



# **THE STATE OF AMERICA'S BORDER SECURITY**

**Senator Ron Johnson, Chairman**

**Committee on Homeland Security and Governmental Affairs**

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**MAJORITY STAFF REPORT**

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## Executive Summary

For decades, politicians from both parties have vowed to secure our national borders and fix our broken immigration system. Unfortunately, the tough talk has yielded little, if any, real or lasting results.

Since the 1986 comprehensive immigration reform that promised to fix the problem once and for all, Congress has passed dozens of laws promising significant reform while the illegal immigrant population has steadily grown from a supposedly 3.5 million in 1986 to approximately 11 million today.

Since becoming Chairman of the Senate Committee on Homeland Security and Governmental Affairs, I have made border security a top priority. The Committee has held 13 hearings and 3 roundtables related to the subject and visited the southwest border, northern border, and Central America. Our efforts represent the necessary first step in solving any problem: a sincere attempt to fully understand and properly define it.

Despite dedicated and often heroic efforts from both the U.S. Customs and Border Protection (CBP) and local law enforcement, the accumulated testimony and information the Committee has gathered yields an inescapable conclusion: America's borders are not secure. This current state of affairs is clearly unacceptable. A secure border is not only a prerequisite to a functioning legal immigration system, but it is essential to maintaining national security and protecting public health and safety.

To understand how porous our borders truly are, consider testimony from former Drug Czar General Barry McCaffrey and Rear Admiral Peter Brown stating we are interdicting less than 10 percent of drugs crossing our land borders and only 11-18 percent crossing our maritime borders. These metrics not only reveal the lack of a secure border, they also point to a root cause—perhaps THE root cause—of the problem: America's insatiable demand for drugs.

This demand fueled the rise of drug cartels and transnational criminal organizations that have grown and expanded their product lines to include most forms of illegal drugs and human trafficking. Sex trafficking is extensive and the drug cartels often use economic migrants as a diversion for even higher value drug and human smuggling. As product moves through Central America the drug cartels have dramatically weakened the public institutions and rule of law within those nations. The resulting corruption and criminal impunity enjoyed by gangs and extortion racketeers have led to high murder rates, destroyed economic opportunity, and created significant incentives to migrate to America—the so called “push factors” of illegal immigration.

Although significant, these push factors pale in comparison to the pull factors, or incentives, that fuel illegal immigration. Even during periods of slow economic growth, the opportunities that abound in America relative to other countries are the most powerful incentives for both legal and illegal immigration. The significant wage gaps that exist between America and our southern neighbors are the metrics that prove the point.

While economic opportunity is the single greatest incentive, we have created numerous other incentives within our laws, regulations, and through the lack of enforcement. We create sanctuary cities where criminals are able to avoid deportation and allow our welfare and tax systems to be abused by non-U.S. citizens. Combined with the 2008 Human Trafficking bill containing extended adjudication rights to unaccompanied minors from non-contiguous countries, President Obama's Deferred Action on Childhood Arrivals (DACA) sparked the dramatic upsurge in unaccompanied children from Central America arriving at the southwest border starting in 2012.

Regardless of whether or not these laws, regulations, and executive actions actually apply to individuals, the reality is that illegal immigrants are allowed to stay in America. Through the use of social media, that fact is widely known and becomes its own powerful incentive for even more illegal immigration.

In order to secure our borders we must clearly identify and eliminate these incentives. One way to eliminate an incentive would be to immediately return those who illegally cross our borders to their country of origin. Both current and former DHS officials have seen firsthand that expedited removal of illegal immigrants works as a deterrent. The surge of 30,000 immigrants from Brazil in 2005 was virtually stopped in its tracks by responding to it with expedited removal. As this example illustrates, we know what works and we simply need the political will and commitment to implement smart policy.

But the problem remains multi-faceted and complex. Unfortunately, the Administration has declared it will oppose a process of incremental progress insisting instead it will only support comprehensive reform. The last three decades of failed attempts to secure our borders and fix a horribly broken legal immigration system lend very little credence to a compressive approach. It's well past time to begin identifying individual problems and enacting solutions on a step-by-step basis.

This report provides a summary of findings from the Committee's border security hearings, as well as a primer on key border security issues and recommendations for "first step" reforms that could begin improving security at our borders. The Committee has already begun crafting and passing a number of these initial reforms. Six bills related to border security have been reported out of Committee, one of which was recently signed into law.

Based on the information gathered by the Committee, the report presents the following findings:

1. Despite spending more than \$100 billion over the last decade to fund security measures along the border, the border is still not secure. America's insatiable demand for drugs, coupled with smugglers insatiable demand for profit, is one root cause (perhaps THE root cause) preventing the achievement of a secure border.
2. In certain areas and aspects, the border has become more dangerous and lawless over the years. The porous border has made the U.S. more vulnerable to criminal and potential terrorist activity.

3. To truly secure our border, we must identify and eliminate—or at least drastically reduce—the incentives for illegal immigration. Some key incentives driving unlawful migration are the opportunity to work and the security in knowing that, upon illegal entry, you will probably be able to remain in the U.S.
  - a. The wage gap, or the difference between wages in the United States and countries south of the U.S.-Mexico border, is a driving factor for migration to the U.S. and will remain a factor for a very long time.
  - b. Both current and former DHS officials agree that expedited removal of illegal immigrants works as a deterrent. Unfortunately, the current Administration is not removing illegal immigrants, including unaccompanied minors, on an expedited basis.
  - c. Due to powerful incentives, immigration of unaccompanied minors from Central America has exceeded that of Mexican unaccompanied minors. To combat this, both pull and push factors should be analyzed and addressed.

Until the political will exists on a bipartisan basis to solve these problems, comprehensive reforms to the state of our border security and immigration system will be difficult, if not impossible, to achieve. There are, however, piecemeal steps we can take now to prepare for bigger reforms down the road. These steps will not provide total border security, but they will move us in the direction of making our borders more secure. This report presents as recommendations the following reforms that the Chairman believes, with leadership and cooperation from both parties, can be achieved this Congress:

- A. Require adequate metrics to measure border security across all U.S. borders—land, air, and sea, with appropriate oversight and transparency.
- B. Ensure sufficient safeguards are in place in both the U.S. Refugee Resettlement Program and Visa Waiver Program.
- C. Initiate a concentrated public relations campaign to dissuade all Americans, but in particular young people, from using and becoming addicted to drugs.
- D. Reform the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to eliminate incentives for illegal immigration.
- E. Provide Border Patrol agents access to federal lands.
- F. Require DHS to examine the threats on the northern border.
- G. Call on the Chief of the Border Patrol to move agents to areas of high risk.

- H. Provide and maintain adequate manpower on our border and satisfy hard to fill vacancies at our ports of entry.
- I. Complete the Congressionally mandated fencing requirement along the southwest border and understand our country's fencing needs and other border security assets to determine what more is necessary.
- J. Require each border security technology acquisition program to demonstrate it has an approved baseline for costs, schedule, and performance.
- K. Ensure that successful state and local programs, such as Operation Stonegarden, are used appropriately and efficiently to maximize manpower at and near U.S. borders.
- L. Cut off federal funding for sanctuary cities that release criminal aliens into local communities, endangering public safety, and provide immunity to law enforcement officers so that courts cannot prevent them from honoring federal detainees.
- M. Ensure the continuation of current Border Patrol programs, such as Operation Streamline, that provide penalties to recent border crossers in order to reduce recidivism.
- N. Emphasize intelligence-based strategies at our borders.
- O. Authorize the Department's preclearance agreements.

The Chairman is hopeful that this report will provide useful and authoritative information to the public and elected officials regarding a path forward on border security and immigration reform.

## Key Highlights

- 1. *Despite spending more than \$100 billion over the last decade to fund security measures along the border,<sup>1</sup> the border is still not secure. America's insatiable demand for drugs, coupled with smugglers insatiable demand for profit, is one root cause (perhaps the root cause) preventing the achievement of a secure border.***

The Department of Homeland Security has pointed to a declining number of apprehensions along the southwest border as an indicator of success in controlling the border and deterring would-be trespassers.<sup>2</sup> However, this does not paint a comprehensive picture of security at the border.

For one, apprehension data alone ignores the drug smuggling threat along our borders. Americans' insatiable demand for drugs is largely driving this trade. Despite spending \$25 billion annually on our war on drugs,<sup>3</sup> some estimates state that more than 60 percent of illegal crossings are related to drugs.<sup>4</sup> According to the Drug Enforcement Agency (DEA), the "new face of organized crime in America" is "[t]he growing relationship between Mexican-based drug cartels and domestic street gangs, coupled with ... an unlimited supply of illegal guns."<sup>5</sup> In addition to being the key drivers of the drug trade, the Mexican cartels have become experts at evading the Border Patrol. A former U.S. official testified that CBP "seizes just 5-10 percent of the illegal drugs smuggled across the border, and interdicts less than 1 percent of the \$20 billion plus laundered to Mexico each year."<sup>6</sup> Regarding the maritime border, the U.S. Coast Guard testified that it only interdicts 11 to 18 percent of the estimated drug flow into the U.S.<sup>7</sup>

Moreover, independent experts believe that apprehension rates along the southwest border are somewhere between 40 and 55 percent.<sup>8</sup> In some sectors, Border Patrol agents and local law

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<sup>1</sup> See Lisa Seghetti, CONG. RESEARCH SERV., DHS BORDER SECURITY AND IMMIGRATION ENFORCEMENT STRATEGY, APPROPRIATIONS, AND METRICS 4–6 (2014) (on file with Majority Staff) (noting that from FY2006 through FY2013, Congress appropriated \$86 billion to CBP and in total about \$131 billion on "enforcement-related spending.").

<sup>2</sup> *Remarks by Secretary of Homeland Security Jeh Johnson, Border Security in the 21st Century*, U.S. DEP'T OF HOMELAND SECURITY (Oct. 9, 2014), <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>.

<sup>3</sup> See Lisa N. Sacco & Kristin Finklea, CONG. RESEARCH SERV., R 41535, REAUTHORIZING THE OFFICE OF NATIONAL DRUG CONTROL POLICY: ISSUES FOR CONSIDERATION 11 (2014).

<sup>4</sup> Data provided by the U.S. Department of Homeland Security during bipartisan STAFFDEL to the Tucson, Arizona Sector (Feb. 2015).

<sup>5</sup> *All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of John "Jack" Riley, Acting Deputy Administrator, Drug Enforcement Agency).

<sup>6</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of General Barry R. McCaffrey, USA (RET.), Former Director, Office of National Drug Control Policy).

<sup>7</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Rear Admiral Peter J. Brown, Assistant Commander for Response Policy, U.S. Coast Guard).

<sup>8</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 2–3 (2013) ("The Obama administration has not offered, and Congress has failed to insist on, any accountability for the effectiveness of these huge enforcement expenditures).

enforcement estimated interdiction rates to be between 30 and 40 percent.<sup>9</sup> In other sectors, agents estimated they caught one-in-three in areas with a fence, and only one-in-20 in areas where no fence was present.<sup>10</sup> Of the 2,000 mile U.S.-Mexico land border, only 653 miles, or less than 33 percent, is fenced.<sup>11</sup> Finally, at a Committee hearing, a witness testified that agents who reported more than 20 “got-aways” had to verify their report with a supervisor and would likely face retribution.<sup>12</sup> Senior officials at DHS have denied this assertion.<sup>13</sup>

It is clear from these numbers and statements that the border is still not secure, and continues to be taken advantage of by cartels and other transnational criminal organizations (TCOs) seeking to smuggle humans and drugs unlawfully into the country.

***2. In certain areas and aspects, the border has become more dangerous and lawless over the years. The porous border has made the U.S. more vulnerable to criminal and potential terrorist activity.***

The Committee has heard numerous anecdotes suggesting the border has become more dangerous and lawless over the years. For example, a local law enforcement official testified that cartels are responsible for numerous crimes in border towns, including home invasions, felony vehicle evasions, extortion, and sexual assault.<sup>14</sup> He also explained that violent transnational gangs, such as Mara Salvatrucha (MS-13), operate on both sides of the border and since 2011 the number of MS-13 members encountered at the border has increased each year.<sup>15</sup>

One rancher testified before the Committee that parks that were previously used for recreation are no longer used for that purpose, because they have simply become too dangerous.<sup>16</sup> The same rancher told the Committee about his irrigation district workers being shot at by cartel members attempting to scare them off to allow the gangs to smuggle drugs across the border.<sup>17</sup> Others who live in border regions spoke of similar experiences. One witness testified that a neighboring farmer witnessed smugglers cutting holes in his fence and then driving 46 trucks

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<sup>9</sup> Majority Staff observations during Senators Johnson, Carper, and Sasse CODEL to the Texas Rio Grande Valley Sector (Feb. 2015); *see also Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Chris Cabrera, National Border Patrol Council).

<sup>10</sup> Majority Staff observations during bipartisan STAFFDEL to the Tucson, Arizona Sector (Feb. 2015).

<sup>11</sup> U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF ADMINISTRATION & OFFICE OF BORDER PATROL, FACILITIES MANAGEMENT & ENGINEERING DIRECTORATE BORDER PATROL FACILITIES & TACTICAL INFRASTRUCTURE PROGRAM MANAGEMENT OFFICE (2015) (on file with Committee staff).

<sup>12</sup> *See Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>13</sup> *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>14</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Benny Martinez, Chief Deputy Sheriff, Brooks County, Texas).

<sup>15</sup> *Id.*

<sup>16</sup> *See Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Othal E. Brand, Farmer, McAllen, Texas).

<sup>17</sup> *Id.*

loaded with drugs across his property.<sup>18</sup> That farmer was later told by a property appraiser that the value of his property had decreased significantly, due to its proximity to the border. Illegal immigration and drug smuggling are obvious deterrents to potential investors.<sup>19</sup>

The National Border Patrol Council estimates that criminal aliens—individuals who have committed crimes in the U.S., served time in jail, and have been deported—constitute 10 to 20 percent of those who are apprehended at the border.<sup>20</sup> The July 2, 2015 murder of Kathryn Steinle in San Francisco, California by a criminal alien that had been deported five times with seven prior felony convictions has brought renewed attention to criminals entering and remaining in the U.S.<sup>21</sup> According to ICE, between January 1, 2014 and June 30, 2015, there have been 16,495 detainees issued that have not been honored in approximately 200 local “sanctuary” jurisdictions.<sup>22</sup> Of those who were released after an ICE detainer was not honored in the first eight months of 2014, “approximately 1,900 were later rearrested 4,300 more times on 7,500 different charges.”<sup>23</sup> Between FY2010 and FY2014, 121 criminal aliens were released into the U.S. and “were subsequently charged with a homicide-related offense,” according to U.S. Immigration and Customs Enforcement (ICE) Director Sarah Saldana.<sup>24</sup>

While drug smuggling and illegal entry represent important threats to our porous borders, there is also a concern that terrorists may be able to exploit these weaknesses to enter the U.S. undetected.<sup>25</sup> Experts have strong disagreements on the likelihood of terrorists transiting the southwest border, but the potential for exploitation is real, given the changing dynamics and backgrounds of the individuals being apprehended at the southwest border in the last few years.<sup>26</sup> Apprehensions include individuals from Iraq, Syria, Pakistan, and Egypt.<sup>27</sup>

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<sup>18</sup> *Id.* (statement of Howard G. Buffett, Chairman and CEO, Howard G. Buffet Foundation and Arizona Landowner).

<sup>19</sup> *Id.*

<sup>20</sup> Response to Questions for the Record from Shawn Moran, Vice President, National Border Patrol Council, *Deferred Action on Immigration: Implications and Unanswered Questions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (“These are not economic immigrants in search of a better life. These are hardened criminals who are facing real jail time”).

<sup>21</sup> Michelle Moons, *Breaking: Pier 14 Murder Suspect Had Been Deported 5 Times With 7 Felonies*, BREITBART (July 3, 2015), <http://www.breitbart.com/texas/2015/07/03/breaking-pier-14-murder-suspect-had-been-deported-5-times-with-7-felonies/>.

<sup>22</sup> Letter to the Honorable Kelly Ayotte, Senator, Senate Homeland Security & Governmental Affairs, from the Honorable Sarah R. Saldana, Director, U.S. Immigration and Customs Enforcement (Aug. 14, 2015).

<sup>23</sup> Jessica Vaughn, *Protect the Public, not Criminal Immigrants*, NAT’L REVIEW (July 8, 2015), <http://www.nationalreview.com/article/420898/illegal-alien-criminal-steinle> (data from Jan. 1, 2014-Aug. 31, 2014).

<sup>24</sup> Joel Gehrke, *ICE Failed to Deport 121 Convicts Now Facing Murder Charges*, NATIONAL REVIEW (June 15, 2015), <http://www.nationalreview.com/article/419781/ice-failed-deport-121-convicts-now-facing-murder-charges-joel-gehrke> (citing a letter from Sarah Saldana, Director, Immigration and Customs Enforcement).

<sup>25</sup> TEXAS DEP’T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 2 (2015) (Unclassified Version).

<sup>26</sup> *U.S. Northern Command and Southern Command: Hearing Before the S. Comm. on Armed Services*, 114th Cong. (2015) (statement of General John F. Kelly, U.S. Southern Command).

<sup>27</sup> TEXAS DEP’T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 2 (2015) (Unclassified Version); see also *American’s Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Brandon Judd, President, National Border Patrol Council).

As to the northern border, “the U.S.-Canada border is the longest common border in the world.”<sup>28</sup> Due to its length and the relatively low number of agents patrolling it, experts believe that vulnerabilities could be exploited.<sup>29</sup> In 2011, Alan Bersin, former CBP Commissioner, told the Senate Judiciary Committee that regarding terrorism, “it’s commonly accepted that the more significant threat comes from the U.S.-Canada border.”<sup>30</sup> In FY2014, the Blaine sector in Washington State alone apprehended migrants from 32 different countries.<sup>31</sup> Finally, there is also the possibility that terrorists may exploit legal avenues to enter and remain in the U.S. For example, in 2011 the U.S. discovered two Iraqi refugees were plotting to send missiles, cash, and sniper rifles to insurgents to kill American soldiers abroad.<sup>32</sup> Other potential vulnerabilities include the Visa Waiver Program, student visas, and visa overstays.

**3. To truly secure our border, we must identify and eliminate—or at least drastically reduce—the incentives for illegal immigration. Some key incentives driving unlawful migration are the opportunity to work and the security in knowing that, upon illegal entry, you will be able to remain in the U.S.**

- a. *The wage gap, or the difference between wages in the United States and countries south of the U.S.-Mexico border, is a driving factor for migration to the U.S. and will remain a factor for a very long time.*

“The main economic factor influencing migration is the wage gap, or the difference between what a potential migrant can earn in the U.S. compared to the migrant’s home country. Differences in average wages for similar workers between developed and developing countries constitute the single largest price distortion remaining in global markets.”<sup>33</sup> Over the last several decades, migrant survey data suggested that the wage gap based on actual labor market outcomes in the U.S. and Mexico was approximately \$7 to \$1, if valued at the commercial exchange rate.<sup>34</sup> Today, this gap has fallen to as low as \$5 to \$1.<sup>35</sup> However, this wage gap is expected to continue to be above \$3 to \$1 until 2075.<sup>36</sup> The wage gap between the U.S. and Central

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<sup>28</sup> U.S. DEP’T OF HOMELAND SECURITY, NORTHERN BORDER STRATEGY 4 (2012), <http://www.dhs.gov/xlibrary/assets/policy/dhs-northern-border-strategy.pdf>.

<sup>29</sup> Garrett Graff, *Fear Canada: The Real Terrorist Next Door*, POLITICO MAGAZINE (Oct. 16, 2014), <http://www.politico.com/magazine/story/2014/10/fear-canada-not-mexico-111919.html#.VSYmIpN0eYM>.

<sup>30</sup> *Improving Security and Facilitating Commerce at America's Northern border and Ports of Entry: Hearing Before the S. Subcomm. on Immigration, Refugees and Border Security of the S. Comm. on the Judiciary*, 112th Cong. (2011) (statement of Alan Bersin, Commissioner, U.S. Customs and Border Protection).

<sup>31</sup> Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>32</sup> See, e.g., James Gordon Meek and Brian Ross, *Terrorists Once Used Refugee Program to Settle in U.S.*, ABC NEWS (Nov. 18, 2015), <http://abcnews.go.com/International/terrorists-refugee-program-settle-us/story?id=35252500>.

<sup>33</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 8 (2013) (citing Michael Clemens, Claudio E. Montenegro, and Lant Pritchett, *The Place Premium: Wage Differences for Identical Workers across the U.S. Border*, CENTER FOR GLOBAL DEVELOPMENT (2008)).

<sup>34</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 8 (2013).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 9.

American countries in terms of income is larger than the wage gap between the U.S. and Mexico.<sup>37</sup> According to economists, people will relocate if the ratio is above \$2 to \$1.<sup>38</sup>

Therefore, the incentive to enter the U.S. for work will continue far into the future. If immigrants cannot find a lawful path to enter the U.S. where they will receive higher wages, they will enter the U.S. unlawfully.

*b. Both current and former DHS officials agree that expedited removal of illegal immigrants works as a deterrent. Unfortunately, the current Administration is not removing illegal immigrants, including unaccompanied minors, on an expedited basis.*

Both DHS Secretary Jeh Johnson and former DHS Secretary Michael Chertoff recognize that those seeking to unlawfully migrate to the U.S. are highly responsive to incentives and disincentives. During the Committee's DHS Budget Hearing, Secretary Johnson admitted, "you have to show the population in Central America that you are sending people back."<sup>39</sup>

In 2005, a large number of Brazilians sought to enter the U.S. illegally due to a change in Mexican policy in which the government suspended a visa requirement for Brazilians, allowing easy travel.<sup>40</sup> According to one account, the number of Brazilians detained at the U.S.-Mexico border tripled from the previous year to more than 30,000.<sup>41</sup> In response, DHS dedicated bed space, detained, and expedited the removal of Brazilians.<sup>42</sup> According to Secretary Chertoff:

"The word spread surprisingly swiftly; within its first thirty days, the operation had already begun to deter illegal border crossings by Brazilians. In fact, the number of Brazilians apprehended dropped by 50%. After 60 days, the rate of Brazilian illegal immigration through this sector was down 90%, and it is still significantly depressed all across the border. In short, we learned that a concentrated effort of removal can actually discourage illegal entries by non-Mexicans on the southwest border."<sup>43</sup>

Secretary Johnson has seen similar results. Recently, organized smugglers in the Dominican Republic have taken advantage of a U.S. policy that eliminated expedited removal of Haitians after the 2010 earthquake by smuggling Haitian immigrants to Puerto Rico.<sup>44</sup> By the end of

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<sup>37</sup> *Id.* at Appendix 2: Wage Gap and Other Trends in Central American Source Countries, <http://www.cfr.org/immigration/managing-illegal-immigration-united-states/p30658>.

<sup>38</sup> Michael Clemens, Claudio E. Montenegro, and Lant Pritchett, *The Place Premium: Wage Differences for Identical Workers across the U.S. Border*, CENTER FOR GLOBAL DEVELOPMENT (2008).

<sup>39</sup> See *The Homeland Security Department's Budget Submission for Fiscal Year 2016: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>40</sup> Chris Kraul & Nicole Gaoutte, *No-Visa Agreement Backfired on Mexico*, L.A. TIMES (Sept. 14, 2005), <http://articles.latimes.com/2005/sep/14/world/fg-mexbrazil14>.

<sup>41</sup> *Id.*

<sup>42</sup> *Comprehensive Immigration Reform II: Hearing Before the S. Comm. on Judiciary*, 109th Cong. (2005) (statement of Michael Chertoff, Secretary, U.S. Department of Homeland Security).

<sup>43</sup> *Id.*

<sup>44</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015); U.S. COAST GUARD, MARITIME BORDER SECURITY (2015) (on file with Majority Staff).

FY2013, 1,760 Haitian migrants attempted to enter the U.S. through the Mona Passage, as compared to 39 Haitians in FY2012.<sup>45</sup> In FY2014, 1,994 Haitian migrants made the same dangerous attempt.<sup>46</sup> DHS resumed expedited removal in October 2014 for non-criminal Haitian migrants who landed on U.S. Territories in Puerto Rico and the islands of the Mona Passage.<sup>47</sup> After the first removal, Haitian maritime flow in the Mona Passage decreased by 80 percent.<sup>48</sup> In the first three quarters of FY2015, only 277 Haitian migrants attempted to enter the U.S. via the Mona Passage compared to 1,430 for the same period in FY2014.<sup>49</sup>

Similarly, after the President's December 17, 2014 announcement regarding the U.S.'s change in policy towards Cuba, Cuban migration increased, as many feared that the current "wet-foot, dry-foot" policy—allowing any Cuban reaching U.S. land to stay and pursue citizenship, while those caught at sea are returned to Cuba<sup>50</sup>—would end. Prior to the President's announcement, from December 1-16, 2014, the Coast Guard interdicted 80 Cubans.<sup>51</sup> After the President's announcement, from December 17-31, 2014 the Coast Guard interdicted 419 Cubans—a 423 percent increase.<sup>52</sup> To address this, the Coast Guard deployed direct repatriation and immediately began sending those interdicted in the waterways back to Cuba.<sup>53</sup> As a result, Cuban interdictions fell to 254 from January 1-21, 2015 and have returned to normal levels.<sup>54</sup>

While employing expedited removal at our maritime border has kept Cuban migration at normal levels, due to the U.S. wet-foot, dry-foot policy, Cubans may not be removed once they reach U.S. soil. As a result, Cubans arriving at U.S. POEs has increased by 78 percent since the President's announcement.<sup>55</sup>

*c. Due to powerful incentives, immigration of unaccompanied minors from Central America has exceeded that of Mexican unaccompanied minors. To combat this, both pull and push factors should be analyzed and addressed.*

In FY2012, more than 24,000 unaccompanied alien children (UACs) were apprehended at the U.S.-Mexico border.<sup>56</sup> In FY2014, that number grew to nearly 69,000.<sup>57</sup> Also in FY2014, for the first time, the number of UACs from Northern Triangle Countries—El Salvador, Guatemala,

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Data Provided to Majority Staff by the U.S. Customs and Border Protection (Sept. 15, 2015); *see* Miriam Jordan, *U.S. News: More Cubans Migrate to U.S.*, WALL STREET JOURNAL (Sept. 21, 2015).

