraduates to mentor detained child migrants. She received her MSc in Refugee and Forced Migration Studies from Oxford University in 2011, and since beginning her doctoral program at San Diego State University and the University of California, Santa Barbara in 2011, has published in academic and popular press. She has also provided expert testimony in Central American asylum seekers' cases in Canada, Sweden, the United Kingdom, and the United States.

ABOUT THE AMERICAN IMMIGRATION COUNCIL

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INTRODUCTION & SUMMARY

Over a decade before President Barack Obama described the influx of unaccompanied child migrants to the United States as an "urgent humanitarian situation requiring a unified and coordinated Federal response,"[1] child and refugee advocates warned that children who shared experiences of years-long family separation, widespread violence in home countries, and higher rates of neglect and abuse were fleeing from South of our border in alarming numbers.[2] Then as now, over 95 percent were from Mexico and the Central American nations of El Salvador, Guatemala, and Honduras. When these children were apprehended in the U.S., the Trafficking and Victim's Protection Reauthorization Act (TVPRA)[3] required agents to ask limited and straightforward abuse questions. If the child was determined to be without a parent or legal guardian, s/he had to be transferred to Office of Refugee Resettlement (ORR) care within 72 hours.[4]

Yet, even though 8,000 to 40,000 unaccompanied child migrants were apprehended annually between 2003 and 2011, only 4,800 to 8,300 entered ORR's care each year. A 2011 report by the Appleseed Foundation documented that most Mexican child migrants did not receive TVPRA screening and thus could not transition to ORR care.[5] Instead, per an agreement between the Mexican and U.S. governments that Obama would like emulated among Central American countries, Mexican children were quickly deported.[6] Nonetheless, those from indigenous areas or areas with high levels of drug violence were able to receive the "Unaccompanied Alien Child"[7] (UAC) designation, alongside thousands from the three countries that make up the so-called Northern Triangle of Central America.[8] In 2012, nearly 14,000 UAC entered ORR care, with 88 percent from the Northern Triangle. In 2013, over 24,000 arrived, with 93 percent from the same three nations.[9] This year, as many as 60,000 could arrive,[10] and while numbers from Mexico have declined, numbers from the Northern Triangle continue rising.

When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list crime, gang threats, or violence as a reason for their emigration.

What drives these children to flee their homes? What causes their parents to put them and their life's savings in the hands of smugglers?[11] What happens if they fail to reach the U.S.? Since October 2013, with funding from a Fulbright Fellowship, I have lived in El Salvador and worked toward answering these questions through my research into the causes of child migration and the effects of child deportation (see appendix).

Based on the evidence I collected and analyzed to date, violence, extreme poverty, and family reunification play important roles in pushing kids to leave their country of origin. In particular, crime, gang threats, or violence appear to be the strongest determinants for children's decision to emigrate. When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list one of those factors as a reason for their emigration. In some areas of El Salvador, however, extreme poverty is the most common reason why children decide to leave. This is particularly true for adolescent males, who hope to work half the day and study the other half in order to remit money to their families and help them move forward in life. In addition, one in three children cites family reunification as a primary reason for leaving home. Interestingly, over 90 percent of the children I interviewed have a family member in the US, with just over 50 percent having one or both parents there.[12] Most referenced fear of crime and violence as the underlying motive for their decision to reunify with family now rather than two years in the past or two years in the future. Seemingly, the children and their families had decided they must leave and chose to go to where they had family, rather than chose to leave because they had family elsewhere. Essentially, if their family had been in Belize, Costa Rica, or another country, they would be going there instead.

ORGANIZED CRIME, GANGS AND VIOLENCE ARE DRIVING CHILDREN FROM THEIR HOMES

When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list crime, gang threats, or violence as a reason for their emigration. Whereas males most feared assault or death for not joining gangs or interacting with corrupt government officials, females most feared rape or disappearance at the hands of the same groups. While over half of Salvadoran children list more than one reason for migrating, nearly 100 list only this fear.

Of the 322 minors I interviewed, 145 have at least one gang in their neighborhood, and about half of these live in a contested gang territory. They report hearing gunshots nightly and are often afraid to walk even two or three blocks from their home since they fear crossing an always changing boundary. Those who did not note a gang presence often followed their response with "Gracias a Dios [Thank God]" or "todavía [yet]" and frequently indicated that they expect one to arrive soon. When sharing these concerns, they often mentioned either strangers arriving to where they live or criminal groups coming to their neighborhoods on an irregular basis in order to scout its potential. Three families told of their neighborhoods being taken over in exactly this manner over the past year. Another 130 said they attend a school with a nearby gang presence. This usually means that the gang either congregates in a park across the street or waits on the streets to and from the school at start and end times. One hundred attend a school with gangs inside, with marijuana or other drugs often present and school directors or teachers occasionally helping gangs recruit students. One hundred and nine have been pressured to join the gang, 22 of whom were assaulted after refusing. Seventy have quit school. While most minimize their time on the streets, saying they go only to and from school, work, or church, more than 30 said they have made themselves prisoners in their own homes; some do not even go to church. One described himself as "paralyzed with fear," as he began crying. Another's mom told me that he had a psychological breakdown when she tried to get him to leave the home. She had to take him to the emergency room to calm him, and the doctor recommended that she get him out of the country as soon as possible. Four families told how their children now find numerous tasks to do around the house to excuse themselves from family outings. Another told me: "people are always dying. I never feel safe." Then, a girl stated that she felt "trapped." She is afraid to enter other neighborhoods, and her father explained that even if the gangs do not harm her, the police or military in their neighborhood could because they "shoot [their firearms] freely, and sometimes innocent people are killed in the crossfire."

Of the 322 minors I interviewed, 145 have at least one gang in their neighborhood, and about half of these live in a contested gang territory.

To date, I have randomly selected at least one child's story from each department (similar to states in the U.S.) and searched local news reports to see whether what they said could be verified.[13] In all 14 cases, news articles supported the high crime rates they described and included names of friends and family members they mentioned as victims. For example, one girl said that her father and cousin had been killed five years apart and that three murders had taken place in her neighborhood in the past year. All three elements of her story had been reported in both La Prensa Grafica and El Diario de Hoy. Another father told me that eight murders, two of which involved children, took place in his neighborhood and the one next to it. Again, press supported his accounts.

While I believed that gang violence was primarily an urban problem before arriving to El Salvador, I have found that this violence is widespread, with children from rural and urban areas of 11 of 14 of El Salvador's departments most likely to list this as the primary cause of their emigration. In Cuscatlán and Usulután, over 85 percent flee for this reason, and in the following departments more than 50 percent flee for this reason: La Libertad (53.8%), La Paz (64.7%), La Union (67.6%), Morazán (52.6%), San Miguel (67.6%), San Salvador (65.9%), San Vicente (61.1%), Santa Ana (58.8%), and Sonsonate (67.7%).

IN RURAL AREAS, EXTREME POVERTY MOTIVATES SOME TO SEEK WORK

The exception to this trend occurs in three of the most rural and impoverished departments in El Salvador—Ahuachapán, Cabañas, and Chalatenango. While children from these areas cite violence as their reason for leaving over 30 percent of the time, more actually cite the desire for an improved life. Over 40 percent of the children, predominantly adolescent males, hope to work half the day and study the other half in order to remit money to their families and help them move forward in life. This desire for a better life is hardly surprising, given that many of these children began working in the fields at age 12 or younger and live in large families, often surviving on less than USD $150 a month.

ONLY 1 IN 3 CHILDREN CITES FAMILY REUNIFICATION AS A PRIMARY REASON FOR LEAVING HOME

Over 90 percent of the children I interviewed have a family member in the U.S., with just over 50 percent having one or both parents there. Despite these high numbers, only 35 percent list reunification as a reason for their emigration, although girls and younger children are more likely to list this reason.[14] Whenever children note a family member in the U.S., we ask them why they wish to see this person now instead of a few years ago or several years in the future. The responses to these questions more often than not referenced fear of crime and violence as the underlying motive. The children and their families had decided they must leave and chose to go where they had family, rather than chose to leave because they had family elsewhere. Essentially, they would be going to another country like Belize or Costa Rica if their family was there instead of in the U.S.

Parents and guardians typically express great distress about weighing the risks of an incredibly dangerous journey to the U.S. versus an incredibly dangerous childhood and adolescence in El Salvador. Over and over again, I have heard that "there is no childhood here," and that "it is a crime to be young in El Salvador today." One father said he never wanted to be away from his son, but after a string of murders in their town, he worried all the time. He felt he was being selfish to keep him here longer, especially since his mother in the U.S. has been asking for him for nearly a decade. Two single mothers shared that gangs were forcibly using their homes as passageways to escape from one neighborhood to another and to stash drugs. They believed they were targeted because no adult males lived with them, and they feared that they and their teenage sons would be arrested as gang members if they reported the events, because each knew a community member who had been. Grandparents feel they are too old to fend off gang threats for their grandchildren. One grandmother stopped working in order to be better able to protect her granddaughter at home, but she felt that the gang knew they could enter her home by force to take her granddaughter at any moment. An aunt worried that keeping her nephew put her own children at risk. In all these cases, the family decided that long-term safety in the U.S. was worth the short-term—and high—risk of migrating.

The adolescents themselves referenced a decreasing risk in migrating related to their bigger and stronger bodies and an increase in danger of staying upon reaching the age of 13. They indicated that since they were more emotionally and physically mature, the risks associated with the dangerous journey to the U.S. were less than they once were, even though they had fairly accurate understanding of what could happen to them. At the same time, they indicated that while some gangs will recruit younger children, most do not recruit intensively until adolescence. Several said they had hoped to never turn 13, and a few mothers indicated that this birthday was celebrated with great sadness. Adolescents thus felt that their risk of staying increased as they aged and would continue to be high until they entered their late twenties. They often said there was nothing here for them and frequently referenced news stories on homicides, in which most victims are in their teens and twenties. They believed that the U.S. would offer them both more opportunities and safety to take advantage of them.

LEAVING THEIR COUNTRY IS OFTEN A LAST RESORT

Importantly, the U.S. is not always the first option. Many move within El Salvador, and there are whole neighborhoods that have been abandoned.[15] According to the Central American University's Institute of Public Opinion (IUDOP) 2012 Survey,[16] approximately 130,000 Salvadorans were forced to relocate within the country in 2012. One-third had moved previously, because often, the same threats to life re-surface. For example, one adolescent male who had been beat three times for not joining the gang in his neighborhood has already moved three times, and each time, the same gang has found him. Another adolescent male fleeing his neighborhood's gang had even greater problems with the rival gang when he arrived to his new neighborhood, because they assumed he was already a rival member. An adolescent girl who witnessed her mom's, brother's and boyfriend's murders by gang members has lived in six different parts of El Salvador—and even Guatemala—and each time, the same gang tracked her down.

Notably, these children are not just arriving to the U.S. in search of protection. UNHCR documented an increase of 432 percent in asylum requests in the neighboring countries of Belize, Costa Rica, Nicaragua, Panama, and Mexico.

Likewise, police who have asked me about my study have shared several related pieces of information. First, they are often required to move every two years because of concerns that gangs will target them for corruption or death. Second, several police and military members have sent their children to the U.S. because they feared for their lives, and the media has indeed documented increased attempts by gangs to murder these agents of the state.[17] Third, two policemen who were threatened by gangs explicitly told me that if threatened, your only option is to flee and hope for the best within the country. They both said that if the gang decided to find you, they could, and you then needed to go abroad if you wanted to survive.

Notably, these children are not just arriving to the U.S. in search of protection. UNHCR documented an increase of 432 percent in asylum requests in the neighboring countries of Belize, Costa Rica, Nicaragua, Panama, and Mexico.[18] Despite being one of the poorest countries in Latin America, Nicaragua alone saw an increase in asylum requests of 240 percent between 2012 and 2013.[19]

CHILDREN AND THEIR FAMILIES DO NOT TRUST THE SALVADORAN GOVERNMENT TO HELP THEM

Children and their families do not feel the Salvadoran government can protect them. Press reports and government authorities in various agencies say that the two child protection agencies in El Salvador—the National Council for Childhood and Adolescence (CONNA) and the Salvadoran Institute for Childhood and Adolescence (ISNA)— infrequently respond to reported abuse[20] or parental homicide[21]. Legislation passed in 2009 makes which agency is responsible for what unclear. Neither is adequately funded nor has programs for children persecuted by gangs or for children wanting out of gangs.

There is also little confidence in the police, military, or other government agencies.[22] Only 16 child migrants who said they had experienced insecurity reported it. The police refused to write up a report for eight of those who reported problems; six said nothing happened after they spoke to authorities, and two of the 16 who made reports said they had received increased threats. One's accused rapist still lives next door.

Fear of authorities is well-founded. Many say gangs have sources of information among police, attorney general offices, and neighborhood residents so that, as several of them told me, "You never know who is who." Three told stories of youth who made complaints and were then detained as suspected, rival gang members by police. Police beat one youth three times because he worked late and was accused of being a gang member since he was on the streets. Thus, because gangs and, at times, police target young people, a number of children and family members have again told me that El Salvador is "no place for children."

THOSE WHO ARE RETURNED FROM THE U.S. FACE ADDITIONAL THREATS OF VIOLENCE

Four families I met were hoping to return to their lives in the United States. All of them had resided with their children there for more than seven years. They elected voluntary departure, and upon arriving to El Salvador, decided to start small businesses. Each of them was extorted for large amounts of money (more than $3,000 per month) within six months of opening. They believed that besides having their businesses, they also stood out because their homes were nicer, and they dressed differently. Unable to pay, and afraid to report the crime to authorities, they were fleeing. They were so afraid that they did not plan to sleep in their homes that evening after being deported from Mexico on their way to the U.S. and were instead looking for a hostel before embarking again the next day.

I also met two men in their early twenties who were fleeing with their adolescent sisters. In both cases, the brothers had received numerous threats in El Salvador and had fled to the U.S. in the previous year. Upon reaching the U.S., they tried to seek asylum. One was told inside the detention center where he was kept that since he was not "black or Muslim," he could not do so. They both stated they were returned against their will and without every talking to a lawyer. Within days of their return, the gangs began forcibly recruiting their sisters to be "girlfriends[23]". Where both lived, girls who refused such advances had been kidnapped and never heard from again or found murdered, which I cross referenced with a Twitter site called Angel Desapercido.[24] With their families, they decided to accompany their sisters to the U.S., but neither had much hope for their or their sister's prospects of obtaining protection.

The most common cause of UAC's exodus from Central America has been and continues to be increasing gang and cartel violence that disproportionately affects them as young people.

Within this context, many children report that their parents who had planned to return to El Salvador after paying for their education now fear doing so because of high violence and these kinds of stories. At least once a month, local news report the homicide of a recent deportee from the U.S.,[25] and several of the Salvadoran families I have met here indicated that they were extorted because of the remittances they receive from relatives in the U.S.

My study is taking place in El Salvador, but I visited Guatemala and Honduras in October 2013 and know over 100 UAC from each country. The initial findings presented in this piece are common in the other two nations, as is reported in aforementioned publications by KIND, UNHCR, UCCSB, and the WRC. Primarily, while family reunification, poverty, and lack of opportunities are common considerations in UAC's decision to emigrate, the most common cause of UAC's exodus from Central America has been and continues to be increasing gang and cartel violence that disproportionately affects them as young people.

As a result, U.S. and regional response must realize that the majority of these children have significant protection needs. Thus, they should continue to receive access to the services and due process guaranteed them in the Flores Settlement Agreement and TVPRA, should have access to free legal counsel, and should await their immigration hearings with family. Whether they remain in the U.S. or return to their home countries, they must have access to services that assist them in transitioning successfully, which would ideally offer them career and educational development and health services alongside mechanisms for better participating in transnational families. Most broadly, in home countries, emphasis must shift from militaristic solutions to those that invest in economic and social development. In doing so, the influence of gangs would likely decrease as they have alternative opportunities, and fewer children will emigrate.

As a final note, I am in contact with 20 UAC who arrived to the U.S. from 2011 to 2013. They now live in different parts of the country, Guatemala, Honduras, and Mexico and have various legal statuses. Their experiences migrating to the U.S. and transitioning from that journey have deeply affected them and me. Even those who are happy in the U.S. greatly miss their home countries. If they could return and live in them safely, most would. At the same time, they are incredibly motivated and talented youth, and whichever nation gets them should make a minimal front-end investment to maximize the return we get from them.

APPENDIX: METHODOLOGY

My subjects have been local, regional, and national government officials; the press; and children and their families, who have told horror stories of violence and despair.[26] I have met hundreds of people fleeing areas where their neighbors, family, or friends have been extorted, threatened, or killed. Many were on their way to the U.S. for the first time, but a few hoped to return to their life in the U.S. since their decision to voluntarily depart in the past year put them and their families in danger within months.

To reach the U.S., Central Americans must traverse Mexico, and an increasing number are being detained and deported there before reaching the U.S. border.[27] Children apprehended below Mexico City are deported by bus to San Salvador twice per week; children detained above Mexico City are departed by commercial plane to the international airport in San Luis Talpa on an as-needed basis. When I began interviewing children deported by bus in January, between five and 15 came two days per week, but between 60 and 80 now arrive each of these two days.[28] Through June, I have completed nearly 500 interviews with these children and their waiting family members, over half of whom intended to attempt migrating again. Indeed, in paying the smuggler, each received three chances for that price that was sometimes equivalent to 20 years' salary. For this piece, I analyzed the 322 interviews I completed between January 27 and May 1, 2014. Within that group of children, 106 (33%) were females, and 216 (67%) were males. Nearly 80 percent (78.5) were between the ages of 13 and 17.[29] The largest numbers come from the departments of San Salvador (41), Santa Ana (34), San Miguel (34), and La Unión (34). The top four destinations in the United States were: New York (39), Los Angeles (38), Houston (38), and Virginia (31).[30]

Through May, I went to the migrant return center on both days that children were deported. There, family members await their children for hours, and I arrived early to talk with them before the bus came. Often, I had the chance to interview the family prior to the bus's arrival and the child after completing her migration interview. In April, I recruited and trained a Salvadoran assistant due to an increase in arrivals. During these first five months, our goal was to complete interviews with at least half of child migrants if together and with at least one quarter if alone. Starting this June, my assistant goes one day per week, and I go the other day. Our goal now is to interview a statistically representative sample based upon sex, age, and origin, and I have begun follow-up interviews by phone.

Interviews have a mixture of closed and open questions and usually take 10 to 30 minutes to complete.[31] We begin by collecting basic demographic information like age, gender and with whom the child lives (including age and relationship of each person in the home). We then ask where they live and what living there is like, with follow up questions about gang, police and military presence, religious involvement, land ownership, and remittances. Before transitioning to where the child's mother and father are (which is always sensitive since some have a father who was not active), in what each parent or guardian works, and where and with whom they wanted to live in the U.S., we ask if they ever lived anywhere else. If so, we want to know where and why they moved. Then, we ask if they were actively studying, what grade they last completed, how they performed academically, what type of school they attended, and if not studying, why they quit when they did. We ask a similar set of questions about if they are actively working. After that, we explicitly ask them why they wanted to leave the country, and depending on the reason(s) they give, a series of follow up questions specific to that reason. For example, if they say they fear for their life, we ask them why; whether they, their family or friends have been threatened, and if so, when the threats began and with what frequency they have occurred; how many murders or other crimes have occurred where they live; names of anyone they know who has been killed; and whether or not they reported these crimes. Finally, we ask with whom they traveled (smuggler, family, friends, other, or alone), whether they will try to reach the U.S. again, and what they hope to do in the U.S. if they arrive. At the end, we share with them possible legal options to travel to or stay in the U.S., if any exist, and answer their questions. All are given my contact information and encouraged to follow up with me if they would like. Over 30 have done so.

The interviews have four major limitations. First, we cannot complete interviews with children alone,[32] so our questions about abuse, mistreatment, or negligence likely yield underestimates. Just 3.1 percent report migrating for this reason to us, but upward of 20 percent from El Salvador reported migrating for this reason to KIND[33] and UNHCR[34] in 2013. Second, because we conduct interviews at the migrant return centers, finding privacy can be difficult, and some child migrants and their families are afraid to talk openly. On more than 10 occasions, they have followed up with me by email after leaving the center to share a much more detailed history. Third, the later the busses arrive, the fewer interviews we can complete since migrants and their families are in a hurry to leave before dark. The return center is in a very bad neighborhood (Colonia Quiñonez): it was named one of 10 municipalities in El Salvador where taxis normally will not go in March[35], and in April, two people were murdered on the only street that can be used to exit.[36] Finally, some speculate that migrants may tell their stories strategically since I am from the U.S. While this may occasionally occur, I have nearly a decade's experience conducting qualitative interviews with children in the Spanish language (and more experience performing youth work with the same population). I am adept at noticing such things and note when I suspect withholding information. Importantly, when my assistant and I conducted interviews with the same children on her first two days, we received similar responses. Then, my field interviews are consistent with what other groups like KIND[37], UNHCR, the United States Conference of Catholic Bishops[38], and the Women's Refugee Commission[39] have reported in the last two years—rampant violence has made it unsafe to be a child in Central America.

ENDNOTES

[1] The White House Office of the Press Secretary, "Presidential Memorandum -- Response to the Influx of Unaccompanied Alien Children Across the Southwest Border," (2014), available at: http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr.

[2] See reporter Sonia Nazario's six-part series about a Honduran unaccompanied child migrant hoping to reunify with his mom and leave a life of instability and crime with the Los Angeles Times here: http://dlib.nyu.edu/undercover/enriques-journey-sonia-nazario-los-angeles-times. It became a full-length book, Enrique's Journey (2006).

Also see Administration for Children and Families, "Annual ORR Reports to Congress - 2003," (2003), available here: http://archive.acf.hhs.gov/programs/orr/data/arc_03.htm, which states: "[m]ost Unaccompanied Alien Children (UAC) in ORR's care are Central American males between the ages of 15 and 17 who come to the U.S. to join family and work. They are fleeing poor socioeconomic conditions, gang victimization, abuse, neglect, abandonment, or other trauma in their home countries." Prior to FY 2003, the UAC program did not exist. See also reporter Melissa del Bosque's stories for The Texas Observer: "Children of the Exodus" (4 November 2010) at http://www.texasobserver.org/children-of-the-exodus/ and "Central America's Lost Boys" (30 April 2012) at http://www.texasobserver.org/central-americas-lost-boys/.

[3] U.S. State Department, "U.S. Laws on Trafficking in Persons," http://www.state.gov/j/tip/laws/

[4] Prior to 1997, UAC were placed in Immigration and Naturalization Services detention facilities with adults, where a number of abuses occurred. A class action suit was brought, and after nine years of litigation, the Flores Settlement Agreement was negotiated. Under it, UAC must be transferred from adult care within 72 hours to the "least restrictive setting appropriate" in facilities meeting state standards for children in foster care. Paramount to their care is "dignity, respect and special concern for their particular vulnerability as minors," as is assuring their appearance at immigration courts. Facilities for UAC must, at a minimum, have: safe and sanitary conditions, toilets and sinks, drinking water and food, medical assistance in cases of emergency, adequate temperature control and ventilation, adequate supervision to protect minors from others, contact with family members, and separation from unrelated adults. For those who have special needs, including health, mental or physical conditions requiring special services or treatment by staff, those needs must be met whenever possible, in licensed programs. While only 25 of these shelters existed in 2005, we have over 90 today.

See Flores v. Meese - Stipulated Settlement Agreement (1997) at https://www.aclu.org/immigrants-rights/flores-v-meese-stipulated-settlement-agreement.

[5] See Cavendish, Betsy and Cortazar, Maru, "Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors," Appleseed Foundation (2011), available at: http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf.

See also Kennedy, Elizabeth, "US immigration bill: silence on the deportation of children," openDemocracy 50.50 (2013), available at: http://www.opendemocracy.net/5050/elizabeth-kennedy/us-immigration-bill-silence-on-deportation-of-children. Since 2005, over 150,000 unaccompanied child migrants from Mexico have been deported in contradiction of U.S. law, as laid out in the TVPRA and the 1997 Flores Settlement Agreement.

[6] Mexican officials assert their ability to provide all services and support that Mexican unaccompanied minors need and thus ask that their youth be repatriated as quickly as possible per these agreements. However, their statements clash with overflowing orphanages in Mexican border towns and accounts of these youth being targeted for both drug and human trafficking (see del Bosque 2010). Then, despite assumptions by Mexican and US officials that these minors have families willing to support them, my conversations with advocates lead us to believe that as many as 20 percent of unaccompanied minors lived on the streets prior to emigrating and will once again find themselves destitute if deported.

See Ryan, Kevin, "Stop the Murders of Street Kids," Huffington Post (2012), available at: http://www.huffingtonpost.com/kevin-m-ryan/honduras-children-violence_b_1574086.html.

[7] The Homeland Security Act amended the United States Code in 6 USC §279(g)(2) to define UAC as those who: (a) have no lawful immigration status in the US; (b) are under the age of 18; and (c) have no parent or legal guardian either present or available to provide care and physical custody in the U.S.

[8] The Northern Triangle is composed of the three Central American nations of El Salvador, Guatemala and Honduras who share economic, political and social characteristics. In 1991, Guatemala and El Salvador signed a free trade agreement, which Honduras signed in 1992. While the Northern Triangle originally designated the free trade area the three share, it is now known as the world's deadliest region because of its high homicide and crime rates. To learn more, you can read ICESI University's background note here: http://www.icesi.edu.co/blogs/icecomex/2008/10/17/triangulo-norte-centroamericano/.

[9] See Immigration Task Force, "Issue Brief: Child Migration by the Numbers," Bipartisan Policy Center (2014), available at: http://bipartisanpolicy.org/library/research/child-migration-numbers.

[10] Prior to this year, neither Customs and Border Patrol (CBP), who apprehends UAC, nor ORR, who houses them, willingly released their numbers. In an unexplained move, CBP officials changed course in 2014 and became much more vocal about the increasing number of child arrivals. They have consistently estimated to the public that from 60,000 to 90,000 children will arrive, but they are not differentiating between accompanied and unaccompanied child migrants or Mexican and non-Mexican children. Differentiation is critical since accompanied and Mexican children rarely enter ORR care, meaning those who have entered ORR care in 2014 are likely markedly lower than the recently released 47,000 number.

[11] As was painstakingly portrayed in the film, Under the Same Moon

(2008), even young children may decide to migrate without telling their families. It could be days before families know where their children are and how to get them.

[12] 54 percent of KIND's Central American children had one parent living in the U.S. UNICEF found that children in kinship care in Africa were more vulnerable to increased poverty, abuse, neglect, exploitation, and unequal treatment in the household. See Roby, Jini L. "Children in Informal Alternative Care, Discussion Paper," UNICEF Child Protection Section. June 2011. UCCSB additionally found that children with family in the U.S. are vulnerable for two reasons: they are more likely to lack a stabilizing element in the home and can become targets for extortion since gangs are able to acquire lists of who receives remittances.

[13] Before concluding this investigation, I will do this far each child's story. I am hoping to create a public database of these articles and several interactive maps of the violence.

[14] 46.7 percent of girls list this reason, compared to 30.5 percent of boys. Nearly all children younger than 12 years old list reunification as a motivating factor.

[15] See Valencia Caravantes, Daniel, "La legión de los desplazados [The legion of the Displaced]," El Faro (2012), available at http://www.especiales.elfaro.net/es/salanegra_desplazados/.

[16] Central American University's Institute of Public Opinion (IUDOP) 2012 Survey (Spanish), Instituto Universitario de Opinión Pública Universidad Centroamericana "José Simeón Cañas" San Salvadar, El Salvador, Diciembre de 2012; available at http://www.uca.edu.sv/publica/iudop/archivos/informe131.pdf.

[17] Servir, proteger, y sobrevivir, March 27, 2011 available at: http://www.elfaro.net/es/201103/fotos/3775/ Castro, Ángela, "Mareros torturan y matan a policia en Soyapango," Elsalvador.com, January 26, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8509092 Hernández, Carlos, "Al menos 37 asesinatos se reportan durante el fin de semana," La Página, February 16, 2014, available at: http://www.lapagina.com.sv/nacionales/92873/2014/02/16/Al-menos-28-asesinatos-se-reportan-durante-el-fin-de-semana

[18] UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection (2014), available at: http://unhcrwashington.org/children

[19] Dara Lind, "The Central American migrant crisis isn't just a US problem, in one chart," Vox, June 24, 2014, available at: http://www.vox.com/2014/6/24/5839236/the-central-american-migrant-crisis-isnt-just-a-us-problem-in-one

[20] Flores, Ricardo. "Quien protege a Monica? [Who protects Monica?]" La Prensa Grafica 7 July 2013 http://www.laprensagrafica.com/-quien-protege-a-monica

[21] Ramirez, Sigfredo. "El pais de los huerfanos [The country of orphans]." La Prensa Grafica 6 April 2014. http://www.laprensagrafica.com/2014/04/06/el-pais-de-los-huerfanos

[22] Numerous reports have documented widespread impunity in El Salvador, including Amnesty International, Human Rights Watch, the United Nations Office of Drug and Crime, the United States Department of State.

[23] While one gang member will typically request a girl to be his girlfriend, after a certain period of time, she is viewed as property of the entire gang. She essentially becomes a prostitute for the gang.

[24] Alerta Angel Desparecido, Twitter, available at: https://twitter.com/AlertaAngelsv.

[25] La Prensa Grafica, "La tragedia de todo un pais," June 15, 2014, available at: http://www.laprensagrafica.com/2014/06/15/la-tragedia-de-todo-un-pais

La Prensa Grafica, "Asesinan a pandillero deportado de EUA en Tejutla," May 21, 2014, available at: http://www.laprensagrafica.com/2014/05/21/asesinan-a-pandillero-deportado-de-eua-en-tejutla

Elsalvador.com, "Matan a una mujer por pleito entre pandilleros," April 29, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8741481.

El Salvador.com, "Matan a pandillero deportado de EE. UU.," January 24, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8503815.

[26] Kennedy, Elizabeth, "'No place for children': Central America's Youth Exodus" InSight Crime (2014), available at: http://insightcrime.org/news-analysis/no-place-for-children-central-americas-youth-exodus .

[27] This trend is concerning in historical perspective, because the United States provided funding and training to Mexican migration officials to return more Central Americans to their home countries when people from those nations fled civil war in the 1970s, 1980s, and 1990s.

[28] Through May, only four Salvadoran children have been deported by plane from the U.S., as reported through private communication with El Salvador's government. This number is likely to increase substantially if the U.S. decides to expedite immigration proceedings for child migrants. See Gilha, Lori Jane and Amin, Sameen, "El Salvador ambassador: US proposed child-only migrant flights," Al Jazeeera Americo (2014), available at: http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/6/25/u-s-proposed-childonlymigrantflightssayselsalvadorambassador.html.

For the month of July, I will spend the day at the airport four days a week to conduct interviews with Salvadoran children deported by plane from Mexico and the U.S. I have not done so earlier because the airport is over an hour from the capitol city where I reside, and I always received no notice or too little notice to arrive in time to complete interviews.

[29] An equal number of girls as boys traveled until age 14, and then sometimes four times as many boys traveled as girls at ages 15, 16, and 17.

[30] Outside of California and Texas, children and their families were rarely able to name cities within the states. Thus, while they knew where they wanted to go in the first two states, they were sometimes unaware that Virginia, for example, was not the name of a city.

[31] Closed questions are those with simply a yes or no answer, and open questions are those that require elaboration and individual response.

[32] In 2009, the Salvadoran government passed a new law for child protection: the Integrated Protection Law for Childhood and Adolescence (LEPINA). See Asamblea Legislativa de El Salvador, Centro de Documentación Legislativa, April 16, 2009; available at: http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia.

It created a new governing body for this purpose, the National Council for Childhood and Adolescence (CONNA) but did not terminate the existence of the previous National Institute for Childhood and Adolescence (ISNA) or make clear what each organization's role would be under the LEPINA. Whereas ISNA used to perform the intake interviews with deported children, no one from either office currently attends return centers. Because migration officials fear they lack expertise to adequately meet children's needs and vulnerabilities, they place the child with her waiting family member as soon as she disembarks from the bus. They believe this is in the best interest of the child. As a result, neither I, the migration officials, nor anyone else completes an interview with the child alone. This is problematic for a number of reasons, not least of which is that the child is not effectively screened for past abuse, mistreatment, or negligence.

[33] In February 2013, Kids in Need of Defense (KIND) released The Time is Now (at http://www.supportkind.org/en/about-us/resources) which drew upon a random sample of over 100 UAC cases they represented. It began: "[a] child migrating alone signals a much deeper protection issue that has caused them to leave their homes, family, and community." It pointed to the lack of "robust national child protection systems" in the Northern Triangle, which resulted in most of their child clients fleeing gang violence or long-term domestic violence by their caregivers. Children reported that police could not be trusted to protect them, moving within the country or region did not offer protection, having family in the U.S. and receiving remittances make one a target for extortion, and not paying extortion demands could result in serious harm or death.

[34] See UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection (2014), available at: http://unhcrwashington.org/children.

In March, UNHCR released their results of extensive interviews with 404 detained UAC. Among UAC, they found that no less than 58 percent were forcibly displaced and potentially in need of international protection: 48 percent had personally experienced cartel or gang violence, and 22 percent had survived abuse in the home. UNHCR also reported that since 2009, more and more Central American adults and children have been requesting asylum in the United States and in Belize, Costa Rica, Mexico, Nicaragua, and Panama, where their requests have increased by a combined 432 percent.

[35] See "Los 10 principales sitios donde taxistas no van por miedo [The top 10 places where taxis wan't go because of fear]" El Diario de Hoy (2014), available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47673&idArt=8602296.

[36] See "Hallan cadaveres de dos jovenes [Two youths' bodies found]," El Diario de Hoy (2014), available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8706438.

[37] See also University of California, Hastings Center for Gender and Refugee Studies and Kids in Need of Defense, A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System, (2014), available at: http://www.supportkind.org/en/about-us/resources. In February 2014, KINO and UC-Hastings teamed to release a report on challenges UAC face while navigating the U.S. system. In calling for legal and policy reforms to ensure basic protections for UAC, it also highlighted that while many UAC seek to reunite with family once in the U.S., their migration is frequently motivated by violence rather than family separation.

[38] See United States Conference of Catholic Bishops (USCCB), Mission to Central America: The Flight of Unaccompanied Children to the United States, (2013), available at: http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf.

Based upon three weeks in the Northern Triangle, while this report noted the absence of economic and educational opportunities, the strong desire to reunify with family, and a breakdown in the rule of law so significant that all three nations have a "culture of fear and hopelessness." At the macro level, it discussed increasing interaction between Central American gangs and drug cartels, partially evidenced by the U.S. Department of Treasury's decision to designate MaraSalvatrucha 13 as a significant Transnational Criminal Organization in October 2012 (See U.S. Department of Treasury, "Treasury Sanctions Latin American Criminal Organization," Executive Order (E.O.) 13581.). It then commented on regional skepticism around the gang truce and noted that whether or not it actually existed, it did demonstrate the gangs' emerging roles as political actors, capable of sitting at the table with government officials and controlling crime rates.

See Archibald, RC, "Gangs' Truce Buys El Salvador a Tenuous Peace" New York Times 27 August 2013 and Farah, Douglas, "What the Kids are Fleeing: Gang Violence Spikes in Central America," Fusion (2014), available at: http://fusion.net/justice/story/guns-drugs-money-anti-socials-form-social-order-807005.

I have yet to meet any researcher or citizen in El Salvador or Central America that has faith in the truce. They often indicate that even when homicide rates were initially halved, disappearance, extortion, kidnapping, and robbery increased. Then, many large clandestine graves are being found this year and last so that many speculate they were just better at hiding the bodies. Finally, homicide rates now exceed pre-truce levels. In May, 401 people were murdered, which is a daily average of 12 in a nation of only six million people.

[39] See Jones, Jessica and Podkul, Jennifer, Forced From Home: The Lost Boys and Girls of Central America, Women's Refugee Commission (2012), available at: http://womensrefugeecommission.org/forced-from-home-press-kit.

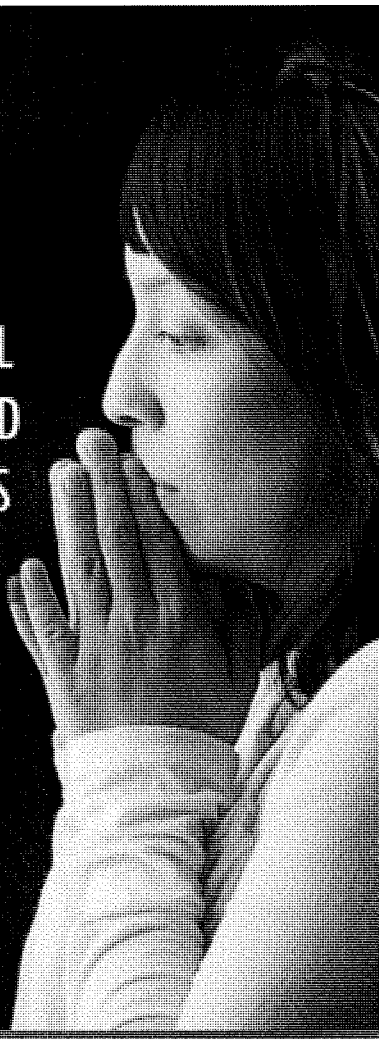
Based upon interviews with 146 detained child migrants from Mexico and the Northern Triangle, The report found that the extent and scale of rising crime, systemic state corruption and entrenched economic inequality were culminating, allowing for growing influence of gangs and cartels, which most listed as their reason for leaving. Specifically, many were threatened by gangs to join or die, saw dead bodies regularly, and lived in constant fear. They were so desperate for safety, that even after enduring horrendous journeys through Mexico that often included abuse, assault, inconsistent access to food or water and witnessing or experiencing death, drowning, kidnapping, maiming or rape, most said they would do it again. The report surmised that until these countries change substantially, the upward trend would become "the new norm," which has proven true in the two years that followed.

ATTACHMENT C

MEXICAN AND CENTRAL AMERICAN ASYLUM AND CREDIBLE FEAR CLAIMS

Background and Context

By Sara Campos, Esq. and Jessica Emerman, Esq.



AMERICAN IMMIGRATION COUNCIL

Special Report | May 2014

MEXICAN AND CENTRAL AMERICAN ASYLUM AND CREDIBLE FEAR CLAIMS
BACKGROUND AND CONTEXT

ABOUT THE AUTHORS

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ABOUT THE AMERICAN IMMIGRATION COUNCIL

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INTRODUCTION AND SUMMARY

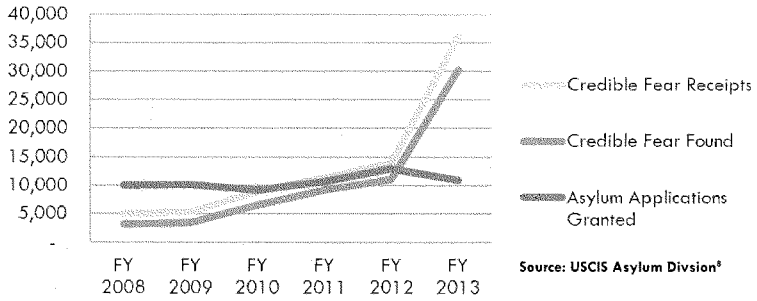
Carlos Gutierrez, a successful businessman in Chihuahua, Mexico, and the married father of two, refused to comply with a criminal cartel's monthly demands of $10,000. In retribution for his refusal and as an example to other businessmen, his feet were cut off and he was left for dead. According to his former attorney, that kind of "organized crime is not possible without the complicity of the municipal, state and federal police."[1]

Gutierrez's friends rushed him to the hospital. He was later able to make his way to the United States to seek asylum and turned himself in to border agents in El Paso.[2] After passing a credible fear screening, he was placed in removal proceedings in immigration court, where his asylum case could be decided. His case was later administratively closed[3] as a matter of prosecutorial discretion.[4] The immigration judge's order leaves Mr. Gutierrez in a precarious situation—a legal limbo with no permanent right to remain in the country and with no decision on his asylum claim unless removal proceedings are reopened.

Gutierrez's case is just one of the thousands of asylum requests that Mexicans and Central Americans have presented along the U.S.-Mexico border in recent years. As described more fully below, persons seeking admission to the U.S. at a port of entry or near the border who express a fear of return to their countries must be interviewed to determine whether there is a significant possibility that they can establish persecution or a fear of persecution before an immigration judge. If the applicant meets this "credible fear" standard, the case proceeds to a removal hearing in immigration court. There the applicant may apply for asylum or other protections from removal based on persecution or torture. If the applicant cannot meet the initial threshold, he or she is deported immediately under an order of expedited removal.[5]

Recently, the credible fear process has become the target of political attacks. Detractors argue that it is too easy to obtain favorable credible fear determinations and avoid deportation. They point to rising credible fear claims as evidence that people are abusing the system. According to the Acting Chief of the U.S. Citizenship and Immigration Services (USCIS) Asylum Division, there were an "unprecedented number of credible fear referrals" during Fiscal Year (FY) 2012.[6] In draft Congressional testimony in mid-2013, USCIS Associate Director Joseph Langlois noted that two-thirds of such claims came from Salvadorans, Hondurans, and

Credible Fear & Asylum FY 2008 - FY 2013



Source: USCIS Asylum Divsion[8]

Guatemalans, most of which were presented in the Rio Grande Valley in South Texas. He attributed the rise "to reports of increased drug trafficking, violence and overall rising crime in those countries."[7]

While the numbers are rising, political attacks are made without reference to how the credible fear and asylum processes actually work, to escalated violence in Mexico and Central America, and to the barriers to obtaining asylum in the United States. This paper addresses these issues, summarizes the concerns and experiences of numerous advocates in the field, and concludes that the credible fear and asylum process poses obstacles for applicants that far surpass the supposed abuses claimed by its detractors.

RECENT ATTACKS ON ASYLUM SEEKERS USING THE CREDIBLE FEAR PROCESS

Prior to 1996, persons seeking asylum in the United States could apply directly to the immigration service or, if they were charged with immigration violations, they could apply for asylum in the context of deportation or exclusion proceedings in immigration court. The asylum process was essentially the same regardless of whether someone was intercepted at the border, deemed inadmissible while attempting to enter the United States at an airport or other port of entry, or arrested and placed in proceedings after many years in the U.S.

In 1996, however, Congress enacted a streamlined removal procedure known as "expedited removal" (explained below that allows immigration officers to issue orders of removal under certain circumstances without affording the person an opportunity to appear before an immigration judge. If applicants establish a credible fear of persecution, they are allowed to apply for asylum in removal proceedings. This process has been criticized as both too harsh and too lenient. Detractors claim that increased claims come from ineligible individuals who apply and subsequently disappear.[9] Yet, as country conditions deteriorate in Mexico, Central America, and other parts of the world, more people arrive at the border intending to apply for asylum. Upon stating their intent to apply for asylum, they are taken into custody, and may languish in detention, often in remote facilities. And if released from detention, immigration courts are so under-resourced that individuals must wait for years for the merits of their cases to be adjudicated.

In August 2013, House Judiciary Committee Chairman Bob Goodlatte (R-VA) called the credible fear process a "loophole." Contrary to the actual numbers, he claimed Mexicans with fraudulent claims were responsible for the increase.[10] Conservative media joined the fray, pointing to increased numbers of asylum seekers from Mexico and Central America and calling it an "effective tactic" to remain in the U.S., and suggesting that many asylum claims are fraudulent.[11] The release from detention of young DREAMer activists in the summer of 2013 after passing credible fear interviews also "provoked the ire of House Republicans, drawing attention to a broader policy that has led to large increases in the numbers of migrants gaining entry by requesting asylum at the southwest border."[12]

In response to these concerns, the U. S. House of Representatives Judiciary Committee held heorings in December 2013 and February 2014 provocatively entitled, "Asylum Abuse: Is It Overwhelming Our Borders?" and "Asylum Fraud: Abusing America's Compassion?"[13] The premises of those hearings were that criminals were "gaming" the system by claiming a credible fear of persecution and that such abuse and fraud in the credible fear process warranted tightening of the process.[14]

Answering the claims of Representative Goodlatte, Eleanor Acer, Director of the Refugee Protection Program at Human Rights First, testified that preventing abuse of the asylum system is critical. But, as she pointed out, U.S. authorities already have a range of effective tools to address abuses. Furthermore, Congress and the Obama administration could take further steps to ensure the integrity of the asylum process, including providing more resources to the asylum office and immigration court system to prevent backlogs. Equally important is lessening the "many barriers and hurdles" that Congress has placed in the path of asylum seekers over the years."[15]

The reality is that the entire credible fear and asylum process, from refugee attempts to enter and apply for asylum through subsequent interviews and hearings, is replete with hurdles.

More recently, USCIS also responded to the increase in credible fear claims and perceptions of abuse. In February 2014, without requesting public comment or providing notice, the USCIS revised its credible fear instruction materials for asylum officers.[16] Applicants now must "demonstrate a substantial and realistic possibility of succeeding" in their cases. Many advocates fear that the new guideline undermines the role of a credible fear finding as a threshold determination. According to Professor Bill Ong Hing, "[A] fair reading of the Lesson Plan leaves one with the clearly improper message that asylum officers must apply a standard that far surpasses what is intended by the statutory framework and U.S. asylum law."[17]

The reality is that the entire credible fear and asylum process, from refugee attempts to enter and apply for asylum through subsequent interviews and hearings, is replete with hurdles. In the words of Paul Rexton Kan, Associate Professor of National Security Studies at the U.S. Army War College, "enduring the asylum process is not easy."[18] The obstacles to asylum stem from the government's failure to follow laws, rules, and policies, as well as inadequate funding for the administrative bodies and courts that hear asylum claims.

NAVIGATING THE ASYLUM PROCESS

The General Rules for Applying for Asylum

In 1980, President Ronald Reagan signed the Refugee Act into law,[19] thereby bringing the United States into compliance with the 1967 United Nations Protocol Relating to the Status of Refugees.[20] Under the act, in order to apply for asylum, an individual must be present in the United States and demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group.[21]

An individual can apply for asylum affirmatively or defensively.[22] If immigration officials have never apprehended the individual, he or she may apply before the USCIS Asylum Office within one year of entering the United States.[23] If the individual is not granted asylum, the case is referred to the immigration court for removal proceedings under the Executive Office of Immigration Review (EOIR).[24] The individual may renew the asylum request in court and also apply for withholding of removal and relief under the Convention Against Torture (CAT).[25] Both withholding of removal and CAT have higher burdens of proof than asylum. And unlike asylum,[26] these remedies do not offer a path to permanent resident status, as is offered to asylees after one year of residence.[27]

Individuals may also apply for asylum defensively after they have been apprehended by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) agents and are placed in removal proceedings in immigration court.[28] Individuals may be deportable unless they can show eligibility for a remedy such as asylum, withholding of removal, or relief under CAT. Prior to 1997, individuals with asylum claims arrested at the border or in the interior of the country could present their cases at adversarial hearings before immigration judges.

