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MOVING ILLEGAL
PROCEEDS

Opportunities Exist for
Strengthening the Federal
Government's Efforts to
Stem Cross-Border
Currency Smuggling

Statement of Richard M. Stana, Director
Homeland and Security Issues



G A O

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Chairwoman Feinstein, Ranking Member Grassley, and Members of the Caucus:

I am pleased to be here today to discuss federal efforts to stem currency smuggling across our nation's borders. Mexican drug-trafficking organizations, terrorist organizations, and other groups with malevolent intent finance their operations by moving funds into or out of the United States. For example, a common technique used for taking proceeds from drug sales in the United States to Mexico is a method known as bulk cash smuggling.¹ The National Drug Intelligence Center (NDIC) has stated that proceeds from drug trafficking generated in this country are smuggled across the southwest border and it estimates that the proceeds total from \$18 billion to \$39 billion a year. NDIC also estimates that Canadian drug-trafficking organizations smuggle significant amounts of cash across the northern border from proceeds of drugs sold in the United States.

In addition to bulk cash smuggling, 21st century methods and technologies of laundering money have emerged. In 2009, NDIC stated that new financial products and technologies present unique opportunities for money launderers as well as unprecedented challenges to the intelligence, law enforcement, and regulatory communities. NDIC and others cited the use of prepaid cards or gift cards that are loaded with currency or value—also called stored value—as presenting a compact and easily transportable method to move money into and out of the United States.

U.S. Customs and Border Protection (CBP)—a major component in the Department of Homeland Security (DHS)—is the lead federal agency in charge of securing our nation's borders. In March 2009, the Secretary of Homeland Security called on CBP to help stem the flow of bulk cash and weapons moving south by inspecting travelers leaving the United States for Mexico—an effort called outbound operations. In addition, the Financial Crimes Enforcement Network (FinCEN)—a bureau in the Department of the Treasury (Treasury)—seeks to deter and detect criminal activity and safeguard the financial system from the risk that terrorists and other criminals may fund their operations through financial

¹Under 31 U.S.C. § 5332, bulk cash smuggling is defined as knowingly concealing and transporting or attempting to transport more than \$10,000 in currency or monetary instruments into or out of the United States with the intent to evade the federal reporting requirements. Under 31 U.S.C. § 5316, a person or an agent or bailee of the person must file a report when the person, agent, or bailee knowingly transports, is about to transport, or has transported, monetary instruments of more than \$10,000 at one time into or out of the United States.

institutions in the United States. Among other things, FinCEN is responsible for administering laws aimed at preventing criminals from abusing U.S. financial systems.

My testimony today is based on our October 2010 report on cross-border currency smuggling and updated information on bulk cash seizures and the status of one our recommendations.² Like the report, it will cover the following three issues: (1) the actions CBP has taken to stem the flow of bulk cash leaving the country through land ports of entry and the challenges that remain, (2) the regulatory gaps that exist for cross-border reporting and other anti-money laundering requirements involving the use of stored value, and (3) the extent to which FinCEN has taken action to address these regulatory gaps.

To conduct our work, we visited and observed outbound operations at five ports of entry (Blaine, Washington; Buffalo, New York; El Paso, Texas; Laredo, Texas; and San Ysidro, California) that provided us examples of outbound operations on the northern and southwest border with high traffic volume. We reviewed and analyzed data on the amount of bulk cash seized from March 2009 through June 2010 and for this testimony updated bulk cash seizure data through February 22, 2011. We assessed the reliability of these data and concluded that they were sufficiently reliable for our purposes. We also reviewed CBP's policies and procedures and strategic plan for its outbound operations at land ports of entry. For this testimony, we updated the status of our recommendation to CBP that it establish a performance measure for its outbound program. We reviewed current regulations and statutes that govern issuers, sellers, and redeemers of stored value and interviewed officials or obtained information from DHS, Treasury, and the Department of Justice. We reviewed relevant legislation and proposed rules related to stored value.³ More detailed information on our scope and methodology appears in our October 2010 report. We conducted our work in accordance with generally accepted government auditing standards.

²GAO, *Moving Illegal Proceeds: Challenges Exist in the Federal Government's Effort to Stem Cross-Border Currency Smuggling*, GAO-11-73 (Washington D.C.: Oct. 25, 2010).

³Amendments to the Bank Secrecy Act Regulations-Definitions and Other Regulations Relating to Prepaid Access, 75 Fed. Reg. 36589 (proposed June 28, 2010).