<sup>56</sup> *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Alan D. Bersin, Acting Assistant Secretary and Chief Diplomatic Officer, Office of Policy, U.S. Department of Homeland Security).

<sup>57</sup> *Id.*

and Honduras—exceeded the number of UACs from Mexico.<sup>58</sup> The Committee heard that many factors led to the increased migration of unaccompanied minors from Central America, and these factors can be attributed to both the conditions of violence in Central America, as well as accurate and inaccurate perceptions regarding the American immigration system.<sup>59</sup>

According to the El Paso Intelligence Center (EPIC), factors leading to this increased migration include the perception of U.S. policy that led people to believe they would be able to remain in the U.S.<sup>60</sup> Policies contributing to this pull factor include the President’s DACA, DHS’s catch and release policies, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).<sup>61</sup> Meanwhile, factors contributing to the push factor include violence, extortion, and lack of opportunities in the Northern Triangle.<sup>62</sup>

The ability of persons from noncontiguous countries to stay in the U.S. pending a hearing has led to campaigns in which smugglers claim that the U.S. is issuing a new “permiso” for minors reaching the U.S.<sup>63</sup> In reality, when unaccompanied minors are apprehended by Border Patrol they are released in the U.S. with a notice to appear (NTA) in court. At this point, many assume that they are “home free” and that “by the time they need to appear, there is going to be an amnesty or legalization.”<sup>64</sup> According to one Committee witness, from July 2014 through February 2015, 62 percent of the children who were ordered to appear before an immigration judge for a hearing failed to show up.<sup>65</sup> All of them were ordered deported, but ICE’s recent enforcement priorities make removal highly unlikely.<sup>66</sup> Since 2009, DHS has apprehended approximately 122,700 unaccompanied children from El Salvador, Guatemala, and Honduras, but has only repatriated approximately 7,700, or 6 percent.<sup>67</sup> In this case, reality reinforces perception.<sup>68</sup>

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<sup>58</sup> U.S. CUSTOMS AND BORDER PROTECTION, SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

<sup>59</sup> *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *The 2014 Humanitarian Crisis at our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015).

<sup>60</sup> EL PASO INTELLIGENCE CENTER, MISPERCEPTIONS OF U.S. POLICY KEY DRIVER IN CENTRAL AMERICAN MIGRANT SURGE (2014) (finding that children from El Salvador, Guatemala, and Honduras arrived in large numbers after hearing rumors that the U.S. Government would stop issuing free passes or *permisos* after June 2014).

<sup>61</sup> Section 235 of TVPRA codified expedited removals for children from contiguous countries and mandated the transfer of children from non-contiguous countries to the Department of Health and Human Services. Pub. L. No. 110-457 (2008).

<sup>62</sup> *See Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>63</sup> *Id.* (statement of Roger F. Noriega, Visiting Fellow, American Enterprise Institute and Former Assistant Secretary for Western Hemisphere Affairs, U.S. Department of State).

<sup>64</sup> *See id.*

<sup>65</sup> *Id.* (statement of William Kandel, Analyst in Immigration Policy, Congressional Research Service).

<sup>66</sup> *See The 2014 Humanitarian Crisis at our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>67</sup> Data provided to Majority Staff by U.S. Department of Homeland Security (Oct. 20, 2015).

<sup>68</sup> *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Kimberly M.

In response to this humanitarian crisis, the Administration has proposed a \$1 billion aid package largely focused on the Northern Triangle, advocating that investing in Central American communities can decrease the need to migrate and significantly reduce the business of human smugglers.<sup>69</sup> Absent new accountability and reforms in Central America, experts question the value of additional resources.<sup>70</sup> In many of these countries, “police and prosecutors are often incapable of, or prevented from, carrying out their law enforcement responsibilities,” according to an expert at the Woodrow Wilson International Center for Scholars.<sup>71</sup> This is often the result of “fear or intimidation by criminal networks,” but also from corruption of the state.<sup>72</sup>

For example, Guatemalan Vice President Roxana Baldetti resigned earlier this year amid a corruption scandal in which officials allegedly “defrauded the state of millions of dollars by taking bribes to charge lower customs duties.”<sup>73</sup> On September 2, 2015, Guatemalan President Otto Perez Molina also resigned, just days before a new election, due to implications of his involvement.<sup>74</sup> Shortly thereafter he was jailed in Guatemala City.<sup>75</sup> Meanwhile, at a Committee hearing, one witness testified that Honduras recently “saw millions of dollars stolen from its national hospital system by the very people charged with overseeing the system.”<sup>76</sup>

A recent GAO report highlighted concerns with the effectiveness of assistance the U.S. is *already* providing to Central America.<sup>77</sup> For example, in El Salvador GAO observed a computer lab filled with computers recently provided by the U.S. Agency for International Development (USAID) but no teachers in the classrooms.<sup>78</sup> Apparently, the Salvadoran Ministry of Education had not yet provided salaries for the teachers.<sup>79</sup> GAO concluded that such ineffectiveness “could lead to higher levels of migration to the United States, which is not only potentially costly in terms of U.S. taxpayer resources but costly and dangerous to the migrants and their families.”<sup>80</sup>

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Gianopoulos, International Affairs and Trade, U.S. Government Accountability Office) (explaining that children use social media to let those in their home countries know they made it to and were able to remain in the U.S.).

<sup>69</sup> WHITE HOUSE, FACT SHEET: PROMOTING PROSPERITY, SECURITY AND GOOD GOVERNANCE IN CENTRAL AMERICA, <https://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame>.

<sup>70</sup> See *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Eric L. Olson, Associate Director, Woodrow Wilson International Center for Scholars).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Guatemala Vice President Roxana Baldetti Resigns Amid Corruption Scandal*, NY DAILY NEWS (May 8, 2015), <http://www.nydailynews.com/news/world/guatemala-vice-president-resigns-corruption-scandal-article-1.2216056>.

<sup>74</sup> Rafael Romo & Greg Botelho, *Otto Perez Molina Out as Guatemalan President, Ordered to Jail*, CNN (Sept. 3, 2015), <http://www.cnn.com/2015/09/03/americas/guatemala-president-arrest-warrant/>.

<sup>75</sup> *Id.*

<sup>76</sup> See *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Eric L. Olson, Associate Director, Woodrow Wilson International Center for Scholars).

<sup>77</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION (2015).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 41.

## Part I: The U.S.-Mexico Border

Each of the nine sectors of the U.S.-Mexico border has unique terrain and faces endemic challenges.<sup>81</sup> For example, the RGV sector border is in the middle of the Rio Grande, a narrow, often shallow, and easily navigable river. Smugglers cross the Rio Grande by foot, raft, or, in some locations, vehicles.<sup>82</sup> This makes enforcement and security quite daunting. In Arizona, two mountain ranges provide concealment for smugglers and illegal crossers. Additionally, protected lands, including national forests, wildlife refuges, military training ranges, and a Native American Reservation, restrict access to approximately 80 percent of the border in the Tucson and Yuma sectors.<sup>83</sup>

**Figure 1: Nine Sectors of the U.S.-Mexico Border**



Image provided by DHS.

Securing one high-risk sector usually leads to shifting pressures on other borders sectors. For example, San Diego was previously one of the most highly trafficked areas for illegal crossers between ports of entry.<sup>84</sup> In the mid-1990s, added personnel and other infrastructure resources such as fencing through *Operation Gatekeeper* in the San Diego sector decreased total

<sup>81</sup> Nine border sectors abut the U.S.-Mexico border: San Diego, El Centro, Yuma, Tucson, El Paso, Big Bend, Del Rio, Laredo, and Rio Grande Valley. U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF BORDER PATROL – SECTORS AND STATIONS, <http://ecso.swf.usace.army.mil/maps/SectorP.pdf>.

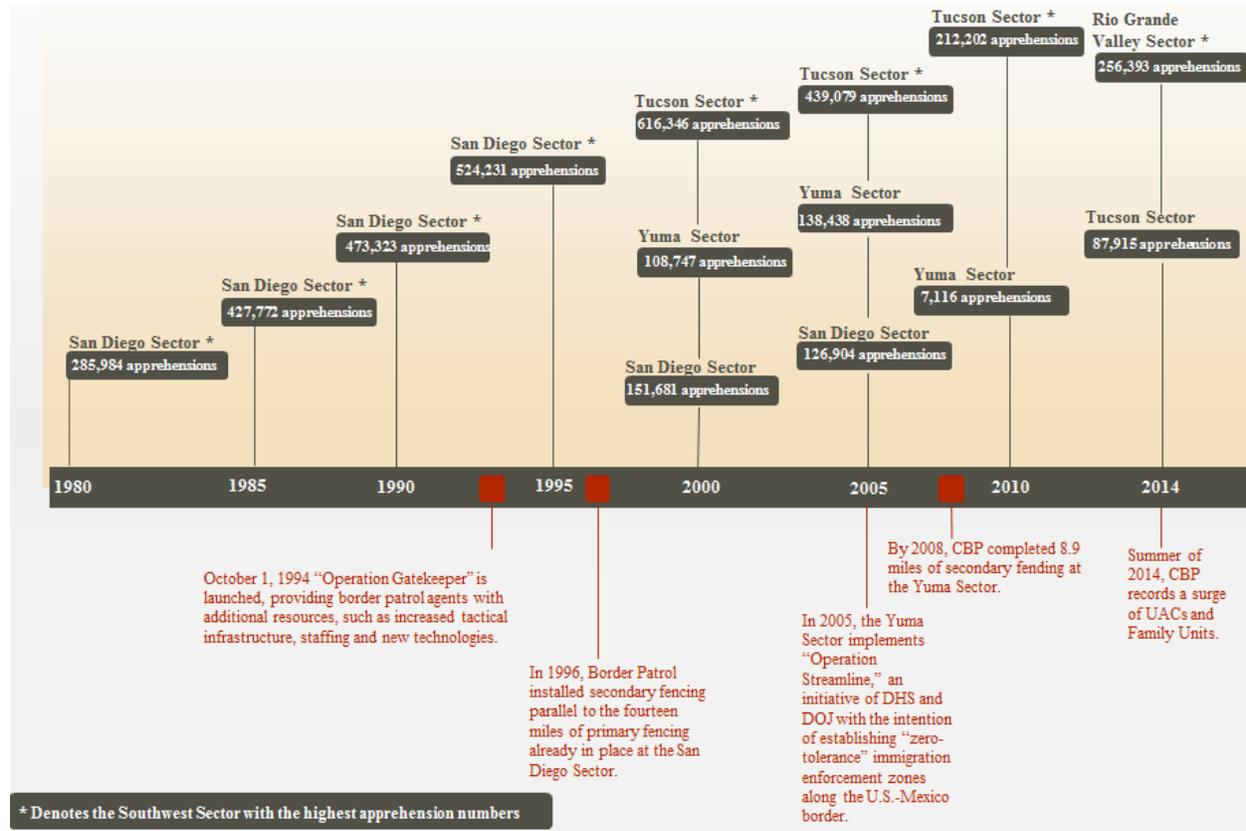
<sup>82</sup> On a CODEL in South Texas, Chairman Johnson observed a truck drive across a shallow portion of the Rio Grande River.

<sup>83</sup> U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF INTELLIGENCE, ARIZONA INTELLIGENCE OVERVIEW (2015) (on file with Majority Staff).

<sup>84</sup> U.S. CUSTOMS AND BORDER PROTECTION, SAN DIEGO SECTOR CALIFORNIA. <http://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/san-diego-sector-california> (“During the seventies, illegal alien traffic steadily increased, rising to more than 100,000 in 1973 and more than 250,000 by 1976. In 1986, the sector recorded its highest number of apprehensions in a single year – more than 628,000. . . San Diego was the busiest sector for illegal entries, accounting for more than 40 percent of nationwide apprehensions in the early nineties.”).

apprehensions by 95 percent.<sup>85</sup> These efforts to halt illegal crossers in San Diego did not reduce the overall flow of illegal activity. Instead, the flow shifted to Arizona in the El Paso and Tucson sectors.<sup>86</sup> Today, RGV is the busiest sector for illegal crossers between ports of entry, and was at the epicenter of last year’s UAC crisis.<sup>87</sup>

**Figure 2: Timeline of Southwest Border Apprehensions by Sector 1980-2014**



### Physical Barriers and Technological Detection Capabilities in the Sectors

DHS has worked to address these challenges through deploying various different technologies and tactical infrastructure along the southwest border, including nearly 700 miles of fencing, 70 miles of border lighting, 11,863 border sensors to detect illicit migration, 107 aircraft from the Office of Air and Marine, 8 unmanned aerial systems, 84 vessels patrolling waterways on the

<sup>85</sup> *San Diego Fence Provides Lessons in Border Control*, NPR (Apr. 6, 2006),

<http://www.npr.org/templates/story/story.php?storyId=5323928>.

<sup>86</sup> H. COMM. ON HOMELAND SECURITY, U.S. HOUSE OF REPRESENTATIVES, BLUEPRINT FOR SOUTHERN BORDER SECURITY 2 (2014).

<sup>87</sup> U.S. CUSTOMS AND BORDER PROTECTION, SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

southwest border, and other new surveillance tools.<sup>88</sup> Each sector has different physical barriers and technological solutions to address its unique terrain challenges.

### *Fencing and Infrastructure*

While sometimes cost prohibitive, fencing, where appropriate, is an important and necessary tool in securing our borders. In 1993, Sandia Laboratory issued a study that concluded multiple barriers were needed to stop and delay illegal border crossers in San Diego.<sup>89</sup> The study determined that “[a] three-fence barrier system with vehicle patrol roads between the fences and lights will provide the necessary discouragement.”<sup>90</sup>

Shortly thereafter, the Border Patrol, with the assistance of the U.S. Department of Defense’s (DOD) Army Corps of Engineers, commenced the first fencing along our southwest border, with a 10-foot-high, welded-steel fence covering approximately 14 miles of the San Diego sector.<sup>91</sup>

Under the Illegal Immigration Reform and Responsibility Act of 1996 (IIRIRA), Congress instructed immigration authorities to construct barriers along our international borders to deter unauthorized crossers.<sup>92</sup> Specifically, immigration authorities were instructed to supplement the 14-mile “Sandia fence” in San Diego with two additional layers of fencing.<sup>93</sup> However, resulting environmental concerns and litigation significantly delayed the fulfillment of this requirement.<sup>94</sup> DHS has still not completed this project.<sup>95</sup> Today, of its 60 mile border, the San Diego sector has 46 miles of primary fence, 13 miles of which include secondary fencing.<sup>96</sup>

Building off the San Diego fence lessons, Congress amended IIRIRA in the REAL ID Act of 2005 to authorize the DHS Secretary “to waive ‘all legal requirements’ necessary to ensure expeditious construction” of security barriers at the U.S. border.<sup>97</sup> DHS has executed five environmental waivers related to fence construction along the southwest border to expedite

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<sup>88</sup> *Remarks by Secretary of Homeland Security Jeh Johnson, Border Security in the 21st Century*, U.S. DEP’T OF HOMELAND SECURITY (Oct. 9, 2014), <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>.

<sup>89</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, *BORDER SECURITY: THE SAN DIEGO FENCE* (2007).

<sup>90</sup> *Id.*

<sup>91</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, *BARRIERS ALONG THE U.S. BORDERS: KEY AUTHORITIES AND REQUIREMENTS* 4 (2015).

<sup>92</sup> *Id.* at 1; Pub. L. No. 104-208, div. C, §102(a)-(c) (1996).

<sup>93</sup> *Id.* at 7; Pub. L. No. 104-208, div. C, §102(a)-(c) (1996).

<sup>94</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, *BORDER SECURITY: THE SAN DIEGO FENCE* 4 (2007).

<sup>95</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, *BARRIERS ALONG THE U.S. BORDERS: KEY AUTHORITIES AND REQUIREMENTS* 7, 22 (2015) (while IIRIRA Section 102(c) expressly authorized the waiver of the Endangered Species Act and the National Environmental Policy Act, other federal laws remained applicable to border construction projects); *see also* Michael John Garcia, CONG. RESEARCH SERV., R 43975, *BORDER SECURITY: THE SAN DIEGO FENCE* (2007).

<sup>96</sup> No triple layered fencing currently exists at the San Diego sector. Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>97</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, *BARRIERS ALONG THE U.S. BORDERS: KEY AUTHORITIES AND REQUIREMENTS* 22 (2015); Pub. L. No. 109-13, div. B, §102 (2005).

construction.<sup>98</sup> But, issues remain. For example, during the Secure Border Initiative project, land acquisition problems prevented DHS from meeting its goals to complete fencing projects on time.<sup>99</sup> Most fencing in California, Arizona, and New Mexico was built on federal land, but in Texas, DHS had to purchase most of the land from private individuals.<sup>100</sup>

In 2006, IIRIRA was amended again by the Secure Fence Act, which called for the deployment of roughly 850 miles of “at least 2 layers of reinforced fencing, [and] the installation of additional physical barriers, roads, lighting, cameras, and sensors” along five stretches of the southwest border.<sup>101</sup> Shortly thereafter, the Consolidated Appropriations Act of 2008 modified the Secure Fence Act to allow for the construction of not less than 700 miles of fence and gave the DHS Secretary waiver authority that reads in part: “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.”<sup>102</sup>

Today, according to DHS, there is approximately 652.6 miles of front-line fencing on the southwest border: 352.8 miles of primary fence,<sup>103</sup> 36 miles of secondary fencing,<sup>104</sup> and 299.8 miles of vehicle barrier fence.<sup>105</sup> The U.S.-Mexico border is nearly 2,000-miles long. DHS is short of the statutory requirements to construct fencing of “not less than 700 miles of the southwest border.”<sup>106</sup> According to the Congressional Research Service (CRS), while there is no deadline for the completion of the fencing, “changes in DHS’s border enforcement strategy and prioritization of resources” appears to have halted further construction of fencing along the U.S.-Mexico border.<sup>107</sup>

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<sup>98</sup> U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF ADMINISTRATION & OFFICE OF BORDER PATROL, FACILITIES MANAGEMENT & ENGINEERING DIRECTORATE BORDER PATROL FACILITIES & TACTICAL INFRASTRUCTURE PROGRAM MANAGEMENT OFFICE (2015) (on file with Committee Staff).

<sup>99</sup> *Observations on Deployment Challenges: Hearing Before the House Comm. on Homeland Security*, 110th Cong. (2008) (statement of Richard M. Stana, Director, Homeland Security and Justice Issues, Government Accountability Office).

<sup>100</sup> N. C. Aizenman, *Border Fence Would Slice Through Private Land*, WASH POST (Feb. 16, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/15/AR2008021503303.html>.

<sup>101</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, BARRIERS ALONG THE U.S. BORDERS: KEY AUTHORITIES AND REQUIREMENTS 8–9 (2015); Pub. L. No. 109-367, §3(2006).

<sup>102</sup> Pub. L. No. 110-161, div. E, §564(a) (2008).

<sup>103</sup> Primary fence is designed to prevent (or at least slow down) people on foot from crossing the border and disable a vehicle traveling 40 miles per hour.

<sup>104</sup> Secondary fence is also known as “double-layered fencing.” Of the double-layered fencing approximately 9 miles is located in the Yuma, Arizona sector; 13 miles is located in the El Paso, Texas sector; and 13 miles is located in the San Diego, California sector.

<sup>105</sup> Vehicle barrier fence consists of barriers used primarily in remote areas to prohibit vehicles engaged in drug trafficking and human smuggling operations to cross the border. These fences can be easily navigated by those on foot.

<sup>106</sup> Pub. L. No. 104-208, div. C, §102(a)-(c) (1996), as amended by Pub. L. No. 109-13, div. B, §102 (2005); Pub. L. No. 109-367, §3 (2006); and Pub. L. No. 110-161, div. E, §564(a) (2008).

<sup>107</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, BARRIERS ALONG THE U.S. BORDERS: KEY AUTHORITIES AND REQUIREMENTS 2 (2015).

Many interpret the Consolidated Appropriations Act of 2008 as having eliminated the requirement of double-layered fencing, now only calling for “a single layer of reinforced fencing.”<sup>108</sup> This, of course, does not prohibit additional layers of fencing.<sup>109</sup> The Act also provides more flexibility in regards to fencing location and border infrastructure.<sup>110</sup>

The construction of border infrastructure is complex. Prior to erecting additional fencing, Border Patrol has to 1) determine the environmental impact of the fence; 2) acquire land; and, when possible, 3) secure assistance of the National Guard or U.S. Army Corps of Engineers to reduce labor costs.<sup>111</sup>

**Figure 3: Examples of Fencing Styles**



Bollard Fencing in Tucson Sector (left); Legacy Fencing in Tucson Sector (middle); Vehicle Barrier Fence – Normandy in El Centro Sector (right). Images provided by DHS.

Border Patrol determines which fencing style is appropriate based on the topography of each area.<sup>112</sup> DHS considers primary fencing prototypes based on the ability to disable a vehicle traveling 40 miles per hour, its effects on animal migratory patterns, and costs.<sup>113</sup> Similarly, DHS builds secondary fencing in areas with large populations. Border Patrol believes that pedestrian fencing is necessary in populous cities because illicit crossers can easily blend into the community before they can be apprehended.<sup>114</sup> Since Border Patrol’s strategy prioritizes fencing and personnel resources in or near border cities, illegal traffic has shifted to remote areas.<sup>115</sup> Border Patrol claims that this approach disrupts traditional crossing routes in border cities or along highways and redirects illegal crossers to terrain where Border Patrol agents have a tactical advantage and more time to apprehend the illegal crosser.<sup>116</sup>

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<sup>108</sup> *Id.* at 9.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 9–10.

<sup>111</sup> Chad C. Haddal, Yule Kim, Michael John Garcia, CONG. RESEARCH SERV., RL 33659, BORDER SECURITY: BARRIERS ALONG THE U.S. INTERNATIONAL BORDER (2009).

<sup>112</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-09-244R, SECURE BORDER INITIATIVE FENCE CONSTRUCTION COSTS 6 (2009).

<sup>113</sup> *Id.*

<sup>114</sup> *The Rise of the Mexico Drug Cartels and U.S. National Security: Hearing Before the House Comm. on Oversight and Government Reform*, 111th Cong. (2009) (statement of Todd Owen, Acting Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection).

<sup>115</sup> *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Mark Dannels, Sheriff, Cochise County, Arizona).

<sup>116</sup> U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF ADMINISTRATION & OFFICE OF BORDER PATROL, FACILITIES MANAGEMENT & ENGINEERING DIRECTORATE BORDER PATROL FACILITIES & TACTICAL INFRASTRUCTURE PROGRAM MANAGEMENT OFFICE (2015) (on file with Committee staff).

To date, CBP has spent approximately \$2.3 billion on fencing.<sup>117</sup> Fencing costs vary based on the type of terrain, materials used, land acquisition, contractors, and the need to meet an expedited schedule.<sup>118</sup> Whether fencing is built on public or private land drives cost differences, as well as whether the fencing is primary fencing or vehicle barrier fencing (see Figure 3).<sup>119</sup>

Private land acquisition remains the primary driver of delay in completing border fencing.<sup>120</sup> According to DHS, out of the approximately 400 cases in which the government needed to acquire land, 330 required legal means to acquire property through condemnation proceedings because the landowner would not voluntarily sell to the government (126 cases), ownership was unknown (11 cases), or the government underwent “friendly” condemnation cases in which there was no dispute on price, but titles were not fully cleared by the government or the court because of multiple landowners (193 cases).<sup>121</sup> Of these 330 cases, 136 remain open.<sup>122</sup> DHS estimates that it could cost an additional \$50 million to settle these cases.<sup>123</sup> These cases include a class action suit in south Texas challenging the location of 40 border gates. Until this case is settled, large gaps in fencing will remain.<sup>124</sup>

During previous projects, Border Patrol agents and DOD personnel built fencing to save money on labor costs.<sup>125</sup> However, during the Secure Border Initiative fencing projects, DHS subcontracted to private companies because using Border Patrol agents removed them from their primary responsibility and DOD informed DHS that it would no longer be able to provide military personnel to build border fencing.<sup>126</sup> Fencing constructed by private contractors is generally more expensive than fencing built by the Border Patrol agents or the military.<sup>127</sup> In 2009, a GAO report found that in a 70-mile fence project, where 40 percent of the fencing was built by Border Patrol and DOD personnel, taxpayers paid \$2.8 million per mile.<sup>128</sup> Conversely, in a 65-mile project completed solely by private contractors, the average cost was \$5.1 million per mile.<sup>129</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-09-244R, SECURE BORDER INITIATIVE FENCE CONSTRUCTION COSTS 7 (2009); GOV'T ACCOUNTABILITY OFFICE, GAO-08-131T, SECURE BORDER INITIATIVE: OBSERVATIONS ON SELECTED ASPECTS OF SBINET PROGRAM IMPLEMENTATION (2007).