The Special Expedited Removal Rules for Applying for Asylum

In 1996, as part of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA), [29] Congress enacted a new provision called "expedited removal." It allows the summary expulsion of noncitizens who have not been admitted or paroled into the U.S., have been in the U.S. for less than two years, and who are inadmissible because they presented fraudulent documents or have no documents. Unless they express a fear of persecution or torture upon return to their home countries or indicate an intention to apply

for asylum, such individuals may be removed right away and will be barred from returning to the U.S. for at least five years (but often much longer).[30]

Initially, the former Immigration and Naturalization Service (INS) applied expedited removal only to individuals arriving at ports of entry. However, over time, the Department of Homeland Security (DHS) announced that it would apply expedited removal along the entire U.S. border, including all coastal areas adjacent to the country's maritime borders.[31] Currently, the government applies expedited removal to apprehensions made within 100 miles of the border.

In addition to expedited removal, IIRIRA also instituted two provisions that affect and bar asylum. The first is a one-year filing deadline.[32] With limited exceptions, an applicant who does not file for asylum within a year of entering the country is barred from doing so.[33] The second bar is Reinstatement of Removal. If an individual is removed or voluntarily leaves under an order of removal and subsequently reenters illegally, he or she faces the reinstatement of the previous removal order.[34] Upon return, DHS bars the individual from asylum and other remedies except for withholding of removal or CAT protection.[35]

Currently, the government applies expedited removal to apprehensions made within 100 miles of the border.

As explained below, the expedited removal process involves three agencies within DHS: 1) CBP, which makes the initial determination of removal and refers an individual to a 2) USCIS asylum officer who conducts an interview to determine whether the individual has a credible or reasonable fear of persecution; and 3) ICE, which detains the individual and makes parole decisions. Individuals who are not deemed "arriving aliens,"[36] are eligible for bonds, and an immigration judge within EOIR, a branch of the Department of Justice, may review bond amounts. In all of these cases, an immigration judge determines eligibility for relief from removal.

The Initial Encounter with Immigration Officers

Immigration officers must interview individuals who are subject to expedited removal.[37] If an individual expresses an intention to apply for asylum or expresses a fear of persecution or torture upon returning to his or her home country, the inspection officer must refer the individual to a USCIS asylum officer for a credible fear interview.[38] Regulations mandate that inspection officers inform individuals of their rights and create a record of their statements.[39] If an individual requires interpretation, it must be provided.[40] In addition, individuals who wish to apply for asylum must be detained, subject to limited exceptions, during the credible fear process.[41]

The Credible Fear Interview

Credible fear of persecution is defined by statute as "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title."[42] Until recently, this standard was to be a preliminary threshold, designed as a fairly low bar due to its use as a screening mechanism. But USCIS has recently issued instructions to asylum officers to use a more rigorous standard that is more akin to the standard applied at merit hearings. The new instructions may prevent many asylum seekers from passing the credible fear stage and having their asylum claims fully considered in immigration court.

If the individual cannot demonstrate a credible fear of persecution or torture, she or he can ask an immigration judge to review the negative decision.[43] If the judge concurs with the prior negative decision, the individual has no right to appeal and must be removed from the United States.[44] If, due to a previous deportation or other bar, the individual cannot apply for asylum, but nevertheless expresses fear of persecution or torture, he or she can apply for withholding of removal or protections under the CAT. Asylum officers must interview such individuals to determine whether they have "reasonable fear" of persecution or torture.[45] If they pass that interview, they can bring their claims to immigration court and have them heard before a judge. If they do not pass the interview, they are summarily removed.[46]

The Process After the Credible Fear Interview

If the USCIS asylum officer issues a favorable determination of credible or reasonable fear, the officer issues a Notice to Appear (NTA) requiring the individual to appear in immigration court for removal proceedings.[47] While USCIS asylum officers must ensure that applicants understand the credible fear process,[48] they are not required to advise applicants on what follows their credible fear interviews, leaving individuals in the dark as to how to pursue their claims. After ICE files the NTA with the court, a removal hearing is held before an immigration judge. Asylum and other claims such as withholding of removal or relief under CAT can be heard in that proceeding.[49]

Release from Detention

Although detention of asylum seekers in expedited removal proceedings is mandatory,[50] it becomes discretionary as soon as individuals pass credible fear.[51] Due to inconsistent application of ICE's own policies and high bonds, however, asylum seekers may languish in detention for months, if not years, thus exacerbating post-traumatic stress and other

harms asylum seekers may have suffered in their own countries.[52]

In 2009, in an effort "to ensure transparent, consistent, and considered" determinations for arriving aliens seeking asylum, ICE issued parole guidelines. Effective January 2010, individuals with favorable credible fear determinations who can prove their identity and are not flight risks and do not pose a danger to the community, may be paroled from detention.[53] The guidelines only affect "arriving aliens," i.e., individuals who present themselves at a port of entry. Regulations allow such individuals to be paroled for urgent humanitarian or significant public interest reasons.[54] Immigration judges do not have jurisdiction to review ICE's parole decisions. Individuals subject to the expedited removal process who are not deemed "arriving aliens" (i.e., those who have been apprehended after entering the United States, but within 100 miles of the border), may ask an immigration judge to set a bond for their release.[55]

COUNTRY CONDITIONS DRIVE REFUGEES FROM MEXICO AND CENTRAL AMERICA TO THE U.S.

At the December 2013 House Judiciary Committee hearing, Ruth Ellen Wasem, Specialist in Immigration Policy at the Congressional Research Service, reported a "surge" in credible fear requests in FY 2013, noting that "a handful of countries lead the increase: El Salvador, Guatemala, Honduras, and to a lesser extent Mexico, India, and Ecuador...."[56] But as Ms. Wasem pointed out, "an increase in asylum or credible fear claims in and of itself does not signify an increase in the abuse of the asylum process any more than a reduction in asylum or credible fear claims signifies a reduction in the abuse of the asylum process."[57] From October 2010 to the present, USCIS data show that El Salvador, Guatemala, Honduras, and—in smaller numbers—Mexico have tended to be among the top five countries of origin of individuals presenting credible fear claims.[58]

Though the numbers of credible fear claims have increased and may create a strain on the adjudication system, the raw numbers are not enormous. Credible fear claims represent "a tiny portion of the millions of travelers who legally enter the country each year."[59] Moreover, the numbers of asylum claims in general have not reached the levels of the mid-1990s.[60] Nevertheless, the numbers are rising, and these increases are not surprising. Even the U.S. government concedes that these countries have abysmal human

rights conditions. U.S. State Department Reports on Country Conditions show that while the particularities may vary, each of these countries suffers from widespread institutional corruption; police and military complicity in serious crimes; societal violence, including brutality against women and exploitation of children; and dysfunctional judicial systems that lead to high levels of impunity.[61]

Central Americans began seeking asylum in the U.S. in 1980 due to civil wars that ravaged the region.[62] Their cases faced a decades-long history of wrongful practices and unfair asylum denials by the U.S. government. Salvadorans and Guatemalans have had to file several major lawsuits in order to obtain fair and equal treatment by immigration officials.[63] Recent claims from those countries arise from escalating gang violence, narco-trafficking, and the failure of judicial systems to institute justice.[64]

Mexico's increase in claims is largely due to violence by a combination of cartel, military, and government actors, accompanied by widespread judicial impunity.[65] Since 2006, when former President Felipe Calderon initiated a war on drugs, at least 130,000 Mexicans have been murdered and 27,000 have officially disappeared.[66] Former Secretary of State Hillary Clinton described Mexico as an "insurgency" that is "looking more and more like Colombia looked 20 years ago."[67] The murder of six members of the Reyes Salazar family, community activists in the Juarez Valley of the state of Chihuahua— "the deadliest place in Mexico" —and the flight of the remaining extended family to the U.S., illustrates the nature of violence in Mexico in recent years.[68]

STATE OF CREDIBLE FEAR AND ASYLUM PROCESS TODAY

In 2005, the U.S. Commission on International Religious Freedom (USCIRF) conducted a legally mandated study of expedited removal to determine whether the new procedure impaired U.S. obligations to asylum seekers.[69] The report concluded that some CBP agents dissuaded people from requesting asylum, did not record their fears of persecution, and did not refer them for credible fear interviews; immigration judges based decisions on "unreliable and incomplete" reports in the initial stages of the process; and asylum seekers were detained in jails and not released according to established criteria after they passed credible

fear interviews.[70] The report concluded that the procedure was replete with deficiencies and set forth numerous recommendations. Additional studies have also noted these problems.[71]

Many of those same flaws still plague the expedited removal system. During telephonic interviews conducted in February 2014[72] and in correspondence, advocates reported that asylum seekers face significant hurdles beginning with their initial encounters with CBP officers and continuing to their merit hearings in immigration court. We heard frequent complaints that CBP officers often dissuade people from seeking asylum, sometimes berating and yelling at them. Some advocates complained that clients were harassed, threatened with separation from their families or long detentions, or told that their fears did not amount to asylum claims.

> ***El Paso private immigration attorney:*** *"We've encountered people who say they expressed a fear of persecution and were told by CBP that the U.S. doesn't give Mexicans asylum, and they are turned back."*

> ***Florida non-profit organization attorney in facility where detainees are transferred from the border:*** *"CBP doesn't do its job and ask the right questions about fear of return. People are removed under expedited removal and then come right back because they are afraid. Then they are only eligible for a reasonable fear interview and withholding of removal and are detained for a long time."*

Other attorneys noted that CBP conducted initial interviews too rapidly, without confidentiality, and without properly interpreting interviews or translating documents back to applicants. The resulting discrepancies, such as erroneous birth dates, were later used against applicants in court. Many attorneys stated that they routinely saw identical boilerplate statements in officers' reports and that officers often failed to record asylum seekers' statements even though clients told attorneys they had provided specific information to the officers.

> ***El Paso attorney at non-profit:*** *"Judges look at discrepancies between the immediate interview at the port of entry and a credible fear interview. CBP and asylum officers speak Spanish but our clients speak indigenous languoges and little Spanish. They rarely get adequate interpretation."*

Similarly, even if an applicant is passed on for a credible fear interview, lack of resources and confusing policies reduce the

chances that an applicant may pass the threshold test. In our interviews, attorneys and advocates also complained that detained asylum seekers may wait from one to two months for credible fear interviews. An attorney in Harlingen reported that until recently waits were as long as five months. Attorneys in some locations such as El Paso and South Florida report waiting periods from three months to a year for reasonable fear interviews. Several advocacy organizations and a private law firm recently filed a class action lawsuit challenging the long delays in reasonable fear interviews for detained persons.[73]

Advocates also reported that credible fear decisions lack consistency and sometimes result in conflicting decisions on the same facts. In one case in El Paso, for example, a family reported the wife's brutal sexual assault to the police and subsequently received threats. The woman did not pass credible fear, but her husband did, even though his claim was based on the assault against her. A December 2013 *New York Times* story reported similar disparities in treatment of asylum claims based on identical facts. Amparo Zavala fled from Michoacan, Mexico with her extended family to escape cartel violence after a bullet was shot into their house. Two weeks later, Ms. Zavala and her daughter-in-law were deported while the rest of her family was allowed to remain and pursue their asylum claim.[74]

Advocates also reported that credible fear decisions lack consistency and sometimes result in conflicting decisions on the same facts

Even when a positive credible fear determination is made, there are reports of failure to actually file charging documents with courts. Applicants whose cases are delayed are at risk that they will be unable to file their asylum claim before the one-year filing deadline ends.

> ***Attorney with non-profit organization:*** *"There are jurisdictional issues. The asylum office won't take jurisdiction because there was a credible fear interview at the border, but ICE hasn't filed a notice to appear with the court. People are not told of the one-year deadline. That combined with the notice to appear not filed with the court, results in them missing the one-year deadline. They don't know where to file their applications and can't request a change of venue until proceedings are initiated."*

In some areas, advocates report that parole is currently denied to detained persons without regard to the factors listed in the 2009 parole memo. Parole practices change without explanation and are inconsistent between and even within detention facilities, sometimes for individuals who present the same facts.

> ***Attorney in AZ:*** *"Generally, people aren't getting paroled. A year ago, people provided information and identity docs to deportation officer and if there was a denial, reasons would be provided. Now people are routinely denied, even when people have stacks of corroborating documents."*

> ***Attorney in El Paso:*** *"Parole is discretionary, and they are denying anyone and everyone parole. We have heard that some deportation afficers have recommended parole for certain individuals and then get overruled. My last client paroled was in November 2013."*

Advocates in El Paso report that officers sometimes split families and their cases; some family members—usually mothers and children—are released under Orders of Supervision and may not undergo credible fear interviews while other family members—usually fathers —remain detained and are often denied asylum and deported. Attorneys in Texas and Arizona report that people who are eligible for bonds because they are not "arriving aliens" are ordered bonds ranging from $5,000 to $10,000 that are impossible for them to pay.

These problems are compounded by lack of access to counsel, and a myriad of other issues relating to limited resources in immigration courts. For example, advocates report long waiting periods for hearings. Merits hearings for non-detained asylum seekers are often scheduled years away, exacerbating family separations and/or precarious situations for families remaining in the home countries. Attorneys in El Paso report master calendar hearings scheduled 1-2 years away and merits hearings 1-2 years after that. An attorney with a non-profit organization in Chicago that has clients whose asylum cases started at the border reported that an immigration judge in Chicago has a 4½ year backlog.

Further, free or low-cost services are stretched thin because of the numbers needing representation. Asylum seekers are often held in or transferred to detention facilities where representation is unavoilable or limited. An attorney at a non-profit in South Florida reported an influx of detained female Central American asylum seekers transferred from the border, only a small number of whom can receive direct representation. Attorneys in El Paso and Berkeley have reported that they must file Freedom of Infarmation Act (FOIA) requests to obtain records of credible fear interviews for their clients.

Perhaps the most difficult issue of all, however, is the general hostility to many of the Mexican and Central American asylum claims currently being filed. Despite reports of horrific violence,

most Mexican and Central American claims continue to be rejected. Some Mexican journalists[75] and human rights activists[76] have been granted asylum, as have family members of law enforcement and union activists[77] and Central American family members of murdered or tortured persons.[78] But many claims asserted by Central Americans are based on forced gang recruitment, and many claims presented by Mexicans are based on violence, including torture and murder, resulting from resistance to extortion or kidnapping by cartels, military, government officials, and sometimes by a combination of all three. Those claims do not fit neatly within the ever-narrowing definitions established by the Board of Immigration Appeals (BIA) through its decisions, of political opinion or membership in a particular social group.[79]

While the numbers of asylum claimants from Central America and Mexico have increased, USCIS shows low numbers of affirmative asylum grants to Salvadorans, Guatemalans, Hondurans, and Mexicans from FY 2003 to FY 2012.[80] Likewise, immigration courts granted similarly low numbers of defensive asylum claims during those same years. In FY 2012, immigration courts granted asylum at rates of 6% to Salvadoran applicants, 7% to Guatemalan, 7% to Honduran, and 1% to Mexican applications.[81] These figures contrast with asylum grant rates of more than 80% to applicants from Egypt, Iran, and Somalia for the same period.[82]

While the numbers of asylum claimants from Central America and Mexico have increased, USCIS shows low numbers of affirmative asylum grants to Salvadorans, Guatemalans, Hondurans, and Mexicans from FY 2003 to FY 2012

The federal courts of appeal are not in agreement regarding the required showing for recent Central American and Mexican asylum cases[83], and despite horrific facts of persecution emanating from this region, they have reversed few BIA decisions denying relief. But some courts have rejected the BIA's narrow interpretation for eligibility for asylum, with one recent decision disputing the BIA's analysis of a particular social group for a Mexican police officer who had suffered persecution. The court even expressed wonder at why the U.S. government "wants" to deport him.[84] And some immigration judges have recognized refusal to submit to extortion by gangs as an expression of political opinion, particularly in the context of police involvement and the broader political context.[85]

Given the undisputed levels of violence in Mexico and Central America, it is understandable that its victims flee and seek asylum in the U.S. And while their cases may present complicated legal questions, those issues can only be answered through a fair process allowing asylum cases to be heard in court. Getting there requires the credible fear phase to operate fully and fairly and for its deficiencies to be recognized and remedied.

CONCLUSION

Asylum seekers in the expedited removal process must navigate a lengthy and complex labyrinth to have their asylum claims considered. And, as new waves of Mexican and Central American applicants raise claims, some lawmakers are attempting to politicize and attack the asylum process, irrespective of the relatively minor role credible fear plays in overall admissions or entries into the U.S.

When Congress instituted expedited removal, it created a procedure that was intended to operate rapidly without compromising U.S. obligations to protect refugees. That balancing of obligations, necessitated by Congress's decision to create a streamlined process, is often at the heart of allegations of abuse of the system. Human rights organizations have explained that the government already has tools at hand to combat fraud, and that these should be enhanced to make sure that fraud can be effectively identified and combated when it occurs. The courts and asylum offices desperately need additional resources to adjudicate claims in a timely manner. But the government also needs to ensure that officers in the agencies charged with implementing expedited removal and asylum strictly adhere to the regulations, policies, and laws that have been instituted. Otherwise, the government will fail in its obligations of offering protection to refugees.

ENDNOTES

[1] Priscila Mosqueda, "Exiled Mexican Seeking Justice Pedals for Justice," *Texas Observer*, November 9, 2013.

[2] Deborah Hastings, "Fleeing Wrath of Vicious Cartels, Record-Breaking Numbers of Mexicans Seek Political Asylum in the U.S.," *New York Daily News*, October 13, 2013.

[3] *Supra*, note 1.

[4] Administrative closure is one form of the exercise of prosecutorial discretion. It is an ICE policy intended to focus resources on immigration enforcement priorities. John Morton Memo re Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, Immigration and Customs Enforcement, June 17, 2011.

[5] Immigration and Nationality Act ("INA") §235.

[6] Memorandum from Ted H. Kim, Acting Chief of the Asylum Division, re Implementation of Credible Fear Determination Checklist Pilot, January 14, 2013.

[7] Alicia A. Caldwell, "Immigrant Asylum Requests on the Rise in the U.S.," *Associated Press*, July 16, 2013. Mr. Longlois' later submitted testimony that does not include these facts.

[8] Compiled from three charts: USCIS Asylum Division, "Asylum Applications Granted by Asylum Office FY 2008 – FY 2014Q2," "Credible Fear Found Rates by Asylum Office FY 2004 – FY 2014 Q2 (October 2003 – March 2014)," "CF Receipts 2004 – 2014 Q2." Because the processing of asylum cases may take a long time, the number of asylum cases granted each year may include applications that were filed in a previous year.

[9] Statement of Judiciary Committee Chairman Bob Goodlatte for the hearing on "Asylum Abuse: Is It Overwhelming Our borders," December 12, 2013.

[10] Press Release, "Goodlatte to Napolitano: Asylum Process Loophole Needs to Be Addressed," August 21, 2013.

[11] *Associated Press*, "Report Shows Modest Rise in Requests for Asylum," August 17, 2013; Joel Millman, "More Illegal Immigrants Ask for Asylum," *Wall Street Journal*, October 17, 2013. For a response, see Eleanor Acer, "Asylum and the Border: Setting the Record Straight," Human Rights First, August 14, 2013.

[12] Julia Preston, "Young Immigrants Protest Deportations," *New York Times*, August 22, 2013. See also Brian Skoloff, "Asylum Seekers at U.S., Mexico Border Double," *Huffington Post*, August 16, 2013. For recent restrictionist claims, See Dan Cadman, "Malfunctioning Asylum System Fosters Fraud, Executive action, agency inaction, and judicial activism at fault," Center for Immigration Studies, March 26, 2014).

[13] "Asylum Abuse: Is It Overwhelming Our Borders?" December 12, 2013; "Asylum Fraud: Abusing America's Compassion?" February 11, 2014.

[14] Statement of Judiciary Committee Chairman Bob Goodlatte for the hearing on "Asylum Abuse: Is It Overwhelming Our borders," December 12, 2013.

[15] Statement for the Record of Eleanor Acer, for the hearing on "Asylum Fraud: Abusing America's Compassion?" Dec. 12, 2013. Tools that currently exist to counter abuses include criminal prosecutions of immigration fraud rings. Kirk Semple, Joseph Goldstein, and Jeffrey E. Singer, "Asylum Fraud in Chinatown: An Industry of Lies," *New York Times*, February 22, 2014.

[16] John Lafferty, Release of Updated Asylum Division Officer Training Course (ADOTC) Lesson Plan, *Credible Fear of Persecution and Torture Determinations*, February 28, 2014.

[17] Memo from Bill Ong Hing to John Lafferty, Chief of the USCIS Asylum Division, re "*Lesson Plan, Credible Fear of Persecution and Torture Determinations*," April 21, 2014.

[18] Paul Rexton Kan, "Mexico's 'Narco-Refugees': The Looming Challenge for U.S. National Security," Strategic Studies Institute, June 22, 2012.

[19] Pub. L. 96-212

[20] The protocol is the principal international agreement affecting U.S. obligations to refugees. 19 U.S.T. 6223, T.I.A.S. No 6577, 606 U.N.T.S. 267 (1967).

[21] §208 of the Immigration and Nationality Act (hereinafter "INA"); 8 U.S.C. §1158

[22] U.S. Citizenship and Immigration Services, Obtaining Asylum in the United States, Last Reviewed/Updated March 10, 2011.

[23] INA §208; 8 USC §1158.

[24] 8 CFR §1208.14(c)(1)

[25] 8 CFR §208.14 and §208.16.

[26] 8 CFR §208.16(b); 8 CFR §208.17(a).

[27] INA §209; 8 USC §1159

[28] 8 CFR §1208.4 (c)(1).

[29] Pub. L. 104-208

[30] INA §235(b), 8 U.S.C. §1225(b), 8 CFR 235.3(b)(c); INA 241(c), 8 U.S.C. §1231(c), 8 CFR §241; INA §212(a)(9)(A) and (a)(9)C)(i), 8 U.S.C. 1182(a)(9)A) and (a)(9)(C)(i)

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[38] 8 CFR §235.3(b)(4).

[39] 8 CFR §235.3(b)(2).

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[41] 8 CFR §235.3(b)(2).

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American Friends Service Committee

Statement to the U.S. Senate Homeland Security and Government Affairs Committee, pertaining to its hearing: Ongoing Migration from Central America:

An Examination of FY2015 Apprehensions

Wednesday, October 21, 2015

As a Quaker organization with nearly 100 years of experience working to support the needs and aspirations of communities across the globe, the American Friends Service Committee (AFSC) has ample direct experience of the root causes of human migration, as well as the heartbreaking impacts of the broken, punitive, and unjust U.S. immigration system.

We at AFSC have been alarmed to see the continued heavy flows of vulnerable populations including unaccompanied children and families with children fleeing violence from the Northern Triangle countries of Guatemala, El Salvador and Honduras. Many migrate northward to Mexico and the United States, but many have also found themselves internally displaced in their home country or flee to other countries in Central America. Corruption, impunity and rampant violence are driving tens of thousands of the most vulnerable residents from their homes. Though we continue to see migration due to dire economic situations, many Central Americans are fleeing violence.

Though fewer unaccompanied children and families with children entered the US from Central America in FY 2015 than in 2014, this is due to interdictions of migrants in Mexico and Central America and not because fewer people are fleeing the Northern Triangle. We at AFSC are concerned that migrants interdicted in Mexico and deported to Central America at the behest of the US are not properly screened for protection needs and are often returned to deadly situations violating international law.

AFSC recognizes both the right to migrate and the right to remain in one's home country. It is crucial that the US recognizes these rights and examines its own contribution to the root causes of migration including poverty, violence, corruption and human rights abuses.

At AFSC we have seen how decades of free trade pacts such as the Central American Free Trade Agreement (CAFTA) have deepened poverty and increased inequality in Central America. Asymmetrical agreements like CAFTA allow for the easier flow of goods and a capital across national borders while the movement of people displaced by these same agreements has been restricted and criminalized. CAFTA devastated small farmers and producers as markets were flooded with heavily subsidized goods from the US. Production for export of goods such as African palm, sugar cane and beef have also displaced thousands of small scale producers from land previously used to produce food for local consumption.

Meanwhile, the US war on drugs on Central America has focused on militarized responses to drug flows including the use of militaries for law enforcement, leading to greater violence and human rights abuses in these countries. US security aid and arms sales to the countries of the Northern Triangle have also armed corrupt and abusive forces and are routinely diverted to criminal actors.

Repressive "iron fist" policies instituted throughout the Northern Triangle supposedly to fight crime have not reduced violence and in many cases have instead spawned greater violence and abuses by government forces. Urban youth are targeted by gangs for recruitment while at the same time criminalized and stigmatized by the government whether or not they are involved in illegal activities.

We urge this Committee to consider these factors as it weighs potential responses to immigration from Central America.

At AFSC we are also alarmed at the ongoing militarization of the US Mexico border, and have directly witnessed how for decades, border communities have borne the brunt of misguided enforcement policies that have undermined the quality of life for border residents. While recognizing that the immigration policy is in dire need of reform, Congress cannot continue to support costly, ineffective, and inhumane border enforcement policies as a panacea for addressing root causes of migration. By overburdening border communities with failed policy proposals, such as building walls, placing interior checkpoints in rural and urban communities, and increasing boots on the ground, residents of border communities must contend with increased civil and human rights abuses without proper recourses for accountability.

According to the Migration Policy Institute, "the nation has spent an estimated $186.8 billion ($219.1 billion if adjusted to 2012 dollars) on immigration enforcement" since the passage of the Immigration Reform and Control Act in 1986. A quadrupling of the number of Border Patrol agents to over 21,000, most of which are designated to the US-Mexico border, is part of that equation. U.S. taxpayers spend more on immigration enforcement agencies that on all other federal enforcement agencies – the FBI, DEA, ATF, U.S. Marshals, Secret Service – combined. In spite of this, FBI statistics demonstrate that in cities with populations of over 500,000 people, El Paso and San Diego consistently rank in the second and third spots as safest in the country.

At AFSC, we are also appalled that while the number of immigrants detained crossing into the United States is at historic lows, the number of immigrants perishing in the deserts continues to steadily rise. This is an indication that enforcement policies in place now force would-be migrants to make perilous journeys and cross through dangerous terrain. The over 6 million people living in border communities in California, Arizona, New Mexico, and Texas deserve policies that uphold their civil rights and protect their human dignity.

AFSC implores this Committee to adopt compassionate and effective immigration reforms that are grounded in the following principles:

- Develop humane economic policies to reduce forced migration
- Protect the labor rights of ALL workers

- Develop a clear path to permanent legal residency and a clear path to citizenship
- Respect the civil and human rights of immigrants
- Demilitarize the U.S.-Mexico border
- Make family reunification a top priority
- Ensure that immigrants and refugees have access to services

CWS statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs regarding its hearing "Ongoing Migration from Central America: An Examination of FY 2015 Apprehensions"

As the committee discusses border enforcement in the context of men, women and children fleeing Central America, Church World Service (CWS) urges all Senators to recognize our country's moral and legal obligations to provide access to protection to individuals seeking safety. Individuals are fleeing violence, gang conscription, trafficking and sexual exploitation in the Northern Triangle. From 1980 to 2013, the size of the Central American immigrant population grew nine-fold from 354,000 to 3.2 million.[1] Asylum requests by Guatemalans, Hondurans and Salvadorans fleeing to Mexico, Panama, Nicaragua, Costa Rica and Belize have increased by nearly 1200 percent since 2009.[2]

As the number of children and families seeking safety in the United States has risen in the past five years, the U.S. government has failed to recognize this as the refugee crisis that it is. Individuals seeking safety within the region and in the United States have clear and compelling protection concerns. In Honduras alone, murders of women and girls have increased by 346 percent, and murders of men and boys are up by 292 percent since 2005. The United States has moral and legal obligations under international[3] and U.S.[4] law to see that individuals seeking protection are not returned back into the hands of traffickers and others who seek to exploit them.

The Obama Administration's response to this refugee crisis has been to detain and deport children and families, in flagrant violation of international law. Policies that President Obama has touted as meant to "stem the tide" are no more than a race to the bottom in terms of human rights violations. While the United States is seeing fewer people seeking safety along our southern border, it is in not because people have stopped fleeing, or that the conditions have changed. It is because the United States has been working with Mexico and countries in Central America to militarize their borders and summarily deport individuals seeking protection. Mexico has apprehended more individuals, including children, than the United States, and is on track to increase its deportations by 70 percent.[5] This has directly resulted in migrants taking more dangerous routes to Mexico and individuals being targeted and even killed[6] upon return.

CWS is strongly opposed to any legislation that would exacerbate these callous and dangerous actions by rolling back protections provided by the Trafficking Victims Protection Reauthorization Act (TVPRA) or funding additional border militarization, whether in the United States, Mexico or Central America. The migration of families and individuals who make the journey to the United States to seek protections is completely legal under U.S.[7] and international[8] law. Deportations are exacerbating a cycle of desperation, making deportees even more vulnerable than when they initially fled the Northern Triangle, due to debt incurred along the journey, unemployment, the lack of housing, and the increased risk of threats, violence and extortion by gangs preying upon their situations.

CWS also urges members to consider the systematic and cyclical links between violence, lack of infrastructure and poverty. The dire economic situation and lack of employment opportunities force people to pursue migration as their only means to survive and provide basic necessities for their families. Instead of focusing on border militarization, members of the committee should support the State Department's investment in poverty reduction programs that provide job training and gang prevention programs for youth in communities most impacted by the control of gangs and organized crime groups, as a strategy to address the root causes of migration. Migration will continue so long as the region is plagued by corruption, human rights abuses by local authorities, militarization of police, high impunity rates, and weak institutions.

CWS encourages all Members of Congress to prioritize the protection of individuals who are in danger and seeking safety. This includes oversight to ensure that asylum processes are followed both in the United States and in Mexico so that vulnerable individuals are not returned back into harm's way. The United States must be a leader in refugee protection, and that means ensuring people seeking safety at our borders and our neighbors' borders have access to the asylum process. To dismiss the lives of Central Americans at our door, to encourage and assist Mexico to violate their own international obligations and domestic protection laws, is both immoral and inhumane. CWS is committed to working with the Senate, House, and Obama Administration to address these very real issues so that families in the Northern Triangle are able to grow and thrive without having to flee their homes, but that if they do have to seek safety elsewhere, they are not denied life-saving protection.

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COLUMBAN CENTER FOR ADVOCACY AND OUTREACH

Statement for the Record on "Ongoing Migration from Central America: An Examination of FY 2015 Apprehensions"

October 21, 2015

Senate Homeland Security and Governmental Affairs Committee

By Columban Center for Advocacy and Outreach

The Columban Center for Advocacy and Outreach (CCAO) appreciates the opportunity to submit this statement for the record. CCAO is the national advocacy office for the Missionary Society of St. Columban.

As the national advocacy office in the U.S. region, we stand in solidarity with marginalized people whom Columban missionaries serve in 15 countries throughout the world. Since our founding as a Catholic missionary society nearly 100 years ago, we have welcomed the stranger in our communities. Columban priests on the U.S.-Mexico border and in Catholic parishes in the Los Angeles region offer hospitality to undocumented immigrants, in accordance with Scripture, "For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me." (Matthew 25:35)

We believe family is at the heart of the Gospel, and at the heart of the communities we serve. In our work, we witness families who have made incredibly dangerous journeys in order to seek refuge in the United States. We also see families torn apart by subsequent detention and deportation practices, oftentimes sent directly back to the life-threatening situations they originally fled.

We are very concerned about the increasingly militarized policies at our border and in Mexico that have been proven ineffective, and even harmful to the local population in towns on the border. Columbans on the U.S.-Mexico border have witnessed the great suffering of migrants due to inhumane border security policies. At the Columban Mission Center in El Paso, Texas, we welcome migrants who come to the United States to escape suffering in their home countries, many of whom have legitimate asylum claims.

Rather than focusing on policies that strengthen border security, we must seek to identify the root causes of migration, and put resources toward addressing those issues in a productive, compassionate manner.

We also oppose harmful legislation to expand interior immigration enforcement efforts. These efforts include expanding immigration detention, the breaking down of trust between migrant communities and police by forcing state and local law enforcement officials to collaborate with immigration enforcement efforts, and decreasing protections and immigration relief for certain migrant groups. We join the faith community in unanimously opposing legislation that would roll back the bipartisan Trafficking Victims Protection Reauthorization Act.

We urge all members of Congress to reject proposals that separate families, further militarize the border, remove critical protections for those seeking refuge, and criminalize our immigrant

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brothers and sisters. In our Society-wide statement covering 15 countries where Columbans serve, the Missionary Society of St. Columban affirms our commitment to the dignity of all people, especially those who seek to migrate: "We believe that we are called to both serve the needs of migrants everywhere, and to address the root causes of migration so that people and their families have the choice to remain at home." We pray that Congress seeks productive policies that are compassionate. We implore you to support immigration measures that serve all members of our community, and respond to God's call to care for the "least of these" (Matthew 25:40).

Read more on the Columban position on migration here: http://www.columbans.co.uk/news/jpic-policy-statements-of-the-columban-missionary-society/.

If you have any questions about this statement, please contact Scott Wright, Director, at swright@columban.org or 202-635-5810.

Franciscan Action Network
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Statement of Franciscan Action Network to the U.S. Senate Homeland Security and Government Affairs Committee for the Hearing on October 21, 2015: Ongoing Migration from Central America: An Examination of FY2015 Apprehensions

Franciscan Action Network (FAN) expresses support for unaccompanied minors, individuals and families from Central America's Northern Triangle crossing the U.S. southern border seeking refuge from violence in their home countries. This vulnerable population should be treated as asylum seekers and not be stopped at the border and deported. As refugees, they should not be placed in detention as they pursue the asylum process.

The numbers of these refugees have decreased in 2015, not because of improved conditions in their home countries, but primarily because of interdictions at the Mexico/Guatemalan border. During the past 15 months the United States government has provided Mexico with millions of dollars to stop these refugees from reaching our country's border, thus forcing vulnerable people to go back to violence in El Salvador and Honduras. Their fear is real, since deportation from the United States has resulted in at least 83 deaths in the past year with the number predicted to be higher given individuals deported from Mexico at the request of the United States. Interdiction is not a solution to this humanitarian situation. It runs counter to the moral and humane values that we hold as a country.

FAN urges our government to address the root causes of violence in Central American, to end its support of interdiction at Mexico's southern border, and to protect these refugees and treat them as asylum seekers. Congress and the Administration must uphold national and international laws that protect refugees and due process for asylum seekers

Friends Committee on
National Legislation
A Quaker Lobby in the Public Interest

Friends Committee on National Legislation's Statement to the U.S. Senate Homeland Security and Government Affairs Committee, pertaining to its hearing:
Ongoing Migration from Central America: An Examination of FY2015 Apprehensions

Wednesday, October 21, 2015

Quakers seek to answer to that of God in each and every person, and the Friends Committee on National Legislation is especially called to act with openness to refugees, asylum seekers, and victims of trafficking. Individuals, children, and families in crisis throughout the Northern Triangle and fleeing from unimaginable gang and state violence are particularly deserving of protection.

Enforcement will not solve this humanitarian crisis, nor will it prevent people from fleeing for their lives. The United States must act quickly in the short term to address the safety and legal needs of those seeking safe-haven, while also addressing the root causes of violence in Central America. Any effective long-term response must incorporate a radical shift in U.S. policies toward the region.

Increasing the deportations of children and other migrants, along with increased military aid to weakened institutions, has only proven to make situations worse. In fact, the gang violence that is causing many families to flee is a direct result of irresponsible U.S. deportation and foreign policies. Central American gangs (MS-13 and the 18th Street Gang) originated on the streets of Los Angeles, California, formed by migrants who fled the U.S.-funded civil wars of the 1980s. State institutions in Honduras, Guatemala, and El Salvador, significantly weakened by the civil wars, were ill-prepared to handle a flood of deportees spurred by the so-called "war on drugs", allowing current gangs in Central America to flourish.

Today these same countries, fortified by U.S. funding, are repeatedly turning to militarized security programs to address gangs and organized crime. Yet within the context of weak state institutions, rampant corruption, and impunity, these "security" measures only breed more violence and insecurity in the region. The U.S. should instead invest more in strengthening judicial systems, promoting journalistic freedoms, and creating spaces for local civil society members to hold their own governments accountable.

The fear of returning home is credible. Expedited procedures used to deport asylum seekers from the United States has already resulted in 83 deaths accounted for in the past year. The number is predicted to be much higher including individuals deported from Mexico at the behest of the U.S.-led interdiction program, another example of a deeply flawed enforcement heavy approach.

There is an opportunity to address deep-seeded problems in our region, but proposed and enacted enforcement only policies will only repeat past mistakes. Beefed up border security, weakened legal protections, and expedited deportations will only add to the suffering of traumatized refugees.

Children and families do not want to leave their homes. In the long term, the United States must pursue sound policies that make it safe for them to build a life in their home communities. In the short term, Congress and the Administration must uphold U.S. and international laws that protect refugees' and asylum seekers' due process and right to seek safe haven.

FRIENDS COMMITTEE ON NATIONAL LEGISLATION
245 2ND STREET NE • WASHINGTON, DC 20002 • (800) 630-1330 • FCNL.ORG

Statement for Homeland Security and Governmental Affairs Hearing
Ongoing Migration from Central America: An Examination of FY2015 Apprehensions
October 21, 2015

As women religious we take seriously the gospel call to welcome the stranger and care for those in need. We are committed to the precepts of Catholic Social Teaching that remind us that the dignity of the person is at the core of our vision of a moral society. Catholic sisters have a long history of welcoming immigrants and healing, housing, and educating families and children in need.

We were heartened by the words and actions of Pope Francis during his recent visit to the United States. The Holy Father touched the hearts of many and challenged us all. He was clear about how we should treat our immigrant sisters and brothers: We should "not [be] fearful of foreigners, because most of us were once foreigners." He encouraged Members of Congress to respond to immigrants "in a way which is always humane, just, and fraternal." We sincerely hope that our legislators have not forgotten his universal call for justice and care for people on the move.

We are particularly concerned about the subject of this hearing because it goes to the very heart of our faith and the principles upon which our national community is built. We are pleased to see that it is of concern to this committee as well. We hope that your concern will translate into action to address the conditions in Central America that force families and children to leave their homes and the inadequacies of our own immigration system.

We note that the situation along our southwest border has changed considerably over the last twelve months. Apprehensions of both family units and unaccompanied children have fallen by almost half. Recently, Homeland Security Secretary Jeh Johnson told the convention of the Congressional Hispanic Caucus Institute that only about 331,000 illegal immigrants were caught on the border in fiscal year 2015. That was the lowest number since 2011.

However, we fear that this is not due to improving conditions in Central America's northern triangle, but rather to dramatically increased interdictions in Mexico and at the Guatemala-Mexico border. According to a September study by the Migration Policy Institute (MPI), *Migrants Deported from the United States and Mexico to the Northern Triongle: A Statistical and Socioeconomic Profile*, Mexican apprehensions and deportations of Central Americans from the Northern Triangle have risen dramatically over the past year. Apprehensions increased by 70% from 2014 to 2015 and deportations of Central American children from Mexico are up 50% over the same period.

Interdiction is not a solution to this continuing humanitarian concern. Deportation of vulnerable children and families who face violence and even death upon return is a violation of international law, clearly immoral, and antithetical to the values all Americans hold dear. Militarization of our southern border, criminalization immigrants, and programs such as Operation Streamline which deny immigrants due

process are not the answer.

The continuing movement of children and families from Central America's Northern Triangle is a result of "push factors" forcing them from their communities. These migrants are fleeing extreme violence in their cities and neighborhoods. They have been threatened by gang members and drug dealers. They have seen their children raped and abused by traffickers. They have been intimidated on their way to school and harassed on their way to church. These are children and families who have endured such unspeakable violence at home that they have no choice but to flee. They are quite literally running for their lives and many, if not most, have a viable claim to refugee protection under international law.

Parents, families, even children will continue to risk the perilous journey as long as necessary. Real solutions to the challenges we face must include attention to the root causes of forced migration and a comprehensive fix of our own broken immigration system. It demands a compassionate response to the immediate need and pragmatic policies that address the root causes of irregular immigration.

Our immediate concern must be to ensure that the needs and rights of children and families fleeing violence and persecution are respected. We call on Congress to:

- Increase funding levels to the Office of Refugee Resettlement, which are currently inadequate to meet the need.
- Improve the trafficking screening training and protocols along the border so that those entering the United States are properly evaluated and that victims of trafficking and persecution are effectively identified and referred for appropriate services.
- End family detention. Place children, families, and other vulnerable immigrants in community-based care, with family members, NGO shelters, rather in large institutional settings like the for-profit detention facilities in Dilley and Karnes City, Texas and the Berks County Detention facility in Pennsylvania.

Finally, we know that our humanitarian response is not going to end forced migration. We call upon Congress to address its root causes and to join with the international community and partners in the Americas to fashion a regional response to what is clearly a regional crisis.

- Invest in local violence-prevention and development efforts including education and job creation plans, and empowerment programs for women and girls.
- Address the unintended consequences of US foreign and trade policies that contribute to rising violence and poverty in the region including: US trade policy; the war on drugs; and training and support of local security forces.
- End support for governments that engage in human rights violations, including illegal land grabs, and the persecution of indigenous, grassroots, and religious leaders.
- Fix the broken US immigration policy that continues to separate families, disempower parents, and make children vulnerable.

LCWR is an association of leaders of congregations of Catholic sisters in the United States. The conference has more than 1400 members, who represent 80 percent of the approximately 51,600 women religious in the United States. Founded in 1956, the conference assists its members to collaboratively carry out their service of leadership to further the mission of the Gospel in today's world.

Statement to the U.S. Senate Homeland Security and Government Affairs Committee, pertaining to its hearing:

Ongoing Migration from Central America: An Examination of FY2015 Apprehensions
Wednesday, October 21, 2015

The Catholic faith is rooted in the tradition that all people are deserving of dignity and respect, no matter their ethnicity, religion, or nationality. Our faith also holds that we have a special responsibility to help the most vulnerable of our world; sadly, there are few situations more vulnerable than being forced to flee one's home and all known things due to racial or religious persecution, violence, or a complete dearth of opportunities to live in dignity.

It has been less than one month since Pope Francis visited the United States and his message to Congress was clear: "Our efforts must aim at restoring hope, righting wrongs, maintaining commitments, and thus promoting the well-being of individuals and of peoples." Core to his address was his assertion that "Our world is facing a refugee crisis of a magnitude not seen since the Second World War" and that our obligation is "to respond in a way which is always humane, just and fraternal. Finally, he urged Congress to "avoid a common temptation nowadays: to discard whatever proves troublesome." It is with these comments in mind that we respectfully urge Congress to resist the temptation to narrow the issue of migration from Central America as a numbers game. We urge you also to dismiss any attempt to assert that apprehension rates define either the success or failure of U.S. policy. Rather, we ask Congress to examine the complex issues causing migration from the region, particularly as they relate to young girls and boys, and develop a plan to address these issues.

The Senate Homeland Security and Government Affairs Committee will likely hear from the Department of Homeland Security that there have been fewer unaccompanied children and families with children who have entered the US from Central America in FY 2015 than in 2014. We caution the Committee from concluding this news alone is good news. Rather, we know that people in Central America, particularly young girls and boys, face extreme hardship and violence and that significant numbers of people are attempting to flee their homes from this violence. In El Salvador, for example, gang violence has erupted following the end of a truce between rival gangs. One of the major reasons why the numbers of apprehensions in the U.S. is down is because of interdiction efforts by the government of Mexico at the request of the United States. NETWORK is concerned that migrants interdicted in Mexico and deported to Central America are not properly screened for protection which is a clear violation of international law. This lack of process means that the Mexican Government risks sending boys and girls fleeing violence to their deaths.

Under U.S. and international law, unaccompanied children and families that make it to the U.S. border and seek asylum in the United States must receive proper evaluation of their refugee claims. NETWORK strongly urges that protections for refugees provided under U.S. law be maintained and that systems be strengthened so that there is proper evaluation of these claims. We remain concerned that the U.S. must do more to improve trafficking screening trainings and protocols along the border so that those entering the United States are properly evaluated and that victims of trafficking and persecution are effectively identified and referred for appropriate services. We know that children and families have fallen through the cracks. Expedited procedures used to deport asylum seekers from the United States have already resulted in 83 deaths accounted for in the past year. The number is predicted to be much higher when we include individuals deported from Mexico in coordination with the U.S. Government.

Finally, we call upon Congress to address the root causes which include persecution and violence committed by gangs and government forces, corruption, and extreme poverty and to join with the international community to develop a regional response to this crisis. Rather than focus on increasing immigration enforcement in Mexico and the United States, Congress and the Obama Administration should concentrate on addressing violence and other drivers of migration and in that way heed Pope Francis' call to justly respond to the refugee crisis in our hemisphere.

STATEMENT FOR THE RECORD

THE REV. DR. WILLIAM SCHULZ
President and Chief Executive Officer
Unitarian Universalist Service Committee

To

The U.S. Senate Committee on
Homeland Security & Governmental Affairs

Hearing on "Ongoing Migration from Central America:
An Examination of FY2015 Apprehensions"

October 21, 2015

Across the West, in the United States and countries within the European Union, we see a drastic criminalization of forced migration. In reality, border security does nothing to deter people fleeing true persecution — it only makes such security more expensive and fuels the human smuggling trade. The past two decades of heightened border security measures have only served to increase the death toll for those trying to flee persecution and war.

Our government should focus on decriminalizing the right to seek asylum and address the critical human rights violations occurring in the Northern Triangle that motivate such flight. We must humanize the refugees' stories and help address the push and pull factors involved. And above all — we must respect the rights to freedom of movement and to seek safety and asylum.

UNITARIAN UNIVERSALIST SERVICE COMMITTEE
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STATEMENT FOR THE RECORD

On

Ongoing Migration from Central America: An Examination of FY2015 Apprehensions

Senate Committee on Homeland Security & Governmental Affairs

By the Women's Refugee Commission (WRC), Lutheran Immigration and Refugee Service (LIRS) and Kids in Need of Defense (KIND)

October 21, 2015

The Women's Refugee Commission (WRC)[1], Lutheran Immigration and Refugee Service (LIRS)[2] and Kids in Need of Defense (KIND)[3] appreciate the opportunity to submit this statement for the hearing record. Our organizations have long advocated for the protection of unaccompanied children, refugees, asylum-seekers and trafficking victims. We urge Congress to uphold our country's proud history as a nation that welcomes vulnerable newcomers fleeing violence and oppression. These children often have families here in the U.S. who can help them, and with adequate protection from the U.S. government, these children can thrive in their new communities.

For example, 14-year-old Fernando is one such courageous child. Fernando grew up in Honduras, in a city saturated with gang violence. His family received regular threats and extortion by gang members, with Fernando frequently being witness to gang members threatening his father with a gun. One time, Fernando decided to stand up to the gang members and one of them shot his brother in the shoulder as a consequence. When he reached 14, Fernando was in a car with friends when they were shot at numerous times by gang members. Fernando was unhurt, and had to lay in the blood of his friends, pretending to be dead, in order to escape. After this incident, his family helped make plans for Fernando to come to the U.S. where he was encountered by U.S. Border Patrol and transferred to the U.S. Department of Health and Human Services Office of Refugee Resettlement. Fernando ultimately received Special Immigrant Juvenile Status due the trauma and violence he experienced in Honduras. He eventually went into the Office of

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[1] The Women's Refugee Commission's mission is to improve the lives and protect the rights of women, children and youth displaced by conflict and crisis. We research their needs, identify solutions and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice.