CBP Has Established an Outbound Enforcement Program, but Further Actions Are Needed to Address Program Challenges

In March 2009, CBP reestablished the Outbound Enforcement Program within its Office of Field Operations.⁴ As a result of its outbound enforcement activities, CBP seized about \$67 million in illicit bulk cash leaving the country at land ports of entry—97 percent of which was seized along the southwest border—from March 2009 through February 22, 2011. Total seizures account for a small percentage of the estimated \$18 billion to \$39 billion in illicit proceeds being smuggled across the southwest border annually.

CBP has succeeded in establishing an Outbound Enforcement Program, but the program is in its early phases and there is a general recognition by CBP managers and officers that the agency's ability to stem the flow of bulk cash is limited because of the inherent difficulty in identifying travelers who attempt to smuggle cash. Beyond this inherent difficulty, in our October 2010 report we identified management challenges in three main areas. First, addressing limitations in staffing, infrastructure, and technology, among other things, could require substantial capital investments at all ports of entry. For example, license plate readers are available at 48 of 118 outbound lanes on the southwest border and none of the 179 outbound lanes on the northern border. Additionally, CBP officials have estimated that there are a limited number of outbound lanes networked to support computer stations or wireless computing. However, CBP lacks data on the benefits and costs of an expanded program and as a result may be unable to most effectively inform decisions on how to apply scarce resources. We recommended that CBP collect data on program costs and benefits to better inform resource decisions. CBP concurred with this recommendation and stated that it is taking action to address the recommendation.

Second, policies and procedures to ensure the safety of officers involved in outbound operations are not in place. In our October 2010 report, we recommended that CBP direct and ensure that managers at land ports of entry develop policies and procedures that address officer safety. At all five ports of entry we visited, we observed that officers used the side of the highway to conduct secondary inspections, while other vehicles

⁴Prior to September 11, 2001, the former U.S. Customs Service conducted outbound inspections. After this date, port directors had the discretion to continue outbound operations, but only two ports of entry continued to conduct outbound operations in a routine fashion. The Outbound Enforcement Program was reestablished, under CBP, on March 12, 2009, when the Secretary of Homeland Security called on CBP to stem the flow of cash and weapons that were being taken into Mexico through land ports of entry.

moved past, potentially endangering officers. At one port of entry, officers conducted inspections of the underside of vehicles by lying on the ground with their legs exposed while traffic moved by in neighboring lanes at speeds up to approximately 25 miles per hour. CBP concurred with our recommendation and stated that it will, among other things, require each port director to develop procedures that address the safety challenges at the port of entry.

Third, CBP has developed a strategic plan for its outbound program, but it has yet to develop a performance measure that assesses the effectiveness of the program. In our October 2010 report, we recommended that CBP develop a performance measure that informs CBP management, Congress, and other stakeholders about the extent to which the Outbound Enforcement Program is effectively stemming the flow of bulk cash and other illegal goods by working with other federal law enforcement agencies. CBP concurred with our recommendation. In February 2011, CBP issued a performance measure for its outbound program that involves the amount of currency and the number of weapons seized, however, this does not fully address our recommendation because it does not measure the degree to which the program is effectively stemming the flow of bulk cash, weapons, and other goods that result from criminal activities. CBP stated in response to our recommendation that it would, among other things, investigate the use of a random sampling process in the outbound environment that would provide statistically valid compliance results for outbound operations.

Regulatory Gaps Involving Cross-Border Reporting and Other Anti-Money Laundering Requirements Exist for Stored Value

Criminals can use other methods of transporting proceeds from illegal activities across the nation's borders, including stored value. Regulatory exemptions heighten the risk that criminals may use stored value to finance their operations. For example, unlike its requirements for cash, FinCEN does not require travelers to report stored value in excess of \$10,000 to CBP when crossing the border. In addition, Money Services Businesses (MSBs) that offer stored value products are exempt from three key anti-money laundering provisions of the Bank Secrecy Act (BSA).⁵ These exemptions involve FinCEN not specifically requiring MSBs (1) that are sole issuers, sellers, or redeemers of stored value to register with FinCEN, (2) to develop and implement a customer identification program, and (3) to report suspicious transactions involving stored value.

⁵Bank Secrecy Act, titles I and II of Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in 12 U.S.C. §§ 1829b, 1951-1959; 31 U.S.C. §§ 5311-5332).