<sup>119</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-09-244R, SECURE BORDER INITIATIVE FENCE CONSTRUCTION COSTS 8 (2009) (explaining that by design, it is less expensive to construct vehicle fencing).

<sup>120</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-09-896, SECURE BORDER INITIATIVE TECHNOLOGY DEPLOYMENT DELAYS PERSIST AND THE IMPACT OF BORDER FENCING HAS NOT BEEN ASSESSED 19 (2009).

<sup>121</sup> *See id.* at 20; *see also* U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF ADMINISTRATION & OFFICE OF BORDER PATROL, FACILITIES MANAGEMENT & ENGINEERING DIRECTORATE BORDER PATROL FACILITIES & TACTICAL INFRASTRUCTURE PROGRAM MANAGEMENT OFFICE (2015) (on file with Committee staff).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF ADMINISTRATION & OFFICE OF BORDER PATROL, FACILITIES MANAGEMENT & ENGINEERING DIRECTORATE BORDER PATROL FACILITIES & TACTICAL INFRASTRUCTURE PROGRAM MANAGEMENT OFFICE (2015) (on file with Committee staff).

<sup>125</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-09-244R, SECURE BORDER INITIATIVE FENCE CONSTRUCTION COSTS 7 (2009).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 8.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

A life-cycle cost study estimated that the “deployment, operations, and future maintenance for tactical infrastructure will total \$6.5 billion.”<sup>130</sup> However, the completion of fencing has led to untold economic developments on both sides of the border, greatly enhancing the economies of border communities.<sup>131</sup> CBP has reported that fences have a lifespan of approximately 20 years and a large portion of its maintenance funding is to repair breaches in the fence.<sup>132</sup> As of May 2009, DHS reported 3,363 breaches, with an average cost of \$1,300 to repair.<sup>133</sup> According to GAO, “the fewest breaches occurred in the bollard-style fencing, while more occurred in wire mesh fence.”<sup>134</sup> With the move towards bollard-style fencing, fence cutting has decreased.<sup>135</sup> Today, a growing cost for CBP is clearing the vegetation growth surrounding fences.<sup>136</sup>

While fencing can reduce or impede illegal entry, it alone cannot secure the border.<sup>137</sup> Cartels and other TCOs are creative in their efforts to circumvent border deterrents. Since 1990, ICE and Border Patrol have discovered more than 150 tunnels along the U.S.-Mexico border, 56 of which have been located in the San Diego sector.<sup>138</sup> The Sinaloa Cartel is particularly notorious for their elaborate tunnels, most recently constructing a mile-long air-conditioned tunnel in central Mexico for their boss, El Chapo Guzman, to escape prison.<sup>139</sup> Importantly, Border Patrol is not aware of any people being smuggled across the border via the tunnels.<sup>140</sup> Instead, due to the large investments made by the cartels, these tunnels are primarily used to smuggle high value narcotics.<sup>141</sup>

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<sup>130</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-09-896, SECURE BORDER INITIATIVE TECHNOLOGY DEPLOYMENT DELAYS PERSIST AND THE IMPACT OF BORDER FENCING HAS NOT BEEN ASSESSED 19, 23 (2009) (this estimate includes deployment and operations and future maintenance costs for all tactical infrastructure, including, among other things, the fence, road, and lighting).

<sup>131</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>132</sup> *Id.* at 23.

<sup>133</sup> *Id.* While these are the latest figures available to the Committee, Majority Staff recently requested that GAO provide updates to these figures.

<sup>134</sup> *Id.*

<sup>135</sup> U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF ADMINISTRATION & OFFICE OF BORDER PATROL, FACILITIES MANAGEMENT & ENGINEERING DIRECTORATE BORDER PATROL FACILITIES & TACTICAL INFRASTRUCTURE PROGRAM MANAGEMENT OFFICE (2015) (on file with Committee staff).

<sup>136</sup> *Id.*

<sup>137</sup> *The Rise of the Mexico Drug Cartels and U.S. National Security: Hearing Before the House Comm. on Oversight and Government Reform*, 111th Cong. (2009) (statement of Todd Owen, Executive Director, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection).

<sup>138</sup> *Sophisticated U.S.-Mexico ‘Drug Tunnels’ Discovered*, BBC (July 13, 2012), <http://www.bbc.com/news/world-latin-america-18823975>; see also Candice Nguyen, *Go Inside Secret Border Tunnel Near San Diego*, NBC (Apr. 30, 2015), <http://www.nbcsandiego.com/news/local/San-Diego-Border-Tunnel-Go-Inside-Video-301822991.html> (reporting Border Patrol discovered a sophisticated tunnel with a rail-cart system near the San Ysidro port of entry); Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015) (San Diego has the best terrain for tunneling of all the southwest border sectors and the majority of these tunnels are 80 feet deep).

<sup>139</sup> See Christopher Woody, *‘El Chapo’ Guzman’s Role in the Global Cocaine Trade is Becoming Clearer*, MCPHERSON SENTINEL (Aug. 16, 2015),

<http://www.mcphersonsentinel.com/article/ZZ/20150816/BUSINESS/308169989/-1/news>.

<sup>140</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>141</sup> *Id.*

An alternative to pedestrian fencing includes a virtual border fence comprised of highly integrated fixed sensor towers. In 2005, DHS attempted to deploy such a system under the Secure Border Initiative-network (SBInet), but after repeated technical problems, cost overruns, and scheduled delays in 2009, Secretary Napolitano froze funding, except for ongoing deployment in Arizona.<sup>142</sup>

Beyond fencing, Border Patrol has requested funding to construct all-weather roads, gates, lighting and electrical systems, low-water crossings, bridges, drainage structures, as well as vegetation and debris removal in various sectors.<sup>143</sup>

### *Technologies*

As discussed above, in 2009, DHS largely suspended SBInet, a networked system of sensors, radars, and tactical communications.<sup>144</sup> Today, after spending approximately \$1 billion, close to 53 miles of coverage, out of the 387-mile Mexico-Arizona border, exists.<sup>145</sup>

The Alternative [Southwest] Border Technology Plan, or Arizona Technology Plan, replaced SBInet.<sup>146</sup> The plan called for various technology capabilities across Arizona, including Integrated Fixed Towers (IFT), Remote Video Surveillance Systems (RVSS), Mobile Surveillance Capability (MSC), Mobile Video Surveillance Systems (MVSS), Agent-Portable Surveillance Systems, Thermal Imaging Devices, and Unattended Ground Sensors (UGS).<sup>147</sup> IFT, RVSS, and MSC constituted approximately 97 percent of the plan's estimated costs.<sup>148</sup> "According to CBP," as GAO reported, "the majority of these technologies will provide the mission benefits of improved situational awareness and agent safety," as well as "help enhance the ability of Border Patrol agents to detect, identify, deter, and respond to threats along the border."<sup>149</sup>

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<sup>142</sup> *After SBInet- The Future of Technology on the Border: Hearing Before the House Subcomm. on Border and Maritime Security of the Comm. on Homeland Security*, 112th Cong., (2011) (statement of Mark Borkowski, Michael Fisher, and Nicole Kostelnik, U.S. Department of Homeland Security).

<sup>143</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-09-896, SECURE BORDER INITIATIVE TECHNOLOGY DEPLOYMENT DELAYS PERSIST AND THE IMPACT OF BORDER FENCING HAS NOT BEEN ASSESSED 22-23 (2009).

<sup>144</sup> *See, supra* note 142; *see also* U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>145</sup> *Id.*; *see also* GOV'T ACCOUNTABILITY OFFICE, GAO-14-411T, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 1 (2014); GOV'T ACCOUNTABILITY OFFICE, GAO-12-22, ARIZONA BORDER SURVEILLANCE TECHNOLOGY MORE INFORMATION ON PLANS AND COSTS IS NEEDED BEFORE PROCEEDING 2 (2011).

<sup>146</sup> *Id.* at 7; *see also* U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>147</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff); GOV'T ACCOUNTABILITY OFFICE, GAO-15-171SP, HOMELAND SECURITY ACQUISITIONS MAJOR PROGRAM ASSESSMENTS REVEAL ACTIONS NEEDED TO IMPROVE ACCOUNTABILITY 44 (2015).

<sup>148</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-14-411T, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 2 (2014).

<sup>149</sup> *Id.* at 9.

**Figure 4: Integrated Fixed Towers**



IFT with images transmitted to a Border Patrol station. Images provided by DHS.

IFTs contain surveillance equipment, such as “ground surveillance radars and surveillance cameras mounted on fixed [ ] towers.”<sup>150</sup> Originally, the Arizona Technology Plan called for six IFTs, but Border Patrol currently is funded for three.<sup>151</sup> One IFT has been located in Nogales, Arizona.<sup>152</sup> Border Patrol has determined that locating a tower in the Tohono O’odham Nation—stretching 74 miles across the U.S.-Mexico border—is their highest priority.<sup>153</sup> Therefore, DHS plans to delay funding for an additional tower for approximately 18 months while environmental and tribal negotiations are worked out.<sup>154</sup> DHS has indicated that it does not plan to deploy IFTs on the northern border because the geography is not suitable for radar use.<sup>155</sup>

**Figure 5: Remote Video Surveillance System**



RVSS with images transmitted to Border Patrol station. Images provided by DHS.

RVSS constitutes 30- to 90-foot towers with two pairs of cameras each—these cameras provide multiple color and infrared images.<sup>156</sup> RVSS differs from IFTs in that it lacks radars.<sup>157</sup> RVSS is remotely controlled by Border Patrol with images transmitted to their stations.<sup>158</sup> The purpose of this technology is to “monitor large areas of the international border or critical transit

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<sup>150</sup> *Id.* at 8.

<sup>151</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-171SP, HOMELAND SECURITY ACQUISITIONS MAJOR PROGRAM ASSESSMENTS REVEAL ACTIONS NEEDED TO IMPROVE ACCOUNTABILITY 45 (2015).

<sup>152</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff);

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* (Note, the time estimate of 18 months was provided in May, 2015).

<sup>155</sup> Questions for the Record Submitted by the Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security, *The Homeland Security Department’s Budget Submission for Fiscal Year 2015: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 113th Cong. (2014).

<sup>156</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-14-368, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 8 (2014).

<sup>157</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-14-411T, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 2 (2014).

<sup>158</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-14-368, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 8 (2014).

routes.”<sup>159</sup> Although originally proposed for Arizona, RVSS has been re-prioritized for the RGV, Texas sector.<sup>160</sup> Additional RVSS technology is deployed in the San Diego and Blaine, Washington sectors<sup>161</sup> and is scheduled to be deployed on the northern border in the Swanton Sector.<sup>162</sup>

**Figure 6: Mobile Surveillance Capability and Mobile Video Surveillance Systems**



MSC (left) and MVSS (right). Images provided by DHS.

MSC consists of a truck carrying a mounted camera and radar.<sup>163</sup> MVSS, also known as a “Scope Truck,” is similar, but consists only of a camera, and no radar.<sup>164</sup> Secretary Johnson recently emphasized that MSC is a priority for his agency.<sup>165</sup> The current MSC fleet consists of 49 systems in Arizona with plans to locate more in Texas.<sup>166</sup> While the Arizona Technology Plan originally called for MVSS, these systems have also been relocated to RGV to address the change in threat to that sector.<sup>167</sup> MVSS is also located in other sectors along the border, including the San Diego sector.<sup>168</sup>

Agent portable surveillance systems are “ground-sensing radar and surveillance system[s]” mounted on tripods that are “operated by Border Patrol agents where truck-mounted systems are unable to be deployed.”<sup>169</sup> Thermal image devices provide Border Patrol the ability to see “up to 5 miles in areas that are dimly lit or in total darkness.”<sup>170</sup> The feed from this device can be

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<sup>159</sup> *Id.*

<sup>160</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>161</sup> On the northern border, the Blaine Sector has 32 RVSS and is the only sector with a fiber optic camera system. Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>162</sup> Questions for the Record Submitted by the Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security, *The Homeland Security Department’s Budget Submission for Fiscal Year 2015: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 113th Cong. (2014).

<sup>163</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-14-368, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 8 (2014).

<sup>164</sup> *Id.*

<sup>165</sup> See *FY16 Department of Homeland Security Budget: Hearing Before the S. Subcomm. on Homeland Security of the Comm. on Appropriations*, 114th Cong. (2015).

<sup>166</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>167</sup> *Id.*

<sup>168</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>169</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-14-368, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 8 (2014).

<sup>170</sup> *Id.*

shown on agent laptops.<sup>171</sup> Finally, UGS are buried underground across the border and are used to detect movement.<sup>172</sup> This is a fairly inexpensive option for very remote areas.<sup>173</sup> However, UGS are subject to false alarms, such as animals triggering the alarm or sensor dysfunctions.<sup>174</sup> In Arizona, CBP intended to procure UGS with Imaging Sensors (IS); however, problems of inadequate bandwidth in its current radio frequencies arose during testing.<sup>175</sup> CBP will not procure UGS with IS technology until it resolves these issues.<sup>176</sup>

**Figure 7: Other Technologies**



Agent-Portable Surveillance System (left) and Thermal Imaging Device (right).

Importantly, while several delays have occurred in implementing the Arizona Technology Plan, DHS has realized some taxpayer savings. CBP initially estimated that the total life-cycle costs of the new plan would be about \$1.5 billion for Arizona.<sup>177</sup> However, the Department saved 75 percent on its IFT contract.<sup>178</sup> These savings have allowed DHS to procure other resources, such as tactical aerostats, which, for the most part, have been located in the RGV sector.<sup>179</sup> Aerostats have high-definition cameras with 10 miles of visibility, depending on the wind. However, smuggling is so pervasive that it is difficult for agents to address everything aerostats detect.<sup>180</sup> Despite detection success, aerostats also experience weather and maintenance

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<sup>171</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>172</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-14-368, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 8 (2014).

<sup>173</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>174</sup> Robert Lee Maril, *The Fence: National Security, Public Safety, and Illegal Immigration along the U.S.-Mexico Border*, TEXAS TECH UNIVERSITY PRESS 99 (2011) (stating that, according to Border Patrol agents, in 2005 false alarms ranged from 50 to 80 percent).

<sup>175</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-14-368, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 12 (2014).

<sup>176</sup> *Id.*

<sup>177</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff); GOV'T ACCOUNTABILITY OFFICE, GAO-12-22, ARIZONA BORDER SURVEILLANCE TECHNOLOGY MORE INFORMATION ON PLANS AND COSTS IS NEEDED BEFORE PROCEEDING 7-8 (2011).

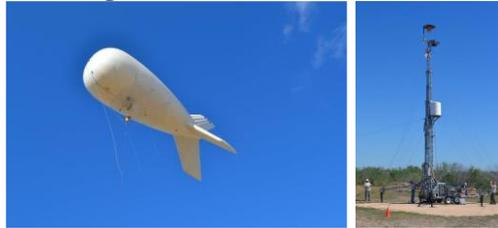
<sup>178</sup> *The Arizona Border Surveillance Technology Plan and its Impact on Border Security: Hearing Before the House Subcomm. on Border and Maritime Security of the Comm. on Homeland Security*, 113th Cong., (2014) (statement of Mark Borkowski, Assistant Commissioner and Chief Acquisition Executive, Office of Technology Innovation and Acquisition, Department of Homeland Security).

<sup>179</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>180</sup> See *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015);

challenges and are only operational 60 percent of the time.<sup>181</sup> It is estimated that each Aerostat currently costs \$5 million, per year, to operate and maintain.<sup>182</sup>

**Figure 8: Tactical Aerostat**



Images provided by DHS.

While Border Patrol has begun experimenting with tactical aerostats to locate illegal pedestrian crossers, CBP's Office of Air and Marine (OAM) deploys tethered aerostat radar systems (TARS) to identify and locate illegal aircraft crossing the border.<sup>183</sup> OAM has six TARS located along the U.S.-Mexico border, as well as two additional TARS located in the Florida Keys and Puerto Rico, which provides OAM with persistent surveillance of the air environment along the southwest border.<sup>184</sup>

OAM also utilizes the Predator B UAS for detection capabilities, particularly with the advent of attaching a Vehicle and Dismount Exploitation Radar (VADER) to the UAS. OAM currently operates four VADERS and is scheduled to acquire two additional VADERS by the end of 2016.<sup>185</sup> VADER monitors movement on the ground and is very precise; however, if the target is static, VADER will not see it.<sup>186</sup> Since 2012, sensor data obtained from VADER is streamed to the Air and Marine Operations Center (AMOC).<sup>187</sup>

**Figure 9: Predator B Land Mission UAS**



Image provided by DHS.

OAM has UAS Ground Control Stations in Corpus Christi, Texas; Sierra Vista, Arizona; Grand Forks, North Dakota; and Jacksonville, Florida. OAM currently possesses nine Predator B UAS,

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<sup>181</sup> Majority Staff observations during Senators' Johnson, Carper, and Sasse CODEL to the Texas Rio Grande Valley Sector (Feb. 2015).

<sup>182</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Data Provided to Majority Staff by the U.S. Customs and Border Protection (Sept. 9, 2015).

<sup>186</sup> Majority Staff observations during bipartisan STAFFDEL to the Tucson, Arizona Sector (Feb. 2015).

<sup>187</sup> OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY, OIG-15-17, 90-DAY STATUS UPDATE TO RECOMMENDATIONS FROM U.S. CUSTOMS AND BORDER PROTECTION'S UNMANNED AIRCRAFT SYSTEMS PROGRAM DOES NOT ACHIEVE INTENDED RESULTS OR RECOGNIZE ALL COSTS OF OPERATIONS (2015).

eight of which are operational.<sup>188</sup> Six of these are assigned to the southwest border, with two used for maritime operations, and the other two are assigned to the northern border.<sup>189</sup> The Predators have slanted cameras that provide 10 mile coverage and a laser illuminator that allows Border Patrol agents with night vision goggles to locate illegal crossers. The aircraft can remain airborne for up to 21 hours; however approximately 30 percent of UAS missions are cancelled due to weather conditions.<sup>190</sup>

In December, the DHS Office of Inspector General (OIG) issued a report that found that the UAS program has not achieved satisfactory or expected results.<sup>191</sup> Specifically, the OIG found that CBP's unmanned aircrafts were "not meeting flight hour goals" and the estimated cost to operate the program was "\$12,255 per flight hour."<sup>192</sup> Ultimately, the OIG concluded, "CBP has invested significant funds in a program that has not achieved the expected results, and it cannot demonstrate how much the program has improved border security."<sup>193</sup>

The Department has disputed the findings of the OIG report in Committee hearings, asserting that the UAS contributes to many apprehensions that are not directly credited unless the aircraft follows the illegal crosser until the apprehension is made.<sup>194</sup> Instead, unattended aircrafts are often used to detect illegal crossings, notify Border Patrol, and continue flying to other locations of potential illegal activity.<sup>195</sup> In Arizona, this makes sense, as it often takes illegal crossers days to get through the mountains, giving agents more time and opportunity to make an apprehension. Moreover, the UAS are often used in drug interdiction operations, and CBP points out that as of August 2015, UAS has interdicted over 68,000 pounds of contraband (cocaine and marijuana), with a retail value of over \$547 million, or \$126,000 per flight hour.<sup>196</sup>

In order to leverage intelligence resources, DHS collaborates with DOD through the Joint Interagency Task Forces.<sup>197</sup> In addition, DOD has deployed National Guard troops to assist with surveillance efforts and to provide training on recent technologies during Operation Jump Start and Operation Phalanx.<sup>198</sup> In 2012, DOD deployed 1,200 National Guard troops to the U.S. -

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<sup>188</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>189</sup> *Id.*

<sup>190</sup> U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF AIR AND MARINE, CORPUS CHRISTI PRESENTATION (2015) (on file with Majority Staff).

<sup>191</sup> OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY, OIG-15-17, U.S. CUSTOMS AND BORDER PROTECTION'S UNMANNED AIRCRAFT SYSTEM PROGRAM DOES NOT ACHIEVE INTENDED RESULTS OR RECOGNIZE ALL COSTS OF OPERATIONS (2014).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Randolph Alles, Assistant Commissioner, Office of Air and Marine, U.S. Customs and Border Protection).

<sup>195</sup> Quantitatively, this is logged as "detection," not "apprehension," even if it results in an apprehension. *Id.*

<sup>196</sup> Data Provided to Majority Staff by the U.S. Customs and Border Protection (Aug. 28, 2015).

<sup>197</sup> *Homeland Threats and Agency Responses: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 112th Cong., (2012) (statement of Janet Napolitano, Secretary, U.S. Department of Homeland Security).

<sup>198</sup> *Boots on the Ground and Eyes in the Sky: How to Best Utilize the National Guard to Achieve Operational Control: Hearing Before the House Subcomm. on Border and Maritime Security of the Comm. on Homeland Security*, 112th Cong., (2012) (statement of Ronald Vitiello and Martin Vaughan, U.S. Department of Homeland Security).

Mexico border. Specifically, the National Guard has assisted CBP's OAM and Border Patrol to expand their aerial capabilities by providing military electronic sensor systems that far exceed CBP's ground-based and mobile systems.<sup>199</sup> CBP has been flying the Predator B UAS with DOD's VADER at the southwest border.<sup>200</sup> Moreover, the tactical Aerostats and TARS mentioned above come from DOD. Currently, DHS is in receiving ownership of over 3,900 items of excess DOD technology, including Marcbot, which are robots used in San Diego for tunnel detection, and Advanced Radar Surveillance Systems (ARSS).<sup>201</sup>

Finally, when examining U.S. border technology, it is important to consider that smugglers are also leveraging the latest technology. Recently, a drone transporting more than six pounds of methamphetamine crashed in the San Diego sector.<sup>202</sup> Arizona and San Diego are seeing an increasing use of "short landers" and "Ultralight Aircraft" (ULAs) described as "flying lawnmowers," used to fly over fences and drop illegal drugs.<sup>203</sup> Alarmingly, cartels have begun to use minors to fly ULAs due to their light weight and the unlikelihood of their prosecution.<sup>204</sup>

## Experiences at the Border

### *Border Patrol*

DHS has devoted a growing number of resources to the southwest border, including increasing the number of Border Patrol agents (those that operate between ports of entry) from 8,617 in 2000 to 18,127 in 2014<sup>205</sup> and Office of Field Operations (OFO) officers (those that operate at ports of entry) from 4,667 in 2003 to 6,323 in 2015.<sup>206</sup>

In 2011, former DHS Secretary Janet Napolitano said that "the border is better now than it has ever been."<sup>207</sup> Similarly, DHS Secretary Johnson points to a declining number of apprehensions along the southwest border as a key indicator of border security.<sup>208</sup> For example, DHS apprehensions totaled 479,000 for FY2014, down from approximately 1.6 million apprehensions

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<sup>199</sup> *Homeland Threats and Agency Responses: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 112th Cong., (2012) (statement of Janet Napolitano, Secretary, U.S. Department of Homeland Security).

<sup>200</sup> *Id.*

<sup>201</sup> U.S. CUSTOMS AND BORDER PROTECTION, BORDER TECHNOLOGY INTRODUCTION (2015) (on file with Majority Staff).

<sup>202</sup> Laura McVicker, *Drone Carrying Meth Crashed Near San Ysidro Port of Entry*, NBC SAN DIEGO (Jan. 22, 2015), <http://www.nbcsandiego.com/news/local/Drone-Carrying-Meth-Crashes-Near-San-Ysidro-Port-of-Entry-289353601.html>.

<sup>203</sup> ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA, THREAT ASSESSMENT 2014 62 (2014).

<sup>204</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>205</sup> *Remarks by Secretary of Homeland Security Jeh Johnson, Border Security in the 21st Century*, U.S. DEP'T OF HOMELAND SECURITY (Oct. 9, 2014), <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>.

<sup>206</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>207</sup> Jennifer Epstein, *Janet Napolitano: Border security better than ever*, POLITICO (Mar. 25, 2011), <http://www.politico.com/news/stories/0311/51925.html>.

<sup>208</sup> *Remarks by Secretary of Homeland Security Jeh Johnson, Border Security in the 21st Century*, U.S. DEP'T OF HOMELAND SECURITY (Oct. 9, 2014), <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>.

in FY2000.<sup>209</sup> However, as a report issued by Dr. Coburn emphasizes, “[t]he apprehensions figure for FY2014 follows a three-year trend of steady increases in the number of apprehensions since FY2011, when DHS data shows that Southern border apprehensions hit a low of 327,000.”<sup>210</sup> Moreover, experts point out that even if apprehensions have decreased, there is limited information of the role immigration enforcement has played in this decline.<sup>211</sup>

Apprehension rates might also be down due to a lack of effectiveness on the southwest border. According to independent experts, apprehension rates along our southwest border are 40 to 55 percent.<sup>212</sup> Most Border Patrol agents and local law enforcement estimated interdiction rates in the RGV to be 30 to 40 percent.<sup>213</sup> In the Tucson sector, Border Patrol agents predicted they caught one-in-three in areas where there was a fence and one-in-20 where no fence was present, which is often in the remote mountainous areas.<sup>214</sup>

Finally, it is unclear as to the impact that misreported apprehension data has had on the final numbers.<sup>215</sup> Border Patrol agents claim that the difference in their experiences and those reported by DHS are due to manipulation of these statistics.<sup>216</sup> Specifically, a Border Patrol agent testified to the Committee that agents faced retribution for reporting more than 20 footprints—a key indicator of “got-aways.”<sup>217</sup>

### *Local Law Enforcement*

While Border Patrol agents provide a key level of security at our border, their efforts are often buttressed by local law enforcement. The relationship and connectivity between local law enforcement, landowners, and Border Patrol is vital and cannot be overstated.