[2] Lutheran Immigration and Refugee Service (LIRS) is the national organization established by Lutheran churches in the United States to serve uprooted people. LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

[3] Kids in Need of Defense (KIND) ensures that no child stands alone in immigration by matching unaccompanied children with pro bono attorneys among our 290 law firm, corporate, law school, and bar association partners, who help these children gain the protection for which many are eligible. KIND has been referred more than 8,000 children since we opened in 2009 and trained over 10,000 attorneys. KIND also helps ensure children who are being returned to Guatemala from the U.S. and Mexico do so safely and with access to support services to help them reintegrate into their communities.

Refugee Resettlement's Unaccompanied Refugee Minor program where he is living with a foster family, attending school, and has received his green card to live permanently in the U.S.

It is stories like Fernando's that demonstrate we can protect our borders and national security while upholding our longstanding traditions and leadership as a nation that protects human rights and respects the dignity of all. We must improve our treatment of unaccompanied children by expanding child protection services and recommitting ourselves to due process in ways that increase efficiency and reduce cost. By retaining the important protections of the Trafficking Victims Protection Reauthorization Act (TVPRA) and including child welfare professionals at initial screenings, we can renew our commitment to border security without sacrificing the well-being of refugee children who so desperately seek humanitarian relief. Respect for the rule of law and humane protection of the vulnerable are not mutually exclusive.

The number of Central American children and families seeking refuge in the United States and elsewhere in the region climbed sharply in 2014. From Fiscal Year (FY) 2013 to FY 2014, the number of unaccompanied children who arrived at the United States southwest border rose from 38,759 to 68,541. Of those apprehended in FY 2014, 51,705 were from Honduras, El Salvador and Guatemala.[4] The number of individuals in family units also rose across the board, from 14,855 to 68,455, with a large increase in Central Americans.[5] Nevertheless, children and families still only represented 28% of all apprehensions by U.S. Border Patrol in FY 2014. Although the number of unaccompanied children seeking refuge in the U.S. dropped in FY 2015, it remains at historically high levels. Arrivals rose again in July and August of this year.[6]

In addition, this past fiscal year's decline in apprehensions at the U.S. border does not necessarily indicate that fewer Central Americans seek refuge in the U.S. Rather, efforts to intercept refugees in Mexico have become increasingly successful.[7] The root causes displacing Central Americans remain—the horrific violence continues and in the case of El Salvador has actually worsened.[8] We must uphold our commitment to the principles under the U.S. Refugee Act of 1980 and Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). These laws provide critical protections to

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[4] Customs and Border Patrol, *Southwest Border Unaccompanied Children*. (2015), http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children

[5] United States Border Patrol, *Southwest Border Apprehensions*. (2015) https://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20FY13%20-%20FY14_0.pdf

[6] *U.S. Border Arrests of Children, Families surge 52% in August*, (September 21, 2015) http://www.wsj.com/articles/u-s-border-arrests-of-children-families-surge-52-in-august-1442884799

[7] Clay Boggs, *Mexico's Southern Border Plan: More deportations and widespread human rights violations.* (2015), http://www.wola.org/commentary/update_on_mexico_s_southern_border_plan_new_routes_more_deportations_and_widespread_human. *See also*, Jo Tuckman, *Mexico's Migration Crackdown Escalates Dangers for Central Americans* (October 13, 2015), available at: http://www.theguardian.com/world/2015/oct/13/mexico-central-american-migrants-journey-crackdown; Cindy Carcamo, *Elite Honduran Unit Works to Stop flow of Children to the U.S."; US Funded Unit in Honduras Stops "drop in a bucket" Child Exodus*, Pan-American Post, 9 Jul. 2014, http://panampost.com/panam-staff/2014/07/09/us-funded-unit-in-honduras-stops-drop-in-a-bucket-ofchild-exodus/

[8] Refugees International, *It's Suicide to Leave of Stay: Internal Displacement in El Salvador.* http://refugeesinternational.org/sites/default/files/07302015_el_salvador.pdf.

refugees and trafficking victims. We must not as nation be complicit in denying protection to refugees and we cannot turn our backs on refugees who come knocking at our doors fleeing harm.

Children and families seeking protection

Brutal violence and political turmoil in Central America continue to push migrants to seek refuge elsewhere. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) recently reported that 4,632 children were apprehended in August of this year, the largest monthly total since last year's refugee flows from Northern Triangle countries. CBP reported that it apprehended 5,158 families in August 2015, an increase of 14% from the 4,506 families apprehended in July 2015.

Other countries bordering the Northern Triangle countries also receive refugees displaced by the violence. The United Nations High Commissioner for Refugees (UNHCR) documented a 1,185% increase in asylum applications in the Central American and Mexican region from 2008 to 2014, though the vast majority fleeing their home countries still head for the United States.[9] At the end of 2014, UNHCR documented the refugee populations in southern Central American countries: 20,744 refugees resided in Costa Rica, and even more are waiting for a determination of their refugee status;[10] 208 refugees resided in Nicaragua;[11] and 26 refugees resided in Honduras.[12] Recognizing that the U.S. has presented an inhospitable face in the past year, refugees are increasingly likely to escape the dangers of their home countries by venturing south, to Costa Rica, Panama, and even other more economically depressed countries such as Nicaragua. Panama, which received 1,800 asylum claims in all of 2014, received almost that many by July of this year [13]

Many of these children and families have legitimate claims for asylum. They have well-founded fears of persecution and the U.S. Refugee Act of 1980 requires the U.S. government to protect them.[14] According to DHS U.S. Citizen and Immigration Services, 88% of families in U.S. detention centers during the second quarter of FY 2015 are *bona fide* asylum seekers.[15] The United States violates its own laws when it treats these children and families as if they violated the law by seeking protection and accelerates their deportation proceedings.[16]

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[9] UNHCR, *Children on the Run*, http://unhcrwashington.org/children.
[10] UNCHR, *2015 UNHCR Subregional Operations Profile*, Latin America – Costa Rica, http://www.unhcr.org/pages/49e492456.html
[11] UNCHR, *2015 UNHCR Subregional Operations Profile*, Latin America - Nicaragua, http://www.unhcr.org/pages/49e4927a6.html
[12] UNHCR, *2015 UNHCR Subregional Operations Profile*, Latin America – Honduras, http://www.unhcr.org/pages/49e492686.html
[13] Melanie Nezer, "Central American Asylum Seekers are Still Fleeing Persecution – They're Heading South." http://latino.foxnews.com/latino/opinion/2015/07/13/opinion-central-american-asylum-seekers-are-still-fleeing-persecution-theyre/
[14] The Refugee Act, 8 U.S. C. § 1101 (1980).
[15] Credible fear determinations in the second quarter of FY 2015 were as follows: Guatemala 73.6%, El Salvador 93.7%, and Honduras 91.2%. USCIS Asylum Division, *Family Facilities Reasonable Fear.* http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-familiy-facilities-FY2015Q2.pdf
[16] The Refugee Act, 8 U.S.C. § 1101 (1980)

Refugees fleeing Central America are forced from their home countries to escape violence by armed criminals, gender-based violence, forced gang recruitment, domestic abuse, human trafficking, and poverty. The situations in these countries have not improved over the past calendar year. Violence and turmoil have only increased; local governments are powerless to protect their citizens, especially families and children. The factors emphasize the need for humane protection of migrants: as refugees, these migrants are fleeing their home countries because of a well-founded fear of persecution. The strife in Guatemala, El Salvador and Honduras has not lessened in the past year. El Salvador continues to struggle with gang violence. In August, 911 homicides were reported.[17] Guatemala is the site of enormous political upheaval. Its resident, Otto Pérez Molina, and Vice-President Roxana Baldetti were both arrested on corruption charges in August.[18]

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) provides critical protection for children from El Salvador, Guatemala, and Honduras. Without the protection of the TVPRA, vulnerable children from these and other non-contiguous countries would be forced back to the same dangerous conditions from which they just fled without proper screening for asylum or trafficking. Many would end up in the hands of traffickers or the gangs from which they fled. The TVPRA ensures children from non-contiguous countries receive adequate care and protection by requiring that they be transferred from CBP to the Office of Refugee Resettlement, a division of the Department of Health and Human Services. ORR, a child welfare and refugee agency, is better equipped to handle the specific needs of children.

The TVPRA protects children like Marta. Marta was a 4-year-old girl from Guatemala who suffered extensive sexual and physical abuse by her father. Marta's mother was living in the U.S. as a legal resident when she heard about the abuse. She flew to Guatemala and contacted authorities to help her remove Marta from her father's home. Although she was successful in removing her daughter from this situation, the father was not incarcerated for his actions. He began threatening to kill Marta, as well as intimidating and threatening family members to learn Marta's location. Marta's mother had to return to the U.S., but had no known legal recourse in which to bring Marta with her. Marta's mother made the difficult decision to send her daughter on the frightening journey to the U.S. with a guide in order for them to live safely together. It is children who have had traumatic experiences like Marta who would be unlikely to reveal the experience of their abuse to CBP agent upon apprehension. It's only first by addressing her protection needs, obtaining screening by a licensed clinician, and locating her family is Marta able to bring forward a claim for legal relief with the help of a lawyer.

Conversely, Mexican unaccompanied children receive no protection. The recent GAO report, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody* revealed that 98% of Mexican, unaccompanied

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[17] Instituto de Medicin Legal, *Agosto 2015*. http://www.csj.gob.sv/Comunicaciones/2015/SEP_15/BOLETINES/PRESENTACI%C3%93N%20IML%20%20Agosto%202015.pdf

[18] Francisco Goldman, *From President to Prison: Otto Perez Molina and a Day For Hope in Guatemala* (New Yorker: September 4, 2015), http://www.newyorker.com/news/news-desk/from-president-to-prison-otto-perez-molina-and-a-day-for-hope-in-guatemala

children are automatically sent back—even when trafficking indicators are present and a child expresses fear. This report reveals how the so-called expedited processing at the border is a failed concept. Instead, we must and should do more to protect child asylum-seekers and trafficking victims from Mexico. Take for instance the story of Marta and imagine if she were a Mexican child. The GAO report indicates that more likely than not Marta would be sent back to Mexico because CBP possesses neither the child forensic screening professionals nor the time to conduct an adequate screening.

The children and families arriving at the southern border are not a security threat; they are fleeing violence and they deserve our protection. We cannot trade the safety of these children for expediency. We must maintain the integrity of the protections provided for Central American children in the TVPRA.

The United States' role in the refugee crisis

The Central American refugee crisis is not a border security issue. It is a humanitarian issue. These families (young mothers and children) and unaccompanied minors are very vulnerable populations seeking protection in our country. By treating children humanely at the border and providing due process while determining their status, the U.S. can continue its role as humanitarian leader and champion for refugees without sacrificing border security.

The Women's Refugee Commission, Lutheran Immigration and Refugee Service and Kids in Need of Defense (KIND) urge Members of Congress to ensure the Obama Administration fulfills its obligation to protect, not punish, individuals who are fleeing persecution in their homelands or who are often victims of trafficking. The United States has a duty to provide refuge to families and children who have endured unimaginable persecution in their countries of origin on account of their race, religion, political opinion, membership in a particular social group, or nationality.[19] The United States should welcome these children and families as refugees. Many of them have members of their families already in the country who can help them get settled.

The U.S. Congress has a unique and important role in the United States response to the children seeking protection here. Congress should provide robust oversight of the agencies charged with the care and custody of unaccompanied children to make sure these children are handled with sensitivity to their particular vulnerabilities. Child welfare professionals must be present for the apprehension and referral to ORR for all unaccompanied children. A Border Patrol officer, in uniform, carrying a gun, who has just taken a child into custody, is not the appropriate person for interviewing a child to determine whether the child has a legitimate claim for asylum.

The TVPRA is crucial to safeguarding children's well-being. Legislation to undermine these critical protections would put these vulnerable children even more at risk. Stripping away TVPRA protections would be a terrible mistake. Instead, we should work to improve our screening mechanisms to ensure all children are protected for the duration of their legal proceedings.

Additionally, the WRC specifically recommends continued efforts in the Northern Triangle to support the development of effective institutions there, especially child

[19] The Refugee Act, 8 U.S.C. § 1101, (1980)

welfare organizations and a functioning judicial system. Only when there is due process within these countries will people stop fleeing for their lives in the wake of violence.

For more information:

Jennifer Podkul, Senior Program Officer, Migrant Rights and Justice Women's Refugee Commission, JenniferP@wrcommission.org. More information can be found at: http://womensrefugeecommission.org/programs/migrant-right

Jessica Jones, Policy Counsel, Lutheran Immigration and Refugee Service, JJones@lirs.org. More information can be found at: http://lirs.org/our-work/people-we-serve/children/advocating-for-children/

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GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

December 10, 2015

The Honorable Ron Johnson
Chairman
United States Senate Committee on Homeland Security and Governmental Affairs
Washington, D.C.: 20510-6250

Dear Chairman Johnson:

Enclosed are responses to the post-hearing questions that were directed to my attention for the official record from the hearing that was held on October 21, 2015, titled "Ongoing Migration from Central America: An Examination of FY2015 Apprehensions." If you or your staff has any questions about this information, please contact me at GianopoulosK@gao.gov or 202-512-8612.

Sincerely yours,

Kimberly Gianopoulos
Director, International Affairs and Trade

Enclosure

Post-Hearing Questions for the Record
Submitted to Kimberly M. Gianopoulos
From Senator Claire McCaskill

"Ongoing Migration from Central America: An Examination of FY2015 Apprehensions"

October 21, 2015

At the hearing, Chairman Johnson stated that, since 2009, only 7 percent of those apprehended at the southern border have been repatriated.

1. **Is that figure accurate?**
2. **If so, what are the factors contributing to that number?**

GAO Response: In July 2015, we reported, among other things, on the extent to which the Department of Homeland Security (DHS) had developed policies and procedures to screen and care for all unaccompanied children as required.[1]

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that, except in exceptional circumstances, unaccompanied children are transferred to the care and custody of the Department of Health and Human Services within 72 hours of determining a child is unaccompanied. TVPRA also provides special rules for unaccompanied children from Canada and Mexico who are apprehended at a land border or port of entry. On a case-by-case basis for unaccompanied children from Canada and Mexico, DHS may allow the child to withdraw his or her application for admission and return to his or her country of nationality or last habitual residence without further removal proceedings if the officers screen the children within 48 hours of being apprehended and determine that

1. the child is not a victim of a severe form of trafficking in persons,
2. there is no credible evidence that the child is at risk of being trafficked if repatriated,
3. the child does not have a fear of returning to his or her country owing to a credible fear of persecution, and
4. the child is able to make an independent decision to withdraw the application for admission to the United States and voluntarily return to his or her country of nationality or last habitual residence.

The scope of our report, which was conducted in response to a requirement in the Violence Against Women Reauthorization Act of 2013, did not include an analysis of available data on the numbers of unaccompanied children who have been removed from the United States or repatriated to Mexico or Canada.[2] However, we did evaluate the extent to which the State Department had negotiated agreements with contiguous countries for the repatriation of children. TVPRA requires that these agreements, at minimum, provide that (1) no child shall be returned unless to appropriate officials, including child welfare officials where available; (2) no child shall be returned outside of reasonable business hours; and (3) border personnel of

[1]GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521 (Washington, D.C.: July 14, 2015).

[2]Repatriation is defined as returning such children to their country of nationality or last habitual residence.

countries who are parties to the agreements are to be trained in the terms of the agreements. On the basis of our analysis, we reported that DHS has entered into local arrangements with Mexican consulates to ensure the safe and humane repatriation of Mexican nationals, including unaccompanied children. However, these arrangements do not reflect minimum TVPRA requirements for agreements with Canada and Mexico with respect to the repatriation of unaccompanied children. In particular, our analysis of the 30 DHS-negotiated local repatriation arrangements shows that fewer than one-third contained provisions directing that no unaccompanied child be returned unless to appropriate employees or officials, for example, by providing titles of Mexican officials to whom Mexican nationals are to be returned; and only one arrangement identified child welfare representatives. In terms of prohibiting the return of unaccompanied children outside of reasonable business hours, fewer than half of arrangements identified the hours during which unaccompanied children could be returned to Mexico. Among those that identified the hours, the allowable hours for repatriation varied widely. Further, none of the local repatriation arrangements addresses the requirement that border personnel be trained in the terms of the repatriation arrangements. To ensure that minimum legislative requirements to protect unaccompanied children from severe forms of trafficking in persons are in repatriation agreements with Mexico and are met, we recommended that the Secretary of Homeland Security, in coordination with the Secretary of State, ensure that TVPRA requirements for these agreements are reflected in local repatriation arrangements. DHS concurred with the recommendation and has efforts underway to address our recommendation.

When they are released from detention, the majority of minors and families have not seen a lawyer, so they do not even understand when or where to show up when they do get a court date, or who to communicate with if they move. This despite the fact that the single biggest factor in whether an undocumented immigrant will show up to a court hearing is whether they have legal representation.

In FY 2015 (through August), 99.25% of represented children (including unaccompanied children and other juveniles) appeared for their immigration court case. In FY 2014 98.94% of represented children appeared for their immigration court case.
Even if they do get a court date, it may be years before their day in court because we don't have nearly enough judges to look at these cases. The average time an immigration case has been pending is up to 587 days. Immigration judges right now have a docket of about 1,500 cases at any given time, which is almost 4 times as many cases as federal district judges, and they don't get a set of law clerks to help them either. Today, there are 243 judges—just 13 more than in 2006 and 21 fewer than at the end of 2012—and more than 30 vacancies the government is trying to fill. All this despite the fact that the immigration court backlog has increased nearly 120 percent since 2006, and that number doesn't even include the

3. **In your opinion, how much are the lack of attorney access and judicial vacancies contributing to the 7 percent repatriation figure?**

GAO response: GAO has ongoing work examining the management and structure of the immigration court system, which we began in response to a request from the Chairman and Ranking Member of the Subcommittee on Immigration and Border Security, House Committee on the Judiciary. We expect to issue a report on this work in late 2016.

The administration is proposing an additional $1 billion to address some of the underlying causes of the migration. In addition to that funding request and CARSI, the

President released a National Strategy to Combat Transnational Crime 4 years ago. The Administration has also released the Strategy for U.S. Engagement in Central America. Some have express frustration that interagency activities in the region are poorly coordinated and minimally funded, frustrating the goals of these strategies.

4. **Who is in charge of seeing that these strategies are implemented well and that there is coordination between agencies?**
5. **Is anyone held accountable for the failure to coordinate efforts across federal agencies?**
6. **How often are agencies meeting to discuss implementation and coordination?**

GAO response: GAO has previously reviewed coordination of U.S. agency programs in Central America, though this was not a focus of our most recent related work. In our 2013 review of the Central America Regional Security Initiative (CARSI),[3] we found that the Department of State and U.S. Agency for International Development (USAID) took a variety of steps—using assessment reports, outreach meetings with host governments and other donors, and interagency meetings—to help identify and consider partner countries' needs, absorptive capacities, and related U.S. and non-U.S. investments when selecting CARSI activities. We recommended that State and USAID work with other agencies to assess progress in achieving the objectives of the (now outdated)the interagency strategy for Central America, which they did. During our most recent work on unaccompanied alien child (UAC) migration from Central America, we did not specifically focus on strategic interagency coordination.[4] As the U.S. Strategy for Engagement in Central America was released in March 2015, during our review, it was not a focus of our study. However, during our field work in Central America, we met with "UAC working groups" at the embassies in El Salvador, Guatemala, and Honduras. These working groups served as interagency coordination mechanisms for the U.S. government's response to UAC migration-related programming, beginning in the spring and summer of 2014, meeting initially every 1 or 2 weeks. At the time of our review, agency officials in El Salvador and Guatemala indicated that, moving forward, the focus of these working groups would likely shift from the agencies' emergency responses to the rapid increase in migration seen in 2014, to addressing long-term strategic efforts in these countries.

GAO also has ongoing work on how the Department of Health and Human Services' Office of Refugee Resettlement (ORR) has responded to the increased number of unaccompanied children; how these children are cared for while in ORR custody and how ORR monitors their care; how ORR identifies and screens sponsors before children are transferred to their care; and what is known about services, challenges, and the status of immigration proceedings for children after they leave ORR custody. This work was requested by the Chairmen of the Senate committees on Homeland Security and Government Affairs, the Judiciary, and Finance. We expect to issue a report on this work in January or February 2016.

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[3] GAO, *Central America: U.S. Agencies Considered Various Factors in Funding Security Activities, but Need to Assess Progress in Achieving Interagency Objectives,* GAO-13-771 (Washington, D.C.: Sept 25, 2013).

[4] GAO, *Central America: Improved Evaluation Efforts Could Enhance Agency Programs to Reduce Unaccompanied Child Migration,* GAO-15-707 (Washington, D.C. July 29, 2015).

Post-Hearing Questions for the Record
Submitted to Kevin Casas-Zamora, DPhil
From Senator Claire McCaskill

"Ongoing Migration from Central America: An Examination of FY2015 Apprehensions"

October 21, 2015

At the hearing, Chairman Johnson noted the large increase in the number of apprehensions of unaccompanied alien children on the southwest border beginning in 2013, which he and others largely attribute to recent changes in US policy, including the Administration's Deferred Action for Childhood Arrivals (DACA).

The Syrian civil war began in 2011. Yet mass migration seems to have begun in earnest just this year, 4 years after the beginning of the war.

1. What lessons can be drawn from the Syrian refugee crisis in Europe right now, particularly with respect to push and pull factors?

I may be an expert on Central America, but not necessarily on migration issues, so I would prefer not say much on this. I will only say that, in my opinion, the US authorities, including Congress, are largely drawing the correct lessons from the events in Europe. On the one hand, you have to dispel the notion that the United States has an open border policy whereby any minor that makes it to the US border will be admitted into the country. And you have to convey that message to the Central American population in effective ways. On the other hand, it is not simply appropriate, but necessary to pay more intense and steady attention to the very profound development issues that are pushing young people to emigrate from Northern Central America. That is precisely what the Alliance for Prosperity for the Northern Triangle is all about. And it is of the essence that this program retains its holistic view of development and migration challenges in Central America. In other words, it is very important that the Alliance is not disfigured to become yet another counter narcotics program funded by US taxpayers.

In 2013, the U.S. spent $145 million on the Central America Regional Security Initiative, or CARSI. There were programs devoted to economic support, rule of law improvement, good governance, counternarcotics, efforts, education, trade and investment, and support for Central American militaries.

At the same time, the U.S. spent $1 billion on a failed border technology program that ended up securing just 53 miles of the U.S.-Mexican border in Arizona. All told, according to one estimate, we have spent $90 billion over the past decade on border security, or $9 billion per year, on average. And once migrants reach the border, the costs increase – U.S. taxpayer dollars are spent on detention, monitoring, and adjudicating their cases.

2. Does it make sense to focus so many of our resources directly on the border or should we be spending more to help these countries improve their own economies, judicial systems and police forces?

Helping Central America help itself should be a crucial part of this effort. Yes, the United States ought to invest more resources helping Central American countries overcome some of their critical development challenges, including the revamping of their law enforcement institutions. However, ultimately, success in that long-term endeavor depends on the commitment of Central American societies and, particularly, their political and economic elites. No amount of foreign assistance will be effective on its own to rebuild rotten law enforcement institutions or to create economic opportunities for young people in Central America. Those things are for Central Americans to solve. This has very practical implications, in my view. I would suggest that demanding a robust financial commitment from recipient governments ought to be one of the guiding principles of US assistance to the governments of the Northern Triangle. Tax burdens Guatemala, Honduras and El Salvador are among the lowest in the world. For all the acknowledgement of shared responsibilities in some critical development issues in Central America (particularly with regards to drug-related security problems), it is unfair and unsound to substitute the financial commitment of US taxpayers for the financial commitment of Central American societies, particularly that of their economic elites. Central American elites should not be left off the hook.

And compared to the rest of the world, what we spend to improve the lives of Central American citizens is almost nothing. In 2012, just 8% of U.S. foreign assistance went to Latin America and the Caribbean. By comparison, 35% went to the Middle East, 30% went to Africa, and 21% went to South and Central Asia. As of 2009, the U.S. was spending just $4.4 million on police training in Guatemala, Honduras and El Salvador, combined. By contrast, the U.S. was spending $327 million in Mexico and $390 million in Iraq.

3. Are we guilty of ignoring some serious issues on our own doorstep?

I'm afraid you are. Central America has a strong historical connection to the United States and over the past 150 years has repeatedly found its way into the crowded US foreign policy radar. For Washington paying more attention to Central America –if not intense attention, at least steady attention—would not be a favor or an act of charity. In the case of a region that is showing disturbing signs of political instability, that is a stone's throw away from the United States and that has already sent three million of its people to the shores of this country it could only be considered enlightened self-interest.

AMERICA'S HEROIN EPIDEMIC AT THE BORDER: LOCAL, STATE, AND FEDERAL LAW ENFORCEMENT EFFORTS TO COMBAT ILLICIT NARCOTIC TRAFFICKING

MONDAY, NOVEMBER 23, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Phoenix, AZ.

The Committee met, pursuant to notice, at 8:59 a.m., in the Historic Senate Chamber, Arizona State Capitol Museum, Third floor, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, McCain, and Flake.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing of the Senate Committee on Homeland Security and Government Affairs is now called to order.

I want to thank the State of Arizona, Governor Ducey, and my colleagues, Senator Flake and Senator McCain, for inviting us here and discussing an incredibly important topic: The security of our border, an enormous problem facing this Nation.

The title of this hearing is "America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking."

When I became chairman of this Committee in January of this year, one of the top priorities of the Subcommittee was really border security, and this is our 13th hearing, trying to lay out the reality of the situation.

I was talking to the Governor earlier. And coming from the business world, particularly in my case, manufacturing, I have solved a lot of problems. And there is actually a process to go through solving a problem. It starts with laying out the reality of the situation. And based on that reality, you set yourself up with achievable goals. Then you start to design the strategies.

We have an enormous problem in this Nation. What is my true definition of a problem? One that does not have any solutions. It is multi-faceted, multi-cause. One thing I will say, having spent now the better part of the entire year fully exploring this with hearings, with trips to the border, with trips to Central America, there are multiple causes. I think a number of Members on the Committee would agree with me on this—the root cause of the fact that we do not have a secure border is America's insatiable demand

for drugs, because that demand has given rise to the rise of the drug cartels.

And I always point out, the drug cartels, it is a business. And they have learned to expand the product line. They have a smuggling route, and then they begin, to think well, let us just use that for human trafficking, sex trafficking. They start using economic migrants as diversion for their illicit drug trafficking. So it is an enormous problem.

I know I am making no big statement. I will ask that my brief opening statement be entered into the record[1] without objection. And also that Senator Kelly Ayotte's statement also be entered into the record.[2]

We held a hearing up in New Hampshire where she was in charge of that hearing as the chairperson, describing the problem of heroin overdoses in New Hampshire. It starts: In 2008, in New Hampshire there were 16 overdoses from heroin. Now there's nearly 250 overdoses reported in 2014.

And in Wisconsin, very similarly, between 2000 and 2007, Wisconsin averaged about 29 heroin overdoses; already 200 in 2014. I think we are on pace, unfortunately, to break that record in 2015. So this is an enormously difficult problem. And it is one that we have to face.

We have a very distinguished panel, two panels of witnesses here, including the Governor of the State of Arizona. I really do appreciate everybody's attention to this matter.

I am really looking forward to hearing our witnesses, lay out that reality. And, again, it is a harsh reality. It is not fun to look at, and we are going to have a number of things we have to do to start solving them.

So with that, I will turn it over to my distinguished colleague, Senator McCain, for his opening statement.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. I want to thank you, Senator Johnson, Chairman, Homeland Security Committee, which in my duty you have done an outstanding job. And this is one, as you mentioned, series of hearings that the Committee has had in the Senate trying to address this very serious issue. And I thank you for leaving sunny Wisconsin to come here to join us in Arizona.

Chairman JOHNSON. It was sunny, a little chilly.

Senator MCCAIN. Yes, what, 10?

Again, I want to thank you for agreeing to hold this field hearing in Arizona. As we will soon see here from the witnesses today, our State has the dubious distinction of being the primary entry point of trafficking corridor and distribution hub for drugs transported from Mexico to the United States by the Sinaloa Cartel.

We have made progress in securing our border. There is no doubt about that. Reduction in apprehensions over the past few years demonstrate the effectiveness of the men and women in the Border Patrol that they have had in preventing illegal entry of people

[1] The prepared statement of Senator Johnson appears in the Appendix on page 1961.
[2] The prepared statement of Senator Ayotte appears in the Appendix on page 1964.

crossing our border. Increased surveillance towers and other technologies will only increase that effectiveness.

But clearly, we are losing the war with the transnational criminal organizations (TCO) that traffic illicit narcotics into our country. But the demand for these drugs—heroin, meth, cocaine—is too high, and the profits the cartels make are too great to simply arrest our way out of this problem.

We must improve our drug interdiction strategy, but we must also do what is possible to reduce the demands for these drugs. A front to Arizona is not just as a drug corridor. These drugs stay in our State, poisoning our children, and doing great harm to our communities. Deaths in overdose from heroin are skyrocketing.

According to the Arizona Department of Health Services, heroin-related deaths increased from less than 50 in 2004 to almost 200 in 2014. The reality is, Customs and Border Protection (CBP) cannot interdict 100 percent of these drugs at the border or at our ports of entry (POE). That is why it is critical we use our intelligence capabilities and strengthen partnerships between Federal, State, and local law enforcement to combat these drug traffickers as a cohesive unit.

Border Patrol has long used the term, quote, "defense in depth" to describe its strategy to locate and track illegal entries, using the terrain to the agent's advantage. But defense in depth should also apply to the coordinating efforts when partnering the State and local law enforcement interdicting narcotics away from the border.

That is why I am intrigued by the Governor's plan to create a new drug interdiction strike force, setting up a dedicated effort, working as a true partner with Federal and local law enforcement to intercept narcotics on the highways and byways before it hits the streets.

Finally, while the focus of this hearing is heroin trafficking, the transnational criminal organizations that are bringing these drugs into the United States do not limit themselves to the trafficking of narcotics. They control the smuggling routes and routinely trafficking humans, currency, and other illicit activities.

There have been several recent cases of special interest aliens from Afghanistan, Pakistan, and other countries being smuggled into the United States by Mexican nationals. No one crosses the border without these cartels' permission. It is a certainty that they have knowledge of and are complicit in smuggling these special interest aliens into the country which is worrisome.

I thank the Governor for his leadership. I thank the witnesses today.

The Honorable Gil Kerlikowske, thank you for being here. I know you have a very busy schedule. But to have the top guy here is very important.

We welcome Frank Milstead and the great job he and his people do.

And our distinguished Maricopa County Attorney, Bill Montgomery.

I thank all of you for being here today.

And, Governor, I specially want to take note of your leadership on this issue. And it is very important. And I think that it can lay the groundwork for a greater cooperation and work together be-

tween the State, local, and Federal authorities. That can only happen under your leadership. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator McCain. Senator Flake.

OPENING STATEMENT OF SENATOR FLAKE

Senator FLAKE. Well, thank you. I just wanted to thank you, Chairman Johnson, for coming out.

This heroin epidemic is a big and growing problem as we have seen in the statistics. And, obviously, Arizona, given its position along the border, it becomes extremely important here. We have to have increased and better cooperation, better government, State, local, and county authorities. And so that is what this is all about. And I appreciate the focus that is been put on this. Appreciate being here.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Flake I did fail to mention based on those 13 hearings, we are releasing today the State of America's Border Security Report, over a hundred pages, pretty well laying out that reality, which I think, is the first step of solving that problem.

So the tradition of this Committee is to swear in witnesses, so if you will all rise and raise your right hand.

Do you solemnly swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Governor DUCEY. I do.

Commissioner KERLIKOWSKE. I do.

Mr. MONTGOMERY. I do.

Colonel MILSTEAD. I do.

Chairman JOHNSON. Our first witness will be the Honorable Governor Douglas Ducey. Governor Ducey is the Governor of the State of Arizona. He began his career in the private sector where he helped launch Cold Stone Creamery, which under his watch grew from a local ice cream scoop shop to over 1,400 locations.

In 2008 and 2009 Governor Ducey, alarmed by the State economy and the massive spending debt the government was incurring, sought public office and was elected on November 2, 2010, as Arizona's 32nd State Treasurer. After serving out this term, he was elected Governor. Governor Ducey.

TESTIMONY OF THE HONORABLE DOUGLAS A. DUCEY,[1] GOVERNOR, STATE OF ARIZONA; ACCOMPANIED BY COLONEL FRANK MILSTEAD, DIRECTOR, ARIZONA DEPARTMENT OF PUBLIC SAFETY

Governor DUCEY. Chairman Johnson, good morning. Welcome to Arizona.

Senator McCain, Senator Flake, thank you for the kind words, and I look forward to talking with you this morning.

Commissioner Kerlikowske, Bill Montgomery, Sheriff Dannels, and everyone joining me today to give testimony, thank you for your commitment to addressing and reversing a very severe and a very real problem in Arizona and in our country.

[1] The prepared statement of Governor Ducey appears in the Appendix on page 1966.

We are here today because our Nation is plagued by a destructive, dangerous, and deadly epidemic. Heroin trafficking use, abuse, and overdose is a growing problem in American society. It is influencing and infiltrating our children's schools. It is tearing apart families. It is spurring crime and creating criminals.

It is driving up costs related to drug enforcement, courts, incarceration, treatment programs, medical care, and other unseen expenses to our taxpayers. And that is nothing compared to the human toll.

There is no dollar sign on the life of a father, a mother, a sibling, a child, or a spouse cut short by drug abuse. There is only anguish and anger.

We have come face to face with a very sad, very scary reality. Heroin is no longer someone else's problem. It is our problem. It is Arizona's problem. It is America's problem. And Arizona is the front door.

It is not news to any of us that Arizona has been and continues to be a major smuggling corridor and distribution hub for illicit drugs being supplied to the United States. We share roughly 370 miles of continuous international border with Mexico. The area consists of rugged terrain that makes it extremely difficult to patrol and secure, a prime environment for trafficking activity.

Right across our border is home to the Sinaloa Cartel, a transnational drug trafficking organization (DTO) with a stronghold in the region. Unless we act and act soon, these cartels and the poison they are bringing to our communities are not going anywhere.

Let us look at the facts. From 2010 to 2014, heroin seizures increased 223 percent in Arizona. Why? Sadly, because prescription opiate drug abuse often leads to heroin addiction, and that is because heroin's a cheaper, quicker, and more intense high. The effects have been staggering. In 2015, drug apprehension efforts in Arizona resulted in 5,282 drug-related arrests. An arrest for heroin alone increased 76 percent over the past 2 years, which constitutes the largest rate of heroin arrests in a decade. Studies have also shown heroin treatment admissions increased approximately 77 percent from 2008 to 2012.

And here is why it should matter to all of us. The impact of heroin reaches far beyond user and supplier.

It is having a cumulative effect on the standard of living in Arizona and throughout our country.

More than 75 percent of inmates in Arizona's prison system have a substance abuse problem. There are more than 17,000 children who are wards of the State because their parents are unfit to raise them. If we found them all homes tomorrow in foster care, there would be thousands more waiting right behind them unless we address the corrosive nature of drug addiction.

Babies, newborns exposed to substances rose from 597 cases in 2008 to 1,248 in 2014. That is a 109 percent, more than double, increase in just 6 years. Each one of these is a tragedy, a terrible, preventable tragedy.

There is no shortage of the harmful effects of heroin and illicit drug trafficking in our communities. Some of these damages can not be undone, but they can be prevented in the future. It is up

to us right now to act. And we are taking action by aggressively targeting the supply.

As we know, Arizona is ground zero in the fight against drug trafficking, a direct nexus through which these cartels are infiltrating our States and ravaging communities in every corner of our country.

That does not sit well with me, which is why we are taking action and why I have created the Arizona Border Strike Force Bureau.

Here are the highlights: The mission of the Border Strike Force Bureau is to partner with local and Federal agencies to deter, disrupt, and dismantle criminal organizations responsible for smuggling drugs and humans into Arizona. The success of the bureau is founded upon strategic partnerships we have created at all levels.

The most significant so far have been with U.S. Customs and Border Protection and the Cochise County Sheriff's Office.

I want to take a moment to acknowledge Commissioner Gil Kerlikowske and Sheriff Mark Dannels for their willingness to partner with the State of Arizona to the Border Strike Force Bureau. In a State like Arizona, the cost of combating drug cartels alone would be too large to bear. A successful long-term strategy to take the fight to the cartels requires multilayered collaboration and cooperation, intelligence sharing, better communication. All of these serve as a force multiplier that is magnifying our individual efforts.

This strike force has been in operation for a little over 2 months utilizing these partnerships, and our successes speak for themselves.

Since September we have seized over $2.2 million in cash, multiple firearms, nearly 4,000 pounds of marijuana, 73 pounds of meth, nearly 19 pounds of heroin. It is important to note that in 2014, Arizona and DPS seized 14 pounds of heroin total. And we have seized nearly 19 pounds in just the last 2 months.

To paint a picture of how much that really is, there are 45,000 individual hits to one pound of heroin. We have made over 150 felony arrests and 30 misdemeanor arrests. We have taken down 14 documented gang members and over 70 undocumented aliens. And we have done it in just a short time with a short list of personnel, scarce resources, and through minimal targeted operations. It was important to build a partnership, prove the concept, and to get some wins.

Now imagine what we could do with more. This is a significant concrete example of what we can accomplish when we take a multilevel, collaborative, and cooperative approach to dealing with public safety. It is also a loud wake-up call that our current strategies have fallen short. We need a plan that is robust, that leverages resources, manpower, and money from local, State, and Federal levels.

I have spent a lot of time meeting with ranchers, families, law enforcement, and residents near the border. I know you all have as well. The greatest concerns among them are the cartels and the traffickers in a place where they live and work and raise their fam-

ily. Border-related crime is a frequent occurrence. If there were ever a time to get serious about protecting our homeland, it is now.

In addition to the drug epidemic, I would be remiss if I did not mention another potential threat to our country as a result of Arizona's border. In light of the horrific terrorist attacks in Paris, new threats on the United States from ISIS in a video released last week and recent apprehensions of Middle Eastern nationals near the Southern Border, one thing's for sure: It is time to step up our game.

On behalf of the citizens of the State of Arizona, I want to thank Commissioner Kerlikowske and his hard-working, talented, and dedicated team who made these apprehensions last week.

After what we have seen in the past couple of months with the Border Strike Force, I am encouraged about our partnership. I believe this is the most meaningful step toward securing Arizona that we have seen in decades. But more vigilance, collaboration and resources are needed if we are going to be successful in keeping our State and our citizens safe.

As Governor of Arizona, I took an oath of office to protect Arizona and our country. Arizona must hold the line for the sake of every State, every community, and every family in this country, and we intend to do so. But we can not do it alone.

Arizona can do a lot, and we will, to combat this epidemic, to slam the door on these cartels and to protect the safety, security, health, and quality of life for our citizens. But we need your help. This is not just Arizona's problem. It is America's problem. And it is going to need to be met with State, local, and Federal resources: More funding, more assets, more planes, helicopters, radios, and equipment added to our arsenal. More personnel, troopers, analysts, pilots, people to gather intelligence on these criminals, and people to take them down.

Ask yourself: What is our primary duty, our highest priority as elected officials?

The answer should be defending our homeland and protecting our citizens.

For the first time in recent memory, we have a plan that can yield real, meaningful results in this effort. We are ready to do something about this problem, and we are ready to do it now.

This could mean the difference between saving one life or countless lives, bringing down one criminal or an entire cartel. It could mean preventing a tragedy in Arizona or somewhere else.

Data shows that from 2012 to 2014, there were at least 458 drug seizures in 30 other American States with a nexus back to Arizona. I ask you, as Federal representatives of the people, to deliver Arizona's message to Congress. If you are serious about taking the fight to drug cartels and turning the tide on the drug epidemic ravaging our Nation, join us. Arizona is on the front line, and we need your support.

Thank you.

Chairman JOHNSON. Thank you, Governor Ducey.

Our next witness is Commissioner Gil Kerlikowske.

Commissioner Kerlikowske is Commissioner of U.S. Customs and Border Protection, at the U.S. Department of Homeland Security (DHS). Commissioner Kerlikowske is also the former director of the

Office of National Drug Control Policy (ONDCP). Commissioner Kerlikowske has four decades of law enforcement and drug policy expertise. And it's also his birthday today.

So welcome. Happy birthday. And we look forward to your testimony.

TESTIMONY OF THE HONORABLE R. GIL KERLIKOWSKE,[1] COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Commissioner KERLIKOWSKE. Thank you, Chairman Johnson, Senator McCain, Senator Flake. I appreciate the opportunity to be here and discuss this important hearing. I testified at Senator Ayotte's hearing in New Hampshire. I think it speaks volumes when you are having a hearing on this issue from New Hampshire all the way to Arizona on the southwest border.

Chairman JOHNSON. Commissioner Kerlikowske, if you could move your microphone up.

Commissioner KERLIKOWSKE. And I think this really speaks volumes about the difficulties of the problem and the fact that the heroin issue is so wide ranging.

On a typical day, Customs and Border Protection seizes about 6 tons of illegal drugs. For the past several years, our heroin seizures have been increasing. Last fiscal year (FY), they increased 23 percent. So far to date, they have increased about 17 percent.

Now, while the vast majority of heroin entering the United States comes in through the southwest border, it does so through the ports of entry. We have a variety of sophisticated technology and people, the use of canines and others. I would tell you that the most important thing and the most impressive thing I have seen is the resulting of these seizures.

It is between two areas. One is the quality of our people. They are very good at spotting everything from drugs coming in through cut flowers at Miami airport, to internal carriers at JFK, to taking apart cars at the border, use of the canines. But it is also, as the Governor mentioned, and Senator McCain mentioned, it is also the collaboration and the importance of that collaboration with State and local partners.

These continued efforts are important to intercept narcotics at the border, and they are a key aspect of addressing the crisis. But we clearly, all of us, recognize that merely doing interdictions and arrests is not going to be enough to solve this heroin epidemic.

When I got out of the Army in 1972 and joined the police department, several years later became a narcotics detective, several years later, commanded a narcotics unit. And then was police chief in two of the nation's largest cities, along with being the President's drug policy advisor, and now with Customs and Border Protection, I have had some real experience with this issue.

We have skipped a generation of young people that are naive about the dangers of heroin; and as we all know, as we have all been talking about, it is making a strong resurgence.

[1] The prepared statement of Commissioner Kerlikowske appears in the Appendix on page 1971.

Secretary Johnson's Southern Border and Approaches Campaign is important in the creation just recently of the three joint task forces (JTF) using all of the DHS components as a particular step forward, and it moves to increase our collaboration across the border with State and local law enforcement.

I want to commend the Governor and certainly Colonel Milstead for the work that Arizona is doing. We have been involved, and they have kept us involved in all of the different discussions on this new strike force. We could not be more proud to be a partner and to be collaborative on that.

I am also pleased that the Office of National Drug Control Policy and the Department of Justice (DOJ) have a National Heroin Task Force that they jointly chair. We also do a lot of training for the private sector, because they are an important partner in all of this. So when you have people that are driving the trucks and operating the rails and operating in the maritime environment, the more that we can educate them about what smugglers may use to try and get these drugs in, the better partner they become.

And our Office of Air and Marine (AMO) has a program called SKY PRO, which I will be happy to talk about later.

Last, I will tell you that in the over 6 years that I have been with the Administration, the opportunity to meet with many officials in the government of Mexico has presented itself to me. I think that to a person, whether it is the Drug Enforcement Administration (DEA), Customs and Border Protection, and others, would tell you that the cooperation and the information being shared with the government of Mexico officials to combat this issue on both sides of the border is at a very high level.

So I look forward to your questions and thank you for the opportunity to be here.

Chairman JOHNSON. Thank you, Commissioner.

We are going to kind of open this up a little bit in terms of being too structured where we each get our 7 minutes. We are going to start going down different lines of questioning. And I encourage Senator McCain and Senator Flake to just chime in when it makes sense.

Let me start, though. This is obviously a complex problem. There are all kinds of things we have to do.

But what I would like to ask both the Governor and Commissioner, understanding we need resources, we need the resource to do any of these things—set that aside; that is just a given—what is the top one, two, or three things that we must do to address this problem?

Governor DUCEY. So there are a number of things. First and foremost, I would say it is the cooperation between the State level, the Federal level, the county level, and the local level. Rather than being a confrontation, the fact that we are bringing these agencies and this enforcement together can make a real measurable difference in this.

And I think you touched on this as well, Chairman. It is the insatiable desire and demand for drugs that we have in this country is the other part of the equation that we have to deal with here.

And then, last, I will reiterate it because it is critical, that the funding and partnership with the Federal Government with set objectives is what success looks like, is critical to the success of this.

Chairman JOHNSON. OK. So out of that, not to complain, but—so you had cooperation. That is obviously natural. But to do what? So address the demand side and, of course, the need for funding.

Commissioner, I will ask you: The actions, I mean, what must we do in a cooperative fashion with proper funding?

So one thing is to address the demand side. I mean, I completely agree. When I was down in Guatemala with General Kelly, we were obviously just talking about the drug cartels and how basically they are off limits and destroy those public institutions.

General Kelly asked me the question: When was the last time as a nation we actually had concerted public relations education campaigns to try and dissuade Americans, but particularly our young, from doing drugs? And according to General Kelly, it was under Nancy Reagan: Just Say No.

And he talked about that famous commercial with a couple of eggs, "Here's your brain." Scrambled up, "Here's your brain on drugs." So, again, so that is the address on the demand side. What are other things? Actions that cooperatively with proper funding must do.

Commissioner KERLIKOWSKE. For us it would be congressional support for technology. We have a lot of boots on the ground, but the technology is truly the game changer in all of this. Whether it is our unmanned aircraft that you got to see when you visited the border, whether it is replacing our nonintrusive inspection devices, just big x-rays that have reached the most useful life cycle, we need that type of new equipment. And the research and development (R&D) that goes into that technology is huge.

We could not be more appreciative of the Department of Defense giving us the remote video surveillance systems, the tethered aerostats. All three of you have seen a lot of this technology, but it needs to be supported, and it needs to be improved upon.

Chairman JOHNSON. OK. So technology to detect people coming to this country illegally. Do we have the manpower once we detect to actually apprehend?

Commissioner KERLIKOWSKE. Well, one is that the Border Patrol is more than doubled in size since 2007, 2008. We are having difficulty hiring right now in the United States Border Patrol (USBP). We are having difficulty hiring our Customs and Border Protection officers. A lot of law enforcement agencies that I know at the State and local level are having that difficulty.

Your support for the veterans hiring. I can not think of another Federal organization that has done as well as we have when it comes to the number of veterans in CBP. But the fact that we are aggressively working with the Department of Defense (DOD) to get the people that will be leaving the Army as it restructures, to get them to come and be a part of Customs and Border Protection is a great opportunity. And that congressional support, your ability to use the stature and the positions you hold to support veterans coming into CBP, is a big help to us.

Chairman JOHNSON. So let us say we have the manpower to detect, we apprehend, what are we doing in terms of our own laws

in terms of processing and in many cases releasing? Can you kind of speak to that and the incentive that creates? Because, bottom line is: If the people come into this country illegally, and they are caught, and they are released, and they are in the State illegally without consequence. Or, for example, the drug traffickers, juveniles that we do not prosecute that we also face, criminally speaking, can you speak to that problem?

Commissioner KERLIKOWSKE. If they are caught with drugs, I do not think we have seen any problem with prosecutions either at the State level or at the Federal level. I think the State prosecutors will probably tell you that they would like to be reimbursed by the Federal Government for some of those costs involved in that, and I think that is important.