Together, these exemptions heighten the risk that criminals may exploit existing vulnerabilities to move criminal proceeds using stored value devices. For example, law enforcement has documented at least two mechanisms for moving currency out of the country using stored value devices. First, illegal proceeds can be loaded on stored value devices and physically carried across the border. Second, illicit proceeds can be moved out of the country by shipping stored value cards, where co-conspirators can use the cards to make purchases or to withdraw cash from local ATMs. Our report details specific examples showing how stored value can be used to transport millions of dollars in illegal proceeds across the nation's borders.

Efforts Are Underway to Address Regulatory Gaps to Stored Value, but Much Work Remains

FinCEN is in the process of developing and issuing regulations to address the risk associated with the illicit use of stored value, as required by the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act),⁶ but much work remains and it is unclear when the agency will issue the final regulations. In June 2010, FinCEN issued a Notice of Proposed Rulemaking (NPRM) that addressed regulatory gaps in the following three areas: (1) providers of prepaid access⁷ must register with FinCEN as a MSB, identify each prepaid program for which it is the provider of prepaid access, and maintain a list of its agents; (2) providers and sellers of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access, including obtaining the person's name, date of birth, and address; and (3) MSBs must file reports on suspicious activities related to prepaid access. At the time of today's testimony, FinCEN had not issued the final rule.

The June 2010 NPRM, however, did not address risks related to the international transport of stored value. FinCEN stated that it plans to regulate the cross-border transport of stored value in a future rulemaking. According to FinCEN officials, they did not address the cross-border transport of stored value in the June 2010 NPRM because addressing other regulatory gaps had a higher priority.

⁶Pub. L. No. 111-24, 123 Stat. 1734 (2009).

⁷FinCEN proposes to revise the BSA regulations applicable to MSBs with regard to stored value by, among other things, renaming "stored value" as "prepaid access." FinCEN proposes to define "prepaid access" as an electronic device or vehicle, such as a card, plate, code, number, electronic serial number, mobile identification number, personal identification number, or other instrument that provides a portal to funds or the value of funds that have been paid in advance and can be retrievable and transferable at some point in the future.

In our October 2010 report, we identified management challenges related to FinCEN's efforts in two areas. First, FinCEN's initial plans for issuing the final rules for stored value did not assess which risks might affect the project, prioritize risks for further analysis by assessing their probability of occurrence, or develop actions to reduce threats to the project as suggested by best practices for project management. A project management plan that is consistent with best practices could help FinCEN better manage its rulemaking effort. In addition to identifying and mitigating risks associated with the regulatory process, a project management plan could also help FinCEN (1) track and measure progress on tasks associated with completing mandated requirements and (2) identify points throughout the project to reassess efforts under way to determine whether goals and milestones are achievable or project changes are necessary. In our October 2010 report, we recommended that FinCEN update its written plan by describing, at a minimum, target dates for implementing all of the requirements under the Credit CARD Act. FinCEN concurred with our recommendation and stated that while it is challenging to identify target dates for a phased rulemaking, it will update its plans accordingly.

Second, FinCEN's approach for addressing vulnerabilities with cross-border currency smuggling and other illicit use of stored value depends, in part, on ensuring that industry complies with the new rules. In 2008, FinCEN issued guidance for examiners who monitor MSB compliance with anti-money laundering requirements. However, this guidance lacks specific information for examiners to follow when assessing MSB compliance by issuers, sellers, and redeemers of stored value. In July 2010, FinCEN officials told us that they intend to update their 2008 guidance to reflect final rules on MSBs, but they were uncertain when they will do so. In our October 2010 report, we recommended that FinCEN revise its guidance manual to include specific examination policies and procedures, including transaction testing, for examiners to follow at an MSB that issues, sells, and/or redeems stored value. FinCEN concurred with our recommendation and stated that once the initial rulemaking is finalized, it will then update the manual.

This concludes my prepared testimony. I would be pleased to respond to any questions that the members of the caucus may have.

Contacts and Acknowledgements

For further information regarding this testimony, please contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Michael P. Dino, Assistant Director; Susan Quinlan, Assistant Director; David Alexander; Neil Asaba; Chuck Bausell; Willie Commons III; Kevin Copping; Ron LaDue Lake; Jan Montgomery; Jessica Orr; Jerome Sandau; Wesley Sholtes; Jonathan Smith, and Katy Trenholme.

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