Operation Stonegarden, a grant program operated through the Federal Emergency Management Agency (FEMA), provides funding to state and local governments to increase operational capacity at the U.S. border.<sup>218</sup> While those who use the program have emphasized its success, it

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<sup>209</sup> *Id.* slide 26

<sup>210</sup> Senator Tom Coburn, *A Review of the Department of Homeland Security’s Missions and Performance* (Jan. 2015).

<sup>211</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 2 (2013) (“The Obama administration has not offered, and Congress has failed to insist on, any accountability for the effectiveness of these huge enforcement expenditures.”).

<sup>212</sup> *Id.* at 3.

<sup>213</sup> *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Chris Cabrera, Border Patrol Agent, Rio Grande Valley Sector, U.S. Customs and Border Protection).

<sup>214</sup> Majority Staff observations during bipartisan STAFFDEL to the Tucson, Arizona Sector (Feb. 2015).

<sup>215</sup> According to the Border Patrol Council, Border Patrol Agents are required to submit apprehension numbers to supervisors. Moreover, staff has been told that agents are instructed to count illegal crossers not caught by border patrol agents as “pending law enforcement resolution” rather than as a “got away.”

<sup>216</sup> *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Chris Cabrera, National Border Patrol Council).

<sup>217</sup> *Id.*

<sup>218</sup> HOMELAND SECURITY GRANTS, OPERATION STONEGARDEN, <http://www.homelandsecuritygrants.info/GrantDetails.aspx?gid=21875>.

is important to ensure that the program is being utilized effectively to achieve its intended and important goals. Moreover, illegal activity at the southwest border stretches beyond the border communities themselves. Brooks County, Texas, which operates a checkpoint more than 70 miles from the border, reported 443 deaths related to illegal immigrants in the past six years.<sup>219</sup>

States have also deployed significant resources to increase manpower at U.S. borders.<sup>220</sup> For example, former Texas governor Rick Perry's Operation Strong Safety deployed the Texas Department of Public Safety to the border, which, according to a recent report, was effective.<sup>221</sup>

It is also important to emphasize the other resource impacts our insecure border has on local communities. When local law enforcement and Border Patrol agents catch more people, jails fill up. Prosecutors refuse to prosecute interdictions below a certain drug possession level due to heavy demands on resources. Captured illegal crossers need to be housed and provided medical care, which is also fiscally impactful on local budgets. When considering new federal border security measures, more boots on the ground is an important component, but not a solution to be considered in isolation.

### *Local Landowners*

Some landowners experience significant damages to their property due to illegal crossers. Their fences have been battered, either from pedestrian illegal crossers or by stolen vehicles. Landowners are responsible for repair costs, some totaling up to \$100,000 a year.<sup>222</sup>

Landowners also face threats of break-ins and violence. Firearms, ammunition, cash, jewelry, and small electronics have all been reported stolen. One Arizona sheriff told the Committee about a rancher who lives in his jurisdiction that has had his home broken into four or five times.<sup>223</sup> That same rancher has also encountered scouts for the cartel sitting on his property, adding even more fear to his situation.<sup>224</sup> According to several witnesses at a Committee hearing, scouts face little to no fear of retribution for their presence or assistance to the cartels.<sup>225</sup>

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<sup>219</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Benny Martinez, Chief Deputy Sheriff, Brooks County, Texas); see also *Texas' Brooks County is 'Death Valley' for Migrants*, NBC NEWS (July 9, 2014), <http://www.nbcnews.com/storyline/immigration-border-crisis/texas-brooks-county-death-valley-migrants-n152121>.

<sup>220</sup> See generally *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>221</sup> TEXAS DEP'T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 2 (2015) (Unclassified Version).

<sup>222</sup> Statement by Fred Cappadona, Double C Cattle Co., South Texans' Property Rights Association Roundtable, during Senators' Johnson, Carper, and Sasse CODEL to the Texas Rio Grande Valley Sector (Feb. 2015).

<sup>223</sup> *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Mark Dannels, Sheriff, Cochise County, Arizona).

<sup>224</sup> *Id.*

<sup>225</sup> See *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (Elizabeth Kempshall, Executive Director, Arizona HIDTA stated, "it has been a challenge for us to prosecute the scouts" due to the lack of laws specific to them, while Benny Martinez, Chief Deputy Sheriff of Brooks County, Texas confirmed "a good percentage of [scouts] walk.").

Cartels have also threatened violence against landowners for contacting the Border Patrol. For example, in 2010, Robert Krentz, a prominent rancher in Cochise County, Arizona, was killed by an illegal crosser on his property.<sup>226</sup>

Committee witnesses who live on the border have said that an important metric to determine whether our border is secure is not quantitative, but rather qualitative: the border is secure when landowners on the border have a reasonable expectation that they can leave their homes and ranches and their property will not be battered or vandalized.<sup>227</sup>

## Transnational Crime at the Southwest Border

### *Cartels*

Cartels have evolved from smaller, primarily family run smuggling groups to multinational entities.<sup>228</sup> The cartels are often equipped with weapons, communications and surveillance equipment, and other paramilitary capabilities that compete with U.S. law enforcement.<sup>229</sup> To protect their routes, cartels invest heavily in enforcement.<sup>230</sup> According to a Committee witness, scouts wear “camouflage uniforms with padded boots for non-tracker, with \$2,500 solar-powered, encrypted satellite phones, with AK-47s.”<sup>231</sup>

According to a Texas Department of Public Safety (DPS) report, “cartels have also been effective in corrupting U.S. law enforcement officials at all levels, which not only facilitates organized crime, but undermines the public trust in law enforcement.”<sup>232</sup> Specifically, officials at DHS are very aware of attempts by drug trafficking organizations (DTOs) “to infiltrate the CBP workforce through conspired hiring operations and aggressive targeting” of agents.<sup>233</sup> According to the Arizona High Intensity Drug Trafficking Area (HIDTA):

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<sup>226</sup> Randal Archibold, *Ranchers Alarmed by Killing near Border*, NY TIMES (Apr. 4, 2010), <http://www.nytimes.com/2010/04/05/us/05arizona.html>.

<sup>227</sup> *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Mark Dannels, Sheriff, Cochise County, Arizona).

<sup>228</sup> Response to Questions for the Record from Shawn Moran, *Deferred Action on Immigration: Implications and Unanswered Questions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>229</sup> Diane Washington Valdez, *Report: Mexican Drug Cartels Adopting Military Tactics*, EL PASO TIMES (Aug. 7, 2011), [http://www.elpasotimes.com/ci\\_18632455](http://www.elpasotimes.com/ci_18632455).

<sup>230</sup> Shannon K. O’Neil, *Two Nations Indivisible: Mexico, The United States, and the Road Ahead* 127 (Oxford University Press 2013).

<sup>231</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of General Barry R. McCaffrey, USA (RET.), Former Director, Office of National Drug Control Policy).

<sup>232</sup> TEXAS DEP’T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 2 (2015) (Unclassified Version).

<sup>233</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-13-59, BORDER SECURITY: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN CBP EFFORTS TO MITIGATE RISK OF EMPLOYEE CORRUPTION AND MISCONDUCT 2 (2012).

“The Sinaloa Cartel is considered the most influential and strongest cartel in Mexico, as it maintains an extensive corruption network at the local, state, and Federal level, giving it more political and judicial cover to protect and secure drug trafficking activities. Historically, Sinaloa Cartel operatives maintained a greater ability to adapt to law enforcement challenges and foresee potential changes in the drug market more effectively than other Mexican cartels.”<sup>234</sup>

From FY2005 through FY2012 GAO found that, “144 current or former CBP employees were arrested or indicted for corruption,” representing “less than 1 percent of the entire CBP workforce per fiscal year.”<sup>235</sup> In 2014, Secretary Johnson “delegated to CBP the authority to investigate its employees for alleged criminal misconduct.”<sup>236</sup> On June 29, 2015, the Homeland Security Advisory Council issued an interim report that found that corruption among Border Patrol agents and officers “*may be increasing*” and that “arrests for corruption of CBP personnel far exceed, on a per capita basis, such arrests at other federal law enforcement agencies.”<sup>237</sup>

Local law enforcement officials and public officials have also been found guilty of taking bribes from drug traffickers.<sup>238</sup> And, corruption is not limited to the U.S. Recently, 14 Mexican “Federales” were arrested for running a kidnapping operation near the Texas border that targeted Mexican businessmen.<sup>239</sup>

### *Drug Smuggling*

Cartels smuggle illicit drugs into the U.S., and rely on U.S.-based gangs to distribute the drugs throughout the U.S.<sup>240</sup> More than 90 percent of all cocaine entering the country transits the Mexican-Central American corridor from countries further south.<sup>241</sup> “Mexico remains the primary foreign source of marijuana and methamphetamine destined for U.S. markets and is also

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<sup>234</sup> ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA, THREAT ASSESSMENT 2015, 11 (2015); *see also* *DEA Maps Show Kingpin ‘El Chapo’ Guzman’s Cartel Controls Nearly the Entire U.S. Drug Market*, FORBES (Nov. 10, 2015), <http://www.forbes.com/sites/doliaestevez/2015/11/10/dea-maps-show-kingpin-el-chapo-guzmans-cartel-controls-nearly-the-entire-u-s-drug-market/>.

<sup>235</sup> *Id.* at 8.

<sup>236</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, CBP BORDER SECURITY REPORT FISCAL YEAR 2014 (2014).

<sup>237</sup> HOMELAND SECURITY ADVISORY COUNCIL, INTERIM REPORT OF THE CBP INTEGRITY ADVISORY PANEL 6 (2015).

<sup>238</sup> Shannon K. O’Neil, *Two Nations Indivisible: Mexico, The United States, and the Road Ahead* 131 (Oxford University Press 2013).

<sup>239</sup> Ildelfonso Ortiz, *14 Mexican Federales Arrested for Running Kidnapping Crew Near Texas Border*, BREITBART (Mar. 7, 2015), <http://www.breitbart.com/texas/2015/03/07/14-mexican-cops-arrested-for-running-kidnapping-crew-near-texas-border/>.

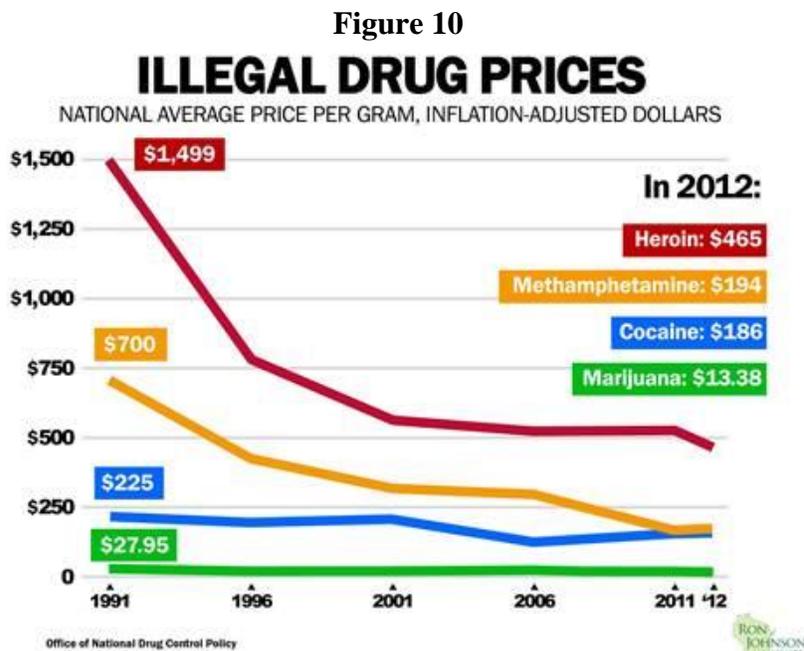
<sup>240</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG CONTROL POLICY, NATIONAL SOUTHWEST BORDER COUNTERNARCOTICS STRATEGY 34 (2013); U.S. DEP’T OF JUSTICE NAT’L DRUG INTELLIGENCE CENTER, NATIONAL DRUG THREAT ASSESSMENT 11 (2011).

<sup>241</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG CONTROL POLICY, NATIONAL SOUTHWEST BORDER COUNTERNARCOTICS STRATEGY 1 (2013).

a source and transit country for heroin.”<sup>242</sup> Observations from Border Patrol agents suggest there has also been a recent rise in cocaine, meth, and heroin deriving directly from Mexico.<sup>243</sup>

Mexican DTOs are known to use minors as young as 12 years old to smuggle drugs between and through POEs.<sup>244</sup> In FY2014, Arizona apprehended 39 minors as pedestrians “with illicit drugs taped to their bodies, concealed within clothing, or in bags.”<sup>245</sup> DTOs also recruit high school and middle school students—the majority of which are U.S. citizens—believing students “are less likely to be identified by law enforcement” and if identified will not be prosecuted.<sup>246</sup>

Mexican DTOs have become experts at evading the Border Patrol. According to General McCaffrey, former Director of the White House’s Office of National Drug Control Policy, the Border Patrol seizes just 5 to 10 percent of the illegal drugs smuggled across the border.<sup>247</sup> The decreasing cost of drugs in the U.S., particularly heroin, illustrates the point.



<sup>242</sup> *Id.*

<sup>243</sup> While refusing to draw a direct inference, Border Patrol agents pointed out that since states have begun to legalize marijuana, drugs smuggled into this U.S. have shifted being predominately marijuana to harder drugs.

<sup>244</sup> See Evelio Contreras, *Inside the Life of a Drug-Trafficking Teen*, CNN (Aug. 13, 2015), [http://www.cnn.com/2015/08/12/us/inside-the-life-of-a-drug-trafficking-teen/index.html?eref=rss\\_latest](http://www.cnn.com/2015/08/12/us/inside-the-life-of-a-drug-trafficking-teen/index.html?eref=rss_latest) (documenting how the Los Zetas gang forced a 12-year-old illegal immigrant living on the Texas side of the border to smuggle drugs for them).

<sup>245</sup> ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA, THREAT ASSESSMENT 2015 56 (2014).

<sup>246</sup> *Id.*; see also Lourdes Medrano, *Along Key Stretch of US-Mexico Border More Kids Running Drugs*, THE CHRISTIAN SCIENCE MONITOR (July 16, 2013), <http://www.csmonitor.com/USA/Justice/2013/0716/Along-key-stretch-of-US-Mexico-border-more-kids-running-drugs>; *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>247</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of General Barry R. McCaffrey, USA (RET.), Former Director, Office of National Drug Control Policy).

Between the POEs, smuggling groups use “an extensive system of scouts armed with radios, solar-powered radio repeaters, cellular telephones, and weapons situated on high points along drug trafficking routes.”<sup>248</sup> This type of structure provides smugglers with a high level of situational awareness of law enforcement presence on both sides of the border.

At the POEs, cartels have begun smuggling drugs in smaller packages and using deep concealment to increase their likelihood of success. Officers at the Otay Mesa POE in the San Diego sector have found drugs hidden in batteries, gas tanks, jalapeno jars, and fire extinguishers.<sup>249</sup> Media reports indicate cartels have concealed drugs in “frozen sharks, sprinkled on donuts, and crammed into cucumbers.”<sup>250</sup>

### *Human Smuggling and Trafficking*

To enter the U.S., more than 90 percent of immigrants hire coyotes that control the routes from Mexico to the U.S. Coyotes move illegal immigrants across the border and into the interior of the U.S. through a series of stash houses.<sup>251</sup> Coyotes often use energy drinks to keep people awake as they are smuggled across the border and frequently leave behind or “sacrifice” those incapable of keeping pace.<sup>252</sup> Moreover, at a Committee Hearing a Border Patrol agent testified that coyotes use migrants as a diversion in order to sneak higher value drugs across the border.<sup>253</sup> For example, rather than directing unaccompanied children and families to bridges and ports of entry along the Rio Grande where they could immediately and safely seek asylum, coyotes forced them to take the more dangerous route across the river, tying up Border Patrol agents and leaving the border unguarded.<sup>254</sup>

Sex trafficking organizations also use coyotes to transport victims across the border en route to destinations throughout the U.S.<sup>255</sup> According to the Texas DPS report, “[c]artels, gangs, and international sex trafficking organizations have worked closely together for many years now, uncharacteristically crossing traditional rivalries in order to traffic drugs and people for large profits.”<sup>256</sup>

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<sup>248</sup> *Id.* (statement of Elizabeth Kempshall, Executive Director, Arizona Region of the Southwest Border, High Intensity Drug Trafficking Area, Office of National Drug Control Policy).

<sup>249</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>250</sup> See Christopher Woody, ‘El Chapo’ Guzman’s Role in the Global Cocaine Trade is Becoming Clearer, MCPHERSON SENTINEL (Aug. 16, 2015), <http://www.mcphersonsentinel.com/article/ZZ/20150816/BUSINESS/308169989/-1/books/?Start=1>.

<sup>251</sup> TEXAS DEP’T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 29 (2015) (Unclassified Version).

<sup>252</sup> Majority Staff observations during Senators’ Johnson, Carper, and Sasse CODEL to the Texas Rio Grande Valley Sector (Feb. 2015).

<sup>253</sup> *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Chris Cabrera, National Border Patrol Council).

<sup>254</sup> *Id.*

<sup>255</sup> TEXAS DEP’T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 34 (2015) (Unclassified Version).

<sup>256</sup> *Id.*

## *Gangs, Criminal Aliens, and Special Interest Aliens*

Violent transnational gangs such as MS-13 and Los Zetas have a stronghold in border states such as Texas, while the Hells Angel Motorcycle Club (HAMC) controls Arizona.<sup>257</sup> These gangs “maintain a buyer and seller relationship with Mexican DTOs.”<sup>258</sup>

Moreover, the number of criminal aliens coming into the U.S. has increased. The Border Patrol Council estimates that the number of individuals who have committed crimes in the U.S., served time in a jail here, and have been deported constitute 10 to 20 percent of those apprehended.<sup>259</sup> As an example, on March 6, 2015, Border Patrol agents in the Laredo sector arrested an illegal immigrant from Mexico convicted of murder in 1992 in Jacksonville, Florida.<sup>260</sup> “The subject was sentenced to 20 years and was released in 2002, after serving 10 years.”<sup>261</sup> Different reports indicates there are somewhere between 200-300 sanctuary jurisdictions in this country in which local governments refuse to assist in the enforcement of our immigration laws. The recent shooting of a young woman in San Francisco, California by a criminal alien that had been deported five times with seven prior felony convictions has brought renewed attention to criminals entering and remaining in the U.S., largely as a result of sanctuary policies.<sup>262</sup>

Finally, legitimate concerns remain that terrorists could exploit our country’s southwest border to enter the U.S. undetected.<sup>263</sup> While the likelihood of a terrorist group using the southwest border as an entry point to complete a terrorist attack is an area of debate, the potential for exploitation should be taken seriously given that there was a 70 percent increase from FY2013 to FY2014 in OTMs crossing the border.<sup>264</sup> This included individuals from Iraq, Syria, and Egypt.<sup>265</sup> According to Border Patrol agents on the ground, 51 percent of all Border Patrol apprehensions are currently OTMs.

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<sup>257</sup> *Id.* at 1; ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA, THREAT ASSESSMENT 2014 22 (2014) (HAMC is known to be involved in murder, drug trafficking, prostitution, weapons trafficking, extortion, arson, and vehicle-theft offenses).

<sup>258</sup> *Id.* at 24; FBI NATIONAL GANG INTELLIGENCE CENTER, 2011 NATIONAL GANG THREAT ASSESSMENT; DEP’T OF HOMELAND SECURITY, MEXICO: CROSS-BORDER GANGS AND THEIR MEXICAN DRUG CARTEL AFFILIATIONS (2011).

<sup>259</sup> Response to Questions for the Record from Shawn Moran, Vice President, National Border Patrol Council, *Deferred Action on Immigration: Implications and Unanswered Questions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (“These are not economic immigrants in search of a better life. These are hardened criminals who are facing real jail time.”).

<sup>260</sup> *Laredo Sector Border Patrol Agents Arrest an Undocumented Immigrant from Mexico Convicted of Murder*, U.S. CUSTOMS AND BORDER PROTECTION (Mar. 6, 2015), <http://www.cbp.gov/newsroom/local-media-release/2015-03-06-000000/laredo-sector-border-patrol-agents-arrest>.

<sup>261</sup> *Id.*

<sup>262</sup> Michelle Moons, *Breaking: Pier 14 Murder Suspect Had Been Deported 5 Times With 7 Felonies*, BREITBART (July 3, 2015), <http://www.breitbart.com/texas/2015/07/03/breaking-pier-14-murder-suspect-had-been-deported-5-times-with-7-felonies/>.

<sup>263</sup> TEXAS DEP’T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR 1 (2015) (Unclassified Version).

<sup>264</sup> Brandon Darby, *Leaked CBP Report Shows Entire World Exploiting Open US Border*, BREITBART (Aug. 3, 2014), <http://www.breitbart.com/texas/2014/08/03/leaked-cbp-report-shows-entire-world-exploiting-open-us-border/>.

<sup>265</sup> *Id.*

## Part II: The U.S. – Canada Border

The United States and Canada share the longest common land border in the world.<sup>266</sup> The binational border is 5,525 miles long.<sup>267</sup> According to the U.S. Census Bureau, the continental border along the 49th parallel from Washington State to Maine is almost 4,000 miles.<sup>268</sup>

Each day, more than 350,000 people and \$2 billion in trade cross the U.S.-Canada border.<sup>269</sup> Canada is the United States' largest trading partner, with over 120 operating POEs along the U.S.-Canada border.<sup>270</sup> The busiest ports are located in Detroit, Michigan; Buffalo, New York; and Blaine, Washington.<sup>271</sup> Additionally, CBP has nine pre-clearance locations at Canadian airports to assist in processing the estimated 750 daily commercial flights to the U.S., as well as pre-inspection locations at Canadian rail stations.<sup>272</sup>

The Border Patrol divides the northern border into eight sectors: Blaine, Spokane, Havre, Grand Forks, Detroit, Buffalo, Swanton, and Houlton. Each sector's terrain is different and the challenges are evolving. For example, in the Great Lakes region, TCOs use small vessels during the summer and snowmobiles during the winter to transport illicit contraband.<sup>273</sup> Similarly, in Washington State and Maine, dense forests and open waters provide criminals cover, making it difficult for authorities to detect cross-border illegal activity.<sup>274</sup> CBP deploys different technologies such as UAS, ground and water sensors, "buckeyes"<sup>275</sup> and trail cameras with live feeds to maintain domain awareness in areas that are difficult to patrol.<sup>276</sup>

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<sup>266</sup> U.S. DEP'T OF HOMELAND SECURITY, NORTHERN BORDER STRATEGY 4 (2012).

<sup>267</sup> U.S. DEP'T OF COMMERCE, CENSUS BUREAU, THE 2012 STATISTICAL ABSTRACT 225 (2012) (including the Alaska-British Columbia-Yukon Territory portion).

<sup>268</sup> *Id.*

<sup>269</sup> *Protecting our Northern Border: Enhancing Collaboration and Building Local Partnerships: Hearing Before the S. SubComm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce of the Comm. on Homeland Security & Governmental Affairs*, 113th Cong. (2013) (statement of Christopher Richards, Havre Sector Chief Patrol Agent, U.S. Border Patrol); *Fact Sheet: Beyond the Border Facilitating Travel at the United States-Canada Border*, U.S. DEP'T OF HOMELAND SECURITY (Dec. 6, 2011), <http://www.dhs.gov/news/2011/12/06/fact-sheet-beyond-border-facilitating-travel-united-states-canada-border>.

<sup>270</sup> *Id.*

<sup>271</sup> Majority Staff observations during a staff briefing on the northern border presented by the U.S. Department of Homeland Security (Apr. 2015).

<sup>272</sup> *Protecting our Northern Border: Enhancing Collaboration and Building Local Partnerships: Hearing Before the S. SubComm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce of the Comm. on Homeland Security & Governmental Affairs*, 113th Cong. (2013) (statement of Christopher Richards, Havre Sector Chief Patrol Agent, U.S. Border Patrol); Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015). For a discussion on preclearance operations, see Part IV.

<sup>273</sup> *Id.*

<sup>274</sup> Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>275</sup> Buckeyes are off the shelf technology designed for hunters that consist of portable cameras with motion sensors that, when triggered, connect to a cell tower and send images to the agent's phone, revealing what triggered the camera. This saves significant resources, as agents are prevented from checking on a sensor that was triggered by animals or other non-threat sources.