So the prosecution of, particularly for a drug smuggler, is critical because that is the way that we also get the information about who is behind it, who is part of the pipeline. If there is no sanction and they are just released, even if it is a smaller amount of drugs, I do not think that is helpful.

Chairman JOHNSON. Governor, you spoke about, obviously your initial success now in terms of breaking up some of these drug cartels on the Arizona side of the border. What do you know in terms of the drug cartels' control of the Mexico side of the border?

Governor DUCEY. That is definitely part of this equation. I mean, I am in my first 11 months in office here, but I do have the commitment of the Governor of Sonora, Claudia Pavlovich, in terms of cooperation and communication to combat this issue.

In addition to that, I want to amplify what the commissioner said. It is not only about law enforcement assets, but it is about proper prosecution. And having the prosecutors available and competitively paid so that when there are arrests, we can complete that to return people to their country of origin, but also to lock up the bad guys.

Chairman JOHNSON. When I toured the border through the Rio Grande Valley, touring with some local officials that complained to me that unless, for example, that the quantity of marijuana was 5 pounds or above, locals did not even bother with the prosecution of it.

Is that something similar here in Arizona?

Governor DUCEY. I hear those stories as well through the county prosecutors and county sheriffs. And to your point, Chairman Johnson, on the wrong incentives, I think if we are telegraphing what you can get away with, we are going to have more distribution and more trafficking. And that is why I think we need to tighten the screws on this.

Chairman JOHNSON. Senator McCain.

Senator MCCAIN. Let's talk for a minute, Mr. Kerlikowske, about the Sinaloa Cartel.

Is it true that they have significant control over the areas in Sonora and further south and are able to bring these drugs with relative impunity to the Arizona border?

Commissioner KERLIKOWSKE. Yes.

Senator MCCAIN. That is true?

Commissioner KERLIKOWSKE. Yes.

Senator MCCAIN. Sinaloa Cartel is the most vicious of all, particularly now that Chapo Guzman is back.

Commissioner KERLIKOWSKE. I know they are vicious, and I know no one crosses a plaza of a cartel without paying a price.

Senator MCCAIN. So the old days where some individual or groups of individuals decided they wanted to bring some drugs, that is not the case anymore. It is all orchestrated by the Sinaloa Cartel?

Commissioner KERLIKOWSKE. Or it passes through them for a fee.

Senator MCCAIN. And then, Mr. Montgomery, the drugs come across the border, and then they come to Tucson, and then they come to Phoenix, Arizona, which is, according to testimony, a major distribution point throughout the country.

By the way, I was just in New Hampshire over the weekend. In New Hampshire, they view this as an epidemic.

I want to tell you. They view it as an epidemic because of the dramatic rise in these deaths.

What happens then, Mr. Montgomery?

TESTIMONY OF THE HONORABLE BILL MONTGOMERY,[1] COUNTY ATTORNEY, MARICOPA COUNTY

Mr. MONTGOMERY. Senator McCain, the drugs get up here into the Phoenix metropolitan area, and they go to what we term stash houses where from there they may be sold to additional distributors or repackaged for further trafficking, either west or east. We have the benefit of having a pretty intricate interstate highway system here where several different highways come together, and they exploit that.

Senator MCCAIN. Do we have enough assets to do the job you want to do?

Mr. MONTGOMERY. Absolutely not.

Senator MCCAIN. Absolutely not?

Mr. MONTGOMERY. No. In order for us to be able to deal with all the drugs that are getting through—and I would underscore, too, that seizures at Arizona ports of entry are substantially on the increase. But the cartels are still getting enough drugs through to make it financially lucrative to continue to try and exploit Arizona's border.

Again, going to some of the prepared remarks, but just with a few local investigations, local law enforcement has seized 131 pounds of heroin just within the last several months. So while we have seen the percentage and the size of seizures increase at Arizona ports of entry due to great fortified Customs and Border Protection, there is still so much getting through.

And right now I have 15 prosecutors assigned to my Drug Enforcement Bureau, all of whom are more than gainfully employed right now. And we do not have the luxury, I would say, as a local law enforcement prosecutor to turn away cases. I have no arbitrary thresholds below which I will not take cases. Because if I do not do it, it will not get done.

[1] The prepared statement of Mr. Montgomery appears in the Appendix on page 1981.

Senator MCCAIN. Commissioner Kerlikowske, I appreciate your comments about hiring vets. I was recently down at Mariposa Port of Entry, and I found that they are 200 short, which then, even though we have expanded the port of entry and there is many more lanes, they are not all open because we are so short of personnel.

Now, what is the—hiring veterans, I think, is a step forward, the program for that. I am glad that it has been inaugurated.

But what are we going to do to get more people?

Commissioner KERLIKOWSKE. Well, I think the difficulty has been, Senator, is that when Congress authorized a lot of money, particularly for the Border Patrol in 2007 and 2008, we rushed very quickly to get a number of people on board.

Not all of those people would be hired today. We stopped doing a polygraph examination during that period. As you know, Congress has made that mandatory with the work of leadership of Senator Cornyn on that. So the process to get very good people who have been clearly vetted is time-consuming.

The job market is better right now. And, frankly, if you are a talented Customs and Border Protection or Border Patrol officer, you have a college degree, you are fluent in Spanish, there are a lot of other opportunities out there for you. So particularly with the Border Patrol, we are losing more people than we are actually able to hire. And we just have to support it.

And as I think all of you know, right now this is a difficult time for any level of law enforcement in the public's eye. And we really need to kind of turn that and work to turn that image around.

Senator MCCAIN. One of the benefits, obviously, of hiring veterans, you can short-circuit this extensive background process that you have to go through.

Finally, Governor, I am sure you have seen this chart.[1] It shows the cost of illegal drugs. For example, heroin in 1991 was almost $1,500 per gram. And now today it is down around $465. And there is substantial reductions. That can only mean to me that there is a supply. The old rules—laws of economics: If there is a greater supply, the cost goes down.

So I would finally ask if you think that we are winning or losing in this effort to try to control this flow of drugs, which clearly is becoming cheaper and cheaper? And I would point out when it gets really cheap, as the heroin has, it is so much less expensive than OxyContin that people turn to heroin as well. Governor.

Governor DUCEY. Senator, we are losing on this front.

You can look at the cost here, and that is a reflection of the supply. But I think what is more important than the statistics and the numbers is the effect that it has on our State and has on our country.

I can tell you that everything that I am dealing with as Governor beyond K–12 education: Chronic homelessness oftentimes; unemployment; poverty; joblessness; the 17,000 children that are wards of the State; the parents that are unfit to care for them; domestic violence; the people, the men and women, that populate our prisons. There is a central unifying theme of drug abuse and addiction.

[1] The chart referenced by Senator McCain appears in the Appendix on page 2053.

So there is a tremendous human toll not only on the families of our State and our country, but the cost to our government in terms of public policy.

Senator MCCAIN. I thank you.

And, Mr. Chairman, I want to thank you again for coming to Arizona. You have made this issue a top priority of the Homeland Security Committee. I appreciate all the work that you have done and many hearings and visits, and thank you for being here today. I think it means a lot to the people of our State. Thank you.

Chairman JOHNSON. Appreciate the invitation. Senator Flake.

Senator FLAKE. Thank you. Commissioner Kerlikowske mentioned that the Border Jobs for Veterans Act was signed into law just a few months ago.

I want to thank the chairman also. Senator McCain and I held hearings and talked to you and others. We were told for a long time the reason these jobs have not been filled partly is because we have too small an applicant pool that can get through all the hoops. And it certainly made sense to turn to our veteran community.

And so when we brought that legislation to Senator Johnson, he worked quickly to move it through, and we are happy to have that signed, and we hope it makes a difference. It is not a solution for everything, but it should help a lot.

And thank you, Mr. Chairman, for that.

Chairman JOHNSON. Senator Flake, let me just quick jump in here because I always say when a train does not derail, that is good news. It is just not news.

I mean, here is a bill that was very good news, and it was done because we concentrated not just amongst ourselves, but with, our colleagues on the other side of the aisle. I mean, that was an area of agreement that unified us. So we were able to get this passed and signed into law. I mean, everybody involved in this, and it was really the leadership of these two gentlemen here that really gets credit in that.

But, again, there is good news. If you concentrate on the areas of agreement, you actually can accomplish things to get resolved, and Senator McCain and Senator Flake made that happen.

Senator FLAKE. Thank you. Let us turn to this chart[1] that Senator McCain referenced talking about this drop in price just across the board—less so for marijuana—but look at the top, heroin, $1,500 a gram back in 1991 down to $465 now, a huge percentage in drop.

I am just wondering, how price sensitive is the demand for heroin? Looking at the problem we have today, you know that when it is more available, when it becomes cheaper than some of the prescription drugs that people either can get or can not get anymore, if we were to, through focusing on the supply side, bring this price back up here, at what point do we make progress? Or is it simply squeezing the balloon, and it goes to somewhere else? It goes to cocaine. It goes to other drugs.

What are your thoughts on that, Mr. Kerlikowske?

[1] The chart referenced by Senator Flake appears in the Appendix on page 2053.

Commissioner KERLIKOWSKE. Well, Senator, so sadly I will tell you that the long history of attempting to influence the price by interdiction or interception is analogous to attempting to reduce the number of diamonds in this country by seizing the lumps of coal. That is a fact. Reducing the demand, as all of you have mentioned, is going to be critical if there is less demand.

But there is two other important points in here. One is that under President Calderon's administration, we all know that the Mexican Military is used to do an awful lot of local law enforcement. I believe they did less of eradication where the poppies are being grown in Mexico.

Very hopeful with this relationship with the government of Mexico, that they will be back involved in greater efforts and eradication because the heroin problem is not just one for us. It is also one for Mexico. So rather than pay a smuggler to bring drugs into the United States, that smuggler may be paid in product. That product will be sold locally on the plazas and the cities and the towns in Mexico.

So eradication is important. Greater interdiction is important. But in the long term, reducing our demand, as all of you have mentioned, is going to be one of the better aspects of how to deal with this.

Senator FLAKE. Governor Ducey.

Governor DUCEY. In addition to that, Senator, I think it is important to point out the prescription opiate drug abuse that exists in this country. So there are things we can do beyond law enforcement and prosecution in terms of reforms around prescriptions and how many of these pills are prescribed and for what, how many, and how many refills.

And I will defer to Colonel Milstead on how the supply and demand has affected the consumption in terms of the pricing structure. But it is in addition to the cartels. There is always also things we can do right here at home.

Colonel MILSTEAD. Chairman Johnson, Senator Flake, the price does change. And back 10 years ago, if you were a heroin addict, it would cost you somewhere between $350, $400 a day to continue with your habit. Today that same amount of heroin or the potency of the heroin would be somewhere closer to $30 or $35 for that same addiction, that same high.

A tab of OxyContin in a school, in a high school in Phoenix, Arizona, is going to be somewhere around $50 or $60. A point of heroin is $10. But what the kids do not understand, remembering it is youth, they are risk takers, they believe it will not happen to them and that the reports are wrong. But the addiction rate for heroin, for opiates, is astronomical. And one of three things happen to those children: They become a slave to the drug, they overdose and die, or they are in a lifetime of rehabilitation and treatment.

Senator FLAKE. Before you get to that, you may have addressed some of these in the opening statement, so I do not want to take away from that, but I would be interested, in terms of prosecutions, of those doctors or others' prescription mills that we see out there. And, in fact, the most effective prosecution is at the State level or the county prosecution or if it needs to be Federal or there needs to be cooperation there?

But before we get to that, since you may address that in your opening, Governor Ducey, can you talk a little more about the human cost? And you mentioned in your opening statement this is impacting the standard of living of folks in Arizona.

We hear numbers. You talk about number of kids that are affected. But somebody could say, well, this is a population of 6.57 million in this State. That is still on the margins.

Is it beyond the margins? Is it affecting more families? What do you see out there? Is it really affecting the quality of life of the State?

Governor DUCEY. Well, I would just ask every parent that is in the room: Has this affected their family or their neighbor's family or your extended family in terms of drug abuse and addiction and the human toll that this brings to a family in terms of pain and anguish and anger and drug abuse?

My experience traveling the State over the last year is that this affects all of our communities and, in fact, affects all of our families, either directly or indirectly. And that does not even go to the fact that we have so many people living in a lower standard of life today than they did before the downturn. And I can not tell you how many small business entrepreneurs tell me when they go to hire for a position, that they can not find people that can pass the drug test. So I think it is affecting us in our homes and our families, but it is also affecting our economy and our productivity as a State and a nation.

Senator FLAKE. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Flake. Just to pick up on the drug test. I know as I traveled around the State of Wisconsin, there is not one manufacturer that can hire enough people and for multiple reasons. One of them is they do drug testing. 50 percent of the people, when they find out they have to take a drug test, do not show up. Of those that do take the drug test, 50 percent fail. So you are already a ways down the list there.

Commissioner, I do want to pick up a little bit on the poppy issue. When I was down in Central America, we were certainly briefed that for the farmers, it is 50 times more profitable for them to grow poppies than really any other crop. The abundance of crops they can grow down in Central America—it is a great place to grow crops—50 times more profitable. Plus, they do not even have to transport it. So that is huge. Heroin poppies are an extremely profitable crop, and that is also part of the issue.

But I do want to talk—in our report, in testimony, former Drug Czar General Barry McCaffrey testified that we are only interdicting about 10 percent of the illegal drugs coming to the Southern Border. I know we had testimony from the Coast Guard separately, only interdicting 11 to 18 percent over our maritime border.

I will just ask the panel: Anybody want to either confirm or dispute those types of numbers?

Commissioner KERLIKOWSKE. When I was in Seattle as the police chief, I was his police chief, so I would get a lot of advice from General McCaffrey. I would tell you that I think there is one big issue of trying to determine what percentage we interdict or do not interdict, and that is that we do not know what we do not know.

So we are doing a much better job, as I said. Our increases last fiscal year, our continuing increases this fiscal year. When Senator McCain talked about our appetite for drugs in this country, we have got to work to reduce that. So I have seen lots of economists and, reminds me of when President Truman said: If you lined up all the economists end to end, would not that be a beautiful sight?

You mentioned that I have seen lots of econometric pieces on this, and, frankly, I still think that there are a lot of questions about how much are we missing versus how much do we interdict?

Chairman JOHNSON. Well, again, those are difficult numbers to come up with. But we can estimate our basic total usage in America. Again, it is not just General McCaffrey. It is also the Coast Guard. Bottom line is: We have an enormous flow coming into this country illegally that we are not catching. Is that kind of without dispute? Mr. Montgomery.

Mr. MONTGOMERY. Chairman Johnson, I think that is true. The cartels have a high level of tolerance for the amount of drugs that are being seized for them to continue the same sorts of routes that they try to exploit. And it is not until they suffer severe economic pain in trying to exploit a particular route that they are going to change and shift their behaviors.

And I think that is also somewhat reflected too in the chart, the pricing chart. A couple of other points that I would offer to consider in this context is, when you look at the early 1990s, the high price for heroin and methamphetamine, over time the drug cartels have been able to improve their own economies of scale where they can produce these drugs at a much lower price than what it used to cost them.

They do not have to import heroin from South America or import it in a way where it originates out of Afghanistan. They are growing it locally. It costs them less to produce. They have improved their ability to produce high-quality heroin by mimicking what Colombian drug cartels were able to do.

So you have product closer to its source in greater amounts, and they have been able to cut out the middleman in order to transport their product into the country. Each one of those different improvements obviously allows you, then, to sell for less and still maintain a high profit potential.

And when it comes to methamphetamine, back in the 1990s it used to be a product of lower yield, small labs domestically. And so there was a lot of danger. The product was not very good. You could charge more if you were a good dealer. But now you have super labs producing methamphetamine just across the border, and that is now a part of that cartel's product mix. And they have gotten very good at producing high quality methamphetamine for less.

Chairman JOHNSON. Talk a little bit about routes and flow. I just kind of want to talk a little bit about the history now and how it really is like damming water, and it just kind of flows around, because 25, 30 years ago the flow was really out of Colombia, through the Caribbean, and then up through Miami; correct? And we did not stop it. Maybe we reduced the flow through there. But then we redirected the flow through Central America.

And same thing's true, in our next panel we will be talking about the 1990 plan which really has not been updated. You shut down certain areas, and it just flows into other areas.

Can somebody address where we are on that? And is that all we can really do is just redirect it to some other area and then destroy public institutions in some other area?

Governor DUCEY. Well, I think when you talk specifically about this State, you look at our neighbors. California does have a wall. New Mexico has a mountain range. Texas has a river. Arizona's border situation is different. So in terms of the history and how that's affected the State over the course of decades, I will ask Colonel Milstead to comment.

Colonel MILSTEAD. Mr. Chairman, over the—I am sorry. If you look at over the years of what has happened with the movement of drugs into the United States, I was a Phoenix police officer back during 9/11. When everything quit moving during 9/11, the supply in Phoenix, the supply for drugs, for hand-to-hand drug deals, was almost nonexistent after about 10 days.

So the supply train, the chain of available drugs in Phoenix, was about a 10-day supply. So that was pretty much cutoff. When everything quit moving, the borders were locked down. Everything stopped.

As we have looked at the changes over the years, Arizona continues to be a central focal point. And really the hard narcotics, they come through the ports, and we call them ports. And the other side, they call them plazas, and as Mr. Kerlikowske spoke of, those plazas are all run by a cartel. And those ports of entry are where your hard narcotics are coming through. Easier to secrete in produce. Easier to secrete in vehicles.

And the number of vehicles coming through Nogales and come through DeConcini and through Mariposa, it is the busiest port in the Nation, so it is very hard to control. And those cars that come through routinely day after day, they begin to be thought of as vehicles that are coming in for work. They have work visas. They come in and out every day.

Some of those are unwitting people who are moving drugs that they don't even know they're moving because they're secreted into cars without their knowledge.

The other thing that happens is through these mountainous regions, if you talk to Sheriff Dannels in Cochise County, you talk to the ranchers, they will tell you that the backpackers are bringing in 25 kilo loads on their backs. They are armed.

And when you ask the ranchers, "Well, what do you do when you see these cartel members coming through your ranch and cutting your fence and disrupting your operation?" They say, "We step aside because the response time is too long, and you can not get law enforcement there quick enough."

So the marijuana is still coming through those mountainous areas through the Tohono O'odham Nation and they daisy chain the Indian reservations up into metro Phoenix.

So what can we do? We have to have that presence. We have to have the troopers, the Federal agents, the sheriffs. Everybody's got to be in alignment to make it much more difficult. And it will move it to some other area, but we will respond to that as well.

But really at the end of the day what has to happen, there has to be a change in America's appetite for narcotics. We have taken law enforcement out of every school for the most part. The only thing that is left is the school resource officers. There is no drug resistance training. There is no national campaigns on drugs.

What we are doing in Arizona with Youth, Faith & Family and Debbie Moak, we are trying to close the back end of that circle, the treatment and prevention side. But until we do something about that, when there is not that insatiable demand as you spoke of, sir, this will continue.

Chairman JOHNSON. By the way, that is an extremely important point you made earlier, though, that after 9/11 we shut down our ports of entry. It really went a long way for drying up the supply, which tells you the reality of the situation: Most of these hard drugs are coming through our ports of entry, not being backpacked.

Anybody else want to comment on that? I mean, that is an insight to me. That is extremely good testimony there.

Commissioner KERLIKOWSKE. Mr. Chairman, the majority of our seizures of heroin are at the ports of entry, not between the ports of entry. But, most police chiefs are not really known for their optimism. But if you look at cocaine, our consumption of cocaine in this country since 2007 and 2008 is down by half. We have made significant improvements. The crack cocaine epidemic that we talked about in the late 1990s is really pretty much a thing of the past.

Chairman JOHNSON. Moved on to other drugs, methamphetamine and——

Commissioner KERLIKOWSKE. Well, methamphetamine has always been the lowest drug in drug use in the United States. The difficulty with methamphetamine is that it is very specific to geography. So a place like Arizona or Iowa or the West Coast can get hit very hard, devastatingly hard, with methamphetamine. If you go to New England, it is not that much of an issue.

But when you approach this issue from this whole of government approach, which I think everybody here is talking about, I think cocaine would be a place where optimism, we could look toward heroin, working and doing the same kind of thing, reducing the demand, doing better interdiction, having better technology, but educating people about, as Colonel Milstead said, the dangers of drug use.

Senator MCCAIN. Could I just——

Chairman JOHNSON. Yes.

Senator MCCAIN. I know we have another panel, so I will be brief.

Governor Ducey, as a major part of your Arizona Border Strike Force Plan is the acquisition of systems, aircraft, hardware that you need very badly. It is called a 1033 program, as you know, where the Defense Department will transfer equipment that we can determine is, quote, "excess."

I just want to tell you we will begin work in January on the 2017 defense authorization bill. We will work closely with you and your people to make sure that we make use of this 1033 program to transfer some of the much needed equipment that you need in order to make this Strike Force Plan effective. So we will go to work on that.

Governor DUCEY. Thank you, Senator.

Chairman JOHNSON. Senator Flake.

Senator FLAKE. Thank you.

Governor Ducey, I want to say congratulations on, again, the Strike Force. That is a great idea to leverage the State's resources and to work more cooperatively at all levels.

Can you give us any idea of where we still need help at the Federal level to make that work more efficiently? Do you work well with the U.S. Attorney's Office, for example? And are there other areas that we can work on and help you out with?

Governor DUCEY. Well, I want to say thank you, Senator Flake. And I want to say the beginning of this partnership with Commissioner Kerlikowske here has been the best first step.

Step two is going to be around proper prosecution. But what we have found, I would say that the difference here is we are reaching out to these agencies, and we are talking about the needs of Arizona and the shared goals, not only about our State, but of the Nation.

And I want to say how grateful I am to Commissioner Kerlikowske for his urgency on this matter. And I think we also have some excitement around the success we have in just 8 weeks, and what is possible afterwards.

Senator FLAKE. Thank you.

Chairman JOHNSON. I just have two basic lines of questioning here.

First of all, you go down to Central America. You see this drug problem having destroyed the public institutions in Central America. In testimony in the second panel, we are talking about the concern with all this money about potential corruption within our own institution.

So I just want to ask your evaluation, how much corruption? How concerned are you? And just take it from there.

We will start with you, Governor Ducey.

Governor DUCEY. Well, the last thing I want to do is paint our State as perfect, because no place is perfect. But this culture of corruption does not exist in the State of Arizona. In terms of what we are seeing across the border, again, I will defer to folks that have been around longer than I have been.

But regardless of that situation, this idea that there is a fight that needs to be fought and that we need to bring resources to it and the best possible people at the highest level of ability and intelligence and sense of mission is going to be in the face of what is happening with these drug cartels and the amount of money that is sloshing through this system and destroying lives on this side of the border.

Chairman JOHNSON. First of all, that is good news.

Colonel, do you want to offer any insights?

Colonel MILSTEAD. With corruption I think I would leave that to Commissioner Kerlikowske having so much experience with the border itself, Mr. Chairman.

But I will tell you, if you speak to the county sheriffs along the border, to Senator Flake's point earlier, there is a huge problem in getting the U.S. Attorney's Office to prosecute these drug offenses on the border by a pound of load, by age of the criminal alien.

But there is a huge concern about the ability to prosecute these cases through the U.S. Attorney's Office. And it puts that burden back on these counties, and I think really the expert on that would be Sheriff Dannels to speak to that specifically and really more Commissioner Kerlikowske on the corruption.

But thank you, sir.

Chairman JOHNSON. Thank you. Commissioner.

Commissioner KERLIKOWSKE. Mr. Chairman, 60,000 employees, I think, the corruption issue is a significant concern to me. And until August of last year, we did not have Internal Affairs, and what we had was anemic.

Secretary Johnson gave me authority to build an Internal Affairs Unit with aggressive criminal investigators, and we are in the process of doing that. Given the amount of money and the drug issues, corruption is always a concern. It has me concerned every night.

Chairman JOHNSON. So let me close out again. Just trying to talk to you about, why do we have to secure our border? I mean, obviously we are talking about one of the problems. The root cause is the insatiable demand for drugs. We have to secure our borders for public health and safety. We also have to secure our border from a standpoint of an immigration system that works.

We also have to secure our border—it is imperative to national security. When I was down in Honduras and touring with General Kelly, apparently this term has been around—I had never heard of it—I have always heard of Other Than Mexico (OTM). In hearings, we would say, well, those are the folks coming in from Central America.

But when we were in Central America, they talked about special interest aliens (SIAs). Right now a lot of the special interest aliens are Cubans because of our, dry foot policies, driving people here that can get here. Cubans, they can stay. There is an incentive.

But also included in that SIA category were Somalis, Pakistanis, and Syrians, and others.

Can you speak to that? Again, to me that is a very large concern based on what we are seeing over in Syria and Iraq right now.

Commissioner KERLIKOWSKE. So the term is for special interest aliens, those that have come from a country that could have problems with the United States. We apprehend every year people from well over 100 countries, whether it is on the Northern Border or whether it is on the southwest border. We turn those people in a very short period of time over to Immigration and Customs Enforcement (ICE) for further work. But it is always a concern, and I work hard with ICE to make sure that they are fully vetted, and ICE works hard to make sure that they are detained.

Chairman JOHNSON. Anybody else providing insights, some data?

Senator McCain, do you want to make comment on that?

OK. Sure.

Mr. MONTGOMERY. Chairman Johnson, I know that within just a couple of years ago, I think 2012, Department of Homeland Security's own Statistics Bureau identified that along the southwest border, Customs and Border Protection, Border Patrol has detained people from every single country of interest and every single State-sponsored terror country that is listed by the U.S. State Depart-

ment. And this is ongoing. And that national security threat is critical.

There has been testimony before Congress by the Acting Inspector General (IG) at DHS noting corruption issues with DHS border personnel and the link between drug trafficking organizations and terrorist organizations. It is in the public record.

Chairman JOHNSON. Thank you, Mr. Montgomery.

Ready for the second panel. Again, I just want to thank all three of you gentlemen. First of all, your service to the community, your State, to our Nation. I really do appreciate you, Governor, in terms of making this a very high priority. It is a priority we share. We want to work very cooperatively with you. We have to solve this problem as a national issue. So, again, thank you for your thoughtful testimony and for your time.

We will seat the next panel.

Governor DUCEY. Thank you, Chairman. Thank you, Senators.

(Applause.)

Chairman JOHNSON. Will the next panel please be seated.

Well, some of the witnesses are participating in a press conference, so let us get going so we can move things along.

Stay standing. Raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Sheriff DANNELS. I do.

Ms. MERTZ. I do.

Agent JUDD. I do.

Mr. TAYLOR. I do.

Chairman JOHNSON. Our next witness is Sheriff Mark Dannels. Sheriff Dannels is the Sheriff of Cochise County, Arizona. Mr. Dannels began his law enforcement career in 1984 after serving a successful tour in the Army. With 30 years of law enforcement experience, Mr. Dannels has been recognized, among other things, to receive the Medal of Valor, Sheriff's Medal, and Deputy of the Year. Sheriff Dannels.

TESTIMONY OF THE HONORABLE MARK J. DANNELS,[1] SHERIFF, COCHISE COUNTY

Sheriff DANNELS. Chairman Johnson, Senator McCain——

Chairman JOHNSON. I think we all have to get our microphones pretty close.

Senator FLAKE. You might want to just grab that mic there if you can reach it. Seems to be a little bit better.

Sheriff DANNELS. That's better?

Chairman Johnson, Senator McCain, Senator Flake, thanks for being here and listening to us today.

With 83 miles of international border within its jurisdiction, Cochise County plays a significant role in combating drug and human trafficking organizations and the associated violent crimes which adversely affects Arizona residents and other areas throughout the United States.

[1] The prepared statement of Mr. Dannels appears in the Appendix on page 1987.

One of Mexico's largest and most notorious drug cartels, Sinaloa Cartel, long employed the use of local Mexican drug trafficking organizations, to carry out cartels' drug distribution and transportation into and throughout the United States.

Violence against innocent citizens, public officials, law enforcement, and rival drug/human trafficking groups in Mexico continues to escalate.

The adverse effects of the drug and human trafficking organizations operating in Cochise County not only have significantly diminished the quality of life of county residents, but also placed unbearable strains on the budgets and resources of private and governmental agencies in our county.

Having the true-life experience to live and work as a officer and deputy and now Sheriff of Cochise County since 1984, it has been an educational lesson for me reference border security. I have witnessed the escalation of violence by these careless assailants on our citizens raising the question: Who actually controls our borders? Cochise County has become known as the gateway to illegal activity for those that unlawfully enter into the United States.

I want to talk just a minute on the history of our border and why we are in the current situation that we are in. In the 1990s, the Federal Government prepared a plan to address the unsecure, unsafe border. At a press conference, Former Sheriff Larry Dever, in Tucson, Arizona, a Border Patrol spokesman announced their intent to secure the populated areas of the border, specifically San Diego, Yuma, and El Paso, and the international port of entries. These target areas, which I call the Ps, ports and populations, will be a Federal Government focus point.

The second half of their plan was to reroute the illegal activity disturbances into the rural parts of the southwest border with the thought that the cartel organizations and smuggling groups would be deterred by the rugged and mountainous terrain along the border.

Since the release of the plan 20-some years ago, many changes have taken place in Cochise County: Increased illegal activity outside the protected areas, ports; fear and frustration increased in rural Cochise County and along the southwest border, my fellow sheriffs; ranch and farmlands damaged due to an increase in illegal activity; transnational cartels and smuggling organizations controlling and set up smuggling routes in rural Cochise County and the southwest border; no lack of redefinition of the plan since the 1990s; economic down-cline to include a population decrease in Cochise County; lack of federally elected leaders to address unsecured border and fears creating a lack of trust and anger by citizens of my county; undue pressure on local law enforcement and sheriffs to address issues, fear, and consequences for those committing those crimes; lack of funding for local law enforcement and criminal justice system and corrections in order to address border crimes at the local level due to lack of Federal Government intervention.

Local law enforcement is best suited to best understand the community needs and solutions based on the expectations of their citizens. Community policing begins and succeeds at the local level first.

As the Sheriff of Cochise County, I felt it was my elected and statutory duty, my oath of office to support the United States Constitution and the Arizona Constitution, to protect and secure the freedoms and liberties of my citizens. No longer a debate by those who live in the rural parts of the southwest border, the rural parts of the southwest border are not secure and are vulnerable to any type of transnational criminal activity.

Working with a limited budget and staffing, sheriffs along the southwest border struggle each and every day to find ways to enhance the quality of life and safety for those they serve. Sheriffs along the southwest border work diligently to do it by educational, prevention, and enforcement programs by building true, trusted partnerships with our local law enforcement partners.

Local law enforcement, typically sheriffs throughout the southwest border and within the State of Arizona, have taken a lead on arresting and prosecuting those involved in local smuggling which create an enormous challenge to our local budgets. One of the most controversial is the juveniles that are smuggling.

And right now we have taken the role of doing that at the State level with our county attorney. And our juvenile rate has gone down from three or four. We are managing juveniles up to 19, 18 or 19 in our jail. So it is a big burden on us.

Additionally, the State Criminal Alien Assistance Program (SCAAP), have steadily decreased over the years. The financial decrease has, once again, placed a huge financial burden on our local sheriffs. Between 2009 and 2014, Arizona sheriffs have a SCAAP deficit of over $226 million. We have been rewarded 19 million throughout the State of Arizona. We get about 4.8 cents on the dollar for detaining illegal aliens at the local level.

The smuggling of Mexican heroin and methamphetamine crossing our national border has become very popular based on the effectiveness and efficiency of transferring certain drugs by the drug cartels. Detection is more difficult by law enforcement creating a financial opportunity for those organizations on both sides of the border.

Sadly, those that become victims of these drugs often become a deadly statistic. In Arizona, heroin deaths in 2004 was 50 and 2014 was 200. Education and prevention programs are necessary for those tempted and are in need of these programs.

Many law enforcement agencies are equipping their law enforcement deputies with Narcan to assist with these overdoses. This is becoming a common epidemic in our communities. This epidemic is relentless. It holds no age, race or gender harmless.

Governor Doug Ducey has been instrumental in supporting our efforts here in Cochise County, constructing a regional public safety communication, intelligence center, providing additional complimentary, I would say, resources to our efforts to combat drug smuggling, that adds nexus to secure the border.

This true partnership unifies local and State efforts in hopes of enhancing our quality of life for our citizens and beyond. As we all know, this problem not only challenges our quality of life here, but negatively exploits communities throughout this Nation.

I want to get to a few recommendations that are a common theme in our county when it comes to talking to our citizens and

based on my experience working with law enforcement. We really need to look at redefining that plan of the 1990s. It has been over 20 years, and take the successes and buildupon what is not working and identifying them.

We need to have a political will by our Federal leaders to make border security a mandated program. Border security should be first and not mixed or blended with immigration reform.

In the Tucson Sector, only 43 percent of the Border Patrol agents are actually on the border in the Tucson Sector. Support immigration first-line Border Patrol agents that work the border regions. They have a dangerous job, and it is no secret that their frustration is high based on the abnormal complexities in reference their assignments.

Secondary checkpoints are good as long as the primary is working first. Quality in life, citizens living on our borders by sheriffs and the State Governors regarding approved security and safety. Funding supplement for local law enforcement prosecutions, detention, and criminal justice in support of border crimes.

Continued funding and support for the Stonegarden program which is discretioned by the local sheriffs, to tell what is best needed for their respective counties. Empowerment with action to the Border Patrol leaderships. We have three great leaders in our county, and they have great ideas. Enhanced funding for the regional communication and accountability for the local law enforcement needs to continue.

In summary, our local efforts have proven to be beneficial in bringing overdue solutions to an insecure border that becomes a discretionary program by those federally elected leaders and policymakers that have been entrusted to protect our freedom and liberties.

As a sheriff elected by the good people of my county, my biggest fear is losing another life, another citizen in my county and/or law enforcement officer, deputy, or agent.

One would hope the priority of security on our border does not become just another price tag and/or political posturing, but, rather, legal and moral requirement to safeguard all of America, which so many heroic Americans have paid the ultimate sacrifice.

Today's opportunity instills fresh hope that our voice and Senator Johnson comes back, but before DC, comes back for the invite, I truly appreciate that. On behalf of my citizens in my county and law enforcement in my county and the folks in this great State and all the sheriffs here in Arizona, thank you.

Chairman JOHNSON. Thank you, Sheriff.

Our next witness is Dawn Mertz. She is the Executive Director of Arizona High Intensity Drug Trafficking Area (HIDTA). Prior to her appointment, Ms. Mertz served 27 years as a criminal investigator for the Internal Revenue Service (IRS) Criminal Investigations Unit. Ms. Mertz.

TESTIMONY OF DAWN MERTZ,[1] EXECUTIVE DIRECTOR, ARIZONA HIDTA, OFFICE OF NATIONAL DRUG CONTROL POLICY

Ms. MERTZ. Good morning. And thank you for this opportunity to appear before you, Chairman Johnson, Senator McCain, and Senator Flake.

It is my privilege to address you today on behalf of the Arizona High Intensity Drug Trafficking Area Executive Board concerning law enforcement efforts to combat illicit narcotic drug trafficking.

The Arizona HIDTA region is just over 64,000 square miles. It includes 372 miles of contiguous international border with Sonora, Mexico. The international border area consists of inhospitable desert valleys and rugged mountainous terrain, which are ideal for drug smuggling.

Due to Arizona's geographical location and shared border with Mexico, all of its highways and roadways are exploited by Mexican drug trafficking organizations to transport large quantities of illicit drugs.

Each year the Arizona HIDTA conducts a comprehensive intelligence study to identify new and continuing trends in the Arizona region.

The most recent threat assessment found that the Sinaloa Cartel continues to present the primary operational threat to Arizona, with vast resources to source, distribute, transport, and smuggle large amounts of cocaine, marijuana, heroin, and methamphetamine, in and through Arizona, to drug networks throughout the United States.

A significant number of drugs seized in other States have been linked to Arizona, which demonstrates how vital Arizona is to Mexican drug organizations. After methamphetamine, heroin is the greatest threat in the Arizona HIDTA region. The abundance of heroin in Arizona is directly correlated to the high levels of opium poppy cultivation and heroin production in Mexico.

The number of Arizona HIDTA investigations with heroin seizures increased 161 percent from 2011 to 2015. Many of the investigations are international, multi-state, and multi-jurisdictional in scope.

Law enforcement operations that successfully disrupt and/or dismantle Arizona-based organizations directly impact the availability, price, and purity of heroin and other U.S. drug markets. Seizing the opportunity to profit from the growing appetite for heroin, stemming from the prescription drug epidemic, the Sinaloa Cartel and other Mexican drug organizations have adapted to meet the growing demand by producing, smuggling, transporting, and distributing wholesale quantities of Mexican white, brown powder, and black tar heroin to expanding northeast, midwest, southeast, and northwest markets through Arizona-based trafficking networks at unprecedented levels.

The Sinaloa Cartel and other Mexican drug organizations have diversified heroin production to produce white heroin to increase their market share in emerging and existing heroin markets. Historically, heroin users in the East Coast cities have preferred white heroin over Mexican tar heroin.

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[1] The prepared statement of Ms. Mertz appears in the Appendix on page 2017.

Chronic abuse of prescription opioid drugs, such as OxyContin, Percocet, and Vicodin, creates a gateway for heroin addiction. Research indicates prescription opioid abusers between the ages of 12 and 49 are 19 times more likely to engage in heroin use than their counterparts with no history of prescription opioid abuse.

The transition from prescription opioid abuse to heroin occurs most often among youths age 12 to 17, with a transition to heroin occurring within an average of 17 months.

Preventing prescription drug misuse and abuse is essential to reduce the number of lives lost and those addicted to prescription drugs and heroin.

The Arizona HIDTA, in collaboration with State and local agencies, is expanding its prescription misuse and abuse initiative to all counties in the Arizona HIDTA region. In the pilot counties, the number of deaths from opiate drug overdoses decreased 28 percent while the non-pilot counties' deaths increased.

The Arizona HIDTA has also launched a Stronger Together prevention initiative bringing together law enforcement and community substance abuse prevention coalitions with a central goal of reducing substance abuse and is in the process of developing a Native American and Spanish language prevention tool to fill those gaps.

Coordination through shared intelligence is critical to combating the tremendous threat posed by the Sinaloa Cartel and Mexican drug organizations. Under the coordination umbrella of the Arizona HIDTA, participating law enforcement agencies eliminate duplicative operational and investigative programs and facilitate tactical, operational, and strategic intelligence sharing.

The Arizona HIDTA approach to intelligence training, information sharing, and demand reduction demonstrates that as traditional organizational barriers are overcome, law enforcement entities can better focus investigative and intelligence resources on dismantling and disrupting the most dangerous and prolific drug trafficking organizations.

The Arizona HIDTA remains committed to facilitating cooperation among law enforcement entities and to supporting coordinated law enforcement efforts to combat Arizona-based drug organizations.

Thank you for the opportunity to appear before you today and for the Subcommittee's continued support of the HIDTA program.

Chairman JOHNSON. Thank you, Ms. Mertz.

Our next witness is Brandon Judd. Brandon Judd is a Border Patrol agent and serves as the President of the National Border Patrol Council, representing more than 17,000 Border Patrol agents and staff. Mr. Judd started his career as a field agent in 1997 and brings with him more than 17 years of experience as a Border Patrol agent. Agent Judd.

TESTIMONY OF BRANDON JUDD,[1] PRESIDENT, NATIONAL BORDER CONTROL COUNCIL

Agent JUDD. Senator Johnson, thank you very much, Senator McCain, Senator Flake, I appreciate the opportunity.

[1] The prepared statement of Mr. Judd appears in the Appendix on page 2026.

On August 26, 2015, the DHS Deputy Secretary Alejandro Mayorkas was in the State of Montana to take a hard look at the organized illegal smuggling problems with narcotics in the Havre Border Patrol Area of Responsibility to the back-end oil fields located in Montana and North Dakota. Mr. Mayorkas was made aware of the smuggling due to the diligence of various local law enforcement entities.

During his visit, Mr. Mayorkas met with several law enforcement agencies as well as with me and a few other officers of both the National Border Patrol Council and the National Treasurer Employees Union (NTEU). Although I represent the men and women of the Border Patrol in the capacity of a labor leader, I am also a Border Patrol agent extremely concerned about the security of our nation's border. My members, who are your agents, are also genuinely concerned about the security of our borders. Therefore, at the meeting and on their behalf, I raised three issues:

First, the lack of actionable intelligence provided to agents to allow them to be successful.

Second, the releasing of criminal aliens from Mexico who are in our custody.

And third, the practice of providing overtime to managers to sit behind a desk as opposed to field agents performing enforcement duties.

For the purpose of this hearing, I will confine my comments to the lack of intelligence and its impacts on Border Patrol and Border Patrol's operations. Simply put, Border Patrol agents are not being given the intelligence necessary to be successful.

How can a Border Patrol agent know smuggling is taking place, let alone do their job, if they are not given the necessary intelligence? To date and even though this issue was brought directly to Deputy Secretary Mayorkas's attention 2 months ago, Border Patrol agents in Montana still have not been given the intelligence necessary for them to interdict the narcotics being smuggled through their Area of Responsibility.

Please allow me to give the committee two examples of how this is impacting our operations. When Customs and Border Protection Commissioner Gil Kerlikowske became aware of this hearing, he hastily put together an operation aimed at interdicting heroin coming from Mexico into the United States.

This operation is now in the fourth week of four, and it has been a complete failure. I personally spoke to the agents participating in this operation and asked the following questions:

Were you given any idea of how this operation could be a success?

Were you given any intelligence that would help you be successful?

Were you given any training on how to conduct the operation?

Were you given any intelligence specific to heroin smuggling?

As a Border Patrol agent, are you familiar with or have ever worked at a port of entry?

Were you trained on how to work at a port of entry?

Are you aware that this operation is not only to seize heroin, but also to gather intelligence?

Do you know of any heroin that was seized during this operation?

Do you feel this operation was properly planned and communicated to the agents assigned?

And last, and most important, as per the stated purpose, do you feel this operation was a success?

To every single one of those questions, those agents answered no. Not one of those did they answer in the affirmative except for one K–9 handler who was formerly an Office of Field Operations (OFO) officer that worked for the port of entry that knew what the port of entry's responsibilities were.

I would also like to give you another example. On February 23, 2015, a Bisbee, Arizona, police officer made a routine traffic stop on a U–Haul moving truck. During the stop and while speaking with the driver, the officer developed enough suspicion to call for a Border Patrol K–9 Handler nine to conduct a free-air sniff around the truck. While walking around the truck the canine alerted to the presence of a controlled substance or persons inside the locked storage unit of the truck.

Several thousands of pounds of marijuana were discovered inside the truck, and it was later determined that the truck came from a home in Naco, Arizona. A subsequent search warrant was obtained and in the early morning of February 24, 2015, a tunnel was found on the property of the home. It is estimated the tunnel was used for several years prior to discovery.

I would like to point out, because Sheriff Dannels is here, the only reason we knew that that truck came from a home in Naco, Arizona, was because one of his deputy sheriffs reported to the scene and said, "Hey, I saw that truck at this home," which allowed us to get the warrant to search that home.

This was great police work, and all officers and agents involved should be commended. It is, however, a complete breakdown of the intelligence cycle. Prior to writing this testimony, I spoke with three of my former colleagues at the Brian Terry Memorial Station. This station is assigned to the area where the tunnel was found, and all three were absolutely amazed that a cartel was able to run contraband directly under the nose of several agents for so long.

How serious is the lack of intelligence? It is very serious. But candidly, heroin is the least of our worries. Last week five Pakistani nationals and two Afghan nationals were arrested by Border Patrol agents in Sonoita, Arizona, in the Sonoita, Arizona, Area of Responsibility.

What can we do better? We are dealing with highly sophisticated, well-organized criminal cartels. As the HIDTA report notes, these cartels employ encrypted communications and hire transportation networks and hundreds of cartel members on this side of the border.

Do we need to support local law enforcement agencies like the Cochise County Sheriff's Department? The answer is absolutely. When Federal agencies work and support local law enforcement, our effectiveness increases exponentially.

Will Joint Agency Task Forces make a difference? Without a doubt. They will have a positive impact. Joint Agency Task Forces not only increase our effectiveness in arresting criminals and seiz-

ing contraband, they increase the probability of gathering the necessary intelligence to support the men and women in the field.

Can the Border Patrol be successful without actionable intelligence that is disseminated to the field agents? The answer is an emphatic no. We must take a proactive instead of a reactive approach to combating crime. Intelligence is the only way we will be able to predict when, where, and how persons or contraband will illegally enter our country.

I appreciate this time to testify before you and look forward to answering any questions you have.

Chairman KJOHNSON. Thank you, Agent Judd.

Our final witness is Mr. Jeff Taylor. Mr. Taylor represents The Salvation Army public policy as an advisory board member. Mr. Taylor also serves as national speaker for The Salvation Army, most recently sharing the stage with President George W. Bush regarding child safety drug treatment. Mr. Taylor has struggled with drug addiction and will share his story with us today. Mr. Taylor.

TESTIMONY OF JEFF TAYLOR,[1] MEMBER, PUBLIC ADVISORY BOARD/PUBLIC POLICY, THE SALVATION ARMY

Mr. TAYLOR. Thank you, Mr. Chairman, and Members of the Committee.

As you just heard, my name is Jeff Taylor, and I will be presenting the many effects drug addiction has on our State. My personal experiences on what works and where to go from here.

Briefly, I grew up in Phoenix and attended Central High School with Senator McCain's wife and also with Colonel Milstead who was on the panel earlier.

My junior and senior year, I achieved a 4.0 grade point average (GPA) in advance placement (AP) classes. My senior year, I was selected as a first team all-State football player and all-city baseball player, and then attended the University of Arizona to play football and study finance.

After college I was employed as a stock options trader for a prestigious Wall Street firm. And at the age of 29, I left the business at the absolutely peak of my career as one of the firm's top traders.

I came from a good family, had a successful and meaningful work history, participated in varied philanthropic works, and had acquired much as symbols of financial and success. I mean, everything that we gauge in this country for success, I had.

Four years after leaving the trading position, I was living on the streets of Phoenix. I had lost everything to addiction. It can happen to anyone. My story is not unusual.

Early on in college I received a career-ending football injury and was prescribed a narcotic pain medication. My first experience with narcotics came from a doctor. Actually, I had one other really bad experience in high school with Boone's Farm Strawberry Hill. That was enough for me. But I was not a drinker. I did not smoke weed in high school. I was a normal, good kid.

As a result of my addiction, I have been incarcerated many times in numerous county jails and State prison. This does not make me a bad person. It makes me an addict in need of help. We have a

[1] The prepared statement of Mr. Taylor appears in the Appendix on page 2029.

sheriff here that runs one of the toughest county jails in the country, Sheriff Joe Arpaio. As I have told him many times, he tries to make our facilities very tough that you do not want to go back. And we agree. We do not want people going back. But I have told him, that his jail is so tough, I have only been back six times. That is the power of addiction.

Facing a 4 to 6 year prison term, a very wise judge diverted me to The Salvation Army drug treatment facility. It is 20 years later, and I am still very grateful for that. My drug treatment cost $6,000. My prison term would have cost $100,000, and statistics show I would likely be back.