<sup>276</sup> *Protecting our Northern Border: Enhancing Collaboration and Building Local Partnerships: Hearing Before the S. SubComm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce of the Comm. on Homeland Security & Governmental Affairs*, 113th Cong. (2013) (statement of Christopher Richards, Havre Sector Chief Patrol Agent, U.S. Border Patrol).

**Figure 11: Eight Sectors of the U.S.-Canada Border**



Image provided by DHS.

There is currently no fencing on the northern border. Instead, the demarcation line between the two countries is often marked by a ditch, approximately six inches deep.<sup>277</sup>

**Figure 12: The U.S.-Canada Border Demarcation in Blaine, Washington**



Image taken during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015)

There are currently 2,093 Border Patrol agents and 3,600 Office of Field Operations officers stationed on the northern border.<sup>278</sup> DHS believes that current staffing numbers are sufficient to manage and address northern security threats, because illegal crossing apprehensions and drug smuggling volumes at the northern border are much lower than at the U.S.-Mexico border.<sup>279</sup> Additionally, agents have more time and resources to target each threat, as well as better information sharing with Canada.<sup>280</sup>

While both the northern and southwest borders are highly active, crossing volumes are different. For example, in FY2014, northern border officers apprehended 3,338 individuals for attempting to enter the U.S. illegally, while agents patrolling the southwest border reported a total of 479,371 apprehensions.<sup>281</sup>

<sup>277</sup> Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>278</sup> Data provided to Majority Staff by the U.S. Department of Homeland Security (April 8, 2015) (as a comparison, there are 2,500 Border Patrol agents stationed in the San Diego sector alone).

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> U.S. BORDER PATROL, STATS AND SUMMARIES, <http://www.cbp.gov/newsroom/media-resources/stats?title=sector+profile>. The Majority Staff notes that DHS has refused to release figures for FY2015.

**Table 1. Comparison of Apprehensions at U.S. Borders FY2011-FY2014<sup>282</sup>**

Sector	FY2011	FY2012	FY2013	FY2014
<b>Northern Border Total</b>	6,123	4,210	3,230	3,338
<b>Southwest Border Total</b>	327,577	356,873	414,397	479,371

Also in FY2014, the U.S.-Canada border recorded a slightly greater volume of trucks and trains, while the southwest border processed more buses, personal vehicles, and pedestrian crossings.<sup>283</sup>

**Table 2. Recorded Crossing at Both U.S. Borders in FY2014<sup>284</sup>**

Border POEs	Trucks	Trains	Buses	Personal Vehicles	Pedestrians
<b>Northern</b>	5,802,211	28,643	103,749	31,979,736	423,605
<b>Southwest</b>	5,414,568	10,414	213,780	69,623,693	41,223,292

### U.S. – Canada Joint Operations

Currently, to secure, monitor, and manage the northern border, the United States and Canada coordinate efforts through the Beyond the Border Initiative (BTB).<sup>285</sup> The key priorities of BTB are: 1) identifying and addressing threats before they reach the U.S.-Canada border; 2) facilitating legitimate trade; 3) integrating cross-border law enforcement efforts; and 4) coordinating approaches to critical infrastructure and cybersecurity.<sup>286</sup> This approach enhances law enforcement cooperation, provides the framework to address security gaps, and ensures that lawful trade and travel are not significantly affected by increased security measures.<sup>287</sup> BTB enables DHS to improve the allocation of resources, because operation chiefs coordinate with their Canadian counterparts to avoid duplicating patrol and surveillance efforts.<sup>288</sup>

Since 2011, the BTB Initiative has institutionalized several information and intelligence sharing mechanisms. DHS states that these air, land, and maritime mobile partnerships provide a greater penetration of intelligence, affording U.S. and Canadian law enforcement agencies an advantage point to disrupt terrorist and transnational criminal activity before it reaches the U.S.-Canada border.<sup>289</sup>

Since 1997, intelligence-driven law enforcement teams have been responsible for securing the northern border.<sup>290</sup> Currently, there are 24 Integrated Border Enforcement Team (IBET)

<sup>282</sup> *Id.*

<sup>283</sup> BUREAU OF TRANSPORTATION STATISTICS, BORDER CROSSING/ENTRY DATA: QUERY DETAILED STATISTICS (2014), [http://transborder.bts.gov/programs/international/transborder/TBDR\\_BC/TBDR\\_BCQ.html](http://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html).

<sup>284</sup> *Id.*

<sup>285</sup> U.S. DEP'T OF HOMELAND SECURITY, FACT SHEET: BEYOND THE BORDER UNITED STATES-CANADA LAW ENFORCEMENT COOPERATION (2011).

<sup>286</sup> U.S. DEP'T OF HOMELAND SECURITY, BEYOND THE BORDER IMPLEMENTATION REPORT 4 (2013).

<sup>287</sup> Observations presented at Canada Institute, Wilson Center, *Beyond the Border Implementation Report Update*, (2014), <http://www.wilsoncenter.org/event/beyond-the-border-implementation-report-update>.

<sup>288</sup> Data provided to Majority Staff by the U.S. Department of Homeland Security (April 8, 2015).

<sup>289</sup> *Id.*

<sup>290</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG POLICY CONTROL, NATIONAL NORTHERN BORDER COUNTERNARCOTICS STRATEGY 12 (2014).

locations, with the majority monitoring the Great Lakes region, including four that are operated by American and Canadian personnel.<sup>291</sup> The five law enforcement agencies contributing to IBETs efforts are: 1) CBP; 2) ICE; 3) U.S. Coast Guard; 4) the Royal Canadian Mounted Police (RCMP); and 5) the Canada Border Service Agency (CBSA).<sup>292</sup>

In addition, since 2005, Border Enforcement Security Taskforces (BESTs) have been investigating criminal activity at, near, and across the U.S.-Canada and U.S.-Mexico borders, as well as maritime seaport locations.<sup>293</sup> At a Committee hearing a DHS official testified that “[c]urrently, ICE Homeland Security Investigations (HSI) has 37 BEST units located across 16 states and Puerto Rico,” four on the northern border, 14 on the southwest border, and 19 maritime seaport locations.<sup>294</sup> According to DHS, these ICE-led operations are successful because they leverage the efforts and resources of more than 150 federal, state, local, tribal, and international law enforcement agencies.<sup>295</sup> Specifically, BESTs have been recognized for infiltrating and dismantling TCOs operating in vulnerable areas of upstate New York.<sup>296</sup>

While DHS states that inter-agency partnerships are critical to secure the northern border, a 2011 GAO report found that the Department needs to increase oversight to ensure its components are coordinating and sharing information.<sup>297</sup> For example, northern border state and local law enforcement officials, as well as their Canadian counterparts, complained that Border Patrol, ICE the U.S. Forest Service, and the DEA do not always share information on operations, which leads to duplication and inconsistent compliance with the numerous cross-border agreements to confront threats.<sup>298</sup>

## Threats to the Northern Border

### *Terrorism*

In 2011, then CBP Commissioner Alan Bersin, told the Senate Judiciary Committee regarding terrorist threats, “[i]t’s commonly accepted that the more significant threat comes from the U.S.-Canada border.”<sup>299</sup> More recently, witnesses before HSGAC echoed Bersin’s testimony, stating

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<sup>291</sup> U.S. DEP’T OF HOMELAND SECURITY, BEYOND THE BORDER: A SHARED VISION FOR PERIMETER SECURITY AND ECONOMIC COMPETITIVENESS (2015), <http://www.dhs.gov/beyond-border>.

<sup>292</sup> U.S. DEP’T OF HOMELAND SECURITY, NORTHERN BORDER STRATEGY 10 (2012).

<sup>293</sup> U.S. DEP’T OF HOMELAND SECURITY, FACT SHEET: BEYOND THE BORDER UNITED STATES-CANADA LAW ENFORCEMENT COOPERATION (2011).

<sup>294</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Peter Edge, Executive Associate Director, Homeland Security Investigations, U.S. Immigration and Customs Enforcement).

<sup>295</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG POLICY CONTROL, NATIONAL NORTHERN BORDER COUNTERNARCOTICS STRATEGY 11 (2014).

<sup>296</sup> *Id.* at 30.

<sup>297</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-11-508T, BORDER SECURITY: DHS PROGRESS AND CHALLENGES IN SECURING THE U.S. SOUTHWEST AND NORTHERN BORDERS 14 (2011).

<sup>298</sup> *Id.* at 15.

<sup>299</sup> *Improving Security and Facilitating Commerce at America’s Northern border and Ports of Entry: Hearing Before the S. Subcomm. on Immigration, Refugees and Border Security of the S. Comm. on the Judiciary*, 112th Cong. (2011) (statement of Alan Bersin, Commissioner, U.S. Customs and Border Protection).

that a terrorist trying to cross the border into the U.S. would be able to enter the country much more easily from the north than from the south.<sup>300</sup>

In 1997, Gazi Ibrahim Abu Mezer entered the U.S. near the Blaine, Washington POE.<sup>301</sup> After being returned three times, the FBI eventually detained him during a counter-terrorism raid in Brooklyn, New York, after being tipped off that Mezer planned to detonate a bomb in a New York City subway station.<sup>302</sup> Similarly, in 1999, Ahmed Ressay, a.k.a. the millennium bomber, was stopped at Port Angeles, Washington (also located in the Blaine sector) with components used to produce a bomb.<sup>303</sup> After admitting that he was planning to bomb the Los Angeles International Airport, he was sentenced to 37 years in prison for terrorist activity.<sup>304</sup> In FY2014, the Blaine sector alone apprehended migrants from 32 different countries.<sup>305</sup>

Recently, Canada has been struggling to confront radicalization and homegrown terrorism.<sup>306</sup> On February 3, 2015 the RCMP charged three men for recruiting and facilitating the terrorist activity of the Islamic State in the Levant (ISIL).<sup>307</sup> One is in custody, while the other two were charged in absentia, as authorities presume that they have left for Syria.<sup>308</sup> In addition, Quebec and Ontario have been reporting an exodus of young men and women heading to Syria and Iraq to fight for ISIL.<sup>309</sup> For example, in February, responding to Islamic extremism propaganda, four young men and two female teenagers left Montreal.<sup>310</sup> Police and community leaders are now scrambling to prevent further radicalization and recruitment.<sup>311</sup> In March, CBSA arrested a man in Toronto for plotting to bomb the U.S. Consulate and several other buildings in the Toronto financial district.<sup>312</sup>

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<sup>300</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of General Barry R. McCaffrey, USA (RET.), Former Director, Office of National Drug Control Policy); *id.* (statement of John P. Torres, Former Acting Director, U.S. Immigration and Customs Enforcement).

<sup>301</sup> U.S. DEPT OF JUSTICE, GAZI IBRAHIM ABU MEZER, <http://www.justice.gov/oig/special/9803/brbrp2.htm>.

<sup>302</sup> Gilbert M. Gaul & Mary Pat Flaherty, *Potential Bomber Shows Resolve in Trips to U.S.*, WASH. POST (Oct. 7, 2001), <http://www.washingtonpost.com/archive/politics/2001/10/07/potential-bomber-shows-resolve-in-trips-to-us/5c43eb16-673d-4135-9d08-7baf080bb628/>.

<sup>303</sup> FBI, MILLENNIUM PLOT/AHMED RESSAM, <http://www.fbi.gov/about-us/history/famous-cases/millennium-plot-ahmed-ressam>.

<sup>304</sup> *Id.*

<sup>305</sup> Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>306</sup> Garrett Graff, *Fear Canada: The Real Terrorist Next Door*, POLITICO MAGAZINE (Oct. 16, 2014), <http://www.politico.com/magazine/story/2014/10/fear-canada-not-mexico-111919.html#.VSYmIpN0eYM>.

<sup>307</sup> See Stewart Bell, *Undercover Informant Infiltrated a Suspected ISIS Recruiting Network in Ottawa, Leading to Arrest*, NATIONAL POST (Feb. 4, 2015), <http://news.nationalpost.com/news/canada/undercover-rcmp-informant-infiltrated-a-suspected-isis-recruiting-network-in-ottawa-leading-to-arrest>.

<sup>308</sup> *Id.* Maguire is reported to have died fighting in Syria in January, 2015.

<sup>309</sup> Allan Woods, *Quebec Stunned by Exodus of Four Young Men, Two Women to Join Islamic State*, THE STAR CANADA (Feb. 27, 2015), <http://www.thestar.com/news/canada/2015/02/27/quebec-stunned-by-exodus-of-four-young-men-two-women-to-join-islamic-state.html>.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> Stewart Bell, *ISIS Sympathizer Arrested After Plotting to Bomb U.S. Consulate in Toronto: CBSA*, NAT'L POST (Mar. 11, 2015), <http://news.nationalpost.com/news/canada/isis-sympathizer-arrested-after-plotting-to-bomb-u-s-consulate-in-toronto-cbsa>.

Historically, security observers have argued that Canada represents a substantial vulnerability, because it provides immigrant visas to individuals who pose a significant threat.<sup>313</sup> Witnesses testified before the Committee that if someone gets into Canada, they will most likely be able to enter the U.S.<sup>314</sup> However, the Canadian government has changed its approach to national and border security after two recent acts of homegrown terrorism. The wake-up call came from both the 2013 detention of two men for conspiring to derail a VA Rail Canada train en route to New York City, and the 2014 Parliament shooting where a military guard was killed during an attack.<sup>315</sup>

Responding to this new reality, in January 2015 Prime Minister Harper introduced a new Anti-Terrorism Act to broaden the powers of the intelligence and law enforcement officers, which was signed into law on June 18, 2015.<sup>316</sup> Essentially, Bill C-51 1) criminalizes publishing terrorist propaganda; 2) creates a no-fly list of suspected terrorists; and 3) allows intelligence and law enforcement agencies to share information on known or suspected terrorists with foreign counterparts.<sup>317</sup> DHS believes this law will improve cross-border counterterrorism efforts by legalizing the implementation of a no-fly list that limits known and suspected terrorists' access to North America and enabling Canadian intelligence units to dismantle terrorist cells operating mostly in Ontario and Quebec.<sup>318</sup> To this end, the Canadian government is revoking the passports of approximately 130 citizens who have joined violent terrorist groups in Syria and Iraq, and is gathering evidence to prosecute more than 80 recently radicalized citizens and permanent residents who have returned to Canada after engaging in terrorist-related activities overseas.<sup>319</sup>

The Canadian government also plans to implement a screening system to deny those with a criminal background or on a terrorist watchlist from entering Canada.<sup>320</sup> According to DHS, by the end of 2015 or early 2016, Canada will be prepared to fully implement its Electronic Travel Authorization (eTA), which will require all visitors, except Americans, to submit their biographic information before they board a Canada-bound airplane.<sup>321</sup> Once implemented, all travelers will be screened against Canadian and American watchlists.<sup>322</sup>

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<sup>313</sup> THE 9/11 COMMISSION REPORT 81 (2004).

<sup>314</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>315</sup> *Muslim Leader: Canada Terror Attack a 'Wake-Up Call'*, CBN NEWS (Oct. 29, 2014), <http://www.cbn.com/cbnnews/world/2014/October/Muslim-Leader-Speaks-Out-against-Canada-Attacks/>.

<sup>316</sup> *PM Announces Anti-Terrorism Measures to Protect Canadians*, OFFICE OF THE PRIME MINISTER (Jan. 30, 2015), <http://pm.gc.ca/eng/news/2015/01/30/pm-announces-anti-terrorism-measures-protect-canadians>; PARLIAMENT OF CANADA, ANTI-TERRORISM ACT 2015,

<http://www.parl.gc.ca/legisinfo/BillDetails.aspx?billId=6842344&Language=E&Mode=1>.

<sup>317</sup> *Id.*

<sup>318</sup> Data provided to Majority Staff by the U.S. Department of Homeland Security (April 8, 2015).

<sup>319</sup> Doug Mataconis, *The Attack on Canada's Parliament and the 'Lone Wolf' Terrorist*, THE CHRISTIAN SCIENCE MONITOR (Oct. 23, 2014), <http://www.csmonitor.com/USA/Politics/Politics-Voices/2014/1023/The-attack-on-Canada-s-Parliament-and-the-lone-wolf-terrorist>.

<sup>320</sup> DEP'T OF CITIZENSHIP AND IMMIGRATION CANADA, ELECTRONIC TRAVEL AUTHORIZATION (eTA) (2012).

<sup>321</sup> Data provided to Majority Staff by the U.S. Department of Homeland Security (April 8, 2015).

<sup>322</sup> *Id.*

eTA efforts will complement the current bi-national effort to deny a visa or asylum status to criminals and known or suspected terrorists. Since 2014, Canadian immigration officials have been sharing biographic and biometric information on visa applicants with DHS and the State Department.<sup>323</sup> Previously, Canadian immigration officers would issue visas to individuals from a country of interest without consulting American law enforcement and intelligence databases.<sup>324</sup> This initiative will reduce visa fraud and enable Canada to deny asylum or an immigrant visa to individuals who could pose a threat.<sup>325</sup>

The nexus between known or suspected terrorists in eastern Canada and the northern parts of the U.S. represent a significant national security threat.<sup>326</sup> Communities in Minnesota and New York, which are adjacent to Ontario and Quebec, have recently experienced apprehensions of individuals on terrorist charges. For example, on November 26, 2014, two men in Minneapolis, Minnesota were charged with recruiting and conspiring to provide support to ISIL.<sup>327</sup> Similarly, on September 17, 2014, a man in Rochester, New York was arrested on similar charges after the FBI provided evidence showing that he attempted to recruit fighters and funds for ISIL.<sup>328</sup>

Recently, the U.S. and Canada, to prevent terrorist and criminal travel, agreed to share more information on travelers crossing the northern border through land POEs.<sup>329</sup> Under the border data exchange program, CBP and CBSA share each traveler's biographic data.<sup>330</sup> Essentially, by compiling this information, an entry into Canada constitutes an exit from the U.S. Currently, border officials are collecting information on third country nationals, but the scope of the program will be extended to include American and Canadian citizens by the end of 2015.<sup>331</sup> Canada will implement a similar program at air POEs, by requiring airlines to present a manifest of all passengers departing the country.<sup>332</sup>

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<sup>323</sup> DEP'T OF CITIZENSHIP AND IMMIGRATION CANADA, CANADA/U.S. INFORMATION SHARING TREATY SUMMARY, (2013).

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> Garrett Graff, *Fear Canada: The Real Terrorist Next Door*, POLITICO MAGAZINE (Oct. 16, 2014), <http://www.politico.com/magazine/story/2014/10/fear-canada-not-mexico-111919.html#.VSYmIpN0eYM>.

<sup>327</sup> Paul McEnroe, *2 Minneapolis Men Charged with Attempting to Aid Terrorists*, STAR TRIBUTE (Nov. 26, 2014), <http://www.startribune.com/local/minneapolis/283857371.html>.

<sup>328</sup> Pierre Thomas & Mike Levine, *New York Man Charged with Trying to Recruit ISIS Fighters in US*, ABC NEWS (Sept. 16, 2014) <http://abcnews.go.com/US/york-man-charged-recruit-isis-fighters-us/story?id=25552426>.

<sup>329</sup> Data provided to Majority Staff by the U.S. Department of Homeland Security (April 8, 2015).

<sup>330</sup> *Canada-U.S. Border Program Could Identify El Cheats, Terrorist*, CBC NEWS (Jan. 27, 2014), <http://www.cbc.ca/news/politics/canada-u-s-border-program-could-identify-ei-cheats-terrorists-1.2512972>.

<sup>331</sup> Jim Bronskill, *Many Visitors to Canada Will Pay \$7 Fee Beginning Next Year Under Security Plan*, CTV NEWS (June 20, 2014), <http://www.ctvnews.ca/canada/many-visitors-to-canada-will-pay-7-fee-beginning-next-year-under-security-plan-1.1879146>.

<sup>332</sup> *Canada-U.S. Border Program Could Identify El Cheats, Terrorist*, CBC NEWS (Jan. 27, 2014), <http://www.cbc.ca/news/politics/canada-u-s-border-program-could-identify-ei-cheats-terrorists-1.2512972>.

## *Drug Smuggling*

While Canada does not face the same drug threat as Mexico, TCOs exploit border security gaps on the northern border to transport drugs and other illicit goods.<sup>333</sup> Currently, criminal groups on the northern border smuggle ecstasy and high potency marijuana into the U.S. and transport cocaine, firearms, cash, and meth from Mexico and South America through the U.S. and into Canada.<sup>334</sup>

Previously, Canada's high potency marijuana, known as Canadian British Columbia Bud (BC Bud), had a stronghold in the U.S., as it was able to compete against Mexico's commercial grade marijuana.<sup>335</sup> However, with the legalization of marijuana in several western states and the surge in U.S. local indoor production of high potency marijuana, the Canadian market has largely been replaced by the domestic market, evidenced by the decline at the Washington-British Columbia border of BC Bud seizures.<sup>336</sup> However, it is also possible that "Southeast Asia growers have moved their marijuana operations from Canada to Washington State in an effort to avoid potential border control problems during transport."<sup>337</sup>

Canada is the top foreign producer and "primary source of MDMA [commonly known as ecstasy] in North America."<sup>338</sup> The majority of Canadian ecstasy is produced in British Columbia, with FY2014 seizures totaling more than 48 kilograms.<sup>339</sup> Washington State's I-5 corridor "is the main transportation route into the Pacific Northwest and into British Columbia, Canada," where MDMA travels south and cocaine, firearms, and cash travel north—often offered in direct exchange.<sup>340</sup> Mexican criminal groups are the predominant transporters of cocaine into and through Washington.<sup>341</sup> Recently, Washington State has seen an uptick in unlawful crossers transporting drugs while dressed in camouflage, mimicking tactics seen on the southwest border and indicating cartel involvement (most likely the Sinaloa Cartel).<sup>342</sup>

Like Mexican DTOs, their Canadian counterparts constantly reevaluate their smuggling operations to evade U.S. law enforcement.<sup>343</sup> For example, in FY2013, 75 percent of the seized marijuana on the northern border was interdicted in the Swanton sector, which includes

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<sup>333</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG POLICY CONTROL, NATIONAL NORTHERN BORDER COUNTERNARCOTICS STRATEGY 4 (2014).

<sup>334</sup> NORTHWEST HIGH INTENSITY DRUG TRAFFICKING AREA, THREAT ASSESSMENT AND STRATEGY FOR PROGRAM YEAR 2015 (2014).

<sup>335</sup> *Id.* at 23.

<sup>336</sup> *Id.* at 20.

<sup>337</sup> *Id.* at 25.

<sup>338</sup> *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of David Rodriguez, Director, Northwest High Intensity Drug Trafficking Area).

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* (providing an example in which law enforcement dismantled a group that "regularly delivered 50,000 [ecstasy] pills to wholesalers in New York and Boston, returning with cash and several kilos of cocaine.").

<sup>341</sup> NORTHWEST HIGH INTENSITY DRUG TRAFFICKING AREA, THREAT ASSESSMENT AND STRATEGY FOR PROGRAM YEAR 2015 33 (2014).

<sup>342</sup> Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>343</sup> *Id.*

Vermont, New Hampshire, and part of New York, while in FY2014, 68 percent of the marijuana was seized in the Spokane sector, specifically in the states of Montana, Idaho, and Washington.<sup>344</sup>

### *Human Smuggling and Trafficking*

According to the State Department's 2014 Trafficking in Persons Report, Canadian born and other foreign girls and women, mostly from East Asia and Eastern Europe, are exploited in sex trafficking along the U.S.-Canada border.<sup>345</sup> In preparation for the 2014 Super Bowl in New Jersey, an intelligence report advised that Canada-based traffickers would move their victims from major cities such as Montreal, Toronto, Quebec City, and Ottawa to supply demand during the event.<sup>346</sup>

Generally, highways along the U.S.-Canada border, including Highway 401, have been used to move victims into the U.S.<sup>347</sup> To address this, DHS implemented a 2012 U.S.-Canada Memorandum Of Understanding (MOU).<sup>348</sup> The agreement formalized an information sharing mechanism on human trafficking, migrant smuggling networks, and suspected perpetrators.<sup>349</sup>

### *Threats on Tribal Land*

Concerns have been raised over the challenges faced by tribal lands directly adjacent or in close proximity to the U.S.-Canada border.<sup>350</sup> In Montana, Minnesota, Michigan, and New York, some Native American reservations are located directly on the U.S.-Canada border, while in Washington State, Wisconsin, Maine, and North Dakota, reservations are situated within a few miles of the international boundary.<sup>351</sup> TCOs have used these lands to smuggle immigrants, narcotics, and other illicit goods.<sup>352</sup> For example, in 1998, U.S. and Canadian authorities dismantled a human smuggling ring operated by 47 Chinese immigrants and members of the St. Regis Mohawk Reservation in upstate New York.<sup>353</sup> U.S. authorities estimated that more than 3,600 Chinese immigrants were smuggled into the U.S. through this corridor, and that individuals paid as much as \$47,000 for the trip from China to the United States.<sup>354</sup> Similarly,

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<sup>344</sup> U.S. CUSTOMS AND BORDER PROTECTION, SECTOR PROFILES FY2011-FY2014.

<sup>345</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 125 (2014).

<sup>346</sup> U.S. DEP'T OF STATE, HUMAN SMUGGLING AND TRAFFICKING CENTER, SITUATIONAL AWARENESS: POSSIBLE SEX TRAFFICKING DURING SUPER BOWL XLVII 1 (2014).

<sup>347</sup> *Id.*

<sup>348</sup> U.S. Embassy in Ottawa, *U.S., Canada Cooperate to Fight Cross-Border Crime* (Mar. 7, 2012) <http://canada.usembassy.gov/news-events/2012-news-and-events/march-2012/7-march-2012-u.s.-canada-cooperate-to-fight-cross-border-crime>.

<sup>349</sup> *Id.*

<sup>350</sup> Tim Johnson, *Indian Reservations on both U.S. Borders Become Drug Pipelines*, MCCLATCHY (June 16, 2010), <http://www.mcclatchydc.com/2010/06/16/96003/indian-reservations-on-both-us.html>.

<sup>351</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG POLICY CONTROL, NATIONAL NORTHERN BORDER COUNTERNARCOTICS STRATEGY 30 (2014).

<sup>352</sup> *Id.*

<sup>353</sup> Steven Holmes, *Ring is Cracked in Smuggling of Illegal Chinese Immigrants*, NY TIMES (Dec. 11, 1998), <http://www.nytimes.com/1998/12/11/nyregion/ring-is-cracked-in-smuggling-of-illegal-chinese-immigrants.html>.

<sup>354</sup> *Id.*

Mexican drug cartels are using these areas to evade northern border law enforcement authorities.<sup>355</sup> For example, in 2010, the DEA found 82,000 marijuana plants in tribal lands located in Washington State.<sup>356</sup>

American and Canadian tribes are also involved in, or turn a blind eye to, cigarette smuggling from the U.S. to Canada.<sup>357</sup> The black market for this illicit good is conservatively estimated to generate more than a billion dollars, rivaling profits of other low-end narcotics.<sup>358</sup> Specifically, black market dealers capitalize on Canada's high tax on tobacco products. In some provinces Canadians pay as much as \$64 USD per carton; the average black market dealer sells a carton of 200 cigarettes for less than \$7 USD.<sup>359</sup>

A 2011 GAO report found that because of a lack of DHS guidance, in some northern border communities, tribal officials: 1) were not clear on what suspicious activity they should report; 2) how to report it; and 3) to whom they should contact to report incidents.<sup>360</sup> GAO stated that consistent coordination with local and tribal law enforcement officers could help identify terrorists and other criminals attempting to exploit the security gaps at the border.<sup>361</sup>

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<sup>355</sup> Amy Harris, *Marijuana Growers Find Cover on Tribal Lands*, SEATTLE TIMES (Aug. 23, 2011), <http://www.seattletimes.com/seattle-news/marijuana-growers-find-cover-on-tribal-lands/>.

<sup>356</sup> *Id.*

<sup>357</sup> William Marsden, *Canada's Boom in Smuggled Cigarettes: Indian Tobacco Factories, Organized Crime Control a Billion-Dollar Black Market*, THE CENTER FOR PUBLIC INTEGRITY (May 19, 2014), <http://www.publicintegrity.org/2009/03/27/2913/canadas-boom-smuggled-cigarettes>.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-11-508T, BORDER SECURITY: DHS PROGRESS AND CHALLENGES IN SECURING THE U.S. SOUTHWEST AND NORTHERN BORDERS 16 (2011).

<sup>361</sup> *Id.*

### Part III: The Maritime Border

Protecting America's coastlines is integral to our border security strategy. The United States coastline, which includes the Atlantic Coast, Caribbean, Pacific Coast, and Great Lakes region, measures 95,471 miles—one of the longest coastlines in the world.<sup>362</sup> According to the U.S. Coast Guard, the strategy for a secure maritime border takes on a layered approach and addresses illicit activity far from the U.S. shores.<sup>363</sup> According to CBP's Office of Air and Marine (OAM), a secure maritime border has: 1) maritime domain awareness; 2) law enforcement information; 3) response capability and capacity; 4) unity of effort; and 5) small vessel accountability.<sup>364</sup>

#### Agency Collaboration and Joint Missions

OAM and the Coast Guard frequently conduct joint missions. This is done through leveraging OAM's more than 250 aircraft and over 280 marine vessels.<sup>365</sup> For example, in December 2013, OAM and the Coast Guard worked together to interdict a panga boat, or, a small, outboard-powered fishing boat, off the coast of Southern California that was attempting to smuggle 1,500 pounds of marijuana.<sup>366</sup> OAM Air Interdiction Agents first spotted the panga from their Multi-Role Enforcement Aircraft.<sup>367</sup> OAM then deployed a Black Hawk helicopter, and the Coast Guard deployed a Jayhawk helicopter to track the suspect vessel.<sup>368</sup> At the same time, three OAM interceptor vessels and the Coast Guard cutter Blackfin also responded, heading to the panga's location.<sup>369</sup> OAM and the Coast Guard were able to apprehend the vessel, the three persons on board, and the marijuana, which had an estimated street value of \$675,000.<sup>370</sup>

Earlier this year, an OAM Black Hawk helicopter fired warning shots at a panga boat off the coast of La Jolla, California.<sup>371</sup> The Coast Guard had first spotted the boat and requested OAM assistance in stopping it.<sup>372</sup> After the vessel failed to yield, OAM fired the warning shots, which prompted the panga boat to stop, resulting in its apprehension by two CBP Midnight Express interceptor boats.<sup>373</sup>

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<sup>362</sup> NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, HOW LONG IS THE U.S. SHORELINE?, <http://oceanservice.noaa.gov/facts/shorelength.html>.

<sup>363</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>364</sup> *Id.*

<sup>365</sup> U.S. CUSTOMS AND BORDER PROTECTION, FROM THE AIR AND SEA, <http://www.cbp.gov/border-security/air-sea>.

<sup>366</sup> *CBP and Coast Guard Stop 1,500 Pound Marijuana Smuggling Attempt Off Southern California Coastline*, U.S. CUSTOMS AND BORDER PROTECTION (Dec. 20, 2013), <http://www.cbp.gov/newsroom/local-media-release/2013-12-20-000000/cbp-and-coast-guard-stop-1500-pound-marijuana>.

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> Michelle Moons, *Warning Shots Fired at Panga Boat from CBP Helicopter Off CA Coast*, BREITBART (Jan. 19, 2015), <http://www.breitbart.com/california/2015/01/19/warning-shots-fired-at-panga-boat-from-cbp-helicopter-off-ca-coast/>.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

Another way in which these two components work together is through the use of OAM's UAS program. This operation is overseen by the Common Unmanned Aircraft Systems Joint Program Office, which was formed by OAM and the Coast Guard to address common requirements. Recently, OAM finished a deployment of a UAS in El Salvador that netted \$362 million in contraband.<sup>374</sup> These joint operations allow OAM to use drone technologies to track and stay with suspects until Coast Guard assets are able to apprehend them.

As noted above, two of OAM's eight operational UAS are dedicated for maritime use. In partnership with the Coast Guard, OAM developed a maritime variant of the Predator B called the Guardian, with the purpose of increasing reconnaissance, surveillance, targeting, and acquisition capabilities in maritime operating environments.<sup>375</sup> These Guardians were modified with "the addition of a Raytheon SeaVue Marine Search Radar and an Electro-optical/infrared sensor that is optimized for maritime operations."<sup>376</sup>

In 2012, GAO issued a report that found that there were opportunities to improve the use of both OAM and the Coast Guard's air and marine assets.<sup>377</sup> The report states that "OAM could benefit from taking additional steps to better ensure that its mix and placement of resources meets mission needs and addresses threats."<sup>378</sup> The report also found that "OAM has not documented its analyses to support its resource mix and placement across locations."<sup>379</sup> Of the four recommendations from that 2012 report, three remain open.<sup>380</sup>

ICE HSI teams also work with OAM and the Coast Guard to prevent illegal immigration and drug trafficking through America's maritime borders. In March 2014, the three agencies worked together to seize two men and a "go-fast" boat transporting 533 pounds of cocaine, 22 nautical miles southeast of Vieques, Puerto Rico.<sup>381</sup> The shipment had an estimated street value of \$5.7 million.<sup>382</sup> The boat was first spotted by the Coast Guard, and the apprehension was conducted by an OAM marine unit that also had an ICE special agent on board.<sup>383</sup> According to OAM, intelligence is crucial for maritime interdictions, particularly on the northern border where illicit traffic is less frequent.<sup>384</sup>

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<sup>374</sup> *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Randolph Alles, Assistant Commissioner, Office of Air and Marine, U.S. Customs and Border Protection).

<sup>375</sup> U.S. CUSTOMS AND BORDER PROTECTION, GUARDIAN UAS MARITIME VARIANT PREDATOR B, [http://www.cbp.gov/sites/default/files/documents/guardian\\_b\\_6.pdf](http://www.cbp.gov/sites/default/files/documents/guardian_b_6.pdf).

<sup>376</sup> *Id.*

<sup>377</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-12-518, OPPORTUNITIES EXIST TO ENSURE MORE EFFECTIVE USE OF DHS'S AIR AND MARINE ASSETS (2012).

<sup>378</sup> *Id.* at *passim*.

<sup>379</sup> *Id.* at 28.

<sup>380</sup> *Id.*

<sup>381</sup> *Federal Authorities Seize \$5.7 Million in Cocaine, Detain Two Smugglers*, U.S. DEP'T OF JUSTICE, U.S. ATTORNEY'S OFFICE, DISTRICT OF PUERTO RICO (Mar. 18, 2014), <http://www.justice.gov/usao-pr/pr/federal-authorities-seize-57-million-cocaine-detain-two-smugglers>.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015); Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

The U.S. is also a partner in Operation Martillo (Hammer), which is a “U.S., European, and Western Hemisphere effort targeting illicit trafficking routes in coastal waters along the Central American isthmus.”<sup>385</sup> Fourteen countries are currently participating in the operation.<sup>386</sup> According to U.S. South Command, “[a]s of March 2015, Operation Martillo has resulted in the disruption of over 400 metric tons of cocaine over the past four years, denying drug traffickers \$8 billion in potential revenue.”<sup>387</sup> The U.S. contribution to this program “includes U.S. Navy and Coast Guard vessels, aircraft from U.S. federal law enforcement agencies, and military and law enforcement units from various nations.”<sup>388</sup>

In June 2015, OAM agents working as part of Operation Martillo assisted in detecting five separate trafficking incidents that resulted “in the interdiction of more than 5,900 pounds of cocaine, worth more than \$441.8 million.”<sup>389</sup> Similarly, in November 2014, a Coast Guard Law Enforcement Detachment Team (LEDET) was involved in the interdiction of \$35 million worth of cocaine in an Operation Martillo event off the shores of Puerto Rico.<sup>390</sup>

### Threats along the Maritime Border

While illegal immigration through America’s maritime borders is not as widespread as it is through the southwest border, “[t]housands of people try to enter this country illegally every year using maritime routes, many via smuggling operations.”<sup>391</sup> The U.S. Coast Guard recently testified in front of the Committee that illegal immigration is heavily influenced by U.S. policy and perceptions of U.S. policy.<sup>392</sup>

According to DHS, while the number of migrant interdictions has remained somewhat steady over the last two decades, these numbers represent a significant drop from its peak in the early 1990s.<sup>393</sup> From 1991 to 1995, the Coast Guard interdicted over 120,000 migrants from 23 countries.<sup>394</sup> In 1994, the Coast Guard responded to two mass migrations from Haiti and Cuba, in which 63,000 migrants were rescued and prevented from illegally entering the U.S.<sup>395</sup>

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<sup>385</sup> U.S. participation is led by Joint Interagency Task Force South. UNITED STATES SOUTHERN COMMAND, OPERATION MARTILLO (2015), <http://www.southcom.mil/newsroom/Pages/Operation-Martillo.aspx>.

<sup>386</sup> These countries are Belize, Canada, Colombia, Costa Rica, El Salvador, France, Guatemala, Honduras, the Netherlands, Nicaragua, Panama, Spain, the United Kingdom, and the United States. Chile has also contributed to the operation. *Id.*

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> *CBP P-3 Crew Detects Cocaine Runs Reaching 2.9 Tons*, U.S. CUSTOMS AND BORDER PROTECTION (June 11, 2015), <http://www.cbp.gov/newsroom/local-media-release/2015-06-11-000000/cbp-p-3-crew-detects-cocaine-runs-reaching-29-tons>.

<sup>390</sup> *Operation Martillo Drug Bust Results in \$35 Million of Cocaine*, U.S. COAST GUARD (Nov. 29, 2014), <http://www.uscgnews.com/go/doc/4007/2426390/Operation-Martillo-drug-bust-results-in-35-million-of-cocaine->

<sup>391</sup> U.S. COAST GUARD, ALIEN MIGRANT INTERDICTION, <http://www.uscg.mil/hq/cg5/cg531/AMIO/amio.asp>.

<sup>392</sup> *See Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Rear Admiral Peter J. Brown, Assistant Commander for Response Policy, U.S. Coast Guard).

<sup>393</sup> U.S. COAST GUARD, ALIEN MIGRANT INTERDICTION, <http://www.uscg.mil/hq/cg5/cg531/AMIO/amio.asp>.

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

**Table 3. Comparison of Apprehensions at U.S. Borders FY2011-FY2014<sup>396</sup>**

Sector	FY2011	FY2012	FY2013	FY2014
<b>Northern Border Total</b>	<b>6,123</b>	<b>4,210</b>	<b>3,230</b>	<b>3,338</b>
<b>Southwest Border Total</b>	<b>327,577</b>	<b>356,873</b>	<b>414,397</b>	<b>479,371</b>
Maritime Border	6,552	3,685	3,162	3,942
Coast Guard	2,474	2,955	2,094	3,587
<b>Total Maritime</b>	<b>9,026</b>	<b>6,640</b>	<b>5,256</b>	<b>7,529</b>

The Coast Guard and OAM have joint responsibility for maritime drug interdiction. The Coast Guard’s mission is to reduce the supply of drugs by denying smugglers the use of air and maritime routes in a seven million square-mile area called the Transit Zone, which includes the Caribbean Sea, the Gulf of Mexico, and the Eastern Pacific Ocean.<sup>397</sup> Meanwhile, CBP’s OAM patrols the 12 mile area directly off the U.S. coasts and provides its air and marine assets to assist in securing the Transit Zone.<sup>398</sup> Both components “coordinate[] closely with other federal agencies and countries within the region to disrupt and deter the flow of illegal drugs.”<sup>399</sup>

The Coast Guard “accounts for nearly 56 [percent] of all U.S. government seizures of cocaine each year.”<sup>400</sup> In FY2014, the Coast Guard seized 93 vessels, 108,534 pounds of marijuana, and 198,636 pounds of cocaine.<sup>401</sup> Already in FY2015, the Coast Guard has seized 72 vessels, 31,224 pounds of marijuana, and 147,268 pounds of cocaine.<sup>402</sup>

In a previous hearing, the Committee heard former drug czar Barry McCaffrey estimate that the overall interdiction rate of drugs coming across our land borders is somewhere between 5 to 10 percent.<sup>403</sup> Similarly, the Coast Guard is only able to target approximately 30 percent of the illegal drugs it is aware of, resulting in the interdiction of only 11 to 18 percent of the maritime

<sup>396</sup> Table 3 apprehensions at the southwest border, northern border, and maritime border represent those recorded by the U.S. Border Patrol. See UNITED STATES BORDER PATROL TOTAL ILLEGAL ALIEN APPREHENSIONS BY MONTH, [http://www.cbp.gov/sites/default/files/documents/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2014\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2014_0.pdf). Since the U.S. Coast Guard also interdicts a significant number of migrants at our maritime border, a full representation of maritime apprehensions adds these two data points together. See U.S. COAST GUARD MARITIME MIGRANT INTERDICTIONS, <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/currentstats.asp>.

<sup>397</sup> THE WHITE HOUSE, TRANSIT ZONE OPERATIONS, <https://www.whitehouse.gov/ondcp/transit-zone-operations>.

<sup>398</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>399</sup> U.S. COAST GUARD, DRUG INTERDICTION, [http://www.uscg.mil/hq/cg5/cg531/drug\\_interdiction.asp](http://www.uscg.mil/hq/cg5/cg531/drug_interdiction.asp).

<sup>400</sup> U.S. COAST GUARD, ENFORCEMENT BRANCH, <http://www.uscg.mil/d8/enforcement/>.

<sup>401</sup> U.S. COAST GUARD, COAST GUARD DRUG REMOVAL STATISTICS, <http://www.uscg.mil/hq/cg5/cg531/Drugs/stats.asp> (updated as of April 30, 2015).

<sup>402</sup> *Id.*

<sup>403</sup> *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015); see also *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

known drug flow toward the U.S.<sup>404</sup> However, when it does set itself on a known target, the Coast Guard is 85 to 90 percent successful in completing the interdiction.<sup>405</sup>

As for CBP, in FY2014, “OAM’s P-3 aircraft flew 6,000 hours of counter-narcotics missions in the drug Transit Zone between South America and the U.S.”<sup>406</sup> These missions resulted in the seizure or disruption of “126,489 pounds of cocaine with a value of nearly \$9.4 billion.”<sup>407</sup>

### *The Atlantic Coast and the Caribbean*

The Atlantic coastline and the Gulf of Mexico make up a large and important part of America’s maritime borders. Due to this coast’s proximity to the Caribbean and many of the other small island nations, many migrants attempt to enter the U.S. through maritime routes. In addition, recent pressures in Central and South America have shifted some of the drug trade to the Caribbean, increasing the need for border protection in these regions.

Most migrants attempting to enter the U.S. illegally via maritime routes come from Cuba, the Dominican Republic, and Haiti.<sup>408</sup> One factor that has led to the large number of apprehensions along the maritime border is the United States’ “wet-foot, dry-foot” policy, which allows any Cuban reaching U.S. land to stay and pursue citizenship, while those caught at sea are returned to Cuba.<sup>409</sup> This policy, formally known as the U.S.-Cuba Immigration Accord, was written into law in 1995 as an amendment to the 1966 Cuban Adjustment Act.<sup>410</sup> Without this policy, Cuban migrants would be processed similar to other foreign nationals caught illegally in the country and would be subject to deportation.<sup>411</sup>

Cubans seeking to make it to America use many different methods, including hiring organized smugglers, homemade boats, or even clinging to inner tubes and hoping to float to the U.S. mainland.<sup>412</sup> In the maritime setting, these migrants travel from Cuba across the Florida Straits, seeking to reach South Florida.<sup>413</sup> With the recent shift in the relationship between Cuba and the U.S., many Cubans are attempting to migrate to America, fearing that America will soon change

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<sup>404</sup> U.S. COAST GUARD, MARITIME BORDER SECURITY (2015) (on file with Majority Staff); *Western Hemisphere Drug Interdiction Efforts: Hearing Before the House SubComm. on Coast Guard and Marine Transportation of the Comm. on Transportation and Infrastructure*, 114th Cong. (2015).

<sup>405</sup> *Id.*

<sup>406</sup> U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF AIR AND MARINE FACT SHEET, <https://www.cbp.gov/sites/default/files/documents/oam-factsheet-20150701.pdf>.

<sup>407</sup> *Id.*

<sup>408</sup> U.S. COAST GUARD, ALIEN MIGRANT INTERDICTION, <http://www.uscg.mil/hq/cg5/cg531/AMIO/amio.asp>.

<sup>409</sup> Jefferson Morley, *U.S.-Cuba Migration Policy*, WASH POST (July 27, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/27/AR2007072701493.html>.

<sup>410</sup> Pub. Law No. 89-732 (1996).

<sup>411</sup> *Cuban Migrants Continue Deadly Hide-and-Seek*, REUTERS (June 12, 2015), <http://www.voanews.com/content/cuban-migrants-continue-deadly-hide-and-seek/2819281.html>.

<sup>412</sup> Frances Robles, *In Rickety Boats, Cuban Migrants Again Flee to U.S.*, NY TIMES (Oct. 9, 2014), <http://www.nytimes.com/2014/10/10/us/sharp-rise-in-cuban-migration-stirs-worries-of-a-mass-exodus.html>.

<sup>413</sup> *Id.*

its wet-foot, dry-foot policy.<sup>414</sup> Prior to the President’s announcement, from Dec. 1-16, 2014, the Coast Guard interdicted 80 Cubans.<sup>415</sup> After the President’s announcement, from Dec. 17-31, 2014 the Coast Guard interdicted 419 Cubans—a 423 percent increase.<sup>416</sup> The Coast Guard deployed direct repatriation and immediately began sending those interdicted in the waterways back to Cuba.<sup>417</sup> As a result, Cuban interdictions have returned to normal levels in the maritime setting.<sup>418</sup>

While Cuban migration has leveled off in the maritime setting where direct repatriation may be employed, it has drastically increased at U.S. POEs, where Cubans are able to gain admittance and remain in the U.S. In fact, on a recent Congressional Delegation (CODEL) to Central America, Members on the Committee heard that 50 Cubans a day are caught transiting Honduras on their way to the U.S. and approximately 90 percent of the Special Interest Aliens caught in Honduras are Cuban nationals.<sup>419</sup>

The Dominican Republic has also “historically been a major source country for undocumented migrants attempting to enter the U.S.”<sup>420</sup> These immigrants enter Puerto Rico by crossing the Mona Passage, which is a “body of water between the Dominican Republic and Puerto Rico.”<sup>421</sup> They are then smuggled to the U.S. by gangs in Yolas, which are homemade fishing vessels.<sup>422</sup>

In 2010, following the earthquake in Haiti, the U.S. ceased its policies of expedited removal of Haitians illegally arriving in the U.S.<sup>423</sup> By 2013, migrant smuggling organizations in the Dominican Republic caught wind of this change in U.S. policy and began taking Haitian immigrants to Puerto Rico via the Mona Passage.<sup>424</sup> In fact, by the end of FY2013, 1,760 Haitian migrants attempted to enter the U.S. through the Mona Passage, as compared to 39 Haitians in FY2012.<sup>425</sup> In FY2014, 1,994 Haitian migrants made the same dangerous attempt in smuggling ventures, directly resulting in the death of 29 Haitians migrants at sea.<sup>426</sup> On October 6, 2014, DHS resumed expedited removal for non-criminal Haitian migrants who landed on U.S. Territories in Puerto Rico and the islands of the Mona Passage.<sup>427</sup> After the first removal,

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<sup>414</sup> *Cuban Migrants Continue Deadly Hide-and-Seek*, REUTERS (June 12, 2015), <http://www.voanews.com/content/cuban-migrants-continue-deadly-hide-and-seek/2819281.html>.

<sup>415</sup> U.S. COAST GUARD, MARITIME BORDER SECURITY (2015) (on file with Majority Staff).

<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> Observations during Johnson-Carper CODEL to Central America (Oct. 2015).

<sup>420</sup> U.S. COAST GUARD, ALIEN MIGRANT INTERDICTION, <http://www.uscg.mil/hq/cg5/cg531/AMIO/amio.asp>.

<sup>421</sup> *Id.*

<sup>422</sup> *Id.*

<sup>423</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>424</sup> *Surge of Migrants Being Smuggled to Puerto Rico*, CBS NEWS (July 26, 2014),

<http://www.cbsnews.com/news/surge-of-migrants-being-smuggled-to-united-states-through-puerto-rico/>.

<sup>425</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>426</sup> *Id.*

<sup>427</sup> *Id.*

Haitian maritime flow in the Mona Passage decreased by 80 percent.<sup>428</sup> In the first three quarters of FY2015, only 277 Haitian migrants attempted to enter the U.S. via the Mona Passage, as compared to 1,430 for the same period in FY2014.<sup>429</sup>

The Coast Guard has recognized that “[t]he Caribbean region is home to some of the most indebted nations in the world” and the “[l]ack of economic resources in the region continues to be a major factor in the failure to prevent contraband from entering the international supply chain.”<sup>430</sup> This “lack of state control and jurisdictional coordination challenges over vast areas of maritime borders” creates opportunities for TCOs “to smuggle and traffic drugs, weapons, and people.”<sup>431</sup> In fact, as early as 2012, Members of the U.S. Senate recognized that there was the potential for an increase in drug trafficking in the Caribbean due to increased security efforts in Mexico, Central America, and the Eastern Pacific.<sup>432</sup>

In 2011, approximately four percent of cocaine brought to the U.S. transited through the Caribbean.<sup>433</sup> This increased to 16 percent by the end of 2013.<sup>434</sup> TCOs such as Mexico’s Sinaloa Cartel or the Italian ‘Ndrangheta are becoming more entrenched in the Caribbean as drug flow in the region increases.<sup>435</sup> These groups work with local counterparts, who are often paid a percentage of the shipment or in commodities such as guns.<sup>436</sup>

### *The Pacific Coast*

The sheer magnitude of the Eastern Pacific Ocean, equivalent in size to the continental U.S., creates many challenges for maritime domain awareness and interdictions.<sup>437</sup> Migrants smuggled via maritime routes are typically found 60 to 70 miles up the coast of California.<sup>438</sup> Smugglers have no regard for the safety of these migrants. For example, when smugglers discovered OAM could figure out the number of migrants who had absconded based on counting the life vests deserted in the water, smugglers ceased distributing life vests to migrants—many of whom cannot swim.<sup>439</sup> Additionally, smugglers may require migrants to hug the engines of their panga boats, preventing OAM from shooting the engine and safely stopping the boat.<sup>440</sup>

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<sup>428</sup> *Id.*

<sup>429</sup> *Id.*

<sup>430</sup> UNITED STATES COAST GUARD, WESTERN HEMISPHERE STRATEGY (2014), [http://www.uscg.mil/seniorleadership/docs/uscg\\_whem\\_2014.pdf](http://www.uscg.mil/seniorleadership/docs/uscg_whem_2014.pdf) (citing C. Ward, *Regional Threats: Security Capacity Imperatives in the Caribbean*, Joint Force Quarterly, 2010, 26-31).