You have asked me to share what I have learned from my unique perspective. First of all, I agree wholeheartedly with Senator McCain. We cannot incarcerate our way out of addiction alone. Our State population has doubled. During the same timeframe our prison population in the State of Arizona has gone up 1196 percent. People are released with the same drug problem they were arrested with.

And we prove this by our high rate of re-arrest. And what is worse when addicts are all placed together in a prison environment, they network and pick up new skills. While incarcerated, I learned how to manufacture crystal methamphetamine, a lot about identity theft, how to import and transport drugs and avoid canine detection, and was introduced to several high-ranking drug cartel members, all while on a prison yard.

Arizona Department of Corrections just reported of the nearly 20,000 inmates we will release next year, 77 percent are in need of substance abuse treatment. I cannot emphasize the following statement enough: We do not have a prison expansion problem. We have a drug problem.

You will never hear me complain about the time I served in jails and prisons. I was a danger to myself and others. Addicts understand consequences. But for me, there was a back door to that prison cell. I received what I needed, a transitional drug treatment program.

That experience has led me to work with several legislators over the years to develop one of the most successful prison transition programs nationally. And if there is one sentence that I would like the panel to hear today, it is this: This program has reduced crime committed by those released from prison by 50 percent. This is not measuring in a month. This is measuring at 3 years and tracking over a thousand inmates.

This program saves taxpayer money, a lot of money, and increases public safety. So let us work on the not-going-back part.

As a result of the increased flow of drugs into Arizona and addiction rate soaring, our State Department of Child Safety (DCS) is under pressure from the wreckage caused by addictive parents. Our system is overburdened in the sheer numbers of child abuse and neglect cases, yet nearly 90 percent of DCS caseloads are addicted to drugs and/or alcohol, one or both parents.

We do not have a child abuse and neglect problem. Again, we have a drug problem.

I know this, because after graduating the drug treatment program, The Salvation Army sent me back to college to study early

childhood development to design and administer the first nursery of its type: A State licensed childcare facility serving children of drug addicted parents.

The program was very successful. Of the 27 women that were released pregnant, drug addicted from Sheriff Joe's jail, 96 percent of these pregnant women delivered a drug-free baby. These mothers could receive residential drug treatment while their children were monitored and kept safe. Often child removal is absolutely necessary, but we must not throw away the parent who is addicted as they will have more kids that we can take away. We need to stop the cycle of addiction.

As high schoolers we all remember going to parties, and there was always someone outside getting sick in the bushes after drinking too much. Teens overdo it. They always have. But if you overdo it with heroin, it kills.

Currently opiate overdoses account for more teen deaths than auto accidents. The bigger question is: Why are our teens altering reality in such an extreme way? And then I was introduced to a very effective education and prevention program called "Not My Kid."

The title really says it all. Most parents today are caught off guard by their children's drug use and are in desperate need to help navigate these difficult parenting challenges. Not My Kid understands that teens listen to teens, and that they have been extremely successful in areas of drug abuse, education, and prevention in our schools in a simple-to-understand, right-and-wrong model. This program needs to be expanded and replicated in other States.

My son thanks The Salvation Army and the criminal justice system for saving his dad's life. It took both working together. My son does not know his dad to be under the influence of drugs. He has never visited his father in prison. And he has never been in foster care. And now at 16, he is definitely not enjoying how involved his dad is in his life right now.

I am very much enjoying my role as an involved parent just as God designed me to be. Thank you.

Chairman JOHNSON. Thank you, Mr. Taylor, for sharing your story and for what you are doing.

Can you just describe a little bit in greater detail the program that works so phenomenally well?

Mr. TAYLOR. Mr. Chairman, Members of the Committee, we give a Band-Aid mainly to people that are suffering from addiction. In other words, if you are losing your children as a result of addiction, that means that you are far along in your addiction. Addiction progresses over time.

So by the time that it is either go to prison or you have been to prison, is that we then send them to a 1-or 2-day class. What really works—and Salvation Army has been doing this for over 150 years. The Salvation Army started in the streets of London in 1865 to handle alcoholics on the streets of London.

So we have learned a lot in those years. We feel that long-term residential drug treatment is the most effective. You add the faith-based component to that. And we do not require that anyone believe, the Christian model. If you are a Jewish client of ours, then

we will take you to a Jewish temple. If you are—we even had a devil worshiper come through, and The Salvation Army officer stood up and said, "We love devil worshipers." We can not dictate how people believe, but we can treat it as the health issue that it is. We get people healthy, their days into days, their nights into nights. We have good nutrition. They go to work every day.

All of the trucks that you see driving around town that are Salvation Army trucks, they are in our drug treatment program. So they are earning that treatment bed. And incidentally, the model does not accept nor seek any government funding. It is self-supporting. It is a long-term residential treatment, 6 months with transition.

Chairman JOHNSON. Now, Jeff——

Mr. TAYLOR. Only as good as your transition. Excuse me.

Chairman JOHNSON. Jeff, is the program working in prisons?

Mr. TAYLOR. The program that we have in the prison is actually not in the prison. Drug treatment in a prison environment is not nearly as effective as drug treatment out of the prison environment.

So briefly, this program releases inmates 90 days early. It is only a 90-day early release, so there's no sentencing reform involved. And during those 90 days, that individual is in a highly monitored drug treatment program, but it is also case managed, meaning that that person is enrolled in parenting classes, safe housing, everything that you need when you get out.

I have been released from our prison system with $42 in my pocket, homeless, and with a felony conviction. And now it is like: Now, do not go back. Of course, people are going to go back.

So that program is called intensive outpatient and, quite frankly, it has been much more successful than I thought it would be.

Chairman JOHNSON. I met with former prisoners in Wisconsin, too, and we make it almost impossible for them to succeed once they leave.

While we are still talking about this subject, Senator McCain, Senator Flake, any questions for Mr. Taylor?

Senator FLAKE. Thank you so much for your testimony. That was just riveting. Really was. You mentioned that you graduated college and then went off to work, but it was an old football injury that had you hooked.

Were you prescribed oxycodone or something during that time, and it took years to develop an addiction, or you could not get that prescription anymore so you turned to illicit drugs? How did that transition?

Mr. TAYLOR. I did not get addicted—Senator Flake, excuse me.

I did not get addicted right away. At that time, I was a pre-med student. I was worried about getting behind in school, and then I took a narcotic pain medication that was prescribed, and all of a sudden, I did not worry. It is called having a false sense of well-being.

And I did not get addicted in college. It is when I got out of college. But that part in my brain, that was the fix to high anxiety or things that I worry about. And then I became a stock options trader which, as we all know, is a highly stressful business.

Most addicts are people that do not have an off switch. I just do not have an off switch. So what I had to learn in treatment is how to take that excessiveness and turn it in the right direction. For example, the other day I woke up, and I got on my bike and I rode to Prescott. That is a little healthier, though. It is downhill coming back, though.

Chairman JOHNSON. Sure. Go ahead.

Senator MCCAIN. I would like to thank all of the witnesses.

And thank you, Mr. Taylor, for that very compelling testimony. It gives us all a great deal of food for thought.

I would like to recognize Agent Judd who I have had the honor of working with as we attempted to become more successful in stabilizing the compensation and retirement and other aspects of personnel for our Border Patrol agents, which, I think, Brandon Judd would agree was a real problem with both retention and recruitment.

And without your leadership, Mr. Judd, we would not have done it. Without the active involvement of the Border Patrol agents that you are the president of, we would not have been able to achieve it.

I would like to go back for a second to this issue of corruption that you and I were just talking about, because it is very concerning.

If we have corruption within those who we place our trust and confidence, then I think it is pretty obvious the results of that. And you pointed out there have been several occasions where this corruption has been discovered. In fact, I seem to remember one case on our border that was really very serious a couple years ago.

What is the extent of this corruption problem, and what do we need to do to fix it?

Agent JUDD. The corruption problem——

Senator MCCAIN. And, again, thank you for your leadership.

Agent JUDD. Senator, if it was not for this committee taking up that issue, we would have been in trouble. Period. You allowed us to have the manpower on the border to help us secure the border, so that was huge, and I greatly appreciate that.

But talking about the corruption issue, we just had an agent assigned in Laredo, Texas, a couple weeks ago that was just arrested and indicted for murder inside the United States. And it is my understanding that we just had an agent here in Tucson Sector that was arrested for having 80 pounds of—I am sorry—80 kilograms of cocaine on his home by the Federal Bureau of Investigations (FBI).

Corruption is a huge problem. And when you allow corruption within an agency that is tasked with stopping drugs and narcotics and smuggling of illegal aliens and especially persons from countries that we know would like to do harm to our country, it is a huge problem.

I really believe, Senator McCain, that what we have to do is we have to listen to those agents. It is the agents that are going to report this corruption. That is what is going to happen. We have case after case after case where our agents have gone to their managers and said, "Look, I know that this person is corrupt. I know it."

In fact, a couple years ago we had agents that went to managers and said, "I know that this agent is corrupt." Management did

nothing about it. Two years later that agent was arrested by the FBI for bringing in money for drug cartels.

Who knows what that agent did in those 2 years and how much harm that agent caused the agency? We need to listen to our agents. We need to take what our agents——

Senator MCCAIN. Excuse me.

As Commissioner Kerlikowske pointed out that they started finally an Internal Affairs branch. Is that something you think would be important?

Agent JUDD. It is. But, again, we are a long way from where we need to be. What we see in the government is we see the government just acts way too slow. So we might have started an Internal Affairs branch to combat corruption, but we probably will not see the results of it for several years.

I mean, Secretary Jeh Johnson said this is a new organization. We have been around for over 10 years, and he says that it is going to take awhile until we get the morale up. And I have to say, again, that is what we see and that is the reality of the Federal Government. It is just way too slow in its reaction.

Senator MCCAIN. Why is there such a shortage on our border, Mariposa Port of Entry of 200 agents? What can we do about that?

Agent JUDD. You are going to have a very hard time recruiting people to areas that are less desirable areas. And let us be frank. You know about Ajo, Arizona.

You know where Ajo is. Who's going to want to live in Ajo, Arizona? And so you have a hard time looking at retentions in Ajo, Arizona.

Senator MCCAIN. Is there such a thing as extra incentive?

Agent JUDD. There should be. And we have been pushing for that. We have been pushing for that to give that extra incentive to allow that.

Senator MCCAIN. We have military when somebody goes to a hardship region.

Agent JUDD. And we should have it in the Border Patrol. Why management is not taking it seriously, I do not know.

Senator MCCAIN. How about sending to the committee a recommendation?

Agent JUDD. I will be happy to do that again.

Senator MCCAIN. So we can try to address it legislatively.

Agent JUDD. I will be absolutely happy to do that.

Senator MCCAIN. I thank you for your leadership.

Agent JUDD. Thank you, sir.

Senator MCCAIN. Sheriff Dannels, just briefly, how is your coordination with the Border Patrol?

Sheriff DANNELS. We work very closely with them.

Senator MCCAIN. But you have a good relationship?

Sheriff DANNELS. Yes. We have a good relationship with the three PACs in our county to include one in Lordsburg and also the agents. We rely heavily on their support, especially in the rural parts to get to the situation where we can get there and neutralize it so we can investigate it from that point on. We do have a good relationship with the Border Patrol.

Senator MCCAIN. Thank you. Mr. Chairman, again, I hate to keep harping. I sound like hometown. But I have forgotten how

many tens of millions of dollars to improve our Mariposa Port of Entry and, yet, we are not using it because we do not have the people. So maybe, Mr. Chairman, we could take up this in January this issue. Maybe an incentive kind of a pay or benefits or something to try to attract men and women. And as Brandon Judd just said, it does get pretty hot. Hotter than Milwaukee.

Chairman JOHNSON. It gets hot. But ours is a humid hot, too.

No. Listen, when you hear about the high levels of unemployment once the finest among us that, veterans coming back from Afghanistan and Iraq, and then to hear jobs are not being filled, it seems like it is a pretty common sense solution.

Agent Judd, it is disturbing that you have talked about these documented cases that are not acted upon. We have had a number of hearings on retribution. Not only just within Department of Homeland Security, but across the Federal Government. Coming from the private sector, I just find it shocking how much retribution there really is against whistleblowers.

Is that part of the problem why the agents do not continue to followup on their accusations? Have they experienced retribution? Do they fear it?

Agent JUDD. Yes. If you look at the most recent reports, especially about the Afghanistan and Pakistanis that were just arrested here in Arizona, and you talk about the Syrians that are giving up at the port of entry, all of these news outlets are saying from sources that do not want to be named.

Well, there is a reason why they do not want to be named.

If they are named, they know darn good and well that they are going to face repercussions from the agency. And it is known that this agency will take action against agents. We just had an agent, Chris Cabrera, who testified before your committee.

Chairman JOHNSON. I was going to point out that agent.

Agent JUDD. And right after his testimony, Internal Affairs wanted to investigate him because he is telling you what is happening on the border. And I am sorry, Senator. I just had one of my local presidents was just proposed termination for absolutely—it's ridiculous what this proposed termination is for. So, yes, we have a lot of problems within our agency as far as them taking action when we come up and we give them commonsense approaches to effectuating law enforcement activities.

Senator, you have heard me many times, although I am elected to be in the National Border Patrol Council, you know darn good and well that the National Border Patrol Council's—our concern is border security. Always has been. Always will be.

Chairman JOHNSON. It was interesting that that exact same instance of Chris Cabrera, we heard prior to our hearing that he was going to have an interview with Internal Affairs. And, of course, I will put the best structure on it. I was assuming that Internal Affairs was going to ask him about the disparity in his testimony that we were only apprehending 30 to 40 percent. He probably wanted to get to the bottom of that. I raised that issue in the hearing, and the interview was canceled.

Agent JUDD. Yes, it was, and I appreciate that.

Chairman JOHNSON. Which kind of tells me they were not going to talk about their concern about a lower apprehension rate and

cooking the books basically in terms of information they were provided.

Agent JUDD. Yes.

Chairman JOHNSON. Senator Flake.

Senator FLAKE. Sure. Sheriff Dannels, you talked about the plan developed in 1990s that just do not apply today. Can you give us some examples of what changes there have been to smuggling routes and methods and strategies employed by the cartels?

Back in the 1990s, the cartels really did not control what they do today in terms of the traffic across the border. I am assuming so. Can you give us some examples of what needs to be updated?

Sheriff DANNELS. Well, the plan in the 1990s, the latter part of that plan was to reroute that illegal activity, the disturbances into the rural parts of the southwest border with the thought that they would never do that because of the mountainous and the desert terrain, and they would not conquer that.

Well, move forward, they did. They have conquered it. They like it. They like being in the mountainous area as the Border Patrol can tell you also. They like being out in the desert. So they have taken advantage of that, and the fact that now that the voice speaking on that are rural folks, ranchers, legacy ranchers, folks that have lived out there in these rural parts for a long time that have become numb to this byproduct of this plan. And their voice is so little, a minority voice out there, that it does not have a voice like El Paso or Yuma or, like, Maricopa where they can actually bring a noise to it, and solution is right away.

So for 20 years they have been living this. And over these 20 years the cartels have solidified their efforts, their smuggling efforts, and their criminal act in these rural parts of the southwest border, and this falls directly onto the sheriffs.

We have ranchers that have had break-ins four and five times. We have a small community that's got 75 homes in it. And they have an average of 20, 25 burglaries a year in that community. This is break-ins to their own homes, their neighbors' homes. It's the illegals.

It is not a fair way or no quality of life for anybody to live like that. But over time, we have forgotten the history of this plan and taking it at face value, this is where our border is. And we really need to take a deep look at where we have gone with this plan.

And as Brandon Judd's talk, the agents on the ground know what is going on. You solve problems at the lowest level, working with your local sheriffs, working with your local police chiefs and agents that work in the rural parts. They can give you a lot of good answers, but you have got to get them to the table before you do that.

Senator FLAKE. Ms. Mertz, what strategies do we have in terms of combating these cartels and the movement of drugs, human intelligence trying to infiltrate and getting intelligence there, signals of intelligence? Communications? Are we making full use of what we have, and as a privacy debate that is been going on in Washington, have an impact on our ability to infiltrate, know what is going on with cartels?

Ms. MERTZ. In answer to that question, yes, it does. As technology increases, we encounter encrypted phone-to-phone trans-

missions. We are having difficulty un-encrypting them. We can not do it. And as technology increases, our ability to conduct these long-term investigations and figure out what they are doing becomes more and more difficult.

Senator FLAKE. Thank you.

Chairman JOHNSON. Thank you, Senator Flake. We are rapidly running out of time. I did want to follow up just quickly on the 1990s plan.

Senator MCCAIN. Can I just ask the sheriff one question? What kind of intel sharing do you get in your work with the Federal Government?

Sheriff DANNELS. It is recently improved working with HIDTA, working with Dawn here, addressing our concerns. So we have more intel coming through.

It all depends on the leadership. It truly does. Good leaders bring good intel.

Senator MCCAIN. Thanks.

Sheriff DANNELS. I truly see a big picture mission that partnerships are beyond paper. We all talk about, "Hey, we have a partnership. We have this written on paper." A partnership come from people sitting down, having a face-to-face discussion. So it has improved. Can it get better? Of course, it can.

Senator MCCAIN. Thank you.

Chairman JOHNSON. I started my questioning with the Governor and the Commissioner really talking about what are the top three things, actions. OK. Cooperation, funding, got that. But to cooperate and fund what?

I want to go to the 1990s plan. We did succeed in dramatically reducing flow of drugs and illegal trafficking in different sectors; correct?

Can you just tell me, what did we do that worked? And, obviously, we have redirected now. They have cracked the code and figured out how to smuggle elsewhere. But talk about what worked to guide our activity in terms of what we need to do now.

Sheriff DANNELS. Chairman Johnson, I will start by saying it is got to have the will. Washington, D.C., has to have the will to change it. We can not settle on the fact that, hey, we have had successes in the three metro cities on the southwest border: El Paso, Yuma, and San Diego.

And I use this analogy when I talk to groups and the fact that 20 years ago when you turned on one of the three major networks, and you would see a pursuit heading north from the border, whether it be a Border Patrol chasing a motor vehicle, a sheriff's office, and then you would see folks bailing out of the pickup. Ask yourself: When is the last time you saw that? Probably has not been much because the agency has been addressed with staffing, technology, attention all the way through intel sharing at a Federal level.

You need to take successes and say, hey, this has worked in these metro areas, and we have done it. Take that because what you have done is taken that illegal, those violent cartels, and you have pretty much given up the rural parts of the southwest border to let them operate in that area to bring across special—like Brandon Judd was talking about this tunnel that I was involved with

also with them. And that is a VIP tunnel. I testified before on that, where special products, special people came through that. That should scare the heck out of all of us in this room.

And so we need to put a huge effort on redefining this plan of the 1990s and go back and see what history has taught us and take that forward.

Chairman JOHNSON. Again, I want to talk about what we can do. So we need the will, commitment, no doubt about it. We need cooperation. We need funding to do what?

What is it? Talk about technology. Now, is it fencing?

Is it more manpower? I mean, what is it that we have to do?

Sheriff DANNELS. If I can answer that, Chairman Johnson, is one thing we do in our county that I think, all sheriffs and all police chiefs on the local level do different things to max their community needs, is to actually speak to a variety of chiefs and sheriffs and say what is working in your county on the southwest border?

There is 24 of us sheriffs, for example, and each one is doing their own thing to make things work. We need to unify on that, first of all, and make sure that that voice is heard from the sheriffs and to our State partners and our Federal partners.

The other aspect of this is, I use a balanced approach of education, prevention and enforcement. And each one has a certain element to address a certain population of your citizenry.

No. 1 is if you look at 66 percent of what we do is education prevention, and you have that 33 percent for those that just will not comply that we have to have that enforcement consequence rule built into our laws.

So how can I say this? You really need to listen to your locals. Because as you solve problems as in anything you are doing in life, you always go to the lowest levels. And that needs to start in our communities with our agents.

Chairman JOHNSON. There are always different solutions to different parts. Again, very quickly, Ms. Mertz, Mr. Judd, Mr. Taylor, I know you want one final comment. Ms. Mertz.

Ms. MERTZ. I do think increasing our ability to use technology as far as the encrypted phone transmissions would assist us.

I agree with what Sheriff Dannels said: Use the information from the sheriffs' departments, the police departments, and roll that up into a bigger investigation, and use the intelligence to ensure that you are targeting the correct people.

And then the task forces can go after those people, and we can enforce our laws, also reducing the demand in our country for the illicit drugs.

Chairman JOHNSON. Has there ever been a meeting of all the county sheriffs, by DHS to really find out what action plan we have to do? And you have to do it quick.

Sheriff DANNELS. Yes. And I can answer that question. I know the four border sheriffs in Arizona, we recently met and discussed issues. I know Southwest Border Sheriffs, the Western Sheriffs Association, National Sheriffs Association, we just had a conference in Sierra Vista, Arizona, where we brought us all together and talked about what we are talking about today.

So we are trying to unify our thoughts and put that balance of what we are doing and how to make it best for the people we serve.

Chairman JOHNSON. Maybe this committee can convene something like that. Keep that in mind. Mr. Judd.

Agent JUDD. I will keep it very short.

We need to develop, increase, and expand our intel.

We need to be able to predict when, where, and how illegal narcotics, persons are going to cross our border.

And we need to put our uniform law enforcement officers and agents in a position where they can be successful. That is what we need.

Chairman JOHNSON. Is that Homeland Security Investigations (HSI) within DHS? Is that separate——

Agent JUDD. It is actually——

Chairman JOHNSON. FBI?

Agent JUDD. Well, FBI, HSI, Internal Affairs included.

But these task forces are huge. When we shut down a task force because a task force is too successful we have to stop politicizing the issue. When we shut down a task force because the task force was extremely effective, which then shows that our ports of entry were not effective, that is just wrong.

Chairman JOHNSON. Mr. Taylor, why don't you close it out.

Mr. TAYLOR. And to Senator McCain's point on corruption, what I did not say in my statement today is I lived in Nogales. I lived right above the Mariposa exit and entry into this country and have been all up and down the border there.

The major cartel members do not try to corrupt. They are amateurs that are trying to corrupt our government officials. They always get caught. Maybe they get caught now; maybe they get caught a year from now. But when they get caught, then that is going to bring all sorts of heat that the cartel members do not want brought into their area there. So it is much easier to throw a lot of product at the border, because they are very sophisticated in that. They know how much they throw at the border and how much is getting caught.

So widespread corruption is highly publicized when one of our people are corrupt. But the corruption that is widespread is not on our side of the border.

And then what we need to do is that drug addicts do not make great criminals. They get caught. We have got 20,000 that are getting out this year. That means 10,000 are going to be back in within 5 years. So when they get treatment, they do not go back.

I do not buy drugs. It is pretty hard to do a drug-motivated crime when you do not do drugs. It is pretty hard to get a driving while intoxicated (DWI) if I am not intoxicated.

So we have put a lot of money in interdiction, and yet drugs have never been more available, more plentiful, more powerful, and cheaper than they are at this very moment. We have to work on the demand side, and it works. We are getting very good at it.

Chairman JOHNSON. Again, Mr. Taylor, thank you.

Thank all of our witnesses again for your service to your community, State, and nation, for your thoughtful testimony, your questions, and your answers to our questions.

I want to thank Senator McCain, Senator Flake, and the State of Arizona, the Governor, for welcoming us here.

This has really been a very good hearing. We have learned a lot, laid out more reality.

With that, the hearing record will remain open for 15 days until December 8, 5 p.m., for the submissions of statements and questions for the record. This hearing is adjourned.

[Whereupon, at 11:08 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson:
"America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking"

Monday, November 23, 2015

As submitted for the record:

This Congress, the committee has spent a great deal of time uncovering and defining the problems occurring at our borders. Today will mark the 13th hearing focused on border security and our second hearing highlighting the rising heroin epidemic across this country. These topics are closely related, as one root cause of our unsecure border is America's insatiable demand for drugs.

The accumulated testimony and information that forms the committee's record indicates that America's borders are not secure. One key indicator is the fact that we are interdicting only 5 to 10 percent of illegal drugs crossing our southwest border. The declining price of heroin—from a nationwide average of $3,260 per gram of pure heroin in 1981 to $465 in 2012—is a metric that proves the point.

Today, the committee will explore how our unsecure Arizona-Mexico border has become a gateway for drug traffickers to distribute illicit drugs across the country. I want to thank Senator McCain, a trusted and valuable member of the committee, for proposing and organizing this very important hearing, and Senator Flake, for also joining us to discuss this topic.

Arizona is facing a heroin epidemic, with 180 deaths attributed to heroin in 2014, up from 125 in 2013 and 90 in 2012. Overall, heroin treatment admissions to publicly funded facilities in Arizona increased approximately 77 percent, from 1,625 in 2008 to 2,880 in 2012.

The Midwest also has been greatly affected by this epidemic. Recently the Wisconsin Department of Health Services reported that drug overdoses killed more Wisconsin residents in 2013 than did motor vehicle crashes, breast cancer or suicide. Between 2008 and 2012, heroin overdose deaths in Wisconsin tripled. While Wisconsin averaged only 29 heroin deaths from 2000 to 2007, by 2014 more than 200 heroin-related deaths occurred in Wisconsin. In Milwaukee County alone, 119 heroin-related deaths occurred in 2014. In fact, earlier this month, it was reported that six people died in Milwaukee in one 24-hour period due to prescription medication or heroin overdoses. Nationwide, the U.S. saw more than 8,000 deaths related to heroin in 2013.

Largely, this heroin entered the U.S. through the Arizona-Mexico border via Mexican cartels, was trafficked to Chicago by drug trafficking organizations (DTOs), and then was distributed throughout communities in Wisconsin by criminal gangs. At the committee's field hearing in New Hampshire, the Drug Enforcement Agency emphasized this point, testifying that "the growing relationship between Mexican-based drug cartels and domestic street gangs, coupled with … an unlimited supply of illegal guns, has really created the perfect storm for law enforcement."

Mexican cartels appear to be responding to the increased demand for heroin in the U.S., and heroin is transiting the border in greater volumes and in larger shipments. Until we take border security seriously in this country, heroin will continue to enter the supply chain through our southwest border to be distributed across all 50 states.

Today, the committee will hear very important federal, state and local perspectives explaining how heroin is trafficked across the Arizona-Mexico border and what effect that has on the local community. I thank the witnesses for appearing today, and I look forward to your testimony.

Opening Statement of Sen. McCain
"America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking"
November 23, 2015

Mr. Chairman, thank you for agreeing to hold this field hearing in Arizona. As we will soon hear from the witnesses today, our state has the dubious distinction of being the primary entry point, trafficking corridor and distribution hub for drugs transported from Mexico to the United States by the Sinaloa Cartel.

We have made progress in securing our border. The reduction in apprehensions demonstrates the effectiveness of the men and women of the Border Patrol in preventing the illegal entry of people crossing the border. Increased surveillance towers and other technologies will only increase that effectiveness.

But clearly, we are losing the war with the transnational criminal organizations that bring illicit narcotics into our country. The demand for these drugs – heroin, methamphetamine and cocaine – is too high and the profits the cartels make are too great to simply dissuade these criminals from trafficking drugs across the border. We of course must improve our drug interdiction strategy, but we must also do what is necessary to reduce the demand for these drugs.

The threat to Arizona is not just that it has become a drug corridor. These drugs stay in our state, poisoning our children and doing great harm to our communities. Deaths and overdoses from heroin are skyrocketing. According the Arizona Department of Health Services, heroin-related heaths increased from less than 50 in 2004 to almost 200 in 2014.

The reality is, we are not going to stop all of these drugs at the border or at our ports of entry. That is why it is critical that we use our intelligence capabilities and strengthen partnerships between federal, state and local law enforcement to combat these drug traffickers.

Border Patrol has long used the term 'defense in depth,' and that description applies here as we work to stop illegal trafficking of drugs. That is why I am intrigued by the governor's plan to create a new drug interdiction strike force to work as a true partner to federal and local officials to intercept narcotics on the highways and bi-ways that cross the border.

Finally, while this hearing is focused on heroin trafficking, the transnational criminal organizations that are bringing these drugs into the United States do not limit themselves to narcotics. They control the smuggling routes and routinely traffic humans, currency, and other illicit activities. In recent months, we've seen Special Interest Aliens from Afghanistan, Pakistan and other countries pay Mexican nationals to smuggle them into the United States. No one crosses the border without these cartels' permission, indicating their clear complicity in smuggling these Special Interest Aliens into the country.

Once again, I thank Chairman Johnson for holding this hearing and the witnesses for appearing and providing testimony on this critical issue to Arizona and the nation.

U.S. Senate Committee on Homeland Security and Governmental Affairs Field Hearing

America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking

November 23, 2015

Senator Kelly Ayotte's Statement for the Record

Right now in my home state of New Hampshire, opioids—particularly heroin and a powerful synthetic drug called fentanyl—are taking lives, ruining families, and significantly harming our communities. Public safety officials are confronting drug overdoses on a daily basis. In 2014, there were over 320 fatal drug-related overdose deaths in New Hampshire, up from 193 in 2013. And heroin and fentanyl were the primary drivers of nearly 250 of those deaths.

In September, the committee convened a field hearing in Manchester, New Hampshire entitled "All Hands on Deck: Working Together to End Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl." I was honored to chair that hearing, and am pleased that the committee continues its work to identify effective solutions to this homeland security and public safety issue.

Law enforcement is working tirelessly to take these drugs off the streets. But we can't simply "arrest our way out of" this problem. Key pieces to confronting this public safety issue are more prevention efforts, more treatment options, more support for individuals in recovery, and interdicting more of these drugs at our Southwest border.

We know that the heroin in New Hampshire is increasingly originating in Mexico. We know that fentanyl is being clandestinely produced in Mexico. We have clear evidence that that the powerful Sinaloa cartel has effectively infiltrated even small rural communities in New Hampshire thousands of miles away.

Unfortunately, communities throughout the nation are experiencing similar devastation. Finding effective solutions for this epidemic will require a comprehensive approach.

I've consistently supported a multi-pronged approach to this problem, encouraging local, state, and federal officials to work together to identify and pursue effective strategies. For that reason, I am pursuing a number of bipartisan legislative efforts intended to support communities dealing with this crisis.

In February, I helped reintroduce the bipartisan *Comprehensive Addiction and Recovery Act.* This legislation would expand opioid abuse prevention and educational efforts and expand the availability of naloxone to first responders and law enforcement. It would also support additional resources to identify and treat incarcerated individuals suffering from a substance use disorder, and

encourage prevention by expanding drug take-back sites to promote the safe disposal of unwanted or unused prescription drugs, strengthening prescription drug monitoring programs, and launching a prescription opioid and heroin treatment and interventions program.

Earlier this year, I also reintroduced the *Heroin and Prescription Opioid Abuse Prevention, Education, and Enforcement Act.* This bipartisan bill would reauthorize programs related to prescription drug monitoring programs and grants for local law enforcement and establish an interagency task force to develop best practices in the prescribing of pain medication.

Earlier this month the Senate approved the final defense authorization bill that authorizes additional funding for SOUTHCOM for drug interdiction and counterdrug activities. The final bill also includes $20 million for increased intelligence, surveillance, and reconnaissance support in the SOUTHCOM area of responsibility. I supported this provision and added report language pressing SOUTHCOM to combat the growth in trafficking of heroin.

In September, I introduced the *Stop Trafficking in Fentanyl Act* to reform trafficking penalties for fentanyl, ensuring that the law appropriately reflects the potency of this drug (estimated by the Drug Enforcement Administration to be up to 50 times more powerful than heroin) and its increasing prevalence in drug overdose deaths. Last year, fentanyl contributed to more drug overdose deaths in New Hampshire than heroin.

I recently met with Eric Spofford, Chief Executive Officer of The Granite House—a Derry, New Hampshire men's sober living facility. Eric's insight is invaluable to improving treatment for those fighting a substance use disorder. But Eric told me on thing that really illustrates what we are dealing with when it comes to fentanyl. Eric simply said that fentanyl is a "serial killer." We need to start treating fentanyl and those who traffic it accordingly.

There are countless other ways we can fight the heroin crisis – like stopping drug trafficking at the border and interdicting more drugs throughout the country. I will continue to pursue these and other solutions to protect and support the individuals, families, and communities impacted by this epidemic.

It's clear to me that we must take a multi-pronged approach to this problem and ensure that local, state and federal officials are working in partnership to identify effective strategies that will help save lives and take back our communities.

Thank you for the opportunity to submit my statement and the committee's continued efforts to find effective solutions to the nationwide opioid abuse epidemic.

Governor Doug Ducey's Testimony Before A Special Field Hearing Of the United States Senate Homeland Security And Governmental Affairs Committee "America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking"

Monday, November 23, 2015

As prepared for delivery:

Good morning. Chairman Johnson, Senators McCain and Flake: welcome, and thank you for being here.

Commissioner Kerlikowske, Bill Montgomery, Sheriff Dannels – and everyone joining me today to give testimony – thank you for your commitment to addressing and reversing a very severe, very real problem in Arizona and in our country.

We're here today because our nation is plagued by a destructive, dangerous ... and deadly epidemic.

Heroin trafficking, use, abuse and overdose is a growing problem in American society.

It's infiltrating our children's schools. It's tearing apart families. It's spurring crime and creating criminals.

It's driving up costs related to law enforcement, courts, incarceration, treatment programs, medical care and other unseen expenses to our taxpayers. And that's nothing compared to the human toll.

There's no dollar sign on the life of a father, a mother, a sibling, a spouse or a child cut short by drug abuse. There is only anguish...and anger.

We've come face-to-face with a very sad, very scary reality: Heroin is no longer someone else's problem. It's our problem. It's America's problem. And Arizona is the front door.

It's not news to any of us that Arizona has been, and continues to be, a major smuggling corridor and distribution hub for illicit drugs being supplied to the United States.

We share roughly 370 miles of contiguous international border with Mexico. This area consists of rugged terrain that makes it extremely difficult to patrol and secure – a prime environment for trafficking activity.

Right across our border is home to the Sinaloa Cartel, a transnational drug trafficking organization with a stronghold in the region.

Unless we act – and act soon – these cartels, and the poison they're bringing to our communities, aren't going anywhere.

Let's look at the facts:

- From 2010-2014, heroin seizures increased 223% in Arizona. Why? Sadly, because prescription opiate drug abuse often leads to heroin addiction. And that's because heroin's a cheaper, quicker and a more intense high.
- In 2015, drug apprehension efforts in Arizona resulted in 5,282 drug-related arrests.
- And arrests for heroin alone increased 76 percent over the past two years – which constitutes the largest rate of heroin arrests in a decade.
- Studies have also shown heroin treatment admissions increased approximately 77 percent from 2008 to 2012.

And here's why it should matter to ALL of us. The impact of heroin reaches far beyond user and supplier.

It's having a cumulative effect on the standard of living in Arizona and throughout the country:

- More than 75 percent of inmates in Arizona's prison system have a substance abuse problem.
- There are more than 17,000 children who are wards of the state, because their parents are unfit to raise them. If we found them all homes tomorrow in foster care, there would be thousands more waiting right behind them ... unless we address the corrosive nature of drug addiction.
- Babies – newborns – exposed to substances rose from 597 cases in 2008, to 1,248 in 2014. That's a 109 percent increase in just six years.

Each one of these is a tragedy – a terrible, preventable tragedy.

There's no shortage of the harmful effects of heroin and illicit drug trafficking in our communities.

Some of these damages can't be undone. But they CAN be prevented in the future.

It's up to us – right now – to act.

And we're taking action ... by aggressively targeting the supply.

As we know, Arizona is Ground Zero in the fight against drug trafficking – a direct nexus through which these cartels are infiltrating our states and ravaging communities in every corner of our country.

That doesn't sit well with me -- which is why we are taking action, and why I've created the Arizona Border Strike Force Bureau.

Here are the highlights:

The mission of the Border Strike Force Bureau is to partner with local and federal agencies -- to deter, disrupt and dismantle criminal organizations responsible for smuggling drugs and humans into Arizona.

The success of the Bureau is founded upon the strategic partnerships we've created at all levels.

The most significant so far have been with U.S. Customs and Border Protection and the Cochise County Sheriff's Office.

I want to take a moment to acknowledge Commissioner Gil Kerlikowske and Sheriff Mark Dannels for their willingness to partner with the State of Arizona through the Border Strike Force Bureau.

In a state like Arizona, the cost of combatting the drug cartels alone would be too large to bear.

A successful long-term strategy to take the fight to the cartels requires multi-layered collaboration and cooperation. Intelligence sharing. Better communication. All of these serve as a force-multiplier that is magnifying our individual efforts.

This strike force has been in operation for little over two months – utilizing these partnerships – and our successes speak for themselves:

Since September, we've seized:

- Over $2.2 million;
- Multiple firearms;
- Nearly 4,000 pounds of marijuana;
- 73 pounds of meth;
- Nearly 19 pounds of heroin.
    - It's important to note: in 2014, Arizona DPS seized 14 pounds of heroin. Total. And we've seized nearly 19 in just the last two months.
    - To paint a picture of how much that really is – there are 45 thousand hits to one pound of heroin.
    - We've made over 150 felony arrests and 30 misdemeanor arrests;
    - We've taken down 14 documented gang members and over 70 undocumented aliens.

And we've done it in just a short time ... with a short list of personnel, few resources, and through minimal targeted operations.

It was important to build the partnership, prove the concept, and get some wins.

Now imagine what we could do with more.

This is a significant, concrete example of what we can accomplish when we take a multi-level, collaborative and cooperative approach to dealing with public safety.

And it's also a loud wake-up call that our current strategies have fallen short. We need a plan that is robust ... that leverages resources, manpower and money from local, state and federal levels.

I've spent a lot of time meeting with ranchers, families, law enforcement and residents near the border – as I know you all have, too.

The greatest concerns among all of them are the cartels and the traffickers. In the place where they live, work, and raise their families – border-related crime is a frequent occurrence.

If there were ever a time to get serious about protecting our homeland, it's now.

In addition to the drug epidemic, I'd be remiss if I didn't mention another potential threat to our country as a result of Arizona's border.

In light of the horrific terrorist attacks in Paris ... new threats on the United States from ISIS in a video released last week ... and recent apprehensions of Middle Eastern Nationals near the southern border ... one thing's for sure: it's time to step up our game.

On behalf of the citizens and state of Arizona, I want to thank Commissioner Kerlikowske and his hardworking, talented and dedicated team who made these apprehensions last week.

After what we've seen in the past couple months with the Border Strike Force – I'm encouraged about our partnership. I believe this is the most meaningful step toward securing Arizona that we've seen in decades.

But more vigilance, collaboration, and resources are needed if we are going to be successful in keeping our state and citizens safe.

As governor of Arizona, I took an oath of office to protect Arizona and our country.

Arizona must hold the line. For the sake of every state, every community, and every family in this country … and we intend to do so.

But we can't do it alone. Arizona can do a lot – and we will – to combat this epidemic … to slam the door on these cartels … and to protect the safety, security, health and quality of life for our citizens.

But we need your help. This is not just Arizona's problem. It's America's problem. And it's going to need to be met with state, local and federal resources.

More funding. More assets – more planes, helicopters, radios and equipment added to our arsenal. More personnel – troopers, analysts, pilots – people to gather intelligence on these criminals, and people to take them down.

Ask yourself: what is our primary duty – our highest priority as elected officials? The answer should be: defending our homeland and protecting our citizens.

For the first time in recent memory, we have a plan that can yield real, meaningful results in this effort. We're ready to do something about this problem, and we're ready to do it now.

This could mean the difference between saving one life or countless lives – bringing down one criminal or an entire cartel. It could mean preventing a tragedy in Arizona or somewhere else.

Data shows that, from 2012 to 2014, there were at least 458 drug seizures in 30 other states with a nexus back to Arizona.

I ask you, as federal representatives of the people, to deliver Arizona's message to Congress:

If you are serious about taking the fight to the drug cartels – and turning the tide on the drug epidemic ravaging our nation - join us. Arizona is on the front line. And we need your support. Thank you.

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TESTIMONY OF

R. GIL KERLIKOWSKE
Commissioner
U.S. Customs and Border Protection
Department of Homeland Security

For a Field Hearing

BEFORE

United States Senate
Committee on Homeland Security and Governmental Affairs

ON

"America's Heroin Epidemic at the Border:
Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotics Trafficking"

November 23, 2015
Phoenix, Arizona

Introduction

Good morning, Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. Thank you for the opportunity to appear today in Arizona to discuss the role of U.S. Customs and Border Protection (CBP) in combating the flow of dangerous drugs into the United States.

The use and availability of heroin and other illegal opioids, as well as the nonmedical use of prescription opioids in the United States, have been increasing at an alarming rate. The situation is one of the most important, complex, and difficult challenges our Nation faces today. According to a recent report[1] from the Centers for Disease Control and Prevention, overdose deaths involving heroin nearly doubled between 2011 and 2013 and are climbing.

There is no single entity, nor a single solution, that can address this problem. Tackling this complex threat involves a united, comprehensive strategy and aggressive approach by multiple entities – from law enforcement, science, medicine, education, social work, and the public health sector – across all levels of government. While continued efforts to interdict heroin and other drugs at the border are a key aspect of addressing this crisis, interdictions, arrests and convictions alone cannot mitigate the far-reaching effects of nonmedical prescription opioid and heroin abuse. We need to focus on prevention and treatment, and identify the characteristics of developing cases of opioid use disorder before they escalate. We must also concentrate on deterring opioid trafficking by transnational criminal organizations (TCO), cartels, and other distribution networks.

To do this effectively, we must better integrate our efforts, share information, and partner with federal, state, local and tribal communities as well as the private sector. The High Intensity Drug Trafficking Areas (HIDTA) Heroin Response Strategy,[2] recently announced by the Office of National Drug Control Policy (ONDCP), will foster a collaborative partnership between public health and law enforcement entities. The strategy seeks a comprehensive response to this complex epidemic by addressing the broad range of efforts required – on the international, national, and local levels – to reduce the use, distribution, and trafficking of this dangerous substance.

As America's unified border agency, CBP has a critical role in the efforts to keep dangerous drugs like heroin and other opioids out of the hands of the American public. Combating TCOs and drug trafficking organizations (DTO) is a key component of our multi-layered, risk-based approach to enhance the security of our borders. This layered approach to security reduces our reliance on any single point or program, and extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but one of many.

Secretary Johnson's Unity of Effort initiative has put in place new and strengthened management processes to enable more effective DHS component operations to address TCOs, drug-trafficking, and other cross-border threats. In addition, DHS-wide border and maritime security activities are guided by the new Southern Border and Approaches Campaign Plan and complement the Administration's National Drug Control Strategy, and the *National Southwest Border Counternarcotics Strategy*. Aimed at leveraging the range of unique Department roles,

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[1] *Vital Signs*, a report from the Centers for Disease Control and Prevention; July 7, 2015.

[2] https://www.whitehouse.gov/the-press-office/2015/08/17/white-house-drug-policy-office-funds-new-projectshigh-intensity-drug

responsibilities, and capabilities, the Campaign enhances our ability to work together in a more unified way to address these comprehensive threats. In support of this new Campaign, on November 20, 2014, the Secretary announced the creation of three new joint task forces (JTF) to coordinate the efforts of the combined resources of DHS component agencies. Joint Task Force-East is responsible for the maritime approaches to the United States across the southeast, from the Gulf of Mexico to the Caribbean. Joint Task Force-West is responsible for the southwest land border from Texas to California. And, supporting the work of the other two task forces is a standing Joint Task Force for Investigations. These three JTFs reached full operational capability on July 30 of this year.

Interdictions and Trends

In Fiscal Year (FY) 2014, CBP officers and agents seized 3.8 million pounds of drugs across the country. During FY 2015, CBP saw a four- percent increase from FY 2014 in overall nationwide seizure events, but a six- percent decrease in drug seizures by weight. Additionally, heroin total seizure amounts for FY 2015 increased 23 percent to more than 6,000 pounds. CBP seizures of clandestinely made opioids like fentanyl, while relatively small compared to heroin, have also significantly increased from 1.1 kg in FY 2013 to 3.7 kg seized in FY 2014 and 89.7 kg seized in FY 2015. These figures demonstrate the continued effectiveness of CBP's detection and interdiction abilities, but may also indicate that manufacturers and traffickers are increasing the production and supply of heroin in the United States.

Mexican manufacturers and traffickers continue to be major suppliers of heroin to the United States. Although the vast majority of CBP's heroin interdictions are seized from DTO smuggling networks along the Southwest land border, CBP also interdicts this dangerous drug in all environments and transportation modes. The reach and influence of Mexican cartels, notably Los Zetas, and the Gulf, Juarez, Jalisco New Generation, and Sinaloa Cartels, stretches across and beyond the Southwest border, operating through loose business ties with smaller organizations in cities across the United States. The threat of DTOs is dynamic; rival organizations are constantly vying for control, and as U.S. and Mexican anti-drug efforts disrupt criminal networks, new groups arise and form new alliances.

DHS Resources and Capabilities to Counter Drug Trafficking Organizations

CBP, responsible for America's frontline border security, has a significant role in the Nation's efforts to combat the cross-border criminal activity of cartels and other drug trafficking organizations. In the past decade, DHS has deployed more resources, technology, and tactical infrastructure for securing our borders than at any other time in history. Technology and detection capabilities significantly contribute to identifying and deterring the entry of potentially dangerous people and contraband.

Between the Ports of Entry (POEs) along the Southwest border, CBP has made significant technology deployments in recent years. These deployments have included mobile surveillance units, ground sensors, and thermal imaging systems to increase its ability to detect illegal cross-border activity and contraband. CBP maintains 652 miles of fencing and has deployed other tactical infrastructure to key trafficking areas. Additionally, the CBP ReUse effort utilizes Department of Defense (DoD) technologies that are no longer needed by DOD but can be used to

satisfy critical border security missions while saving DHS resources. For example, CBP received from DOD and delivered to its field operators aerostat technology, spectrometers, and night vision equipment. DHS and CBP have employed these technologies for line-watch persistent surveillance, aerial surveillance, detection of contraband and Weapons of Mass Destruction, and agent/officer safety. For example, tactical aerostats deployed in the Rio Grande Valley enabled the Border Patrol to seize over 100 tons of narcotics to date.

As part of its efforts to prevent the illicit smuggling of humans, drugs, and other contraband, CBP's Border Patrol maintains checkpoints and a high level of vigilance on corridors of egress from our Nation's borders. For example, this past May, San Diego Sector Border Patrol agents made an arrest after discovering more than 16 pounds of heroin in the back of a vehicle travelling along Interstate 5 in California. In August of this year, Border Patrol agents in the El Centro Sector, also in California, arrested a suspected drug smuggler during a check of a commercial passenger bus at the Highway 86 checkpoint after discovering packages of heroin hidden inside his shoes. And earlier this year, Border Patrol agents participated in "Operation Crazy Bull", which targeted drug traffickers in northwest Pennsylvania and other states in the region. The operation, which resulted in the arrest of 15 suspected members of a DTO, included federal and state agencies and was the culmination of a two-year investigation initiated by the Border Patrol and U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI).

At POEs, the Office of Field Operations (OFO) utilizes technology, such as non-intrusive inspection (NII) x-ray and gamma ray imaging systems, and canine teams to detect the illegal transit of drugs hidden on people, in cargo containers and in other conveyances. Since September 11, 2001, NII technology has been the cornerstone of the CBP multi-layered enforcement strategy. The President's FY 2016 Budget requests an increase of $85.3 million for its NII program to fund recapitalization of aging systems. Without this funding increase, maintenance costs will increase, systems will become obsolete, system downtime will rise, all negatively impacting the effectiveness and cost of inspections due to the need for manual inspection, ultimately delaying the movement of legitimate trade and travel.