<sup>431</sup> *Id.*

<sup>432</sup> *Id.* (citing United States Senate Caucus on International Narcotics Control, *Preventing a Security Crisis in the Caribbean*, (2012), <http://www.drugcaucus.senate.gov/sites/default/files/caribbean%20drug%20report.pdf>).

<sup>433</sup> *Full Circle: An Old Route Regains Popularity with Drugs Gangs*, THE ECONOMIST (May 24, 2014), <http://www.economist.com/news/americas/21602680-old-route-regains-popularity-drugs-gangs-full-circle>.

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> *Id.*

<sup>437</sup> See *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>438</sup> Data provided to Majority Staff during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

As another example, on June 18, 2015, Marine Interdiction Agents from OAM encountered a vessel off the California Coast near Encinitas.<sup>441</sup> Agents hailed the vessel and ordered the pilot to yield, but the vessel failed to comply, even after warning shots were fired.<sup>442</sup> After the failure to comply, the marine interceptor vessel and the smuggling vessel collided, resulting in the capsizing of the smuggling vessel.<sup>443</sup> Twenty Mexican migrants were thrown into the water, and one woman was later pronounced dead at a local hospital.<sup>444</sup> All 20 people were suspected of attempting to enter the U.S. illegally.<sup>445</sup>

The vast majority of drugs enter the U.S. through the U.S.-Mexico land border; however, some cartels have started using panga boats to move drugs across the U.S. maritime border.<sup>446</sup> Mexico's Sinaloa Cartel smuggles marijuana on 50-foot vessels, which are loaded with cargo as far south as the port of Mazatlán, and then smuggled up the Pacific coast deep into California.<sup>447</sup> Smugglers using longer-range boats and semi-submersible vessels have also begun taking advantage of the remote coasts of Northern California, and have landed as far north as Santa Cruz, 350 nautical miles north of San Diego.<sup>448</sup> In July 2015, the Coast Guard in Northern California seized six tons of cocaine from a semi-submersible vessel in the Pacific Ocean, to date, the largest bust in Coast Guard history.<sup>449</sup>

Earlier this year, the Oregon HIDTA released a report, which describes the threat that Oregon, as a Pacific Coast state, faces from maritime drug trafficking.<sup>450</sup> The HIDTA report concludes that there is a lack of intelligence when it comes to the use of maritime smuggling, and that the threat posed by maritime smuggling is “undoubtedly larger than law enforcement is aware.”<sup>451</sup> Washington State also faces unique maritime threats, with small U.S. islands located on the open waters in close proximity to Canada. If a Canadian vessel is able to penetrate these islands, those on board can catch a ferry to the mainland with very little interaction with U.S. law enforcement.<sup>452</sup>

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<sup>441</sup> Christian De La Rosa, *Woman Dies after CBP, Suspected Smuggling Boats Collide*, FOX 5 SAN DIEGO (June 18, 2015), <http://fox5sandiego.com/2015/06/18/woman-dies-after-cbp-suspected-smuggling-boats-collide/>.

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> *Western Hemisphere Drug Interdiction Efforts: Hearing Before the House SubComm. on Coast Guard and Marine Transportation of the Comm. on Transportation and Infrastructure*, 114th Cong. (2015).

<sup>447</sup> *Drug Smugglers Take to the High Seas to Avoid Border Patrol*, NY POST (Feb. 24, 2014), <http://nypost.com/2014/02/24/drug-smugglers-take-to-the-high-seas-to-avoid-border-patrol/>.

<sup>448</sup> *Id.*

<sup>449</sup> Lisa Fernandez, *Record Bust: Coast Guard Seizes 5 Tons of Cocaine Valued at \$181 M*, NBC SOUTHERN CALIFORNIA (Aug. 6, 2015), <http://www.nbclosangeles.com/news/california/US-Coast-Guard-in-Alameda-Seizes-6-Tons-12000-Pounds-of-Cocaine-Valued-at-181-Million-Largest-Bust-in-History--320897421.html>.

<sup>450</sup> OREGON HIGH INTENSITY DRUG TRAFFICKING AREA, PROGRAM YEAR 2016 THREAT ASSESSMENT AND COUNTER-DRUG STRATEGY (2015).

<sup>451</sup> *Id.*

<sup>452</sup> Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

## *The Great Lakes*

There are three Border Patrol sectors that encompass the Great Lakes: Grand Forks, Detroit, and Buffalo. These sectors have unique challenges regarding illegal migration and drug trafficking. For example, Canadian smugglers often use smaller airports along the Great Lakes for quick drop-offs before turning around and heading back to Canada, making it difficult for CBP to apprehend these smugglers.<sup>453</sup> Additionally, Mexican-based TCOs now operate in the Great Lakes region, including the Sinaloa Cartel, Los Zetas, and the Tijuana Cartel.<sup>454</sup>

In 2012, DHS released its Northern Border Strategy, which in part focused on the Great Lakes.<sup>455</sup> The report states that “as the shared internal waters of sovereign nations, the Great Lakes provide equal opportunity access to both countries.”<sup>456</sup> The report noted that “[t]he vast maritime border with Canada and the open access that small vessels have in the Great Lakes provide an additional conduit for potential exploitation.”<sup>457</sup> In order to address this challenge, DHS has implemented the Small Vessel Security Strategy (SVSS), which develops and leverages a partnership with the small vessel community, as well as the public and private sectors.<sup>458</sup>

The ShipRider program is also integral to enforcement of the Great Lakes borders.<sup>459</sup> The U.S.-Canada ShipRider program is a “cooperative approach to combating cross border crime” on U.S.-Canada shared waters.<sup>460</sup> The program “involves vessels jointly crewed by specially trained and designated Canadian and U.S. law enforcement officers who are authorized to enforce the law on both sides of the international boundary line.”<sup>461</sup> This cooperative effort allows law enforcement officials to secure the border “from threats to national security, as well as prevent cross-border smuggling and trafficking.”<sup>462</sup>

## *U.S. Ports*

America’s extensive port system is one of its most valuable assets, but also one that faces numerous threats and weaknesses. From 2004 to 2013, American ports witnessed a 128 percent

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<sup>453</sup> *Drug Bust in Michigan’s Thumb Exposes Use of Tiny Airports by Canadian Smugglers*, AP (May 15, 2011), <http://www.toledoblade.com/local/2011/05/15/Drug-bust-in-Michigans-Thumb-exposes-use-of-tiny-airports-by-Canadian-smugglers.html>.

<sup>454</sup> U.S. DEP’T OF JUSTICE NATIONAL DRUG INTELLIGENCE CENTER, NATIONAL DRUG THREAT ASSESSMENT 2011 (2011), <http://www.justice.gov/archive/ndic/pubs44/44849/44849p.pdf>.

<sup>455</sup> U.S. DEP’T OF HOMELAND SECURITY, NORTHERN BORDER STRATEGY (2012).

<sup>456</sup> *Id.*

<sup>457</sup> *Id.* at 12 (highlighting the challenges of deciphering between bad actors and the commercial trade, recreational boaters, ice fishermen, and snowmobilers that also utilize the Great Lakes).

<sup>458</sup> U.S. DEP’T OF HOMELAND SECURITY, SMALL VESSEL SECURITY STRATEGY (2008), <https://www.dhs.gov/xlibrary/assets/small-vessel-security-strategy.pdf>.

<sup>459</sup> U.S. DEP’T OF HOMELAND SECURITY, FACT SHEET: BEYOND THE BORDER: UNITED-STATES – CANADA LAW ENFORCEMENT COOPERATION (2011), <http://www.dhs.gov/news/2011/12/06/fact-sheet-beyond-border-united-states-%E2%80%93-canada-law-enforcement-cooperation>.

<sup>460</sup> ROYAL CANADIAN MOUNTED POLICE, CANADA-U.S. SHIPRIDER, <http://www.rcmp-grc.gc.ca/ibet-eipf/shiprider-eng.htm>.

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

growth rate, processing the second-most cargo of any port system in the world, second only to China.<sup>463</sup>

In an attempt to improve security at America's ports, the Security and Accountability for Every Port Act (SAFE Port Act) was passed by Congress in 2006 and signed into law by President George W. Bush.<sup>464</sup> The Act codifies a number of programs to improve the security of U.S. ports.<sup>465</sup> These programs include additional requirements for maritime facilities, the establishment of Interagency Operations Centers, a Port Security Grant Program, a Container Security Initiative (CSI), and a Customs Trade Partnership against Terrorism.<sup>466</sup> The Act also created the Domestic Nuclear Detection Office (DNDO) within DHS, and appropriated funds toward the Integrated Deepwater System Program, a long-term Coast Guard modernization program.<sup>467</sup>

A 2007 GAO report on the SAFE Port Act found that federal agencies have improved overall port security in numerous ways.<sup>468</sup> For example, GAO noted that the Act "increased requirements for the scope and frequency" of Coast Guard inspection of ports, leading to a doubling in the frequency of both announced and unannounced inspections.<sup>469</sup> However, GAO also found that "agencies face resource constraints and other challenges" in meeting the Act's requirements.<sup>470</sup>

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<sup>463</sup> INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS, WORLD CONTAINER TRAFFIC DATA 2014, <http://www.iaphworldports.org/LinkClick.aspx?fileticket=A7oMk7mR0a4%3d&tabid=4879>.

<sup>464</sup> Pub. L. No. 109-347 (2006).

<sup>465</sup> *Id.*

<sup>466</sup> *Id.* Under CSI, CBP stations U.S. officers in 29 countries to work with host country counterparts to identify and inspect potentially high-risk shipments before they reach the U.S. Today, more than 80 percent of maritime containerized cargo destined to the U.S. originates in or transits through a CSI port and is screened prior to being laden aboard a U.S. bound vessel.

<sup>467</sup> *Id.*

<sup>468</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-08-126T, THE SAFE PORT ACT: STATUS AND IMPLEMENTATION ONE YEAR LATER (2007).

<sup>469</sup> *Id.* at 6.

<sup>470</sup> *Id.* at *passim*.

## Part IV: U.S. Ports of Entry

The only lawful way to enter the U.S. is through an air, land, or sea port of entry. Upon reaching a POE, CBP OFO officers inspect passengers and cargo to ensure threats do not enter the U.S.<sup>471</sup> Working with other countries, the U.S. has established trusted traveler programs to expedite the processing of low-risk passengers and cargo.<sup>472</sup> For passengers, these programs include SENTRI<sup>473</sup> on the southwest border, NEXUS<sup>474</sup> on the northern border and Global Entry<sup>475</sup> at airports. For cargo, FAST is available at 17 POEs on the northern border and 17 POEs on the southwest border.<sup>476</sup>

Despite these programs, significant staffing is needed to process heavy volumes of traffic to ensure commerce is not impeded. Therefore, manpower remains a concern across POEs. In FY2013 Congress appropriated to CBP additional funding to hire 2,000 officers.<sup>477</sup> However, due to attrition and the time it takes to bring on new officers, CBP has only realized a net gain of approximately 818 officers.<sup>478</sup>

While discussions of U.S. land and sea POEs are examined above, air POEs located across our country are also highly active entry points into the U.S.

### Visa Waiver Program

In 1986, Congress established the Visa Waiver Program (VWP) as a pilot program under the Immigration Reform and Control Act.<sup>479</sup> The main objective of the program was to facilitate tourism and short-term business travel with allies.<sup>480</sup> Prior to VWP, foreign nationals traveling to the U.S. for a short-term visit needed a nonimmigrant “B” visa, requiring an in-person interview at a U.S. consulate or embassy.<sup>481</sup> On October 30, 2000, with bipartisan support, Congress made permanent VWP in the Visa Waiver Permanent Program Act.<sup>482</sup>

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<sup>471</sup> U.S. CUSTOMS AND BORDER PROTECTION, OPERATIONS, <http://www.cbp.gov/border-security/ports-entry/operations>.

<sup>472</sup> U.S. CUSTOMS AND BORDER PROTECTION, TRUSTED TRAVELER PROGRAMS, <https://www.cbp.gov/travel/trusted-traveler-programs>.

<sup>473</sup> U.S. CUSTOMS AND BORDER PROTECTION, SECURED ELECTRONIC NETWORK FOR TRAVELER’S RAPID INSPECTION (SENTRI), [https://help.cbp.gov/app/answers/detail/a\\_id/184/~secured-electronic-network-for-travelers-rapid-inspection-\(sentri\)](https://help.cbp.gov/app/answers/detail/a_id/184/~secured-electronic-network-for-travelers-rapid-inspection-(sentri)).

<sup>474</sup> U.S. CUSTOMS AND BORDER PROTECTION, NEXUS PROGRAM DESCRIPTION, <http://www.cbp.gov/travel/trusted-traveler-programs/nexus/nexus-overview>.

<sup>475</sup> U.S. CUSTOMS AND BORDER PROTECTION, GLOBAL ENTRY, <http://www.cbp.gov/travel/trusted-traveler-programs/global-entry>.

<sup>476</sup> U.S. CUSTOMS AND BORDER PROTECTION, FREE AND SECURE TRADE PROGRAM (FAST) FACT SHEET, [http://www.cbp.gov/sites/default/files/documents/of0\\_fast\\_final\\_file\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/of0_fast_final_file_3.pdf).

<sup>477</sup> Pub. L. No. 133-76.

<sup>478</sup> Data Provided to Majority Staff by the U.S. Customs and Border Protection (June 2, 2015).

<sup>479</sup> Pub. L. No. 99-603 (1986).

<sup>480</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-12-599T, ADDITIONAL ACTIONS NEEDED TO MITIGATE RISKS AND STRENGTHEN OVERSTAY ENFORCEMENT 2 (2012).

<sup>481</sup> U.S. CUSTOMS AND BORDER PROTECTION, VISA WAIVER PROGRAM REQUIREMENTS, <http://www.dhs.gov/visa-waiver-program-requirements>

<sup>482</sup> Pub. L. No. 106-396 (2000).

The terrorist attacks of September 11, 2001 and the plot by Richard Reid, also known as the Shoe bomber, in December 2001 motivated Congress to modernize VWP's security requirements.<sup>483</sup> In 2007, Congress passed the Implementing the 9/11 Commission Recommendations Act requiring the Director of National Intelligence to produce intelligence reports to assess the threats from VWP countries and more reporting on lost or stolen passports.<sup>484</sup> As part of this modernization, on January 12, 2009, DHS deployed the Electronic System for Travel Authorization (ESTA), an online portal to pre-approve VWP travelers for travel to the U.S.<sup>485</sup>

At a hearing, the Committee heard that ESTA “is an example of how U.S agencies effectively use information collected from visitors in advance of travel to prevent terrorists and serious criminals from boarding a flight headed to the United States.”<sup>486</sup> A witness from the State Department explained that passengers from VWP countries must receive ESTA approval before traveling, which:

“involves filling out an online questionnaire with biographic information and paying an administrative fee, after which, similar to a visa application, ESTA screens against interagency databases for watchlisted individuals. If there is a positive match, DHS may deny the authorization, meaning the individual cannot utilize the VWP to board a U.S.-bound air or sea carrier.”<sup>487</sup>

If approved, ESTA authorization is valid for multiple trips to the U.S. up to 90 days in duration for a period of two years.<sup>488</sup> Once a traveler arrives to the U.S., biometric data is collected by CBP at the port of entry, prior to admission into the country.

VWP countries are required to sign agreements with the U.S. to share information related to terrorists and criminals.<sup>489</sup> The information sharing agreements initiated under VWP increase the understanding of global security threats as well as the unique threat profiles of both VWP members and at times, non-VWP members.<sup>490</sup> Witnesses at a Committee hearing testified that “[w]ithout the leverage that VWP provides, the U.S government likely would not receive the same amount and quality of information.”<sup>491</sup>

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<sup>483</sup> Pub. L. No. 107-56 (2001).

<sup>484</sup> Pub. L. No. 110-53 (2007).

<sup>485</sup> U.S. CUSTOMS AND BORDER PROTECTION, ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION, <https://esta.cbp.dhs.gov/esta/>.

<sup>486</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-12-599T, ADDITIONAL ACTIONS NEEDED TO MITIGATE RISKS AND STRENGTHEN OVERSTAY ENFORCEMENT 2 (2012).

<sup>487</sup> *Id.*

<sup>488</sup> U.S. CUSTOMS AND BORDER PROTECTION, ESTA – LENGTH OF APPROVAL, [https://help.cbp.gov/app/answers/detail/a\\_id/1126/~/esta---length-of-approval](https://help.cbp.gov/app/answers/detail/a_id/1126/~/esta---length-of-approval).

<sup>489</sup> See *Visa Waiver Program: Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement: Hearing Before the S. SubComm. on Immigration, Refugees, and Border Security of the Comm. on the Judiciary*, 112th Cong. (2012) (Testimony of Rebecca Gambler and Michael J. Courts, Government Accountability Office).

<sup>490</sup> *Id.*

<sup>491</sup> *Visa Waiver Program: Implications for U.S. National Security: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Mark Koumans & Maureen Dugan, U.S. Department of Homeland Security).

Under the 2007 Act, DHS and its VWP partners are required to check passports against INTERPOL's Lost or Stolen Documents database.<sup>492</sup> In November 2014, DHS added data fields to the ESTA application.<sup>493</sup> These upgrades have arguably improved the security of the travel ecosystem by encouraging common security standards for travel documents.<sup>494</sup>

However, in a 2011 report, GAO stated that in 2010, two percent, or 364,000 VWP visitors, boarded airplanes and arrived in the U.S. without proper ESTA clearance.<sup>495</sup> Given that ESTA is the security backbone to screen VWP travelers for security risks, this is a significant vulnerability.<sup>496</sup> DHS now notes that it has implemented new safeguards, including re-vetting ESTA applications every 24 hours.<sup>497</sup>

Moreover, in the wake of the terror attacks in Paris, Brussels, and Copenhagen, the growing number of Western foreign fighters traveling to Syria and Iraq, and the surge of Syrian refugees entering Europe, there have been calls for oversight of VWP in the context of terrorist travel.<sup>498</sup> The visa-less nature of VWP raises concerns because terrorists not yet flagged by U.S. or foreign intelligence could enter or re-enter the U.S. within their two-year ESTA period with little interactions with U.S. authorities.<sup>499</sup>

On August 6, 2015, Secretary Johnson announced the Department's intention to implement additional security requirements to enhance VWP.<sup>500</sup> As part of the new directive, foreign nationals from the 38 existing member countries<sup>501</sup> and new candidate countries will be required to use an e-passport in order to visit the U.S. under the visa free program, which are harder to tamper with as it contains the electronic photograph, full name, and birthday of the foreign

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<sup>492</sup> Pub. L. No. 110-53 (2007).

<sup>493</sup> The data fields include additional passport data, contact information, other potential names or alias, parents' name(s), and employment information. U.S. CUSTOMS AND BORDER PROTECTION, STRENGTHENING SECURITY OF THE VWP THROUGH ENHANCEMENTS OF ESTA, <http://www.cbp.gov/travel/international-visitors/esta/enhancements-to-esta-faqs>; U.S. DEP'T OF HOMELAND SECURITY, PRIVACY IMPACT ASSESSMENT UPDATE FOR THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) 2 (2014), <http://www.dhs.gov/sites/default/files/publications/privacy-pia-update-cbp-esta-11032014.pdf>.

<sup>494</sup> Letter to the Honorable Ron Johnson, Chairman, Senate Homeland Security & Governmental Affairs, from the Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security (Mar. 20, 2015).

<sup>495</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-11-335, DHS HAS IMPLEMENTED THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION, BUT FURTHER STEPS NEEDED TO ADDRESS POTENTIAL PROGRAM RISKS 18 (2011).

<sup>496</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-12-599, ADDITIONAL ACTIONS NEEDED TO MITIGATE RISKS AND STRENGTHEN OVERSTAY ENFORCEMENT 5 (2012).

<sup>497</sup> Data provided to Majority Staff by the U.S. Department of Homeland Security (Aug. 28, 2015).

<sup>498</sup> Brian Naylor, *Critics Worry Visa Waiver Could Allow Foreign Fighters To Slip in*, NPR (Feb. 2, 2015), <http://www.npr.org/2015/02/02/383214948/critics-point-out-weakness-of-visa-waiver-program>;

<sup>499</sup> Letter from the Honorable Ron Johnson, Kelly Ayotte, and Thomas Carper, to the Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security (Mar. 2, 2015).

<sup>500</sup> *Statement by Secretary Jeh C. Johnson on Intention to Implement Security Enhancements to the Visa Waiver Program*, U.S. DEPARTMENT OF HOMELAND SECURITY (Aug. 6, 2015), <http://www.dhs.gov/news/2015/08/06/statement-secretary-jeh-c-johnson-intention-implement-security-enhancements-visa>.

<sup>501</sup> The countries the U.S. currently has VWP agreements with are: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, The Netherlands, New Zealand, Norway, Portugal, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom.

national.<sup>502</sup> In addition, VWP member countries will have to use the INTERPOL Lost and Stolen Documents database to screen all travelers crossing their borders and allow more U.S. federal air marshals on flights departing to the United States.<sup>503</sup>

Finally, DHS estimates that approximately five million of the current 11 million illegal immigrants in the U.S. are visa overstays.<sup>504</sup> While DHS claims that the overstay rate of VWP countries is collectively less than one percent, the Department has not released data on the individual overstay rate of VWP countries, despite repeated requests for such information by Congress.<sup>505</sup> In its 2011 report, GAO indicated that in 8,200 of 34,700 cases, or roughly one-quarter of VWP cases, ICE's Counterterrorism and Criminal Exploitation Unit (CTCEU) could not locate the suspected overstay.<sup>506</sup> Based on this percentage, the Majority Staff believes it fair to conclude that today, close to a million passengers who entered the U.S. through VWP cannot be found.

### Refugee Resettlement

Each year the President, after consultation with Congress, sets an annual ceiling for the number of refugees the U.S. will admit.<sup>507</sup> For the past several years, the ceiling has been set at 70,000 refugees.<sup>508</sup> The President recently announced plans to raise the refugee ceiling to 85,000 for FY2016 and to 100,000 for FY2017.<sup>509</sup> Moreover, the President has announced that of the 85,000 refugees that will be admitted into the U.S. in FY2016, 10,000 will come from Syria.<sup>510</sup> Due to vetting, interviews, and required screenings, it takes on average between 18 and 24 months from the time a refugee is referred to the U.S. to their admittance into the country.<sup>511</sup>

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<sup>502</sup> *Id.* This means that if you change the picture of a lost or stolen passport, it will not match with official biographic records.

<sup>503</sup> Michael S. Schmidt, *Tougher Standards Set for U.S. Visa Waivers, Citing Militant Threat*, NY TIMES (Aug. 6, 2015), [http://www.nytimes.com/2015/08/07/world/middleeast/us-visa-waiver-program-europe-radicalization-isis-syria-iraq.html?\\_r=0](http://www.nytimes.com/2015/08/07/world/middleeast/us-visa-waiver-program-europe-radicalization-isis-syria-iraq.html?_r=0). Changes such as these have been recommended to DHS by key members of Congress. See Letter from Senators Ron Johnson, Kelly Ayotte, and Thomas Carper, to the Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security (Mar. 2, 2015).

<sup>504</sup> *FACT SHEET: Modes of Entry for the Unauthorized Migrant Population*, PEW RESEARCH CENTER (May 22, 2006), <http://www.pewhispanic.org/2006/05/22/modes-of-entry-for-the-unauthorized-migrant-population/>; see also Alison Siskin, CONG. RESEARCH SERV., RL 32221, VISA WAIVER PROGRAM (2014).

<sup>505</sup> See, generally, GOV'T ACCOUNTABILITY OFFICE, GAO-08-967, VISA WAIVER PROGRAM: ACTIONS ARE NEEDED TO IMPROVE MANAGEMENT OF THE EXPANSION PROCESS, AND TO ASSESS AND MITIGATE PROGRAM RISKS (2008).

<sup>506</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-11-335, DHS HAS IMPLEMENTED THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION, BUT FURTHER STEPS NEEDED TO ADDRESS POTENTIAL PROGRAM RISKS (2011).

<sup>507</sup> Andorra Bruno, CONG. RESEARCH SERV., RL 31269, REFUGEE ADMISSIONS AND RESETTLEMENT POLICY 1 (2015).

<sup>508</sup> *Id.* at 2.

<sup>509</sup> U.S. Dep't of State, U.S. Dep't of Homeland Security, U.S. Dep't of Health and Human Services, Proposed Refugee Admissions for Fiscal Year 2016 Report to Congress Submitted on Behalf of the President of the United States to the Committees on the Judiciary United States Senate and United States House of Representatives (2015).

<sup>510</sup> *White House: US Preparing to Accept at Least 10,000 Syrian Refugees in FY2016*, AP (Sept. 10, 2015), <http://bigstory.ap.org/article/db01f145696043bc8a264c47319bfd19/white-house-us-preparing-accept-least-10000-syrian-refugees>.