As of October 15, 2015, 315 Large-Scale (LS) NII systems are deployed to, and in between, our POEs. In FY 2014, LS-NII systems were used to conduct more than 7.2 million examinations resulting in more than 2,000 seizures and more than 249,000 pounds of seized drugs. Just a month ago, in three separate smuggling incidents, CBP officers at the DeConcini POE in Nogales, Arizona arrested three Mexican nationals and a U.S. citizen and seized more than 75 pounds of heroin, worth more than $1 million, that was concealed in their vehicles. This past August, CBP officers conducting a container check in San Juan, Puerto Rico discovered two backpacks with brick-shaped objects inside that tested positive for cocaine and heroin. While cargo containers may be a popular conveyance for smuggling, DTOs also move heroin in smaller quantities to try to evade detection. Last December, CBP officers working express consignment operations in Cincinnati seized five pounds of heroin when a shipment manifested as a baby playpen arrived at the facility for processing. The shipment was mailed from Malaysia and was destined for delivery in Toronto, Canada. ICE and the Royal Canadian Mounted Police Serious and Organized Crime Division conducted a controlled delivery that resulted in the arrest of two individuals suspected of illegal importation and drug trafficking.

CBP also contributes to the whole-of-government effort to combat drug - related threats from Mexico by sharing critical information on travelers and cargo with investigative and intelligence partner agencies to identify and disrupt sophisticated routes and networks. Recognizing the need for open and sustainable channels to share information with our law enforcement and intelligence partners, CBP co-locates interagency personnel at its National Targeting Center (NTC) to support efforts to combat drug and contraband smuggling by integrating real-time tactical intelligence into CBP targeting efforts and enforcement actions. This whole-of-government counter network approach has resulted in TCOs being identified and dismantled, and their smuggling routes shut down. An example of this successful collaboration can be seen in the aggressive targeting of heroin transiting, or destined for, the United States. In FY 2015, CBP efforts at the NTC, in conjunction with increased cooperation from foreign and domestic law enforcement partners, resulted in 40 seizures of heroin with a gross weight of 47.7 kilograms as well as several arrests.

The Office of Field Operations National Canine Enforcement Program deploys 478 specialized detection canine teams throughout the nation. These canine teams are trained to detect drugs and concealed humans. The majority of the canine teams are concentrated in four field offices along the southwest border. Of those 478 canine teams, 49 of these teams are trained in the detection of firearms and currency. During FY 2015, OFO canine teams were responsible for the seizure of 603,283 pounds of drugs, $34,991,253 in seized property, and $39,323,455 in currency.

The United States Border Patrol (USBP) Canine Program deploys over 808 specialized detection canine teams throughout the nation. These canine teams are trained to detect narcotics and concealed humans. The majority of the canine teams are concentrated in the nine Sectors along the southwest border. Of those 808 canine teams, 37 of these teams are trained in the Search and Rescue discipline, 11 are trained the Human Remains Detection discipline, and 20 and trained in the Patrol discipline. During FY 2015 USBP canine teams were responsible for the seizure of 432,761 pounds of narcotics, $3,073,313 in currency, and 39,942 human apprehensions.

CBP also has capable and effective aerial and marine assets, including manned aircraft, unmanned aircraft systems and strategic and tactical aerostats, providing critical surveillance coverage and domain awareness toward counternarcotic efforts. In the maritime domain, CBP's Air and Marine Operations (AMO) employs high speed Coastal Interceptor Vessels that are specifically designed and engineered with the speed, maneuverability, integrity and endurance to intercept and engage a variety of suspect non-compliant vessels in offshore waters, as well as the Great Lakes on the northern border.

This past May, AMO participated in a joint law enforcement operation with the Drug Enforcement Administration (DEA) targeting a heroin ring in Philadelphia, PA, and Rochester, NY. AMO's highly-trained air crews and marine agents conducted aerial and land surveillance and executed search warrants. The operation yielded the arrest of more than a dozen suspects and seizure of $187,000 in currency, 1.6 kg of heroin, five handguns, and an assault rifle.

CBP AMO P-3 Orion Aircraft (P-3s) have also been an integral part of the successful counternarcotic missions operating in coordination with Joint Interagency Task Force South (JIATF-S). The P-3s patrol in a 42 million-square mile area known as the Source and Transit Zone, which includes more than 41 nations, the Pacific Ocean, Gulf of Mexico, Caribbean Sea, and seaboard approaches to the United States. In Fiscal Year 2014, CBP's P-3s operating out of

Corpus Christi, Texas and Jacksonville, Florida flew more than 5,900 hours in support of counternarcotic missions resulting in 135 interdiction events of suspected smuggling vessels and aircraft. These events led to the total seizure of 57,374 kg of cocaine with an estimated street value of $9.47 billion.

Improved technology and enhanced capabilities have also expanded the collection, analysis, and dissemination of information between law enforcement partners working to dismantle DTO networks. For example, CBP's Laboratories and Scientific Services Directorate uses advanced techniques to provide qualitative identification and quantitative determination as well as pollen analysis of heroin, cocaine, marijuana, and methamphetamine to assist with identifying potential drug smuggling routes. In addition, DHS Science and Technology Directorate (S&T) is working with CBP to develop, test, and pilot new technology for securing and scanning cargo, improving surveillance of the Southern border, and enhancing detection capabilities for radar-evading aircraft. S&T is also pursuing and fielding new technology to monitor storm drains, detect tunnels, track low-flying aircraft, monitor ports, and enhance current mobile/fixed radar and camera surveillance systems to increase border security. Recently, S&T-developed technology was put into operational use at the US-Mexican Border. These technologies included a new general aviation aircraft scanner in Laredo, TX, and a new Brownsville-Matamoros Rail Non-Intrusive Inspection Microwave Data Transmission System.

Intelligence and Information Sharing

Criminal intelligence sharing is a key component of countering drug-trafficking along the Southwest and Northern borders. CBP contributes to several initiatives to improve the combined intelligence capabilities of Federal, state, local, tribal, and international partners.

CBP hosts monthly briefings/teleconferences with Federal, state and local partners regarding the current state of the border – the Northern border and Southwest border – in order to monitor emerging trends and threats and provide a cross-component, multi-agency venue for discussing trends and threats. The monthly briefings focus on drugs, weapons, and currency interdictions and alien apprehensions both at and between the POEs. These briefings/teleconferences currently include participants from: the Government of Canada; the Government of Mexico; ICE; U.S. Coast Guard (USCG); DEA; Federal Bureau of Investigation (FBI); U.S. Northern Command; Joint Interagency Task Force-South; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Attorneys' Offices; Naval Investigative Command; State and Major Urban Area Fusion Centers; and other international, Federal, state, and local law enforcement as appropriate.

JTF operations increase information sharing with Federal, state and local law enforcement agencies, improve border-wide criminal intelligence-led interdiction operations, and address transnational threats. Physical evidence gathering and forensic analysis is also valuable to the information sharing effort. Substantive and timely information sharing is critical in targeting and interdicting individuals that move drugs and illicit merchandise from the POEs to their destinations throughout the United States and Mexico.

CBP exchanges information with our partners within the Government of Mexico. This information sharing, facilitated by the CBP Attaché office in Mexico, has allowed for an unprecedented exchange of real-time information through deployments of personnel between our countries. Today, Mexican Federal Police personnel sit with our personnel in Tucson, Arizona,

and Laredo, Texas, where they assist us with targeting criminal activity through the sharing of Mexico criminal history database information. Likewise, CBP personnel are assigned to Mexico City under the Joint Security Program where we exchange alerts on suspicious TCO movements through the monitoring of our Advance Passenger Information System. This information sharing has also led to numerous seizures and cases within Mexico that serve to disrupt the activities of TCOs throughout the Western Hemisphere.

Enhancing counternarcotic operations in the air and maritime environments, the Air and Marine Operations Center (AMOC), a state-of-the-art law enforcement radar surveillance center, integrates data from multiple sensor sources to provide real-time information on suspect targets to responders at the Federal, state, and local levels. AMOC's capabilities are enhanced by the continued integration of DHS and other Federal and Mexican personnel to increase efforts to identify, interdict, and investigate suspected drug trafficking in the air and maritime domains.

Operational Coordination

Our Nation's borders – land, maritime, and air environments – cannot be effectively policed by a single DHS component or even a single governmental entity. A whole-of-government approach that leverages interagency and international partnerships as a force multiplier has been and will continue to be the most effective way to keep our border secure.

Providing critical capabilities toward the whole-of-government approach, CBP works extensively with our Federal, state, local, tribal, and international partners to address drug trafficking and other transnational threats along the Southwest border, Northern border, and coastal approaches. Our security efforts are enhanced through special joint operations and task forces conducted under the auspices of multi-agency enforcement teams. These teams are composed of representatives from international and U.S. federal law enforcement agencies who work together with state, local, and tribal agencies to target drug and transnational criminal activity, including investigations involving national security and organized crime.

Under the Secretary's Unity of Effort initiative and with the three new DHS JTFs, CBP is enhancing our collaboration with other DHS components – specifically ICE and USCG – to leverage the unique resources, authorities, and capabilities of each agency to more effectively and efficiently execute our border security missions against TCOs, drug-trafficking and other threats and challenges.

Through JTF-W's integrated efforts in the South Texas Corridor (STC), two TCOs were impacted utilizing counter network strategies and unity of effort amongst DHS components. In addition, the STC employed integrated intelligence collection to enhance joint interdiction and investigations significantly disrupting the TCOs ability to smuggle their commodity through the application of consequences. These two organizations were designated as priority targets culminating into enforcement actions under Operations Fusion One-Five and Project Highway 83.

Under Operation Fusion One-Five, multiple members of the Brewster Criminal Organization, to include the leader of the organization, were targeted and arrested. This investigation resulted in an additional 22 criminal arrests, 497 UDAs, and the seizure of various types of narcotics. On August 10, 2015, members of the Brewster Organization appeared in federal court and received a

cumulative sentence of 12.5 years for their roles in human smuggling. This was an HSI led investigation with support from CBP assets.

Under Operation Project Highway 83, six TCOs operating within the STC were targeted as part of an illicit network utilizing money service businesses to facilitate human smuggling. This investigation led to the issuance of 31 arrest warrants in San Antonio, Dallas, and Crystal City, Texas. To date, over 400 individuals involved in this network have received consequences ranging from arrests, indictment, and/or administrative actions. This investigation was initiated and led by the HSI Eagle Pass and Laredo Offices, assisted by USBP Del Rio and Laredo Sectors, and OFO Laredo Field Office.

CBP is a critical partner in the ICE-led Border Enforcement Security Task Forces (BESTs), which are composed of Federal, state, local, and international law enforcement and intelligence stakeholders working together to counter TCOs and enhance border security. BESTs currently operate in 37 locations, including 14 along the Southwest border. In FY 2015, BESTs made more than 3,700 criminal arrests and 960 administrative arrests; seized more than 269,100 pounds of drugs, 800 weapons, and $29 million in currency and monetary instruments; and federal prosecutors obtained more than 2,100 indictments and 1,700 convictions in BEST-investigated cases.

Other investigative agencies such as ICE-HSI, DEA, and FBI utilize AMO specific skills for air and marine relevant investigations, in order to help identify and dismantle the organized flow of narcotics and trans-criminal organizations. This leads to significant intelligence and seizures, and the critical information gained is often crucial to identifying TCO suspects, associates, and accomplices. The threat in the air and maritime domains require specialized skills and tactics tailored to the specifics of each of those environments. In the maritime domain, AMO personnel routinely augments vessel crews from investigative partner agencies when air and marine investigative skills and technical expertise are needed for investigation or operation of these maritime assets.

In the air domain, AMO detects, identifies, investigates, and interdicts potential air threats to the United States including general aviation (GA) aircraft involved in the aerial transit of contraband. The AMOC monitors complex airway traffic to identify illicit use of aircraft and those attempting to blend in with legitimate traffic. AMO, through its national SKY PRO initiative and in collaboration with ICE-HSI, the Federal Aviation Administration, and state, local, and tribal law enforcement agencies, works to enhance law enforcement interactions with the GA community to increase awareness and intelligence on international and domestic smuggling activities.

Also, AMO actively participates in Operation Martillo, an international counter illicit trafficking initiative whereby U.S. and regional partner nations' military and law enforcement agencies patrol the air and sea environments in the Caribbean Sea, Gulf of Mexico and the Eastern Pacific on a year-round basis.

Because DTOs are also known to use legitimate commercial modes of travel and transport to smuggle drugs and other illicit goods, CBP partners with the private sector to provide anti-drug smuggling training to air, sea, and land commercial transport companies (carriers). The overall goals of these programs and their training component are to encourage commercial carriers to

share with CBP the burden of stopping the flow of illicit drugs; to deter smugglers from using commercial carriers to smuggle drugs; and to provide carriers with the incentive to improve their security and their drug smuggling awareness. The Carrier Initiative Program is a voluntary training program directed at employees of carriers with route systems that are high risk for drug smuggling. The Super Carrier Initiative Program is for those carriers that face an extraordinarily high risk from drug traffickers. Participating carriers sign agreements stating that the carrier will exercise the highest degree of care and diligence in securing their facilities and conveyances, while CBP agrees to conduct site surveys, make recommendations, and provide training. CBP and various carriers have signed over 3,800 Carrier Initiative Agreements and 27 Super Carrier Agreements.

Heroin trafficking is a global problem, and CBP continues to work with our international partners to share information and leverage resources to combat this threat. Through the 21st Century Border Management Initiative, the U.S. Government and Government of Mexico (GOM) are working to strengthen our collaborative relationship and efforts to secure and facilitate the cross-border flows of people and cargo. CBP also has Border Patrol International Liaison Units (ILU) who facilitate cooperation between U.S. and Mexican law enforcement authorities as part of a multi-layered effort to target, disrupt, and dismantle criminal organizations. During FY 2015, the U.S. Border Patrol and GOM conducted multiple joint bi-national operations targeting TCOs. During these operations, and as a direct result of intelligence sharing with GOM, USBP and GOM were able to locate more than 30 illicit tunnels, and seize approximately 80,000 lbs. of drugs.

AMOC's coordinating efforts with the GOM and the deployment of shared surveillance technology has enabled the GOM to focus aviation and maritime enforcement efforts to better combat TCO operations in Northern Mexico and the contiguous U.S./Mexico border. For example, this past January, officers working at the AMOC detected a suspicious aircraft travelling north towards the United States. AMOC subsequently alerted GOM of the activity, and both the Mexican Federal Police and Air Force responded to investigate. The abandoned aircraft was located by Mexican officials a short time later, where 27 bags containing approximately 389 kilos methamphetamine, 79 kilos of cocaine, 79 kilos of white heroin, and 1.5 kilos of black tar heroin were discovered and seized.

CBP, together with our international, federal, state, local, and tribal partners, is committed to reducing the risk associated with TCOs by addressing threats within the Southern Border and Approaches Joint Operating Area. The establishment of JTFs marks a renewed commitment to seek out and coordinate optimal, multi-component authorities, capabilities, competencies, and partnership expertise to combat all threats to the homeland.

Lastly, it is important to acknowledge the significant strides that Mexico has taken in recent years to address transnational organized crime generally, and drugs smuggling specifically. I noted some examples of this earlier, but I wanted to highlight for the Committee that CBP's relationship with its Mexican counterparts is stronger today than it has ever been. We receive information from Mexican authorities on a daily basis that helps us better target drugs smugglers at the border. Just last month, I participated in a high level bilateral and interagency security cooperation meeting in Mexico City, where senior Mexican officials committed to working with the U.S. Government even more closely—including expanding efforts to combat heroin cultivation, production, and trafficking, and sharing more information on smuggling routes and networks, and

crafting a binational action plan specifically focused on heroin smuggling. While more can always be done, I am pleased that Mexico and the United States are working in close cooperation as we seek to identify, interdict, and take down the cartels.

Conclusion

CBP, through collaboration and coordination with our many Federal, state, local, tribal, international government, and other partners, has made great strides with regard to the integrity and security of our borders.

With continued support from Congress, CBP, in coordination with our partners, will continue to refine and further enhance the effectiveness of our detection and interdiction capabilities to combat transnational threats and the entry of heroin into the United States. We will continue to work with the intelligence community and our law enforcement partners to improve the efficiency of information sharing with relevant partners, to guide strategies, identify trafficking patterns and trends, develop tactics, and execute operations to address the challenges and threats posed by TCOsto the safety and security of the American public.

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to testify today. I look forward to your questions.

Maricopa County Attorney

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Via email
November 18, 2015

Ron Johnson, Chairman
Thomas R. Carper, Ranking Member
United States Senate
Committee on Homeland Security and Governmental Affairs
Washington, DC 20510-6250

Re: Testimony of Maricopa County Attorney Bill Montgomery for hearing titled "America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking" on Monday, November 23, 2015 at 9a.m. MST at the Historic Senate Chamber, Arizona State Capitol Museum, 3rd Floor, 1700 W. Washington Street, Phoenix, AZ 85007

Dear Chairman Johnson, Ranking Member Carper, ladies and gentlemen of the Committee,

Thank you for the invitation to testify here today. I am Bill Montgomery, the elected Maricopa County Attorney with felony prosecution responsibility on behalf of the 4.1 million people in my jurisdiction. As we sit here in this Historic Senate Chamber, command and control elements from the Sinaloa Cartel are moving heroin into and out of Maricopa County, which serves as the Sinaloa Cartel's distribution hub for their heroin trafficking operations in the United States. The market is proving so lucrative that the Cartel has also shifted some of their marijuana fields to poppy cultivation for increased heroin production and I must underscore that heroin is being trafficked into the United States. It is not being domestically produced.

The overall volume of drug trafficking is significant with Arizona, once again, the main thoroughfare for drug smuggling into the United States with Customs and Border Protection drug seizures in Arizona in FY 2014 amounting to nearly half of all southwest border seizures. For heroin in particular, we have seen a steady increase in Arizona port of entry seizures reported by Customs and Border Protection of 170% from 267 pounds seized in 2010 to 722 pounds in 2014. Select investigations just this year in Maricopa County have resulted in seizures of 131 pounds of heroin, 108 pounds of cocaine, 205 pounds of methamphetamine, and $327,533.00 in US currency. The combined street value of the drugs seized is over $3 million. Such heavy smuggling activity also has a direct impact on our prison population. As of October, 2015, 4,569, or 10.7% of Arizona's prison inmates, are criminal aliens and account for 29.2% of all inmates incarcerated for drug sales/trafficking convictions.

The broader impact to Arizona from heroin trafficking is also illustrated by the sharp increases in emergency department admissions for heroin. Specifically, we have seen a 103% increase in emergency department visits from 277 in 2009 to 561 in 2013. We have also seen an impact from heroin in the types of drug prosecutions undertaken in Maricopa County. Prosecutions for heroin related cases have increased 200% from 468 cases filed in 2009 to over 1400 in 2014. In terms of possession cases alone, the percent increase from 2009 to 2014 is 231%, and heroin possession cases accounted for 64.8% of all possession or use of narcotic drug cases in 2014. Our response as a state since 1996 to drug abuse has been to emphasize drug treatment first. Accordingly, no prison sentence is possible for the first two arrests and convictions even if previous opportunities for diversion or deferred prosecution have failed. We have also seen a corresponding 25% increase in the numbers of individuals offered diversion or deferred prosecution for using heroin. Successful completion of these treatment programs can result in no drug charges ever being filed or result in no felony conviction and cases dismissed with prejudice.

The increase in use of heroin also manifests itself in other areas of crime. We have seen heroin use reflected in cases of organized retail theft where individuals enter a supermarket and engage in mass shoplifting with shelves cleared of baby formula, deodorant, shaving cream or similar items. The items are then turned over to a middleman who in turn sells them for pennies on the dollar to a broker who, in turn, sells them to flea market vendors or neighborhood grocery stores for retail sales. The shoplifters are heroin addicts recruited with the promise of heroin or enough money to get their next fix as payment. These are our walking dead who are enslaved by their addiction and provide the labor for such organized criminal activity.

Despite the rapid growth in heroin cases, methamphetamine is still a scourge and, like heroin, is trafficked into Arizona. There is little domestic production as supplies now come from superlabs in Mexico as part of the Cartels line of products. In comparison to heroin, meth represents 52% of cases involving the sale or transportation of drugs, excluding marijuana, over twice the number of heroin cases at 25%. Meth sales out of fixed locations where drugs are brought for further distribution are 42% of sales, marijuana 40%, and heroin 10%. In contrast, street sales of meth represent 35% of our cases, heroin 23%, and marijuana 25%.

With respect to funding I receive from federal sources for drug related prosecutions, those monies come from our HIDTA and Byrne/Justice Assistance Grants (Byrne/JAG). HIDTA monies essentially cover 1 prosecutor position and have averaged approximately $100,514 each of the last three years. Byrne/JAG monies for FY 2015 amount to $550,840 for additional personnel expenditures and related expenses, including investigative positions in my Office that participate in task force operations. I would also note that Byrne/JAG monies have been steadily decreasing since at least 2010. Needless to say, these funds are not enough to handle the workload and so I use County general fund monies in my budget for the necessary additional prosecutor, paralegal, and legal support positions. Overall, my Drug Enforcement Bureau is staffed with 15 prosecutors plus one prosecutor-supervisor, 7 paralegals, and 5 legal assistant/specialist positions. I do not refuse to take cases from local, state, or federal agencies on the basis of lack of resources. Instead, I take the cases that are made in my jurisdiction and see to it that justice is done. Our unique proximity to the border and the activities of drug cartels require no less a commitment for law enforcement or my Office on behalf of Maricopa County.

As for improving coordination among local, state, and federal law enforcement, I must say that we work together well in and through HIDTA initiatives, local Task Force efforts, as well as in other daily law enforcement interactions serving a shared constituency and dedicated to enhancing public safety. What I would offer in the current environment is that the FBI should be resourced to assist in dealing with Mexican drug cartels and the problem should be treated as a national security issue. As stated in Congressional testimony on August 1, 2012, by Charles K. Edwards, the Acting Inspector General of DHS, "DTOs [Drug Trafficking Organizations] are becoming involved increasingly in systematic corruption of DHS employees to further alien and drug smuggling, including the smuggling of aliens from designated special interest countries likely to export terrorism." I would even go so far as to suggest making the Border Patrol a uniformed service akin to the Coast Guard with similar domestic law enforcement authority during peacetime as the Coast Guard wields and falling under the Department of Defense during time of war. Securing and protecting the territorial sovereignty of the United States of America from national security and transnational criminal threats along our nation's borders is directly charged to the federal government in our Constitution and Arizona has suffered long enough from the federal government's failure to act accordingly. Collecting information here today is an important part of carrying out congressional duties and responsibilities but it cannot stop with gathering info, either. And I urge this Committee to take the lead in directing resources to address the problem and not just place a salve on the symptoms. Thank you again for the opportunity to testify here today. I am prepared to address any questions.

Sincerely,

Bill Montgomery
Maricopa County Attorney

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Via email
November 23, 2015

Ron Johnson, Chairman
Thomas R. Carper, Ranking Member
United States Senate
Committee on Homeland Security and Governmental Affairs
Washington, DC 20510-6250

Re: Supplemental testimony of Maricopa County Attorney Bill Montgomery for hearing titled "America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking" on Monday, November 23, 2015 at 9a.m. MST at the Historic Senate Chamber, Arizona State Capitol Museum, 3rd Floor, 1700 W. Washington Street, Phoenix, AZ 85007

Dear Chairman Johnson, Ranking Member Carper, ladies and gentlemen of the Committee,

Thank you for the opportunity to provide information to this very important review of the impact of heroin and drug trafficking on Arizona and our country. The questions asked were pertinent, to the point, and elicited much valuable information for your consideration in reviewing next steps to secure our community and nation from the impact of transnational criminal threats. Given the fixed amount of time available, I wanted to offer the following additional information from areas of inquiry during the hearing and other points arising from our discussion.

Precipitous drop in drug prices since 1991

As well documented in the "Illegal Drug Prices" chart discussed at the hearing, the national average price per gram for heroin has fallen from $1,499 in 1991 to $465 in 2012. In addition to the basic effect of supply and demand on price-setting, additional factors involve the Mexican Drug Cartels improved process of manufacturing of heroin near their market (the U.S.), and engaging in direct distribution, thereby eliminating at least one level of additional cost between the source of production and the end user. This allows lower pricing for heroin without impacting profitability. One study confirming this phenomenon internationally, is *Globalization and The Price Decline of Illicit Drugs*, Costa Storti C , De Grauwe P. Specifically:

> *This study aims at understanding the mechanisms underlying the dramatic decline of the retail prices of major drugs like cocaine and heroin during the past two decades.*

1985

> *We find that the decline in the retail prices of drugs is related to the strong decline in the intermediation margin in the drug business, and that globalization is the main driving force behind this phenomenon. Globalization has done so by increasing the efficiency of the distribution of drugs, by reducing the risk premium involved in dealing with drugs, and by increasing the degree of competition in the drug markets.*

Int J Drug Policy. 2009 Jan;20(1):48-61. doi: 10.1016/j.drugpo.2007.11.016. Epub 2008 Feb 12.

A similar phenomenon, in terms of the impact from Mexican Drug Cartels, can be seen in the decrease in pricing for methamphetamine with a price drop from $700 per gram to $194 per gram over the same time frame. Mexican super labs are able to make meth in high volumes of improved quality and are located near their market.

Key Components of a Successful Strategy

While it is a fact that smuggling routes can and do shift based on shifting interdiction efforts, as illustrated by respective amounts of drugs seized along the Arizona and Texas borders over FY 2012 – 2014, a successful U.S. Drug Policy requires sustained commitment and effort over time and over several components of U.S. Drug Policy. In particular, we need a sustained effort in the areas of: prevention education and awareness, also known as demand reduction; substance abuse treatment; interdiction and dismantling efforts of drug trafficking organizations, including prosecution and incarceration along with utilization of asset forfeiture laws; and source eradication for cultivation and production.

Despite measured success in positively impacting youth attitudes about drug use and abuse with award winning media campaigns such as the "This is your brain. This is your brain on drugs." effort, sadly, they are no more. Instead, they have been replaced with messages from Administration officials up to and including the President himself that demonstrate indifference or ignorance as evidenced by the message that marijuana is no more dangerous than alcohol and outright refusal to enforce drug laws. This sends a terrible message to youth. The 2014 National Survey on Drug Use and Health reflects the impact of such foolishness with the finding that the perceived risk of Americans 12 and older from smoking one or more packs of cigarettes a day and binge drinking on a daily basis is greater than the risks from smoking marijuana.

We must renew consistent messaging efforts with all levels of government cooperating to combat gross and misleading statements about the risk of drug use for all types of drugs, including the abuse of prescription drugs. We need to increase investment in drug abuse treatment during periods of incarceration and re-entry, as well as supporting efforts at addiction treatment in the community before addiction manifests in criminal conduct. We need to continue efforts at local, state, and federal levels for the interdiction, dismantling, prosecution, and incarceration of drug traffickers, as illustrated by Governor Ducey's Border Strike Force Bureau initiative. While increased seizures at ports of entry certainly indicate enhanced ability to interdict drug trafficking, the continued seizure of large quantities of drugs beyond border counties is evidence of the successful exploitation of smuggling routes through areas between authorized ports of entry.

Finally, we need to continue to engage source countries for strategies to address cultivation and production of drugs for trafficking into the U.S. and other countries. A continued effort across all domains is essential to a successful drug policy essential to an environment necessary for future American success in educating our children, minimizing costs to public health, and competing in a global economy while defending national security interests.

Economic Impact

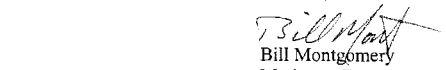
The overall volume of drug trafficking is significant with Arizona, once again, the main thoroughfare for drug smuggling into the United States. Customs and Border Protection report FY 2014 drug seizures in Arizona amount to nearly half of all drug seizures along our southwest border. For heroin in particular, we have seen a 170% increase in Arizona port of entry seizures as reported by Customs and Border Protection from 267 pounds seized in FY 2010 to 722 pounds in FY 2014. This translates to the raw numbers of criminal alien drug traffickers incarcerated in Arizona's prisons. As of October, 2015, 29.2% of all inmates incarcerated for drug sales/trafficking convictions are criminal aliens. At an average annual cost of $25,000, it costs Arizona $42.8 million to incarcerate foreign drug traffickers.

Staffing

As I stated in response to Senator McCain's question about staffing levels in the present trafficking environment, I do not have sufficient personnel. Overall, my Drug Enforcement Bureau has 15 prosecutors and one prosecutor-supervisor, 7 paralegals, and 5 legal assistant/specialist positions. I do not refuse to take cases from local, state, or federal agencies on the basis of lack of resources. Instead, I take the cases that are made in my jurisdiction and see to it that justice is done. Any dedicated effort to further improve cooperation and collaboration among local, state and federal agencies in trafficking cases will result in more cases presented for prosecution. I estimate I would need at least 1/3 more personnel to ensure we can manage increasing caseloads.

Thank you again for inviting me to participate and I look forward to enhanced efforts to protect the people of Maricopa County, Arizona, and our Nation.

Sincerely,



Bill Montgomery
Maricopa County Attorney

Mark Dannels
Sheriff

Thad Smith
Chief Deputy

Office of the Sheriff
Cochise County

HOMELAND SECURITY BRIEF (NOVEMBER 23, 2015)

Introduction

Testimony of Mr. Mark J. Dannels, Cochise County Sheriff, Arizona before the Senate Committee on Homeland Security and Governmental Affairs Hearing on "America's Heroin Epidemic at the Border: Local, State and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking" on November 23rd, 2015.

Chairman Johnson, Ranking Member Carper, and Members of this Committee, thank you for the invitation to speak to you today on this very important subject.

History of Cochise County

With eighty-three miles of international border within its jurisdiction, Cochise County plays a significant role in combating drug and human trafficking organizations and the associated violent crime which adversely affects Arizona residents and other areas throughout the United States. In 1990 the Office of National Drug Control Policy (ONDCP) designated Cochise County as a High Intensity Drug Trafficking area within southern Arizona. This designation is a direct result of overwhelming and sustained levels of illicit drug and human trafficking within Cochise County.

With 6,219 square miles, Cochise County is as large as the states of Rhode Island and Connecticut combined. The estimated population of the county in 2010 is approximately 131,346. The geography of the county consists of seven incorporated cities to include the historical town of Tombstone. Surrounded by vast areas of desolate uninhabited desert and mountainous terrain, the seven cities only represent a combined area of 215 square miles, leaving 6004 square miles of unincorporated area. These desolate areas are routinely exploited for smuggling routes by the drug/human traffickers and pose one of the greatest challenges to local law enforcements effort in establishing border security and interdiction efforts. Cochise County is the 38th largest land mass county in the United States, and is home to the United States Army base, Fort Huachuca. Throughout the history of the county ranching and farming has played a significant part in its legacy.

Unlike other border counties in Arizona, Cochise County is unique in that there are two cities in the Republic of Mexico situated on the international border within the county. The cities of Agua Prieta and Naco, with an estimated population of 80,000 and 10,000 respectively, are well know to U.S. Law Enforcement officials as staging and operational centers for one of Mexico's largest and most notorious drug cartels. The Sinaloa Cartel has long employed the use of local Mexican Drug Trafficking Organizations (DTO's) to carry out the Cartel's drug distribution and transportation into and throughout the United States.

These local DTO's also utilize their established smuggling routes in Cochise County to transport the Cartels illicit profits such as U.S. currency, firearms, and ammunition into Mexico. A large portion of the profit is used to sustain control over the corridor through the use of violence against law enforcement, rival trafficking organizations, and bribes of government officials.

The Mexican drug trafficking organizations operating in Cochise County are highly sophisticated and innovative in their transportation methods. Aside from the normal use of human backpackers (mules), clandestine tunnels, and vehicles, the trafficking organizations have resorted to the use of ultra light aircraft which cannot be detected by normal radar, cloned vehicles appearing to be law enforcement or other legitimate companies, and most recently the use of catapults which hurl bundles of marijuana into the U.S. to awaiting co-conspirators. The organizations utilize sophisticated and technical communications and counter surveillance equipment to counter law enforcements interdiction tactics and strategies. Scouts or observers are strategically placed along smuggling routes to perform counter surveillance on law enforcement and report their observations to those controlling the drug/human smuggling operation so they may avoid and elude law enforcement. The use of cell phones and sophisticated two-way radio encryptions for communications are standard equipment, as are night vision and forward looking infra-red devices.

Violence against innocent citizens, public officials, law enforcement, and rival drug/human trafficking groups in Mexico continues to escalate. Cochise County's law enforcement and private citizen fears of it spilling into the county were realized in 2010 when a longtime Cochise County resident rancher was senselessly murdered while inspecting fences on his ranch. Further complicating the concerns is the potential for foreign terrorist to employ drug/human trafficking organizations to smuggle individuals and or weapons of mass destruction into the United States through Cochise County.

The adverse affects of the drug and human trafficking organizations operating in Cochise County not only have significantly diminished the quality of life of county residents, but also placed unbearable strain upon the budgets and resources of private and government agencies in the county.

Historically speaking, illegal border crossings into the United States are well known in southern Arizona and recognized as a part of everyday life within Cochise County and throughout the southwest border. Many years ago, Cochise County citizens were not overly alarmed when they observed a handful of undocumented aliens travelling through private or public lands in search of jobs. Unfortunately, over time these groups dramatically increased in size and became more reckless, aggressive, and violent, bringing unrest and fear to the citizens living on the border. Examples of this include reckless high speed pursuits, assaults on citizens, rapes, kidnappings, murders and home invasions to steal one's private and personal possessions. It was apparent the search for the American dream was being over-shadowed by these mules, coyotes, bandits, and transnational criminals preying upon our citizens.

Having the true-life experience to live and work as a law enforcement officer/deputy and now Sheriff in Cochise County since 1984, it has been an educational lesson for me reference border security. I have witnessed the escalation of violence by these careless assailants on our citizens raising the question, who actually controls our borders? Cochise County has become known as the gateway to illegal activity for those unlawfully entering into the United States.

Heroin in Cochise County

In conducting research into the matter of Heroin smugglers, distributors, and users in the Cochise County, AZ area, I discovered that our federal partners (US Border Patrol [USBP], Homeland Security Investigations [ICE], and Customs are reporting that very little heroin is "caught" coming through the Ports of Entry (POE) in Cochise County.

According to the USPB, their office in **Nogales, AZ** is area that seizes the most Heroin in our state. Although the exact weight seized was unavailable, it was estimated this station seized over **50 pounds of Heroin for FY 2014**. (October 1 2014 to September 30 2015) Further, the station in Cochise County that seizes the most Heroin is the **Wilcox station**. It was estimated that for FY 2015, this station seized over **10 pounds of Heroin**. There was no explanation for why they saw more Heroin then Douglas and Naco stations, except that the Wilcox station borders the New Mexico/Arizona border and that the suspects may have been transporting the drug out of the state; or Wilcox BP station captured several "body carriers" of the drug.

In discussing this issue with our federal partners (USBP and HSI), they advised most Heroin is being smuggled into the country through POE's, whether it is being driven or carried in. Further per our federal partners, the State of California is seeing the majority of the smuggling of this drug. They are seeing so much "hard drugs" agents from the Brian Terry Station (Naco) are being sent (temporary duty or "TDY") to California to assist with this predicament. Further, our federal partners report that when smugglers are caught, the Heroin is usually hidden with other illegal drug loads like Marijuana or Methamphetamine as it is being smuggled into the country. It is the belief of law enforcement the cartels are attempting to disguise the drug in this manner as the "mules" will either refuse to take the cargo (due to the dangers of transporting Heroin) or they want more money to transport the drug.

HSI reported that fiscal year 2013, they made a seizure of approximately 25 pounds of Methamphetamine through the Douglas POE. Fiscal year 2014, they **seized approximately 23 pounds of Heroin through the Douglas and Naco POE's collectively**. HSI reports this seizure is low in comparison to other ports like Nogales and Yuma ports, which easily double and even triple this seizure amount.

Per HSI, the 23 pounds is an anomaly as narcotic drugs are usually smuggled through the Nogales POE, not any ports in Cochise County. The region in Mexico that borders Cochise County is known for Marijuana smuggling and that is normally the only drug the cartels will allow to be smuggled through this area/region. HSI further reported that drugs smuggled through Cochise County generally transits to the Tucson/Phoenix, AZ area where they are unloaded and transshipped throughout the United States.

Sources working for/with the Cochise County Sheriff's Office report when a user wants to purchase Heroin in quantities larger than an eighth of an ounce (3.5 grams), they (or the person they are purchasing the drugs from) travel to Tucson to "re-up" for that amount. Users in the Cochise County community travel north to acquire the drug as prices there are less expensive there and distributors in our county cannot complete with the price of distributors farther north in the state. Most users spoken to report they were looking for a connection in Tucson, AZ to purchase the drugs as the prices there are way more inexpensive then in Cochise County.

However, in one case the Cochise County Sheriff's Office conducted this year, the suspect, on surveillance video, showed our source how to smoke Heroin. The suspect

also spoke about how everyone in Cochise County has Methamphetamine, making a profit selling Methamphetamine is difficult, but Heroin is a money maker. Hardly anyone has it in Cochise County, it is easier to conceal and most law enforcement in this area don't readily recognize it like Methamphetamine, and a Heroin high is better the a Methamphetamine high.

In speaking with other law enforcement agencies in Cochise County, they report they have seen a spike in Heroin overdoses. Although the Sierra Vista Police Department was unable to provide exact numbers, they reported they are contemplating issuing narcon to their officers because of this trend.

The Sierra Vista Police Department also reported they seized over 5.5 ounces of Heroin in 2014. They reported their seizures for 2015 were unavailable, but they anticipated them to be less than 2014 due to staffing issues with their narcotics unit. The Benson Police Department, Douglas Police Department and the Wilcox Police Department all reported that Heroin is becoming more of a problem in their respective areas, but were unable to provide and statistical data. They did report that they are seeing a rise in ancillary crimes like burglary, thefts and frauds as a result of this growing epidemic. All departments contacted in Cochise County advised Heroin is a growing problem in their areas of responsibility and are seeing this problem getting worse in the future.

In Cochise County, an ounce of Heroin is estimated to sell for $800.00. In Tucson, the same amount sells for $500.00 and in Phoenix, the drug sells for $750.00 per the Drug Enforcement Administration (DEA) 2015 Biannual Drug Price List. In looking at the estimated costs for the drug, it would appear the drug is more prevalent in the Tucson, AZ area than Cochise County or even Phoenix; as one who works in the narcotics field knows when there are more outlets to purchase a product, price wars will bring the cost of the product down, not up for the consumer.

Both USBP and HSI report that Marijuana is the predominant drug being smuggled through Cochise County, and Heroin and Methamphetamine is being smuggled through Santa Cruz County. Heroin is mostly being harvested in Mexico and smuggled into the United States. The City Nogales AZ is approximately 70 miles north of Tucson, AZ, and it is a well known fact that the illegal drugs that enter the country through Nogales travels north to Tucson and then is distributed to other destinations throughout the nation. However, citizens from Cochise County are traveling more and more to Tucson to purchase the drug. The use and sales of the drugs is impacting the quality of life negatively in Cochise County.

From January 2015 to September 2015, the Cochise County Special Operations Unit has seized over 2 ounces of Heroin during operations, and through Operation Stone Garden, approximately a half ounce of Heroin has been seized by Deputies working the operation. Through interviews of the subjects arrested for possessing the drug, all have reported they purchase the drug through suppliers from Tucson, AZ as the prices there are less expensive and the drug is easier to locate in Tucson then in Cochise County.

In the investigations conducted by **the Cochise County Special Operations Unit**, it appears that **Methamphetamine** is still the drug of choice in Cochise County as the unit has **seized over 32 ounces (or 2 pounds) of Methamphetamine** from January 2015 to September 2015.

1991

Federal Government's Border Security Plan of the 90s

In the early 1990s, the federal government prepared a plan to address the unsecure, unsafe border. At a press conference in Tucson, Arizona, a Border Patrol spokesman announced their intent to secure the populated areas of the border, specifically San Diego, Yuma and El Paso and the International Ports of Entry. These targeted areas, which I call the "Ps = Ports and Population", would be the federal government's focus points. The second half of their plan was to reroute the illegal activity/disturbances into the rural parts of the southwest border with the thought that these cartel organizations and smuggling groups would be deterred by the rugged and mountainous regions along the border.

Since the release of the plan, many changes have taken place. Specifically, Cochise County has increased their staffing of Border Patrol agents from a handful of agents to an estimated 1300 agents stationed within Cochise County. To add, an estimated 200 Custom agents working at the port of entries (Douglas and Naco) and within the Cochise County to secure and protect the estimated 83 miles of international border. Infrastructure, such as metal fencing, lightning, cameras, sensors, radars, etc. have been installed between both ports and some distance beyond bringing some needed relief to this area and those that live within. Secondary immigration checkpoints were established on routes (roadways) 20 – 40 miles north of the border. The plan has been in place for over 20 years and the following are some thoughts regarding the plan:

- Reduction in illegal activity between the protected areas (ports)
- Decrease in larger groups of undocumented aliens between the protected areas (ports)
- Increase in illegal activity outside the protected areas (ports)
- Fear/Frustration increased in rural Cochise County/Southwest Border
- Ranch and Farm lands damaged due to increased illegal activity
- Property (fencing, livestock, waterlines, etc.) damaged
- Burglaries/Thefts increased in rural Cochise County/Southwest Border
- Violent Crimes increased i.e. Homicides, Assaults, Rapes, Drug and Human Smuggling, etc. in rural Cochise County/Southwest Border
- Transnational Cartels/Smuggling Organizations controlled and set up smuggling routes in rural Cochise County/Southwest Border
- Lack of Border Patrol Agents directly on border but north of border
- Secondary checkpoints became international ports within communities resulting in disturbances/illegal activity during all hours of the day or night
- Lack of Re-Definition to the plan of the 90s (time erased history)
- Loss of recreational land use due to fear of criminal activity
- Economic decline (Cochise County largest decrease in population)
- Legacy Ranches being sold
- Lack of Federally elected leaders to address unsecure border/fears creating a lack of trust and anger by citizens
- Questionable consequences by federal government by those committing border crimes
- Undue pressure on local law enforcement/Sheriffs to address issues, fear, and consequences for those committing crimes
- Lack of funding for local law enforcement/criminal justice system/corrections in order to address border crimes at the local level due to federal government lack of intervention

- Border Security shall be a Mandate, not a Discretionary program
- Border Security v. Immigration Reform (two different programs not to be blended)
- Lack of Trust and Confidence in Federal Government = Border Patrol as arm of Federal Government

Action-Based Solutions Local Government

Local Solutions and Programs are no longer a thought, but a reality for bringing relief to our citizens who consciously choose to live near our borders. No better example of the importance of local law enforcement during a national crisis was the terrorist attack on September 11, 2001. First responders from local police and fire were the first on scene to address this horrific threat. Local law enforcement is best suited to best understand community needs and solutions based on the expectations of their citizens. Community policing begins and succeeds at the local level first.

As the Sheriff of Cochise County, I felt it was my elected and statutory duty (oath of office to support the United States Constitution and the Arizona Constitution) to protect and secure the Freedoms and Liberties of my citizens, with or without the help of our federal law enforcement partners/policy makers. No longer a debate by those that live in the rural parts of the southwest border, the rural parts of the Southwest Border are NOT secure and are vulnerable for ANY type of transnational criminal activity.

Working with limited budgets and staffing, sheriffs along the southwest border struggle each and every day to find ways to enhance the quality of life/safety for those they serve and bring a general sense of deterrence for those choosing our border as a venue to promote their criminal enterprises.

Sheriffs along the southwest border have worked diligently to unify our educational, prevention and enforcement programs by building true-trusted partnerships with our law enforcement partners with an emphasis on our state partners and governor to enhance our voice and efforts.

Local law enforcement to include sheriffs throughout the southwest border and within the State of Arizona have taken the lead on arresting and prosecuting those involved in local smuggling creating an enormous challenge to local budgets. One of the most controversial examples involves juvenile smugglers. Due to mixed justifications, the federal government has declined to prosecute juveniles engaged in illegal smuggling across our international border.

As a consequence driven solution, Cochise County has taken a proactive step in arresting and prosecuting these juveniles with punishment being carried out at the Arizona Department of Corrections. Since the implementation of this program, our remanded in-custody juveniles have multiplied by a rate of 5.

Additionally, the State Criminal Alien Assistance Program (SCAAP) has steadily decreased over the years. This financial decrease has once again placed a huge financial burden on the local sheriffs. Between 2009 and 2014, Arizona Sheriffs have a SCAAP deficit of $226,445,617 .00. During this same time period, Arizona Sheriffs have been awarded $19,176,997.00 (see SCAAP Chart for define numbers). The return rate for the incarceration of illegal-criminal aliens is just less than 5 cents on the dollar.

The smuggling of Mexican Heroin and Methamphetamine across our international border has become very popular based on the effectiveness and efficiency of transporting this illicit drug by violent cartels. Detection is more difficult by law enforcement creating financial opportunities for those criminal organizations on both sides of the border.

Sadly, those that become victim to these drugs are likely to become a deadly statistic. In Arizona, heroin deaths are up considerably increasing (2004: 50 deaths compared to 2014: 200 deaths according to the Arizona Department of Health Services) due to this extremely addictive drug. Educational and prevention programs are necessary for those tempted and/or in need of these programs.

Physicians prescribed use of pain medication has been blamed for the initiation of heroin use due to the inexpensive cost of heroin compared to pain medication. Evaluation and follow-up with patients by these physicians is critical for those experiencing a potential addiction to these pain medications.

Many law enforcement agencies are equipping their officers/deputies with "Narcan" drugs to assist with overdoses. This has become a common epidemic in our communities. This epidemic is relentless and holds NO age-race-gender harmless.

Arizona Governor Doug Ducey has been instrumental and supportive in our efforts here in Cochise County to construct a regional public safety communication/intelligence center and providing additional (complimentary) resources to our efforts to combat drug smuggling and illicit acts nexus to our insecure border. This true-partnership unifies local and state efforts in hopes of enhancing the quality of life for our citizens and beyond. As we all know, this problem not only challenges our quality of life here, but negatively exploits communities throughout this nation.

The following bullet points are action-driven solutions implemented in hopes of bringing some relief and sense of security for those living in Cochise County:

- Balanced Community Policing (Education, Prevention, Enforcement)
- Transparency + Time = Community Trust
- Collaborated Efforts by all 3-levels of Government
- Law and Order Partnership between Sheriff and County Attorney
- Private and Public Funding donations/grants to purchase upgraded equipment/communications
- Installation of New Radios/Towers/Consoles/Microwave
- Portable Radios to Citizens/Ranchers/Farmers/Schools
- Interoperability/Intelligence Sharing at all 3-levels
- Regional Application for Law Enforcement
- Financial Interdiction Unit
- Regional Border Team by Sheriff supported by Border Patrol, DPS, ICE, U.S. Forest
- Ranch Advisory Team
- Ranch Patrol
- Consequence Driven Prosecution (all 3-levels)
- Local Trail-Cameras, Sensors, ATVs, Thermal Vehicle, Off-Road Vehicle, etc..
- Factual Situational Awareness for Media, Elected Officials, America
- Quarterly Law Enforcement Leadership Meetings

- Community Outreach Unit
- Community Meet & Greets within Communities
- Aviation Program (Helicopter & Drone)
- Positive-Interactive Use of Media and Social Medial

Recommendations Federal Government

The Federal Government (elected and policy makers) has been slow to react to the voices and concerns of those living on the southwest border. Cochise County and other counties along the border have become VIP attractions, venues for those seeking to make a difference or promising change only to become another faded high-hope. The following comprehensive recommendations are directly linked to our federal leaders:

- Re-define the plan of the 90s and build upon successes
- Political-Will to make Border Security a Mandated Program
- Border Security First, Immigration Reform Second
- Maximize Allocated Resources such as Staffing (only 43% of Border Agents in the Tucson Sector are assigned on the border)
- Support and Embrace First-line Agents that work the border regions, they have a dangerous job and it's no secret that their frustration is high based on the unknown complexities reference their assignments, they have great ideas to share
- Secondary Checkpoints only after Primary border interdiction is satisfied by stakeholders
- Quality in Life/Citizens living on border supported by Sheriffs and State Governors regarding improved security/safety
- Funding supplement for Local Law Enforcement/Prosecution/Detention/Criminal Justice in support of border crimes
- Continued Funding and Support for Stone Garden Program
- Empowerment with action to Border Patrol Leadership/PACs (currently Cochise County has 3-dedicated and solution-driven leaders that work well with local law enforcement)
- Enhanced Funding for Regional Communication and Interoperability with local law enforcement
- Cultural/Quality in Service Training for Border Patrol Agents working in rural counties

Summary

Our local efforts have proven to be beneficial in bringing over-due solutions to an insecure border that has become a discretionary program by those federally elected leaders and policy makers that have been entrusted to protect our freedoms and liberties. As a Sheriff elected by the good people of my county, my biggest fear is another loss of life to one of my citizens and/or law enforcement officers/agents contributed to a border that is NOT secure. One would hope the priority of securing our border doesn't become just about a price tag and/or political posturing, but rather the legal and moral requirement to safeguard all of America, which so many heroic Americans have already paid the ultimate price for.

Today's opportunity to address this group instills fresh hope that our voice does matter and on behalf of the citizens of Cochise County, Arizona and beyond, we hope you won't forget us and will do your Constitutional mandate to bring positive change to an over-due vulnerable situation.

I will leave each one of you with an open invitation to visit Cochise County along with a personal-guided tour and visit with our citizens to hear/see first-hand America's true rural border.

Again, thank you very much for the opportunity to share this information with you. I will be happy to answer any questions you may have.

Respectfully Submitted,

Sheriff Mark J. Dannels

Attachments

a. Sheriff Mark J. Dannels Biography
b. Arizona Sheriffs SCAAP Report
c. Cochise County Border Slides of Illegal Acts/Smuggling

SCAAP

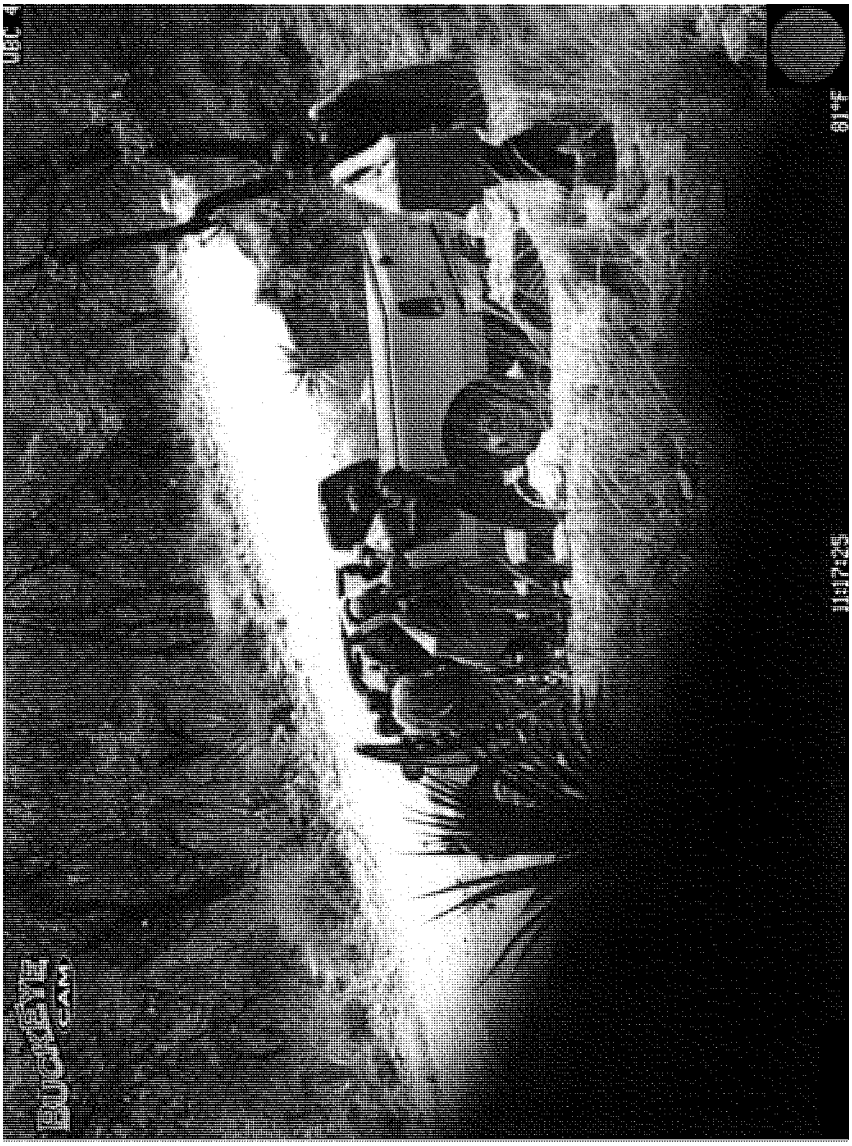
	2009			2010			2011		
	Requested	Received	Deficit	Requested	Received	Deficit	Requested	Received	Deficit
Apache County	$59,394.00	$8,875.00	$50,519.00	$105,507.00	$15,594.00	$89,913.00	$154,185.00	$11,619.00	142,566.00
Cochise County	$822,245.65	$664,261.00	$157,984.65	$964,582.07	$468,199.00	$496,383.07	$1,056,431.14	$70,214.00	986,217.14
Coconino County	$318,371.76	$64,977.00	$253,394.76	$307,120.80	$27,671.00	$279,449.80	$193,851.00	$17,185.00	176,666.00
Gila County	$150,367.56	$19,403.00	$130,964.56	$307,120.80	$37,408.00	$269,712.80	$84,154.14	$10,012.00	74,142.14
Graham County	$57,243.00	$5,737.00	$51,506.00	$218,177.40	$16,721.00	$201,456.40	$183,132.80	$9,909.00	173,223.80
Greenlee County	$7,069.86	$1,402.00	$5,667.86	$1,596.42	$314.00	$1,282.42	$10,110.66	$1,759.00	8,351.66
La Paz County	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	0.00
Maricopa County	$52,068,322.00	$4,006,872.00	$48,061,450.00	$49,348,594.00	$2,819,911.00	$46,528,683.00	$41,716,263.00	$2,241,068.00	39,475,195.00
Mohave County	$356,837.88	$24,135.00	$332,702.88	$459,008.76	$29,769.00	$429,239.76	$338,745.12	$20,515.00	318,230.12
Navajo County	$993,657.42	$50,457.00	$943,200.42	$919,124.00	$47,844.00	$871,280.00	$751,685.76	$38,299.00	713,386.76
Pima County	$7,167,697.70	$832,379.00	$6,335,318.70	$6,964,192.20	$709,628.00	$6,254,564.20	$4,845,362.70	$429,695.00	4,415,667.70
Pinal County	$1,076,747.20	$215,025.00	$861,722.20	$1,059,794.80	$107,290.00	$952,504.80	$1,144,861.20	$115,075.00	1,029,786.20
Santa Cruz County	$507,130.00	$49,657.00	$457,473.00	$559,780.00	$103,383.00	$456,397.00	$397,215.00	$61,261.00	335,954.00
Yavapai County	$1,608,887.20	$239,719.00	$1,369,168.20	$1,316,134.20	$178,483.00	$1,137,651.20	$1,074,162.60	$118,583.00	955,579.60
Yuma County	$1,724,811.78	$162,766.00	$1,562,045.78	$1,356,300.42	$133,551.00	$1,222,749.42	$1,183,717.40	$93,406.00	1,090,311.40
TOTALS	**$66,918,783.01**	**$6,345,665.00**	**$60,573,118.01**	**$63,887,032.87**	**$4,695,766.00**	**$59,191,266.87**	**$53,133,877.52**	**$3,238,600.00**	**49,895,277.52**

	2012			2013			2014		
	Requested	Received	Deficit	Requested	Received	Deficit	Requested	Received	Deficit
Apache County	$59,565.00	$4,883.00	$54,682.00	$84,873.00	$6,820.00	$78,053.00	$0.00	$0.00	$0.00
Cochise County	$0.00	$0.00	$0.00	$541,044.43	$31,423.00	$509,621.43	$254,032.02	$18,759.00	$235,273.02
Coconino County	$101,182.62	$6,936.00	$94,246.62	$134,099.28	$9,008.00	$125,091.28	$255,883.32	$14,321.00	$241,562.32
Gila County	$96,849.48	$9,700.00	$87,149.48	$134,099.28	$9,649.00	$124,450.28	$36,489.60	$2,661.00	$33,828.60
Graham County	$86,738.82	$3,458.00	$83,280.82	$81,037.32	$3,800.00	$77,237.32	$71,154.72	$3,586.00	$67,568.72
Greenlee County	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$17,256.54	$2,336.00	$14,920.54
La Paz County	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Maricopa County	$28,336,812.00	$1,281,403.00	$27,055,409.00	$25,312,951.00	$1,127,899.00	$24,185,052.00	$23,352,979.00	$832,073.00	$22,520,906.00
Mohave County	$186,249.00	$10,077.00	$176,172.00	$200,464.74	$11,226.00	$189,238.74	$0.00	$0.00	$0.00
Navajo County	$455,891.94	$16,230.00	$439,661.94	$440,003.76	$17,375.00	$422,628.76	$299,138.70	$12,248.00	$286,890.70
Pima County	$3,426,221.40	$247,571.00	$3,178,650.40	$4,659,873.90	$310,851.00	$4,349,022.90	$4,250,202.10	$227,337.00	$4,022,865.10
Pinal County	$1,154,211.60	$104,266.00	$1,049,945.60	$993,201.30	$99,032.00	$894,169.30	$681,139.20	$50,354.00	$630,785.20
Santa Cruz County	$271,895.00	$40,000.00	$231,895.00	$278,520.00	$16,426.00	$262,094.00	$427,505.00	$27,690.00	$399,815.00
Yavapai County	$571,012.02	$41,853.00	$529,159.02	$653,924.04	$51,113.00	$602,811.04	$504,316.68	$28,901.00	$475,415.68
Yuma County	$1,314,780.22	$84,202.00	$1,230,578.22	$991,706.06	$73,752.00	$917,954.06	$965,618.84	$57,747.00	$907,871.84
TOTALS	**36,061,409.10**	**$1,850,579.00**	**$34,210,830.10**	**$34,505,798.11**	**$1,768,374.00**	**$32,737,424.11**	**$31,115,715.72**	**$1,278,013.00**	**$29,837,702.72**

SOUTHERN ARIZONA BORDER

1997

1998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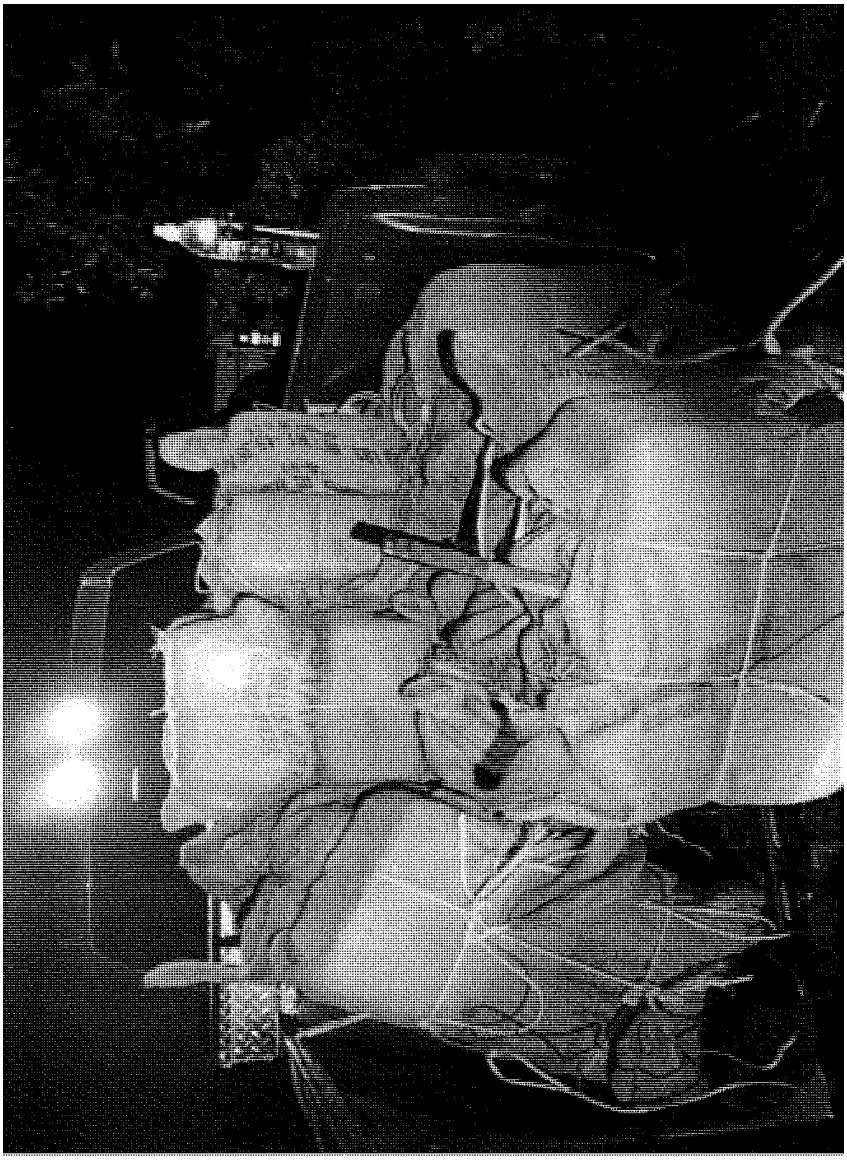

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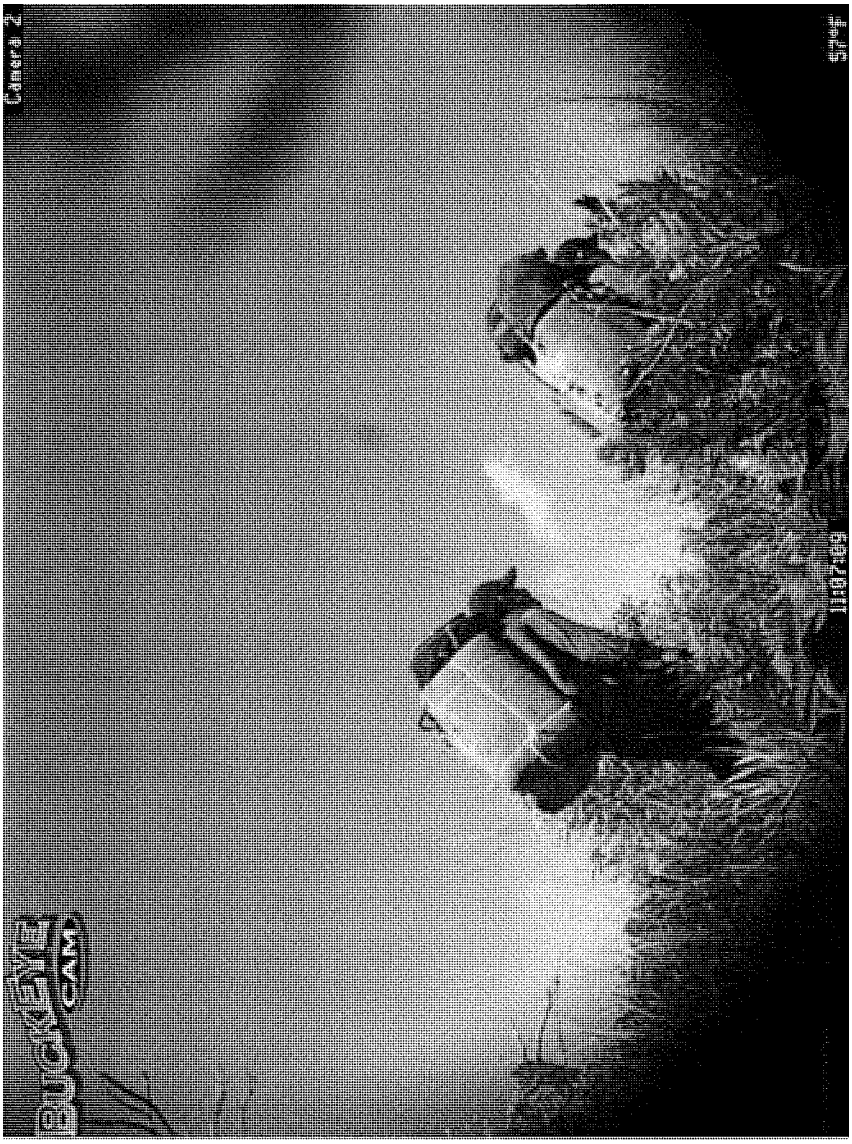

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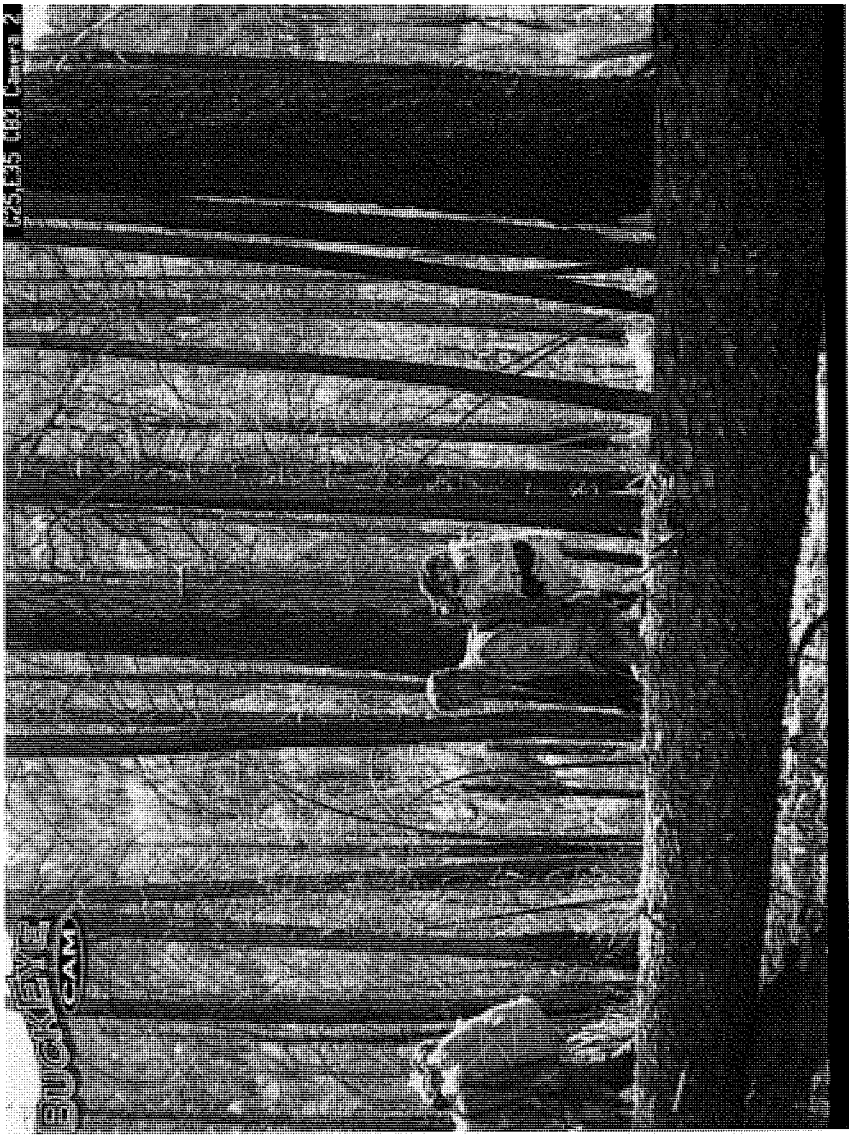
2007



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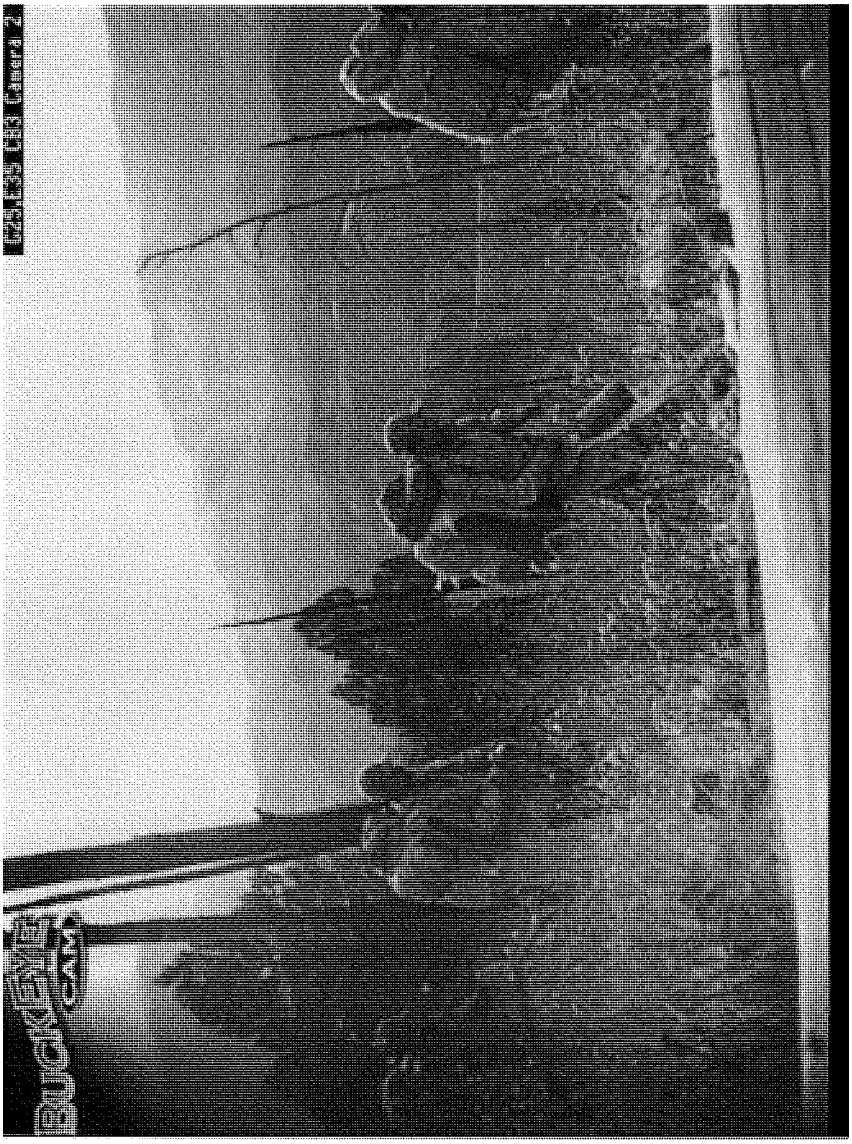

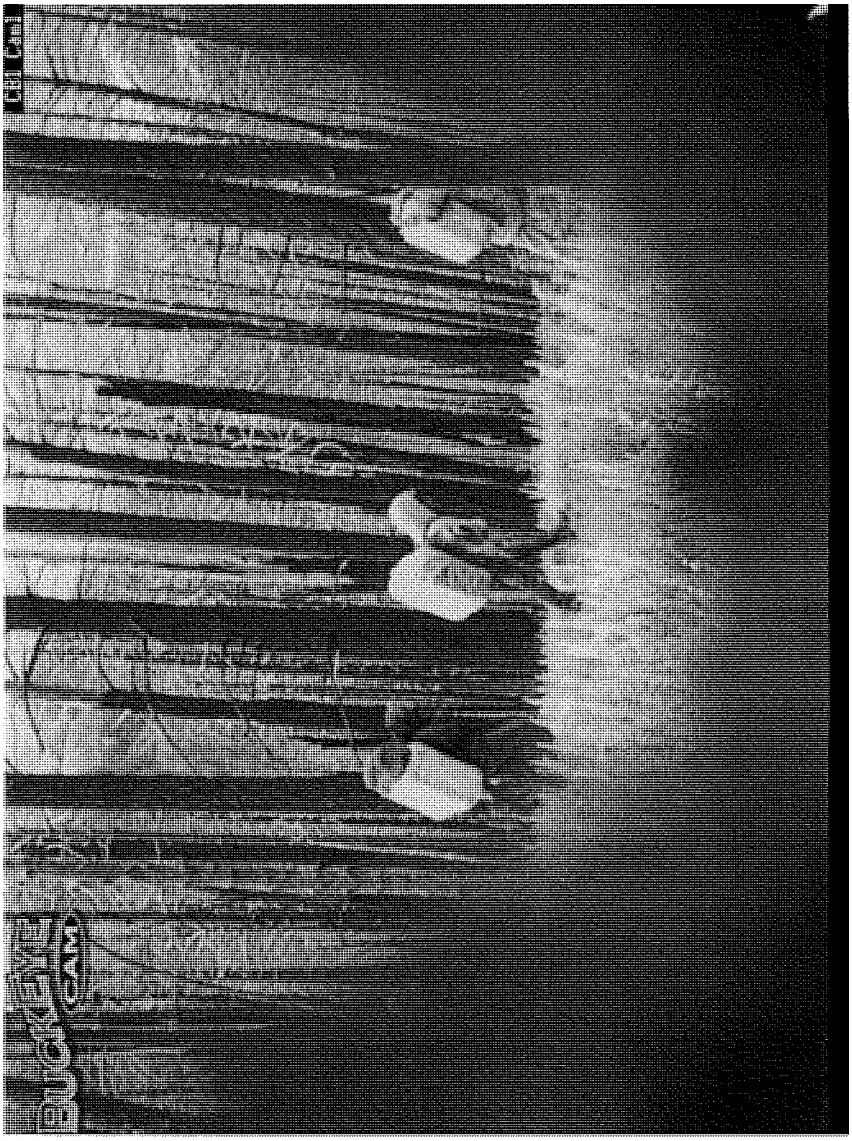

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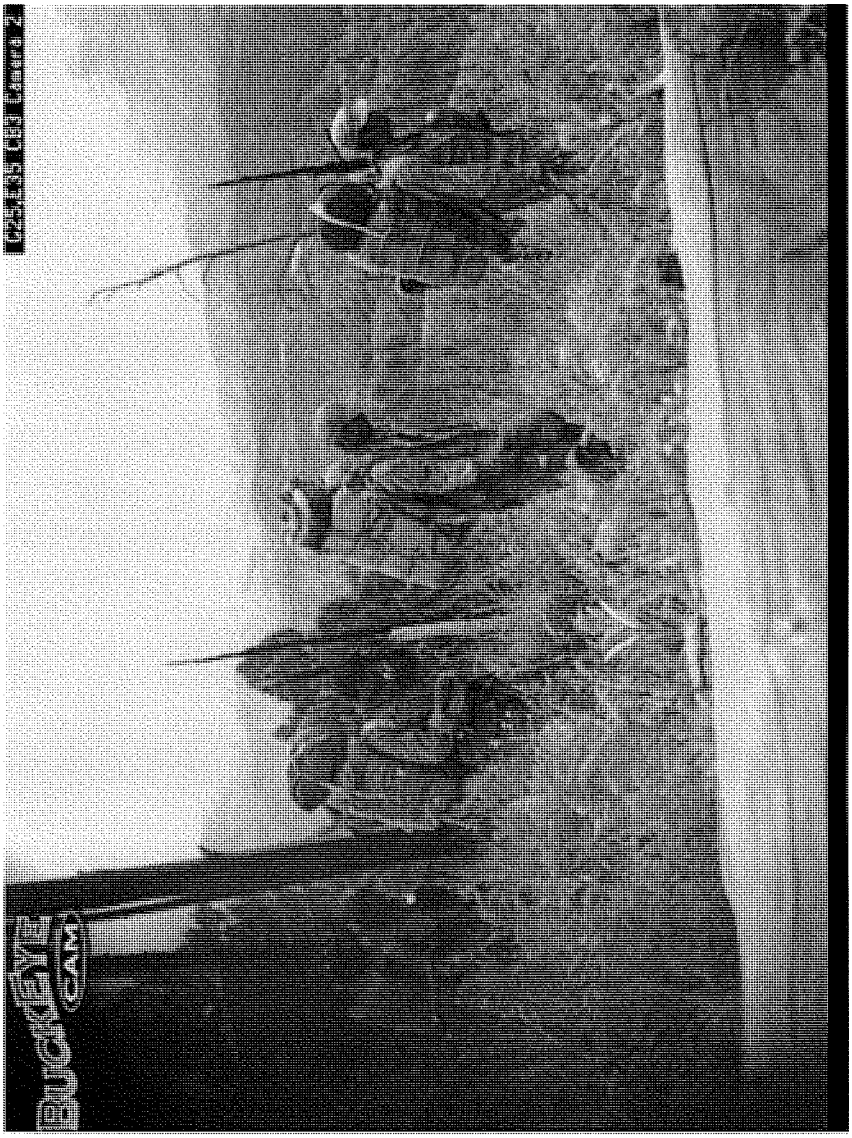
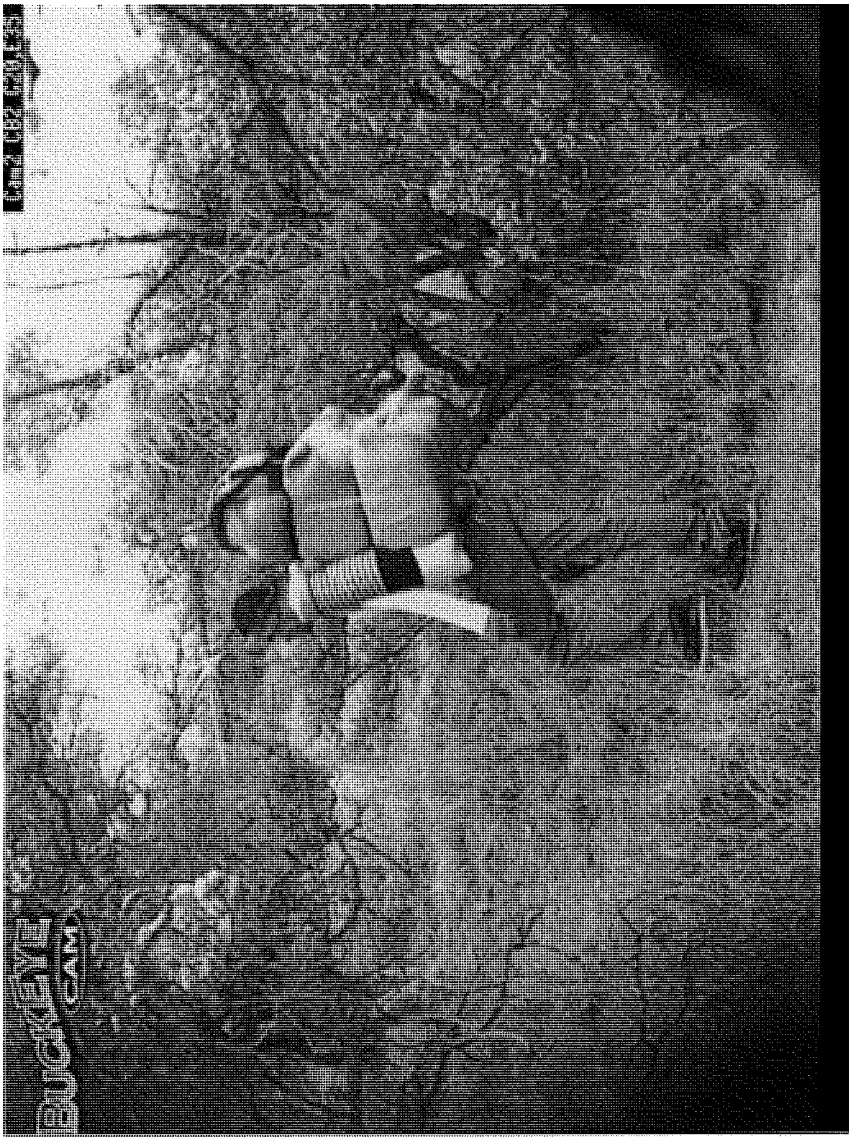


2011

2012

2013



2014

BUCKEYE
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2017

Statement of

Natalie Dawn Mertz
Executive Director
Arizona Region of the Southwest Border
High Intensity Drug Trafficking Area
(Arizona HIDTA)

Before the U.S. Senate Committee on
Homeland Security and Governmental Affairs
"America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking"
November 23, 2015

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee:

It is my privilege to address you today on behalf of the Arizona High Intensity Drug Trafficking Area's (HIDTA) Executive Board concerning law enforcement efforts to combat illicit narcotic trafficking.

The Arizona HIDTA region is approximately 64,443 square miles and includes 372 miles of contiguous international border with Sonora, Mexico. The international border area consists of inhospitable desert valleys and rugged mountainous terrain, which are ideal for drug smuggling. The Arizona/Sonora corridor is comprised of six international land ports of entry (POEs) situated in Nogales (Mariposa and DeConcini), Naco, Douglas, Sasabe, Lukeville, and San Luis.

The Arizona HIDTA is comprised of nine counties that encompass the Phoenix and Tucson metropolitan areas, with a combined population of approximately 6,082,367 residents. Of the 21 Native American Reservations in Arizona, 17 are in the Arizona HIDTA region.

Six main interstate highways run through Arizona and connect Arizona to California, New Mexico, Nevada, Colorado, and/or Utah: I-8, I-10, I-15, I-17, I-19, and I-40. Due to Arizona's geographical location and shared border with Mexico,

all highways and roadways are exploited by Mexican drug trafficking organizations (DTOs) to transport large quantities of illicit drugs.

On an annual basis, the Arizona HIDTA Investigative Support Center's Threat Production Unit conducts a comprehensive intelligence study to identify the new and continuing trends in the Arizona region. The purpose of the yearly Threat Assessment is to provide strategic intelligence to the Arizona HIDTA and its partners to assist in the development of drug enforcement strategies.

The *2015 Arizona HIDTA Threat Assessment* found that the Sinaloa Cartel presents the primary operational threat to Arizona, possessing vast resources to source, distribute, transport, and smuggle large amounts of cocaine, marijuana, heroin, and methamphetamine in and through Arizona. The Sinaloa Cartel and affiliated Mexican DTOs exploit well-established routes and perfected smuggling methods to supply drug distribution networks based in Arizona cities, which in turn supply drug networks throughout the United States. The Mexican State of Sonora is home to key drug trafficking plazas controlled by the Sinaloa Cartel. The plazas are used for the staging of drugs, money, and weapons. Smuggling organizations, based on both sides of the Arizona/Mexico border, are hired to smuggle drugs through or between the Arizona POEs.

Arizona HIDTA investigations reveal several operational components to the drug business as it relates to Arizona. First, drugs are smuggled from Mexico into Arizona through the POEs, or between the POEs, through remote desert areas; then drugs are either transported directly to stash houses in Tucson or Phoenix or temporarily staged on the Arizona side of the border before landing in Tucson or Phoenix stash houses.

The metropolitan and surrounding areas of Phoenix and Tucson are command and control hubs for far-reaching Mexican drug distribution networks. The Arizona Threat Assessment found that from Fiscal Year (FY) 2012 through FY 2014, 479 drug seizures which occurred in other states had a documented nexus to Arizona. In addition, the sheer volume of illicit drugs seized on Arizona highways demonstrates how vital Arizona is to Mexican DTOs. According to the El Paso Intelligence Center (EPIC) National Seizure System (NSS) database, during FY 2014, drug seizures on Arizona highways accounted for approximately 5% (24,953

kilograms) of marijuana; 13% (72 kilograms) of heroin; 26% (315 kilograms) of cocaine; and 26% (576 kilograms) of methamphetamine seizures in the state.

According to the *2015 Arizona HIDTA Threat Assessment,* methamphetamine poses the most significant drug threat to the Arizona HIDTA region. Mexican-produced crystal methamphetamine is the predominant type of methamphetamine trafficked in Arizona, a major transshipment zone for the Sinaloa Cartel and other Mexican DTOs. Mexican DTOs are the primary sources, distributors, and transporters of methamphetamine in the Arizona HIDTA region and are involved in the wholesale distribution of methamphetamine both in Arizona and throughout the United States. Open source information suggests operational methamphetamine laboratories in Sinaloa, Sonora, and Jalisco are producing 100-pound quantities of methamphetamine. Drug seizure activity and investigations indicate the Sinaloa Cartel and Mexican DTOs are increasing the methamphetamine production capacity of clandestine laboratories in Sinaloa, Sonora, and Jalisco, to maintain a steady supply of methamphetamine to the United States drug market.

Increased methamphetamine production in Mexico correlates to increased methamphetamine seizures in Arizona, as methamphetamine seizures in Arizona increased 56% from FY 2011 to FY 2015. Cross-border smuggling operations involving methamphetamine are likely to continue because of the unabated supply of precursor chemicals and large-scale methamphetamine laboratory operations in Mexico. Large quantities of methamphetamine are staged in Northern Sonora plazas for transportation through the Arizona border. Seizure analysis indicates Mexican Highways 15, 8, and 2 are used as primary gateways to move methamphetamine into the Arizona region, where it is then transported to Phoenix and to a lesser extent Tucson stash houses for distribution to domestic customers.

Seizure data indicates Arizona is a primary staging and distribution hub for Mexican black tar heroin, Mexican brown heroin, and Mexican white heroin destined for the Midwestern, Southeastern, and Northeastern regions of the United States. Heroin is supplied to Phoenix and Tucson distribution networks by the Sinaloa Cartel and other Mexican-based sources at unprecedented levels.

According to the *2015 Arizona HIDTA Threat Assessment*, heroin is the second greatest drug threat in the Arizona HIDTA region. The HIDTA Initiatives reported an increase in the availability of heroin in the region during 2014. The EPIC NSS shows Arizona heroin seizures increased from 328 kilograms in FY 2011 to 588 kilograms in FY 2015, a 79% increase. Arizona HIDTA heroin seizures show similar trends, increasing 71% from 208 kilograms seized in FY 2011 to 356 kilograms in FY 2015.

The abundance of heroin in Arizona is directly correlated to high levels of opium poppy cultivation and heroin production in Mexico. Estimated cultivation of opium poppy reached 17,000 hectares (one hectare is approximately 2.47 acres) in 2014, with an estimated production potential of 42 metric tons of pure heroin. Government of Mexico/Secretariat of National Defense seizures of opium paste and heroin increased in recent years: opium paste seizures increased 683%, from 206 kilograms in 2013 to 1,612 kilograms in 2014; and heroin seizures increased 61% from 182 kilograms in 2013 to 293 kilograms of heroin in 2014.

The number of Arizona HIDTA investigations whereby heroin was seized increased 161%, from 76 in FY 2011 to 198 investigations in FY 2015. Many of these investigations are international, multi-state, and/or multi-jurisdictional in scope, as Mexican DTOs' span of control reaches beyond Arizona into Mexico and to all areas of the United States. Because Arizona is essential to the Sinaloa Cartel, law enforcement operations that successfully disrupt and/or dismantle Arizona-based drug organizations directly impact the availability, price, and purity of heroin in other U.S. drug markets.

Seizing the opportunity to profit from the growing appetite for heroin pursuant to the prescription drug epidemic, the Sinaloa Cartel and other Mexican DTOs adapted to meet the growing heroin demand by producing, smuggling, transporting, and distributing wholesale quantities of Mexican white, brown powder, and black tar heroin to the expanding Northeast, Midwest, and Northwest heroin markets through Arizona-based trafficking networks. The *Arizona HIDTA Heroin Seizure Study* shows from 2012 through June 2014, approximately 163 heroin seizures totaling 575 kilograms which occurred outside of Arizona were linked to distribution networks operating in Arizona. In June 2014, an Arizona HIDTA investigation into a Mexico heroin organization resulted in the seizure of 89 pounds of white heroin. The investigation revealed the

Tucson-based Mexican distribution cell was supplying multi-pound quantities of heroin to Las Vegas, Nevada, Denver, Colorado, and Portland, Oregon.

Most often, the drug trafficking trends occurring within the Arizona HIDTA region set the trends for other United States regions. For example, the June 2014 *Arizona HIDTA Heroin Seizure Study* reported that circa 2007, Mexican "white" heroin first surfaced in Arizona, and investigations increasingly showed direct connections between Mexico-based sources and wholesale heroin buyers in East Coast, Midwest, and Northwest cities. The Sinaloa Cartel and other Mexican DTOs have diversified heroin production to produce "white" heroin to increase their market share in emerging and existing heroin markets. Historically, heroin users in East Coast cities have preferred white heroin over Mexican tar heroin.

According to the *2015 National Heroin Threat Assessment Summary*, the average retail-level purity of heroin in the United States increased from 10% in 1981 to an average of 40% in 1999. Since 1999, heroin prices have remained low, and despite periodic fluctuations, heroin purity levels remain high.

In late 2013, several states reported spikes in overdose deaths due to Fentanyl and its analog acetyl-fentanyl. Fentanyl is much stronger than heroin and can cause the most experienced users to overdose. There have been more than 700 reported overdose deaths, and the true number is most likely higher because many coroner offices and state crime laboratories do not test for fentanyl or its analogs unless given a specific reason to do so. Because fentanyl is most commonly mixed with white powder heroin, or is sold and misrepresented as white powder heroin, fentanyl overdoses are prevalent in the eastern United States, where white powder heroin is preferred by the user population. While pharmaceutical fentanyl (from transdermal patches or lozenges) is diverted for abuse in the United States at small levels, the latest rash of overdose deaths is largely due to clandestinely-produced fentanyl, not diverted pharmaceutical fentanyl.

In 2015, the Arizona HIDTA Investigative Support Center prepared and disseminated two law enforcement officer safety bulletins detailing a Fentanyl overdose in Tempe, Arizona, and a one kilogram Fentanyl seizure in Phoenix, Arizona. Through coordinated intelligence sharing and collection efforts with law

enforcement partners, the Arizona HIDTA will continue to monitor Fentanyl trends in Arizona to promote officer safety.

Privately owned automobiles and tractor trailer trucks with hidden compartments are prevalently used for heroin and methamphetamine Arizona POE smuggling operations. POE seizures reveal the use of gas tanks, quarter panel door panels, and other natural voids in vehicles. Some of the more sophisticated concealment methods involve false oil pans, gas tanks, fire wall compartments, engine manifold areas, drive shafts, transmissions, and compartments built into the vehicle frame. For example, a long-term Arizona HIDTA investigation resulted in an Arizona record seizure of 107 pounds of heroin; 137 pounds of methamphetamine; and $50,000, concealed in 140 PVC pipes in rear axles of nine semi-tractor trailers. The targeted smuggling organization utilized a specific method whereby semi-tractor trailer trucks, already loaded with drugs concealed in PVC pipes, were driven from Nogales, Sonora, Mexico, through the Nogales POE by Mexican drivers to truck yards in Nogales, Arizona. At the Nogales, Arizona, truck yards, U.S.-based drivers would take control and drive these same trailers, still loaded with drugs concealed in PVC pipes, to Phoenix or Los Angeles, for further transport to Atlanta, Georgia.

Arizona drug smuggling groups use pedestrian body carriers and oftentimes exploit children and their families to transport heroin and methamphetamine through the POEs. HIDTA investigations reveal ties between body carriers who crossed the border as pedestrians and then boarded commercial shuttles or buses destined for Tucson and/or Phoenix, Arizona. In addition to adult pedestrians carrying drugs through the POEs, the *2015 Arizona HIDTA Threat Assessment* reports the use of car seats, strollers, and the body area of infants and young children to conceal all drugs. The organizations use grade school, middle school, and high school students, as they are perceived to be less likely identified by law enforcement.

Chronic abuse of prescription opioid drugs containing oxycodone and hydrocodone, such as OxyContin, Percocet, and Vicodin, creates a gateway for heroin addiction. Research indicates prescription opioid abusers between the ages of 12 and 49 are 19 times more likely to engage in heroin use than their counterparts with no history of prescription opioid abuse. The transition from prescription opioid abuse to heroin occurs most often among youths aged 12

to 17, and the transition to heroin averages within 17.5 months. A wide body of research indicates 4 out of 5 heroin users between the ages of 18 and 24, who are currently in treatment, report using prescription opioids first.

Arizona has seen a corresponding increase in heroin and opiate-related treatment admissions and emergency department encounters. According to the Treatment Episode Data Set, heroin treatment admissions increased 77%, from 1,626 in 2008 to 2,880 in 2012. Likewise, other opiate treatment admissions, which include prescription pain relievers, increased an alarming 221%, from 524 in 2008 to 1,681 in 2012. Emergency department encounters for opioids or opioids in combination increased 35%, from 8,507 in 2011 to 11,450 in 2014. Opioid addiction and misuse costs to Arizona are immense and real. Hospitalizations for non-fatal poisonings (Rx drugs are a leading cause) cost Arizona nearly $213 million in 2013.

Comparatively, heroin deaths increased 103%, from 64 in 2008 to 130 in 2013. Other opioid deaths (e.g., codeine, morphine, and oxycodone) increased 17%, from 274 in 2008 to 320 in 2011, but decreased 25%, from 320 in 2011 to 240 in 2013.

With regard to the most vulnerable, three out of every 1,000 babies born in Arizona between the years 2008 and 2013 were born with neo-natal abstinence syndrome (NAS); meaning, they were born addicted to opiates. Monetarily, the average NAS birth costs $31,000 versus $2,500 for a non-NAS birth. With regard to public safety concerns, this epidemic contributes to crime, drug-related driving under the influence, and children entering the foster care system.

The *2015 Arizona HIDTA Threat Assessment* reported moderate to high availability of controlled prescription drugs (CPD) containing Oxycodone, and the diversion of CPDs was prevalent in the HIDTA region. CPDs are obtained through fraudulent means such as doctor shopping and/or prescription fraud. Doctors and pain clinics involved in the fraudulent distribution of CPDs are increasingly accepting cash-only patients to avoid insurance billing, further concealing illicit profits and making prescription fraud more difficult for law enforcement to detect. CPDs are also obtained from local DTOs involved in street-level distribution activity. Street-level dealers involved in heroin sales are also sources for Oxycodone and Hydrocodone products.

Mexican pharmacies along the Arizona/Mexico border are additional CPD sources, as independent Mexican DTOs, in coordination with Mexican pharmacies, are involved in cross-border smuggling operations. Traditional smuggling methods, such as pedestrian border crossings and commercial shuttle vans, are used by DTOs to transport CPDs to Arizona and other domestic drug markets in the United States. Increasingly, DTOs are using the United States Mail and private parcel services to distribute CPDs.

CPDs obtained in the United States are also diverted to Mexico for distribution by Mexican pharmacies. The potential for law enforcement detection is reduced when loosely regulated Mexican pharmacies are involved, as opposed to closely regulated United States pharmacies. The profit margin is higher with Mexican pharmacies, compared to the domestic market.

CPD diversion occurs in our homes, many times without knowledge. An unused pain medication sits for months or even years in the medicine cabinet only to be taken by a teenager, a neighbor, a worker in the home, or a friend. This is where it all begins – one medicine cabinet, one pill, one person, one life. Demand reduction must be a top priority. Preventing prescription drug misuse and abuse is essential to reduce the number of lives lost and those addicted to prescription drugs and heroin. For this reason, the Arizona HIDTA takes a pro-active approach to reduce the demand for opioid medication. The Arizona HIDTA launched the Rx Misuse and Abuse Initiative, in collaboration with other key state and local agencies. In the pilot counties where the initiative was launched, the number of deaths from opioid drug overdoses decreased 28%, while increases occurred in the non-pilot counties. A toolkit has been developed to assist communities and substance abuse prevention coalitions in launching the initiative. In addition, the Arizona HIDTA has launched the Stronger Together Prevention Initiative, bringing together law enforcement and community substance abuse prevention coalitions with a central goal of reducing substance abuse. The Arizona HIDTA is in the process of developing a Native American and Spanish language prevention tool to fill the gap that exists in the current initiative.

The Arizona HIDTA and its law enforcement partners are at the forefront of this epidemic. The Arizona HIDTA Training Center recently developed and hosted law enforcement training on Heroin Use and Trafficking trends, which included an

examination of the link between legal opioids and heroin. The class was full, with dozens on the waiting list.

The Arizona HIDTA is uniquely qualified to combat the immense drug trafficking threat facing Arizona, for this threat is too big for one single agency. Intelligence, training, information sharing, and demand reduction are integral components of the infrastructure of the Arizona HIDTA Program. Through the systematic collection, analysis, and dissemination of secure, accurate, and timely intelligence, there is increased inter-agency communication, coordination, and deconfliction, which heightens officer safety, eliminates duplication of effort, and enhances investigations. Coordination through shared intelligence is critical to combating the tremendous threat posed by the Sinaloa Cartel and Mexican drug trafficking organizations. The Arizona HIDTA philosophy of cooperation and coordination is based upon enhanced information and resource sharing through co-located and/or collaborative Task Force Initiatives strategically stationed throughout the region. Under the coordination umbrella of the Arizona HIDTA, the participating law enforcement agencies eliminate duplicative operational and investigative programs and facilitate tactical, operational, and strategic intelligence sharing. The extent of inter-agency cooperation supported by the Arizona HIDTA illustrates that all Initiatives are working investigations in an efficient and effective manner.

The Arizona HIDTA approach to intelligence, training, information sharing, and demand reduction demonstrates that when traditional organizational barriers are overcome, Federal, state, local, and tribal law enforcement entities can better focus investigative and intelligence resources in dismantling and disrupting the most dangerous and prolific drug trafficking organizations.

The Arizona HIDTA remains committed to facilitating cooperation among Federal, state, local, and tribal law enforcement through the sharing of intelligence and to supporting coordinated law enforcement efforts.

Thank you for the opportunity to appear before you and for the Subcommittee's continued support of the HIDTA Program.

Testimony of Brandon Judd
On behalf of the
National Border Patrol Council

To the
U.S. Senate Committee on Homeland Security & Governmental Affairs

Field Hearing
America's Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking

9:00am MST
Arizona State Capitol Museum
November 23, 2015

Background

Chairman Johnson, thank you for providing me with the opportunity to testify today on behalf of the National Border Patrol Council (NBPC) and the 16,500 line Agents whose interests it represents.

My name is Brandon Judd and I am President of the Council. I have been a Border Patrol Agent for just over 18 years and although I am currently assigned to a Border Patrol Station in Montana, most of my career was spent on the Southwest Border in the El Centro, California and Tucson, Arizona Border Patrol Sectors.

Lack of Intelligence

On August 26, 2015, DHS Deputy Secretary Alejandro Mayorkas was in the State of Montana to take a hard look at the organized illegal smuggling of prostitutes and narcotics through the Havre Border Patrol Area of Responsibility to the Bakken Oil Fields located in Montana and North Dakota. Mr. Mayorkas was made aware of the smuggling due to the diligence of various local law enforcement entities.

During his visit, Mr. Mayorkas met with several law enforcement agencies as well as with me and a few other officers of both the National Border Patrol Council and the National Treasury Employees Union. Although I represent the men and women of the Border Patrol in the capacity of a labor leader, I am also a Border Patrol Agent extremely concerned about the security of our nation's borders. My members who are your agents are also genuinely concerned about the security of our borders, therefore at the meeting and on their behalf, I raised three issues:

1. The lack of actionable intelligence provided to Agents to allow them to be successful.
2. The releasing of criminal aliens from Mexico who are in our custody.
3. The practice of providing overtime to managers who sit behind a desk as opposed to field Agents performing enforcement duties.

For the purpose of this hearing I will confine my comments to the lack of intelligence and its impact on the Border Patrol's operations. Simply put, Border Patrol Agents are not being given the intelligence necessary to be successful. How can a Border Patrol Agent know smuggling is taking place let alone do their job if they are not given the necessary intelligence? To date, and even though this issue was brought directly to Deputy Secretary Mayorkas' attention two months ago, Border Patrol Agents in Montana still have not been given the intelligence necessary for them to interdict the narcotics being smuggled through their area of responsibility.

Please allow me to give the Committee two examples of how this is impacting our operations. When Customs and Border Protection Commissioner Gil Kerlikowske became aware of this hearing, he hastily put together an operation aimed at interdicting heroin coming from Mexico into the United States. This operation is now in the fourth week of four and has been a complete failure. I personally spoke to the Agents participating in this operation and asked the following:

- Were you given any idea of how this operation could be a success?
- Were you given any intelligence that would help you be successful?
- Were you given any training on how to conduct the operation?
- Were you given any intelligence specific to heroin smuggling?
- As a Border Patrol Agent, are you familiar with or ever worked at a Port of Entry?
- Were you trained on how to work at a Port of Entry?
- Are you aware that this operation is not only to seize heroin but to also gather intelligence?
- Do you know if any heroin was seized during this operation?
- Do you feel this operation was properly planned and communicated to the Agents assigned?
- As per its stated purpose, do you feel this operation was a success?

Except for one K-9 handler who was formerly an Office of Field Operations (OFO) Officer, none of the Border Patrol Agents whom I interviewed were familiar with operations at the Ports of Entry. All other questions were answered in the negative. This poorly planned and hastily put together operation cost tax payers thousands of dollars and achieved nothing other than allowing CBP to tell this Committee they are doing something.

Let me give you another example, on February 23, 2015, a Bisbee, Arizona Police Officer made a routine traffic stop on a U-Haul moving truck. During the stop and while speaking with the driver the officer developed enough suspicion to call a Border Patrol K-9 Handler to conduct a free air sniff around the truck. While walking around the truck, the K-9 alerted to the presence of a controlled substance or persons inside the locked storage unit of the truck. Several thousands of pounds of marijuana were discovered inside the truck and it was later determined that the truck came from a home in Naco, Arizona. A subsequent search warrant was obtained and in the early morning of February 24, 2015, a tunnel was found on the property of the home. It is estimated the tunnel was used for several years prior to discovery.

This was great police work and all officers and agents involved should be commended. It is, however, a complete breakdown of the intelligence cycle. Prior to writing this testimony I spoke with three of my former colleagues at the Brian Terry Memorial station. This station is assigned

to the area where the tunnel was found and all three were absolutely amazed that a cartel was able to run contraband directly under the nose of several hundred Agents for so long. They chalked it up to the lack of intelligence gathering by the Intelligence Agents at the station. The intelligence was never gathered even though agents assigned to that area believed that there was a tunnel in operation in that area for years.

How serious is this the lack of intelligence? It is very serious, but candidly heroin is the least of our worries. Last week five Pakistani nationals and two Afghan nationals were arrested by Border Patrol Agents in the Sonoita, Arizona, Area of Responsibility.

What Can We Do Better?

We are dealing with highly sophisticated and well organized criminal cartels. As the HIDTA report notes these cartels employ encrypted communications, an entire transportation network, and hundreds of cartel members on our side of the border.

Do we need to support local law enforcement agencies like the Cochise County Sheriff's Department? The answer is absolutely. When federal agencies work with and support local law enforcement, our effectiveness increases exponentially.

Will Joint Agency Task Forces make a difference? Without a doubt they will have a positive impact. Joint Task Forces not only increase our effectiveness in arresting criminals and seizing contraband, but they increase the probability of gathering and necessary intelligence to support the men and women in the field.

Can the Border Patrol be successful without actionable intelligence that is disseminated to field Agents? The answer is an emphatic no. We must take a proactive instead of a reactive approach to combating crime. Intelligence is the only way we will be able to predict when, where, and how persons or contraband will illegally enter our country.

If there is one thing I would ask this Committee to do is to not let this failure on behalf of CBP continue.

Thank you again for the opportunity to testify in front of this committee.

The United States Senate Subcommittee on Homeland Security and Governmental Affairs

Jeff Taylor

Salvation Army

Narrative Statement:

Mr. Chairman and Members of the Committee my name is Jeff Taylor and I'll be presenting on the many effects drug addiction has on our State, my personal experiences on what works, and where to go from here.

Briefly, I grew up in Phoenix and attended Central High School. My junior and senior year I achieved a 4.0 GPA in advanced placement classes. My senior year I was selected as a 1st Team All-State football player and an All-City baseball player. Then attended the University of Arizona to play football and study finance. After college I was employed as a Stock Options Trader for a prestigious Wall Street firm and 9 years later I left the business at the absolute peak of my career as one of the firm's top traders.

I came from a good family. I married a beautiful, kind, and talented wife. Had a successful career, participated in varied philanthropic works and had acquired many other "things" as symbols of financial and personal achievements. By every measure this country accepts as a gauge for success I had it. Four years after leaving the trading position I was living on the streets of Phoenix. I had lost everything to addiction. Drug addiction does not discriminate. It can happen to anyone.

Early on in college I received a career ending football injury and was prescribed narcotic pain medication. My 1st experience with a mind altering substance. That prescription started a slow but increasing dependency to drugs. As a result of my addiction I have been incarcerated many times in numerous county jails and state prison. This does not make me a bad person. It makes me an addict in need of help. Facing a 4-6 year prison term a very wise judge diverted me into a residential drug treatment facility. My drug treatment cost $6000. The prison term would have cost the taxpayer over $100,000. And statistics show I would probably be back in prison for a very long time.

This is what I've learned in the last 20 years in dealing with literally thousands of businessmen, teens, mothers in poverty, wealthy homemakers, lawyers, doctors, drug offenders, and yes politicians and their children all suffering from addiction.

We cannot incarcerate our way out of drug addiction. People are released with the same drug problem they were arrested with. And we prove this by our high rate of recidivism. And what is worse, when addicts are all placed together in a prison environment they "network" and pick up new skills. And these are not the skills society wishes them to have. While incarcerated I learned how to manufacture crystal methamphetamine, a lot about identity theft, how to import and transport drugs, avoid canine detection, and was introduced to several high ranking drug cartel members. All while on a prison yard.

Arizona Department of Corrections just reported, of the nearly 20,000 inmates we will release in the next 12 months, 78% are in need of substance abuse treatment. They are hitting the streets with new skills and an untreated drug problem. I cannot emphasis the following statement enough, we do not have a prison expansion problem we have a drug problem. Our state's population has doubled. During the same timeframe our state prison population increased over 1000%, 10 to 1 over our general population. At a cost of $24,000 per year per person…so half can be back in prison within 5 years. This is not financially sustainable any longer and makes our communities much less safe.

What I know to work is simply this. You will never hear me complain about the time I served in jails and prison. I was a danger to myself and others. Addicts understand consequences but for me there was a backdoor to that prison cell. I received what I needed. A transitional drug treatment program. That experience has led me to work with several legislators over the years to develop one of the most successful prison transition program nationally. It has cut new felony crime committed by released inmates by 50%. This program decreases our dependency on future prison expansion, saves money (a lot of money), and most importantly INCREASES public safety. The Prison Transition Program for Non-Violent Offenders needs to be expanded here in Arizona and replicated nationally.

Child Safety and Welfare

As a result of the increased flow of drugs into Arizona and addiction rates soaring, we have other state agencies that are overburdened. Currently Arizona is #50 in per pupil education spending yet we are #2 in prison spending. The not so funny joke is: If we keep cutting education we better build bigger prisons because we're going to need'm. I thank God for Governor Ducey and our legislative leadership's new plan to fund education. Not just a blind appropriation but a sustained funding stream directed into the classroom where it's needed most.

Aside from education our state's Department of Child Safety is under pressure from the wreckage caused by addicted parents. Our system is overburdened in the sheer numbers of child

abuse and neglect cases. Nearly 90% of parents on DCS caseloads are addicted to drugs and or alcohol. We do not have a child abuse and neglect problem we have a drug problem.

After graduating the drug treatment program The Salvation Army sent me back to college to study early childhood development to become certified to design and administer the 1st nursery of its type. A state licensed child care facility serving homeless children of drug addicted parents. The program was a resounding success. 96% of the addicted pregnant women who came into the program delivered a drug free baby. These mothers could receive drug treatment while their children were monitored and kept safe. It is not uncommon that a drug addicted baby can cost upwards of $400,000 just to reach school age. We found when the mother is drug free the neglect goes away. If we take the child away and ignore her drug problem she'll have more children that we can take away. Arizona currently has 17,000 children in foster care. Some foster children do amazingly well. Most do not. They grow up like mom or dad and have children that we can take away. Stopping this cycle is key. We do this by treating the addiction in the mother. There are many parents who are on DCS caseloads who have toddlers or school age children. The Department has a small but growing program called In Home Services where a 2 person team goes into the home twice a week and works with the families in order to keep the family together. But currently there is a waiting list of 30-60 days to refer the parents into drug treatment. I feel the treatment offered is inadequate but can easily be improved. Parents at risk of losing their children are typically far along in their addiction. Once again the money is going towards the wreckage of addiction not prevention or adequate drug treatment.

Opioid Addiction in Our Youth

As high schoolers we all remember going to parties and there was usually someone outside getting sick in the hedges after drinking too much. Teens overdo it. If you overdo it with alcohol you throw up. But if you overdo it with heroin it kills. Currently opiate overdoses account for more teen deaths than auto accidents.

I read that one of our major high school boards was going to start a drug testing program in order to expel those students who came up positive. I went to that board meeting and explained that attending school may be the most positive thing going on in that teens life and that throwing them out of school would almost guarantee the drug use would increase. Well the school board listened and we started the Insight Group. Insight was a simple program where I spoke to the entire student body each semester explaining my personal story and invited anyone to attend the Insight Group. We didn't want the group to be labeled the druggie group so anyone could attend if they had a concern about drugs. Maybe a friend, family member, or personal concerns. To make a point I asked we start the program at the school with the lowest graduating rate. Most of our high schools have a licensed school prevention counselor. They deal with all types of

students from eating disorders, anger, or all my friends are going to prom accept me. The Insight Program focused on drug use only. We used young as people guest speakers because kids listen to kids and I had some sort of street credentials because I had been locked up. We met with the group only once per week for an hour and the graduation rate for Insight Group members nearly doubled. Most of these kids were angry, and usually had every right to be. We sided with them not telling them not to do drugs, as their drug use was but a symptom of other things going on on their young lives. In many cases the use decreased significantly or ceased all together. They even started designing t-shirts they proudly wore stating they were drug free.

This program can be delivered very economically and can be instituted literally anywhere within our school systems.

The bigger question is why isn't reality good enough for our young people? Why are our teens altering reality in such an extreme way?

Conclusion

Drug treatment is not nearly as effective in a prison environment as it is when delivered in a community setting. The tools of recovery must be learned, then practiced, and then you become a healthy person. Treatment programs are only as effective as their transitional element. Addiction advances overtime. The longer the advancement the harder it is to treat. We can do better by intervening early on with drug prevention in our schools and churches then treating addiction at its earliest onset.

Jeff Taylor

The Salvation Army

Phoenix Advisory Board/Public Policy

The immigration crisis has overwhelmed the capabilities of U.S. Customs and Border Protection (CBP) and all the federal agencies attempting to assist in the efforts to secure our borders. Sheriffs support the humanitarian efforts undertaken to care for the oppressed people who appear on our borders; however, sheriffs are concerned that the crisis is creating vulnerabilities that are being exploited by real and ever-increasing threats to our national security. We, a Coalition of Sheriffs' Organizations, understand the importance of partnerships with the federal government and stand together to ensure that public safety and homeland security are appropriately promoted, protected, and preserved.

Sheriffs are ready and willing to help. All sheriffs swear an oath of office to protect and serve their communities. Each sheriff responds to his or her community and each sheriff knows the county's strengths, weaknesses, and vulnerabilities. Enlisting the help of those sheriffs will ensure a direct connection to local government with the ability to enlist the cooperation and collaboration of its citizens. This Coalition stands prepared to form a united security zone in sufficient depth along the border with Mexico to communicate and collaborate on unified law enforcement operations and to ensure the safety of our citizens and adherence to constitutional authority.

The current illegal immigration crisis is spiraling out of control.

The sheriffs serving counties along the border are at the epicenter of this crisis, though sheriffs across the country recognize the negative impacts of what crosses our borders illegally. The underlying criminal menace in the immigration crisis is evident in the smuggling of contraband and illegal drugs, exploitation of persons, and the movement of criminals across the border. This flood of men, women, and children is perpetrated through an organized effort aided by groups of transnational criminals who profit from these activities and exploit those being trafficked. It is impossible to determine the full extent of that underlying criminal menace or the scope of the threats to national security.

Sheriffs are concerned about the challenges created by the current illegal immigration crisis. The singular focus on the humanitarian effort for those that have entered our country illegally is a distraction engineered to further the goals of the criminal enterprises. Current border security measures have little effect on the smuggling and trafficking of humans, contraband, and illegal drugs moving across our borders, forcing local law enforcement to prepare for and respond to the continuing threats of violence, drug smuggling, and exploitation. This situation, aggravated by transnational criminals who facilitate and often accompany the movement of illegal immigrants, causes great concern for sheriffs. With little to no information, financial assistance, or physical support from the federal government, sheriffs are struggling to understand the threats and risks to their counties.

Creating viable law enforcement partnerships.

Sheriffs must be collaborative partners with federal, state, local, and tribal law enforcement agencies operating along our borders in order to successfully enforce current law and secure our land and maritime borders. The development and implementation of strategies, procedures, policies, and laws to improve border security are essential to that collaboration.

To ensure communication and collaboration, it is necessary to legislate interagency cooperation, networking and information sharing among all federal agencies and their state, local, and tribal law enforcement agencies – *especially for incidents involving criminal actions and/or homeland security threats.*

To make sheriffs viable law enforcement partners, the following is necessary:

- Full reimbursement to counties participating in the State Criminal Alien Assistance Program (SCAAP);
- Funding for Operation Stonegarden at a minimum of $100 million;
- Funding for the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program at a minimum of $1.1 billion;
- Funding for the High Intensity Drug Trafficking Areas (HIDTA) Program at a minimum of $280 million;
- Funding for U.S. Immigration and Custom Enforcement's (ICE) Criminal Alien Removal Programs, such as 287(g) and Secure Communities, which enable state and local law enforcement to effectively and accurately identify criminal aliens for removal by ICE. An application method must be made available for jurisdictions to seek 287(g) status;
- The use of the National Guard solely in support of law enforcement in a role that is commensurate with law and in a manner that does not increase liability to local jurisdictions. Information regarding the role of local jurisdictions in conjunction with National Guard activities must be explicitly stated and the affected agencies must be included in strategic planning sessions;
- Adequate facilities to detain and process all illegal immigrants must be constructed or acquired;
- The Federal Emergency Management Agency (FEMA) and CBP must collaboratively develop resourcing strategies with state, local, and tribal law enforcement agencies;
- The Administration and Congress must work with other nations to stem the flow of illegal immigration into the United States.

Amnesty is not the answer.

As long as there is a reasonable expectation of amnesty in some form, the number of illegal immigrants is expected to increase. The sheriffs strongly oppose outright amnesty for those who are in the United States illegally because it is not a practical solution to illegal immigration issues. When granted in 1986, it did little to stop the flow of illegal immigrants from coming across the borders and, in fact, contributed to thousands of fraudulent applications for amnesty. The identities of those crossing our borders must be known to the federal government; otherwise, there is no plausible recourse aside from deportation.

The need to develop viable solutions for illegal immigrants who seek legal status.

Solutions must include the following:

- Illegal immigrants who wish to be considered guest workers must declare themselves to the federal government at which point they can take the steps necessary in a guest worker program to achieve legal status. Guest workers must not be permitted to seek U.S. citizenship;
- Citizenship application status must be earned by living within the rule of law;
- All persons apprehended entering the United States illegally, as well as those applying for legal status, must be required to submit to a DNA sample, fingerprints, and iris scan for identification purposes;
- Due process for eligible asylees within a legislated time period must be strengthened. The time frame must not be broadened; and
- The federal government must require DHS to oversee the application process and must not outsource to community organizations.

Our country's sheriffs have a unique perspective to the current immigration crisis and the underlying threats to our Nation's safety and security. The best resolution to this crisis is one in which every level of government and all federal, state, local, and tribal law enforcement agencies communicate and collaborate in pursuit of the best possible outcome for our country and her present and future citizens.

May 8, 2015

ENDORSEMENT OF WESTERN STATES SHERIFFS' ASSOCIATION RESOLUTIONS

May it be known that on April 29, 2015, in meeting in Del Rio, Texas, the Southwestern Border Sheriffs' Coalition consisting of 31 Sheriffs within 25 miles of the United States Border with Mexico approved to endorse the following resolutions as passed by the Western States Sheriffs' Association.

Resolution No. 2015-02 dated March 26, 2015
Resolution No. 2015-03 dated March 26, 2015
Resolution No. 2015-04 dated March 26, 2015

May it be known that on April 30, 2015, in meeting in Del Rio, Texas, the Texas Border Sheriffs Coalition consisting of 20 Sheriffs within 25 miles of the United States Border with Mexico in Texas unanimously approved to endorse the following resolutions as passed by the Western States Sheriffs' Association.

Resolution No. 2015-02 dated March 26, 2015
Resolution No. 2015-03 dated March 26, 2015
Resolution No. 2015-04 dated March 26, 2015

Sheriffs stand united in the quest of providing for the public safety their citizens and maintaining constitutional authority and rights for all who are entitled. These resolutions fully support that endeavor.

For the Chairmen and memberships,

Executive Director

SOUTHWESTERN BORDER SHERIFFS' COALITION
TEXAS BORDER SHERIFF'S COALITION

STATEMENT: The Sheriffs' primary duties are to serve, protect, and enforce the Constitution and Laws of their State and Nation. Sheriffs follow the Rule of Law in their service and urge that the Rule of Law be followed in the face of this border crisis. The existing laws should be fully enforced and there should be no efforts to circumvent these laws. Also, to ensure the safety and security of our Nation, the southern, northern, and maritime borders should be effectively and efficiently secured. The sheriffs serving those counties along the borders are in the epicenter of this crisis, though every sheriff recognizes the negative impacts of what crosses the borders illegally: smuggling of contraband, illegal drugs, exploitation of human beings and the infiltration of subversives bent on doing harm to our counties, the States and this Country.

WHEREAS: Federal law mandates border security. The quality of life normally enjoyed by our citizens is being jeopardized by an unsecure border that enables transnational criminals and their accomplices to prey on our citizens; and

WHEREAS: Border Security must be a standalone priority for the Federal Government; and

WHEREAS: Violence against innocent citizens, public officials, law enforcement, and rival drug and human trafficking groups in Mexico continues to escalate and cross international boundaries; and

WHEREAS: The reduction of the Federal Government's enforcement of border security and prosecution of the criminal element places our citizens in harm's way. This leaves the burden on local governments to bear the costs associated with apprehension, prosecution, and incarceration of this criminal element; and

WHEREAS: Elected Sheriffs have a statutory duty to protect and secure the Freedoms and Liberties of our citizens and must do so with or without the help of our federal law enforcement partners and policy makers; and

WHEREAS: Working with limited budgets and staffing, Sheriffs along the Southwest border of the United States and Sheriffs across the nation struggle to find ways to enhance the quality of life and safety for those they serve and to deter those who cross our borders to promote their criminal activities; and

WHEREAS: Local governments are not funded to provide solutions and programs but are cognizant of the requirement for bringing relief to our citizens who are impacted by the lack of border security; and

WHEREAS: Several federal prosecution policy changes have had a significant impact on how state and local authorities manage criminal justice prosecutions and have further burdened state and local resources sidetracking those resources from addressing criminal activity and its effects on our community; and

240 Thunderbird, Suite C • El Paso, Texas 79912
Office: (915) 351-0621 • Fax: (915) 351-0641
www.bordersheriffs.us

WHEREAS: The Federal government's Prosecution policy of being "Smart on Crime" is a Failure: and

WHEREAS: Without aggressive prosecution of all of those committing criminal acts occurring as a result of breaching our border. the American people will continue to see a border that is an open opportunity for the criminal element to exploit by entering the United States to prey on this country and its citizens; and

THEREFORE: Let it be resolved that the Southwestern Border Sheriffs' comprised of 31 border sheriffs and the Texas Border Sheriffs Coalition encourages Congress to direct the appropriate Federal agencies to do the following:

- Fully secure all of our borders.
- Fully reimburse Sheriffs for the costs associated with housing of illegal aliens being charged with state crimes.
- Return to the original guidelines as set forth in Operation
- Streamline for the prosecution of persons crossing the United States Border illegally.
- Return to previous policies of "assisting" not "Coordinating" with local governments and law enforcement agencies .
- The burdensome reporting requirements and restrictions on Federal grants.

Passed on April 29, 2015 at Del Rio, Texas, by a vote of the SWBSC and passed by TBSC on April 30, 2015, at Del Rio, Texas.

For the Chairmen and Membership.

Donald L. Reay
Executive Director

SOUTHWESTERN BORDER SHERIFFS' COALITION
TEXAS BORDER SHERIFF'S COALITION

May 8, 2015

ENDORSEMENT OF WESTERN STATES SHERIFFS' ASSOCIATION RESOLUTIONS

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For the Chairmen and memberships,

Executive Director

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Office: (915) 351-0621 • Fax: (915) 351-0641
www.bordersheriffs.us

WESTERN STATES SHERIFFS' ASSOCIATION
RESOLUTION NO. 2015-02
March 26, 2015

STATEMENT: The Sheriffs' primary duties are to serve, protect, and enforce the Constitution and Laws of their State and Nation. Sheriffs' follow the Rule of Law in their service and urge that the Rule of Law be followed in the face of this border crisis. The existing laws should be fully enforced and there should be no efforts to circumvent these laws. Also, to ensure the safety and security of our Nation the southern, northern and maritime borders should be effectively and efficiently secured. The sheriffs serving those counties along the borders are in the epicenter of this crisis, though every sheriff recognizes the negative impacts of what crosses the borders illegally: smuggling of contraband, illegal drugs, exploitation of human beings and the infiltration of subversives bent on doing harm to our counties, the States and this Country.

WHEREAS: Federal law mandates border security. The quality of life normally enjoyed by our citizens is being jeopardized by an unsecure border that enables transnational criminals and their accomplices to prey on our citizens; and

WHEREAS: Border Security must be a standalone priority for the Federal Government; and

WHEREAS: Violence against innocent citizens, public officials, law enforcement, and rival drug and human trafficking groups in Mexico continues to escalate and cross international boundaries; and

WHEREAS: The reduction of the Federal Government's enforcement of border security and prosecution of the criminal element places our citizens in harm's way. This leaves the burden on local governments to bear the costs associated with apprehension, prosecution, and incarceration of this criminal element; and

WHEREAS: Elected Sheriffs have a statutory duty to protect and secure the Freedoms and Liberties of our citizens and must do so with or without the help of our federal law enforcement partners and policy makers; and

WHEREAS: Working with limited budgets and staffing, Sheriffs of the Western United States struggle to find ways to enhance the quality of life and safety for those they serve and to deter those who cross our borders to promote their criminal activities; and

WHEREAS: Local governments are not funded to provide solutions and programs but are cognizant of the requirement for bringing relief to our citizens who are impacted by the lack of border security; and

WHEREAS: Several federal prosecution policy changes have had a significant impact on how state and local authorities manage criminal justice prosecutions and have further burdened state and local resources sidetracking those resources from addressing criminal activity and its effects on our community; and

WHEREAS: Without aggressive prosecution of all of those committing criminal acts occurring as a result of breaching our border, the American people will continue to see a border that is an open opportunity for the criminal element to exploit by entering the United States to prey on this country and its citizens;

THEREFORE: Let it be resolved that the Western States Sheriffs' Association encourages Congress to direct the appropriate Federal agencies to do the following:

- Fully secure all of our borders.
- Fully reimburse Sheriffs for the costs associated with housing of illegal aliens being charged with state crimes.
- Return to the original guidelines as set forth in Operation Streamline for the prosecution of persons crossing the United States Border illegally.
- Return to previous policies of assisting local governments and law enforcement agencies
- Reduce the burdensome reporting requirements and restrictions on Federal grants.

SIGNATURES

Sheriff Dave Brown, President
Western States Sheriffs' Association

Jim Pond, Sheriff (Ret.)
Executive Director WSSA

WESTERN STATES SHERIFFS' ASSOCIATION
RESOLUTION NO. 2015-03
March 26, 2015

WHEREAS; The Western States Sheriffs' Association represents Sheriffs from 15 western states to provide access to continuing education and training as well as a voice for Sheriffs on federal policies and laws that impact our communities; and

WHEREAS; The Unlawful Flight to Avoid Prosecution Act, 8 USC, Section 1073, is a Federal law designed to aid in the apprehension for prosecution of a person who moves or travels in interstate or foreign commerce with the intent to avoid criminal proceedings; and

WHEREAS; The primary purpose of the Unlawful Flight to Avoid Prosecution Act is to permit the Federal Government to assist in the location and apprehension of fugitives from state justice; and

WHEREAS; The United States of America recognizes 566 tribal nations as domestic dependent nations with sovereignty within the United States; and

WHEREAS; The Unlawful Flight to Avoid Prosecution Act does not currently provide permission for the Federal government to assist in the location, apprehension or prosecution of fugitives from state justice who move from non-tribal land to tribal land within the same state or a different state; and

WHEREAS; Flight to avoid prosecution onto tribal lands both delays and denies justice for victims, endangers tribal communities and thwarts the legitimate aims of Federal, state and tribal justice systems;

THEREFORE: Let it be resolved that the Western States Sheriffs' Association supports an amendment to strengthen the Unlawful Flight to Avoid Prosecution Act in order to provide Federal assistance and/or charges for fugitives from state justice who flee to tribal lands to avoid state prosecution.

SIGNATURES:

Sheriff Dave Brown, President
Western States Sheriffs' Association

Jim Pond, Sheriff (Ret.)
Executive Director WSSA

WESTERN STATES SHERIFFS' ASSOCIATION
RESOLUTION NO. 2015-04
March 26, 2015

WHEREAS; The Western State Sheriffs' Association was formed "to improve and provide effective service and protection to all citizens" of its constituent states; and

WHEREAS; The Office of Sheriff carries with it special responsibility for promoting not just public safety but the rule of law and fidelity to the United States Constitution and the Constitution and laws of the states represented by the Western State Sheriffs' Association; and

WHEREAS; The Western State Sheriffs' Association believes that exercise of the right to keep and bear arms by responsible, law-abiding persons is consistent with, and protective of, public safety; and

WHEREAS; M855/SS109 cartridges provide a reliable and affordable source of ammunition for many weapons used by law enforcement and the law abiding public; and

WHEREAS; The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in February 2015 proposed a "Framework" reinterpreting federal law to ban the manufacture, importation, and distribution of M855/SS109 ammunition and the potential to ban other common rifle bullets; and

WHEREAS; A ban on M855/SS109 ammunition would constrict supplies and raise the price of 5.56 x 45 mm ammunition generally, hindering the ability of law enforcement officers to train with duty and personal firearms chambered in this caliber;

THEREFORE: The Western State Sheriffs' Association hereby resolves the following:

- The Western States Sheriffs' Association opposes ATF's February 2015 "Framework" and any interpretation of federal law that would ban common rifle ammunition primarily used by responsible, law enforcement and law-abiding persons for sporting and other legitimate purposes;

- That ATF should interpret federal statutes and regulations in a manner consistent with the United States Constitution, and the intent of the law as dictated by Congress;

- That ATF should consider the effects its interpretations of federal law and consult with law enforcement agencies regarding access to ammunition and training by law enforcement offers in considering how such interpretations impact officer safety;

- That a copy of this resolution be delivered to ATF Director B. Todd Jones to help guide further consideration of ATF's February 2015 "Framework" and any other attempts at interpreting relevant federal laws related to firearms and ammunition.

Sheriff Dave Brown, President
Western States Sheriffs' Association

Jim Pond, Sheriff (Ret.)
Executive Director WSSA

April 30, 2015

Man Up Crusade
P.O. Box 1922
Nampa, ID 83653-1922

The Sheriffs of the Southwestern Border Sheriffs' Coalition and the Texas Border Sheriff's Coalition endorse and commend the efforts of the Man Up Crusade!

Sheriff Kieran Donohue and Jeanie had a vision to make a difference. The immediate realization is that the program is bringing attention to the issue of Domestic Violence. The long term realization is the hope and prayer that domestic violence will be reduced and victims will be saved and violent actions prevented.

The Sheriffs of SWBSC and TBSC believe that we all must "Take a stand and break the cycle of domestic violence."

The Professional Rodeo Cowboys' Association is commended for using PURPLE in their PRCA Rodeos.

Let us all Man Up, wear Purple, and BREAK THE CYCLE OF VIOLENCE!

Yours in ending domestic violence,

Sheriffs of the Southwestern and Texas Border Sheriff's Coalitions
240 Thunderbird, Ste C
El Paso, TX 79912

San Diego County, CA	Imperial County, CA	Yuma County, AZ
Pima County, AZ	Santa Cruz County, AZ	Cochise County, AZ
Hidalgo County, NM	Luna County, NM	Dona Ana County, NM
Otero County, NM	Grant County, NM	El Paso County, TX
Hudspeth County, TX	Culberson County, TX	Jeff Davis County, TX
Presidio County, TX	Brewster County, TX	Pecos County, TX
Terrell County, TX	Val Verde County, TX	Kinney County, TX
Maverick County, TX	Zavala County, TX	Dimmit County, TX
Webb County, TX	Zapata County, TX	Jim Hogg County, TX
Starr County, TX	Hidalgo County, TX	Willacy County, TX
	Cameron County, TX	

MAN UP CRUSADE ™

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May 7, 2015

Southwestern Border Sheriff's Coalition
Texas Border Sheriff's Coalition
240 Thunderbird, Ste C
El Paso, TX 79912

Dear Sheriffs

On behalf of the board of directors of the Man Up Crusade, we want to thank you for your endorsement of the Man Up Crusade.

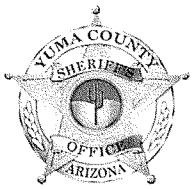
We commend the border sheriffs for taking a stand, as the top law enforcement officials, on the issue of domestic violence. Your dedication to bringing an end to domestic violence is not only an investment to your communities and our nation, it is also a unique way to help change the culture and behavior of the next generation.

Please pass on our "thanks" for voting to endorse our campaign. Your support is very much appreciated. We will be adding your logos to our website under our partnership program with a link to your organization's websites.

Sincerely,

Jeanie Donahue
Executive Director

PROUDLY SUPPORTED BY [redacted] MONTANA SILVERSMITHS



Yuma County Sheriff's Office

Leon N. Wilmot
Sheriff of Yuma County

141 S. 3rd Avenue, Yuma, AZ 85364
Tel: (928) 783-4427 • Fax: (928) 539-7837
www.yumacountysheriff.org

PRESS RELEASE

Contact: Alfonso Zavala
Phone: (928) 783-4427
DR# NA

FOR IMMEDIATE RELEASE
July 31, 2015 – 10:30 a.m.

DHS - Priority Enforcement Program Rebuttal from Sheriff Wilmot

Location of Incident: Yuma, AZ

This week, Sheriff Leon Wilmot was notified by the Nationals Sheriff's Association that his rebuttal letter to Homeland Security Director Jeh Johnson letter concerning current border security had been published in this month's National Sheriff's Association magazine.

> *I recently became aware of an article submitted by Homeland Security Director Jeh Johnson to the National Sheriff's Association for publication in their magazine. As Sheriff of Yuma County, Chairman of the NSA Immigration and Border Security Committee, President of the Arizona Sheriff's Association, member of the Southwestern Border Sheriff's Coalition, I felt that it was my duty to submit a response to the article from a **law enforcement** perspective. I would like to preface this release by saying that this is **not** about **immigration** but rather border security.*
>
> *In his article, "Priority Enforcement Program – How DHS is focusing on Deporting Felons," Homeland Security Director Jeh Johnson discusses the end of the Secure Communities program and its replacement, the "Priority Enforcement Program". Secretary Johnson skillfully attempts to convince the reader that the "Priority Enforcement Program" will achieve what the Secure Communities program failed to do and that is keep our streets safe. He "believes" that every governor, mayor, state legislature, city council and county commission share in that goal with himself and the President. What his article does not include is any dialogue with local and state law enforcement agencies or County Sheriffs, specifically sheriffs serving in counties along the U.S./Mexico border even though they are in the epicenter of the border crisis. Furthermore, there is no mention of the financial impacts on local and state law enforcement agencies or any discussions of the impact this new program would have on those who are on the front lines. Yuma County alone has seen a cost of $800,000 and expects an increase to continue because The United States Attorney Office will not and has refused to prosecute drug smugglers in which majority of these cases the smugglers entered the country illegally. These types of crimes are not going to go unpunished in Yuma County, we are committed to prosecuting these people, but the unfortunate reality is that it is a federal responsibility and should be a federal expense. Yuma County had the worst record in the United States for illegal entries by undocumented immigrants and as a result, our community suffered numerous ancillary crimes. Several federal programs, such as the Secure Communities program and Operation Streamline, were put into place and had a significant impact on curtailing the criminal activity in our county. However, the recent changes made by our federal administration have left a significant burden on local governments not only to bear the costs associated with the apprehension, prosecution, and*

incarceration of criminal illegal aliens, but to also insure that this criminal element is not released back into society to continue to prey on our citizens. Furthermore, state and local resources which have become necessary to address the criminal activity by these criminals and its effects on our communities have also been burdened to the point of exhaustion and aggravation. How does all this translate in actual dollars? During 2014, Arizona Sheriffs requested reimbursement through the State Criminal Alien Assistance Program (SCAAP) for cost incurred in housing criminal aliens. The costs totaled approximately 30 million dollars of which our "federal partners" reimbursed Arizona Sheriffs 1.2 million dollars which is equivalent to 4.8 cents on the dollar.

The federal administration is announcing their "Priority Enforcement Program" as a replacement for the "ineffective" Secure Communities program. According to Director Johnson, the goal of this new program is "...to better focus our immigration enforcement resources on convicted criminals over undocumented immigrants who have been here for years, have committed no serious crimes, and, have, in effect, become peaceful and integrated members of the community." That statement in itself is contradictory in nature. As I read it, the following words stood out: "undocumented immigrants"; "no serious crime"; and "peaceful and integrated members of the community." Now, let's look at this statement from a law enforcement perspective.

1) Undocumented immigrant: Isn't it a crime to enter into the United States illegally?

2) No serious crime: Isn't it still a crime to break the laws of our nation and states, regardless of the seriousness of the crime?

3) Peaceful and integrated member of society: If someone is arrested and prosecuted for committing a crime, can they really be classified as a "peaceful and integrated member of society"?

As law enforcement officers, we are sworn to uphold the Constitution of the United States of America and the laws of our respective states. I firmly believe that the laws of our nation and our states apply to everyone, regardless of their legal (or illegal) status and as such, they should be fully enforced on everyone. In other words, "If you do the crime, you do the time." So I have to ask, "At what point did it become ok NOT to enforce these laws on criminal aliens?" Keep in mind that these are the same laws that we expect our citizens to abide by, just as we expect them to bear the consequences when they break these laws and commit crimes.

The bottom line is that the new Priority Enforcement Program will be just another program that will continue to burden the finances and resources of state and local law enforcement agencies that must step in to enforce the laws that our federal partners should be enforcing. Enforcing our laws in order to secure our border is not an option.

Click link for DHS Secretary Jey Johnson's article: Priority Enforcement Program - How DHS is Focusing on Deporting Felons (NSA Sheriff Magazine)

Click link for Sheriff Leon Wilmot's rebuttal letter: Rebuttal to Department of Homeland Security's Focus on Deporting Felons (NSA Sheriff Magazine)

Information Released by: Alfonso Zavala, Public Information Officer

Official website of the Department of Homeland Security

Priority Enforcement Program – How DHS is Focusing on Deporting Felons

July 30, 2015
5:18 pm

Jeh Johnson
Secretary

Share / Email

President Obama and I are committed to sensible and effective enforcement of our immigration laws to safeguard our borders and protect public safety and national security.

That is why, as part of the executive actions the President announced last November, we ended the controversial Secure Communities program. This was a program by which our immigration personnel lodged orders known as "detainers" to hold individuals in local jails, so that they could be handed directly over to federal authorities for enforcement purposes after their time in local custody. The goal of the program was to make it easier to identify and remove convicted criminals. But, in many instances the program led to the transfer of those who had been in this country for years, and had simply been picked up and charged with a minor offense, without a conviction. As a result, the Secure Communities program became embroiled in political and legal controversy. And, in reaction, a rapidly expanding list of city, county and state governments enacted laws and directives that limit or outright prohibit their cooperation with federal immigration enforcement personnel. The consequences nationwide have, regrettably, included notorious cases in which dangerous individuals on whom we placed detainers were released to the streets, and committed more serious crimes.

We have now acted to stop this ineffective program. We have ended the Secure Communities program, and are replacing it with a new "Priority Enforcement Program." Our overarching goal, which we believe is shared by every governor, mayor, state legislature, city council and county commission, is keeping our streets safe. The President and I want to better focus our immigration enforcement resources on convicted criminals over undocumented immigrants who have been here for years, have committed no serious crimes, and, have, in effect, become peaceful and integrated members of the community. To do this, however, requires that we go where removable, dangerous criminals are most often found -- behind bars.

Our new Priority Enforcement Program is a balanced, common-sense approach to help us achieve this goal. It removes the controversy that consumed the Secure Communities program. With some limited exceptions, we are replacing detainers with "requests for notification" and are no longer requesting the transfer of someone based merely on a warrant or arrest—we're going to stay focused on our top priorities, like those who have been convicted of serious crimes. The program will better ensure the promise of our criminal justice system, that individuals are innocent until proven guilty. For those who have been convicted of a serious crime, and are removable from the country, we want to deport them as soon as possible so that our communities are as safe as possible.

But, the federal government cannot make a success of this new policy alone. We need a partner in state and local law enforcement. It is for this reason that I and other officials of the Department of Homeland Security have set out across the country to meet with state and local officials, including those in law enforcement, to show them our new policy, and encourage them to work with us again. I am pleased by the vote by the Los Angeles Board of Supervisors, encouraging the Los Angeles County Sheriff's Department to work closely with DHS and ICE to implement the new PEP program. We will continue to work with the Sheriff's office and local elected officials in Los Angeles and across the country to implement PEP in a way that supports community policing and public safety while ensuring that ICE takes custody of dangerous individuals before they are released into the community. ICE is also committed to engaging with community members and providing the public with more information about the PEP program.

We must work together to enforce our immigration laws in a smart and cooperative way, in line with our enforcement priorities, and for the sake of the public safety we are all pledged to protect.

# # #

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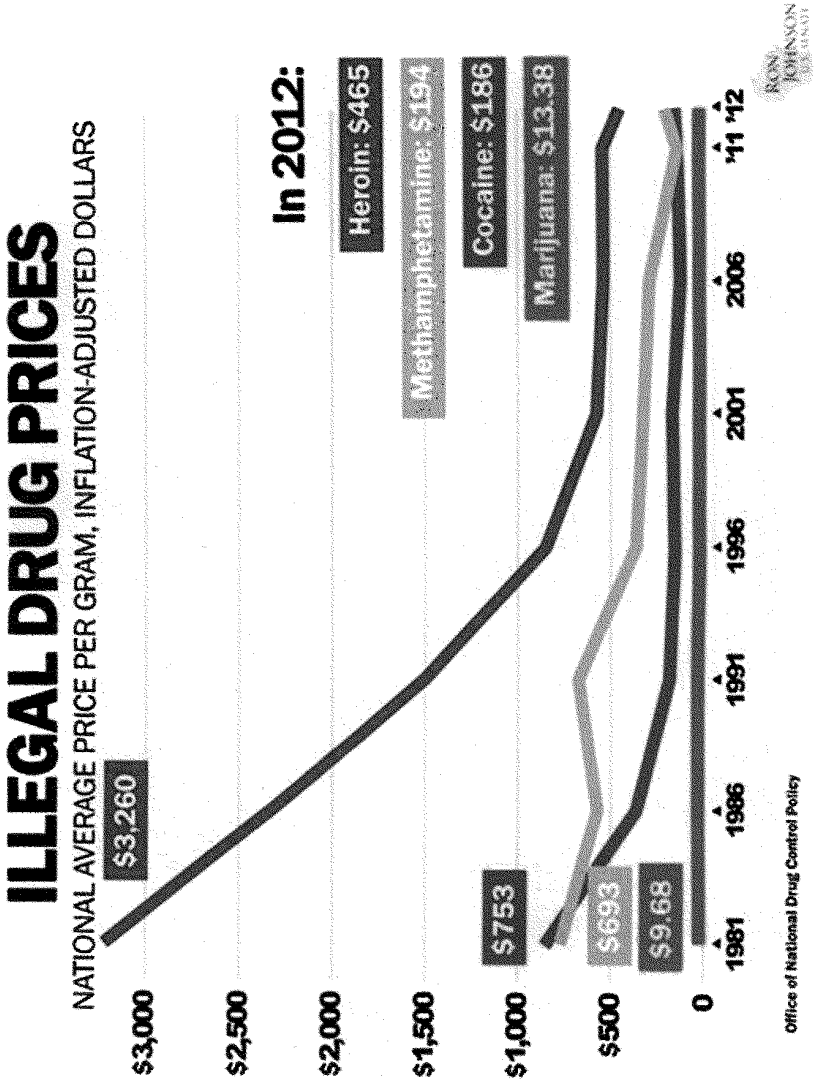
This first appeared in Sheriffs Magazine.


ILLEGAL DRUG PRICES
NATIONAL AVERAGE PRICE PER GRAM, INFLATION-ADJUSTED DOLLARS
$3,000
$2,500
$2,000
$1,500
$1,000
$500
0
$3,260
$753
$693
$9.68
In 2012:
Heroin: $465
Methamphetamine: $194
Cocaine: $186
Marijuana: $13.38
1981
1986
1991
1996
2001
2006
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Office of National Drug Control Policy
RON JOHNSON

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