<sup>511</sup> *The Impact of ISIS on the Homeland and Refugee Resettlement: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Anne C. Richard, Assistant Secretary for Population, Refugees, and Migration, U.S. Department of State).

Various federal agencies are involved in the U.S. Refugee Resettlement Program. Put simply, the U.S. Department of State is charged with processing the refugees while overseas, the U.S. Department of Homeland Security determines eligibility for admission into the country, and the U.S. Department of Health and Human Services assists in the resettlement, placement, and support of the refugees.

ISIS's violence in Syria and Iraq has created a large population of vulnerable, displaced Syrian and Iraqi citizens. Over 4 million registered Syrian refugees have left the conflict region.<sup>512</sup> As of August 2015, 121,535 Syrians have arrived in Europe, seeking asylum,<sup>513</sup> while 1,682 Syrians were admitted to the U.S. as refugees in FY2015.<sup>514</sup>

According to the State Department, refugees go through a rigorous screening process in order to be granted access to the United States,

All refugees undergo multiple security checks in order to be approved for U.S. resettlement. Refugees are subject to the highest level of security checks of any category of traveler to the United States. The screening includes involvement of the National Counterterrorism Center (NCTC); the FBI's Terrorist Screening Center; DHS; the Department of Defense; and other agencies. Most of the details of the security checks are classified. At the same time, refugees complete a health screening.<sup>515</sup>

At a Committee hearing, witnesses from both the State Department and DHS stated that the vetting for refugees, particularly Syrian refugees, was more rigorous than for any other migrant seeking to legally come to the country.<sup>516</sup> However, in February, FBI Assistant Director Michael Steinbach told the House Homeland Security Committee that he was concerned about the risks associated with bringing in Syrian refugees, due to our lack of on the ground collection and thus incomplete databases.<sup>517</sup> FBI Director Comey echoed this concern during HSGAC's annual "Threats to the Homeland" hearing in October, admitting that the U.S. faces deficits when it

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<sup>512</sup> The UN Refugee Agency's Syria Regional Refugee Response Inter-agency Information Sharing Portal, <http://data.unhcr.org/syrianrefugees/regional.php>.

<sup>513</sup> Drew Desilver, *Europe's Asylum Seekers: Who They Are, Where They're Going, and Their Chances of Staying*, PEW RESEARCH CENTER (Sept. 30, 2015), <http://www.pewresearch.org/fact-tank/2015/09/30/europes-asylum-seekers-who-they-are-where-theyre-going-and-their-chances-of-staying/>.

<sup>514</sup> Haeyoun Park, *Paris Attacks Intensify Debate Over How Many Syrian Refugees to Allow into the U.S.*, N.Y. TIMES (Nov. 16, 2015), [http://www.nytimes.com/interactive/2015/10/21/us/where-syrian-refugees-are-in-the-united-states.html?\\_r=0](http://www.nytimes.com/interactive/2015/10/21/us/where-syrian-refugees-are-in-the-united-states.html?_r=0).

<sup>515</sup> U.S. Dep't of State, *Background Briefing on the Mechanics of the United States Refugee Admissions Program*, (Sept. 11, 2015) <http://www.state.gov/r/pa/prs/ps/2015/09/246843.htm>.

<sup>516</sup> The Impact of ISIS on the Homeland and Refugee Resettlement: *Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Anne C. Richard, Assistant Secretary for Population, Refugees, and Migration, U.S. Department of State and Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security).

<sup>517</sup> *Countering Violent Islamist Extremism: The Urgent Threat of Foreign Fighters and Homegrown Terror: : Hearing Before the H. Comm. on Homeland Security*, 114th Cong. (2015) (statement of Michael Steinbach, Assistant Director, Federal Bureau of Investigation).

comes to vetting Syrian refugees.<sup>518</sup> NCTC Director Rasmussen expressed concerns at both hearings explaining that the U.S. does not have the traditional diplomatic, military, and intelligence footprint in Syria to provide law enforcement with lists of known or suspected terrorists.<sup>519</sup> Thus, while the U.S. may have a system that ensures that all databases are touched during the vetting process, “you can only review against what you have.”<sup>520</sup>

### Biometric Entry-Exit Program

Terrorists have exploited the U.S. immigration system to enter and remain in the U.S., often by entering the country lawfully but then unlawfully remaining in the country after their visa expired.<sup>521</sup> To address this, Congress has passed eight statutes mandating some form of an entry-exit system to track those transiting the country.<sup>522</sup> In 2004, the 9/11 Commission Report recommended DHS “complete, as quickly as possible, a *biometric* entry-exit screening system.”<sup>523</sup> That year, DHS “fully implemented a biometric air *entry* solution into existing inspection booths”<sup>524</sup> and fully deployed a biometric land entry system in 2005.<sup>525</sup> To date, DHS has spent approximately \$1 billion on the implementation of a biometric entry-exit program; however, a biometric exit solution still does not exist.<sup>526</sup>

Non-U.S. citizens or legal permanent residents seeking to travel to the U.S. either obtain a temporary visa at a U.S. consulate abroad or enter through the VWP (see above).<sup>527</sup> All arriving travelers that are not previously cleared through CBP’s preclearance program (see below) are

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<sup>518</sup> *Threats to the Homeland: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Nicholas J. Rasmussen, Director, National Counterterrorism Center, Office of the Director of National Intelligence).

<sup>519</sup> *Id.* (“the intelligence picture we have of this particular conflict zone is not as rich as we would like it to be.”); see also *Countering Violent Islamist Extremism: The Urgent Threat of Foreign Fighters and Homegrown Terror: Hearing Before the H. Comm. on Homeland Security*, 114th Cong. (2015) (statement of Nicholas J. Rasmussen, Director, National Counterterrorism Center, Office of the Director of National Intelligence).

<sup>520</sup> *Threats to the Homeland: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Nicholas J. Rasmussen, Director, National Counterterrorism Center, Office of the Director of National Intelligence).

<sup>521</sup> THE 9/11 COMMISSION REPORT 527–528 (2004).

<sup>522</sup> See Pub. L. No. 104-208 (1996); Pub. L. No. 106-215 (2000); Pub. L. No. 106-396 (2000); Pub. L. No. 107-56, (2001); Pub. L. No. 107-173 (2002); Pub. L. No. 108-458 (2004); Pub. L. No. 110-53 (2007); Pub. L. No. 113-76 (2013).

<sup>523</sup> THE 9/11 COMMISSION REPORT 389 (2004) (emphasis added).

<sup>524</sup> *Fulfilling A Key 9/11 Commission Recommendation: Implementing Biometric Exit, Hearing Before the House SubComm. on Border and Maritime of the Comm. on Homeland Security*, 113th Cong. (2013) (statement of David Hayman, John Wagner, and John P. Woods, U.S. Department of Homeland Security), available at <http://www.dhs.gov/news/2013/09/26/written-testimony-cbp-and-ice-house-homeland-security-subcommittee-border-and>.

<sup>525</sup> U.S. DEP’T OF HOMELAND SECURITY, U.S.-VISIT UPDATE: DHS COMPLETES FOUNDATION OF BIOMETRIC ENTRY SYSTEM, <http://www.fosterglobal.com/news/BiometricEntrySystem.pdf>.

<sup>526</sup> See *Securing the Border: Biometric Entry and Exit at our Ports of Entry: Public Roundtable Before the Comm. on Homeland Security & Governmental Affairs*, 114th Cong (2015).

<sup>527</sup> Lisa Seghetti, CONG. RESEARCH SERV., R 43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 6 (2015).

“subject to inspection [] by a CBP officer prior to entering the United States.”<sup>528</sup> Travelers may also “be selected through risk-based screening or at random” for further scrutiny.<sup>529</sup>

When a passenger makes an airline reservation, a Passenger Name Record (PNR) is created which includes, among other things, the passenger’s itinerary, name, date of birth, and passport details.<sup>530</sup> The airline is required to provide to CBP the PNR up to and continuously within 72 hours in advance of travel so that CBP can begin to build a manifest of the passenger.<sup>531</sup> For international flights to the U.S., carriers must transmit passenger and crew manifests to CBP’s Advance Passenger Information System (APIS) before departure, prior to securing the aircraft doors, to confirm the passenger actually got on the plane.<sup>532</sup> Both “PNR and APIS data [] are forwarded to CBP’s National Targeting Center (NTC), where they are vetted against intelligence and law enforcement databases.”<sup>533</sup> Thereafter, the data is sent to the Arrival and Departure Information System (ADIS) to “be held for matching against departure records.”<sup>534</sup> ADIS is a *biographic* database that reads identity documents, such as a traveler’s name, date of birth, nationality, gender, and passport number.<sup>535</sup> APIS data sent to ADIS “allows DHS to identify air travelers who may have overstayed their visas.”<sup>536</sup> Entry-exit data is also stored in a *biometric* database, known as the Automated Biometric Identification System (IDENT). IDENT is a fully biometric database and includes biographic information, biometric data (all 10 fingerprints), and a report regarding a person’s previous immigration record.<sup>537</sup>

DHS has utilized several different pilot programs to implement a biometric exit solution. From 2004 to 2007 DHS placed biometric collection kiosks inside secure checkpoints and biometric collection mobile devices in departure gate areas at 12 airports and two seaports.<sup>538</sup> However, a series of GAO reports during this time period highlighted concerns with the pilot.<sup>539</sup>

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<sup>528</sup> *Id.*; see also U.S. CUSTOMS AND BORDER PROTECTION, CBP SEARCH AUTHORITY, <http://www.cbp.gov/travel/cbp-search-authority>.

<sup>529</sup> *Id.*

<sup>530</sup> See *Securing the Border: Biometric Entry and Exit at our Ports of Entry: Public Roundtable Before the Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>531</sup> Lisa Seghetti, CONG. RESEARCH SERV., R 43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 9 (2015).

<sup>532</sup> *Id.*; see also *Eleven Years Later: Preventing Terrorists from Coming to America: Hearing Before the House SubComm. on Border and Maritime of the Comm. on Homeland Security*, 112th Cong. (2012) (statement of Kevin McAleenan, Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection).

<sup>533</sup> Lisa Seghetti, CONG. RESEARCH SERV., R 43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 10 (2015).

<sup>534</sup> *Implementation of an Entry-Exit System: Still Waiting After All These Years: Hearing Before the House Comm. on the Judiciary*, 113th Cong. (2013) (statement of David Heyman, Assistant Secretary for Policy, Department of Homeland Security).

<sup>535</sup> Lisa Seghetti, CONG. RESEARCH SERV., R 43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 22 (2015).

<sup>536</sup> *Id.* at 27.

<sup>537</sup> *Id.* at 23.

<sup>538</sup> *Id.* at 26.

<sup>539</sup> GOV’T ACCOUNTABILITY OFFICE, GAO 04-586, HOMELAND SECURITY: FIRST PHASE OF VISITOR AND IMMIGRATION STATUS PROGRAM OPERATING, BUT IMPROVEMENTS NEEDED (2004); GOV’T ACCOUNTABILITY OFFICE, GAO-05-202, HOMELAND SECURITY: SOME PROGRESS MADE, BUT MANY CHALLENGES REMAIN ON U.S. VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (2005); GOV’T ACCOUNTABILITY OFFICE,

Specifically, GAO found that, on average, only 24 percent of travelers subject to the pilot complied with the exit procedure.<sup>540</sup>

In 2009, DHS employed a departure biometric pilot program at Atlanta International Airport and Detroit Metropolitan Airport, collecting digital fingerprints of non-U.S. citizens at boarding gates.<sup>541</sup> Despite concluding that the pilot generally confirmed that biometric exit data could be collected, in 2010, DHS adopted a plan to focus in the near-term on enhanced biographic data collection and analysis to identify potential overstays, and to invest in research and development of emerging biometric technology to be employed in a future exit system.<sup>542</sup>

In 2013, CBP and the DHS Science and Technology Directorate (S&T) announced their plan to develop a test facility to examine biometric technology and operational concepts to advance a biometric exit program at air and sea ports.<sup>543</sup> Also in 2013, “CBP and S&T initiated a joint Air Entry/Exit Re-Engineering (AEER) Apex project” to test both processes and technologies “to determine how and when a biometric air exit concept would be feasible.”<sup>544</sup> For example, at the test facility, S&T is currently testing the efficacy of three biometric technologies—fingerprint, retinal scan, and facial recognition equipment—and potential approaches to implement the technologies at U.S. airports.<sup>545</sup> Based on the best performing concepts and operations, in FY2016, DHS plans to initiate a field trial at one U.S. airport.<sup>546</sup>

Meanwhile, in July 2015, CBP launched its testing of “an enhanced mobile device to collect biometric exit data from a limited number of foreign national air travelers departing the U.S. at Hartsfield-Jackson Atlanta International Airport.”<sup>547</sup> As to the land border, CBP plans to initiate

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GAO-06-296, HOMELAND SECURITY: RECOMMENDATIONS TO IMPROVE MANAGEMENT OF KEY BORDER SECURITY PROGRAM NEED TO BE IMPLEMENTED (2006); GOV'T ACCOUNTABILITY OFFICE, GAO 07-1044T, HOMELAND SECURITY: PROSPECTS FOR BIOMETRIC US-VISIT EXIT CAPABILITY REMAIN UNCLEAR (2007).

<sup>540</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-06-296, HOMELAND SECURITY: RECOMMENDATIONS TO IMPROVE MANAGEMENT OF KEY BORDER SECURITY PROGRAM NEED TO BE IMPLEMENTED 45 (2006).

<sup>541</sup> *DHS Begins Test of Biometric Exit Procedures at Two U.S. Airports*, U.S. DEP'T OF HOMELAND SECURITY (May 29, 2009), <http://www.dhs.gov/news/2009/05/29/dhs-begins-test-biometric-exit-procedures-two-us-airports>.

<sup>542</sup> U.S. DEP'T OF HOMELAND SECURITY, COMPREHENSIVE BIOMETRIC AIR EXIT PLAN, FISCAL YEAR 2012 REPORT TO CONGRESS 3 (2012).

<sup>543</sup> See *Securing the Border: Biometric Entry and Exit at our Ports of Entry: Public Roundtable Before the Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of John Wagner, Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection).

<sup>544</sup> *Fulfilling a Key 9/11 Commission Recommendation: Implementing Biometric Exit: Hearing Before the H. SubComm. on Border and Maritime Security of the H. Comm. on Homeland Security*, 113th Cong. (2013) (statement of U.S. Customs and Border Protection & U.S. Immigration and Customs Enforcement).

<sup>545</sup> Data provided to Majority Staff by the U.S. Customs and Border Protection during a tour of the U.S. Department of Homeland Security Science & Technology facility in Maryland (Aug. 11, 2015).

<sup>546</sup> *Id.*; see also *Securing the Border: Biometric Entry and Exit at our Ports of Entry: Public Roundtable Before the Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Arun Vemury, Chief, AEER Pilot, Directors of Science & Technology, U.S. Department of Homeland Security).

<sup>547</sup> *CBP Begins Testing an Enhanced Handheld Mobile Device to Collect Biometric Data*, U.S. CUSTOMS AND BORDER PROTECTION (July 14, 2015), <http://www.cbp.gov/newsroom/national-media-release/2015-07-14-000000/cbp-begins-testing-enhanced-handheld-mobile-device>.

a facial recognition biometric pilot for pedestrians exiting the U.S. at the Otay Mesa POE in the San Diego sector by early December 2015.<sup>548</sup>

### Preclearance Agreements

The U.S. also operates a number of preclearance facilities at airports in foreign countries. According to DHS, “Preclearance is the process by which CBP officers stationed abroad screen and make admissibility decisions about passengers and their accompanying goods or baggage heading to the U.S. before they leave a foreign port.”<sup>549</sup> Committee witnesses have testified as to the benefits of preclearance, in that it helps expand our borders and provide important information to CBP officers prior to persons entering the country.<sup>550</sup> This effectively adds an additional layer of defense.

Preclearance travelers go through customs, immigration, and agriculture inspections all before leaving the foreign port.<sup>551</sup> The Transportation Security Administration (TSA) requires that the screening of both passengers and their property at foreign preclearance airports conforms to U.S. aviation security screening standards.<sup>552</sup> This ensures that, upon the arrival to the U.S., passengers can disembark without needing to be rescreened.<sup>553</sup>

The purpose of this process is to enable “CBP to stop potential threats before they arrive on U.S. soil.”<sup>554</sup> At a Committee briefing, CBP explained that current preclearance agreements save the U.S. \$25 million in detention costs annually.<sup>555</sup> In addition, preclearance helps streamline border procedures by reducing congestion at POEs as well as facilitating travel between U.S. ports and those foreign ports that are equipped for preclearance. Moreover, CBP has entered into public-private partnerships with foreign ports that enable the foreign port to fund up to 85 percent of CBP’s preclearance operations.

Currently, preclearance is available at most major Canadian airports.<sup>556</sup> There are also preclearance locations in Aruba, Bermuda, the Bahamas, Ireland, and the United Arab Emirates.<sup>557</sup>

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<sup>548</sup> Majority Staff observations during bipartisan, bicameral STAFFDEL to the San Diego Sector (Aug. 2015).

<sup>549</sup> U.S. CUSTOMS AND BORDER PROTECTION, PRECLEARANCE LOCATIONS, <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>.

<sup>550</sup> See *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>551</sup> *DHS Announces Intent to Expand Preclearance to 10 New Airports*, U.S. DEP’T OF HOMELAND SECURITY (May 29, 2015), <http://www.dhs.gov/news/2015/05/29/dhs-announces-intent-expand-preclearance-10-new-airports>.

<sup>552</sup> *Id.*

<sup>553</sup> *Id.*

<sup>554</sup> U.S. Dep’t of Homeland Security, *DHS Announces Intent to Expand Preclearance to 10 New Airports*, PRESS RELEASE (May 29, 2015), <http://www.dhs.gov/news/2015/05/29/dhs-announces-intent-expand-preclearance-10-new-airports>.

<sup>555</sup> U.S. CUSTOMS AND BORDER PROTECTION, PRECLEARANCE OPERATIONS: OVERVIEW BRIEF (2015) (on file with Majority Staff).

<sup>556</sup> U.S. CUSTOMS AND BORDER PROTECTION, PRECLEARANCE LOCATIONS, <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>.

On May 29, 2015, Secretary Johnson announced the U.S.’s intention “to enter into negotiations to expand air preclearance options to ten new foreign airports, located in nine separate countries: Belgium, the Dominican Republic, Japan, the Netherlands, Norway, Spain, Sweden, Turkey, and the United Kingdom.”<sup>558</sup> According to the Department, CBP coordinated with TSA and the State Department to identify these new airports “and prioritized them based on the greatest potential to support security and travel facilitation.”<sup>559</sup> Last year, approximately 20 million passengers traveled to the U.S. from these 10 airports.<sup>560</sup>

DHS is also interested in expanding preclearance to other modes of transportation. On March 16, 2015, DHS Secretary Jeh Johnson and Canadian Minister of Public Safety and Emergency Preparedness Steve Blaney signed the Agreement on Land, Rail, Marine, and Air Transport Preclearance, which will provide the legal framework to locate CBP and CBSA personnel to offer preclearance at more locations and modes of transportation in both countries.<sup>561</sup>

Essentially, this agreement will: 1) provide security updates that accurately reflect the post 9/11 operating environments; 2) enable preclearance at cruise, rail, and ferry terminals that currently only receive pre-inspection;<sup>562</sup> 3) allow CBP and CBSA officers to carry firearms and restraining devices at preclearance locations;<sup>563</sup> and 4) “enable the exploration of co-location at small and remote ports.”<sup>564</sup> To implement, both the U.S. and Canada would have to enact legislation.

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<sup>557</sup> The airports are: Calgary International Airport, Edmonton International Airport, Halifax Stanfield International Airport, Montreal-Pierre Elliott Trudeau International Airport, Ottawa Macdonald-Cartier International Airport, Toronto Pearson International Airport, Vancouver International Airport, Winnipeg James Armstrong Richardson International Airport (Canada), Bermuda International Airport (Bermuda), Grand Bahama International Airport, Lynden Pindling International Airport (The Bahamas), Queen Beatrix International Airport (Aruba), Dublin Airport, Shannon Airport (Ireland), Abu Dhabi Airport, Dubai International Airport (United Arab Emirates). *Id.*

<sup>558</sup> *DHS Announces Intent to Expand Preclearance to 10 New Airports*, U.S. DEP’T OF HOMELAND SECURITY (May 29, 2015), <http://www.dhs.gov/news/2015/05/29/dhs-announces-intent-expand-preclearance-10-new-airports>. (The 10 airports are: Brussels Airport, Belgium; Punta Cana Airport, Dominican Republic; Narita International Airport, Japan; Amsterdam Airport Schiphol, Netherlands; Oslo Airport, Norway; Madrid-Barajas Airport, Spain; Stockholm Arlanda Airport, Sweden; Istanbul Ataturk Airport, Turkey; London Heathrow Airport, Manchester Airport, UK).

<sup>559</sup> *Id.*

<sup>560</sup> *Id.*

<sup>561</sup> U.S. DEPARTMENT OF HOMELAND SECURITY, UNITED STATE AND CANADA SIGN PRECLEARANCE AGREEMENT, (2015), <http://www.dhs.gov/news/2015/03/16/united-states-and-canada-sign-prec-clearance-agreement>.

<sup>562</sup> While CBP conducts preclearance at Canadian airports, it currently only provides “pre-inspection” at Canadian rail stations. Amtrak estimates that full preclearance could save the passenger 10 to 20 minutes per trip from Canada to the U.S. by eliminating the required Customs stop in Blaine, Washington. Majority Staff observations during bipartisan STAFFDEL to the Blaine, Washington Sector (Aug. 2015).

<sup>563</sup> Currently CBP officers stationed in Canada are not permitted to carry their firearms and must rely on Canadian police if assistance is needed.

<sup>564</sup> U.S. DEPARTMENT OF HOMELAND SECURITY, UNITED STATE AND CANADA SIGN PRECLEARANCE AGREEMENT, (2015), <http://www.dhs.gov/news/2015/03/16/united-states-and-canada-sign-prec-clearance-agreement>.

## Part V: Understanding the Root Causes of Immigration

In FY2014, more than 479,000 people were apprehended along the southwest border, more than 3,300 people were apprehended at the northern border, and more than 7,500 were apprehended across the maritime border.<sup>565</sup> Moreover, countless people entered the U.S. lawfully at a port of entry but have since overstayed their visas. While these numbers may be somewhat down from the late 1990s and early 2000s when infrastructure, technology, and manpower at our borders were virtually nonexistent, they still remain high. And, given, the powerful pull factors in this country, migration to the U.S. will remain high for a very long time.

For starters, the wage gap, or the difference between what a migrant can earn in this country as compared to his home country, remains “the main economic factor influencing migration.”<sup>566</sup> As this gap sits at approximately \$5 to \$1 in Mexico and perhaps as much as \$8 to \$1 in Central American countries, we can expect migration to the U.S. to continue as people seek the opportunity to work and make money for their families.<sup>567</sup>

Moreover, U.S. policies create powerful pull factors that incentivize people to illegally migrate to the country. As an example, due to current law the U.S. is unable to immediately repatriate unaccompanied minors from noncontiguous countries.<sup>568</sup> Instead, the minor must first receive an immigration hearing. In practice, once these minors receive their immigration hearings and a final order of removal is rendered, the federal government does not prioritize their removal. In fact, since 2009, DHS has apprehended 122,700 unaccompanied children from El Salvador, Guatemala, and Honduras, but ICE has only repatriated approximately 7,700, or 6 percent.<sup>569</sup> In the last several years this powerful signal has resulted in a substantial influx of Central Americans unlawfully migrating to and remaining in the U.S.<sup>570</sup>

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<sup>565</sup> See UNITED STATES BORDER PATROL TOTAL ILLEGAL ALIEN APPREHENSIONS BY MONTH, [http://www.cbp.gov/sites/default/files/documents/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2014\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2014_0.pdf). Since the U.S. Coast Guard also interdicts a significant number of migrants at our maritime border, a full representation of maritime apprehensions adds these two data points together. See U.S. COAST GUARD MARITIME MIGRANT INTERDICTIONS, <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/currentstats.asp>.

<sup>566</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 8 (2013) (citing Michael Clemens, Claudio E. Montenegro, and Lant Pritchett, *The Place Premium: Wage Differences for Identical Workers across the U.S. Border*, CENTER FOR GLOBAL DEVELOPMENT (2008)).

<sup>567</sup> *Id.* at 9, Appendix 2: Wage Gap and Other Trends in Central American Source Countries, <http://www.cfr.org/immigration/managing-illegal-immigration-united-states/p30658>.

<sup>568</sup> Section 235 of TVPRA codified expedited removals for children from contiguous countries and mandated the transfer of children from non-contiguous countries to the Department of Health and Human Services. Pub. L. No. 110-457 (2008).

<sup>569</sup> See *The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015); *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>570</sup> U.S. CUSTOMS AND BORDER PROTECTION, SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

## Central American Migration to the U.S.

In 2014, unaccompanied minors attempted to cross the southwest border in alarming numbers. From FY2009 to FY2013, CBP officers apprehended mostly Mexican minors attempting to enter the U.S.<sup>571</sup> However, in FY2014 and for the first time, the number of UACs from El Salvador, Guatemala, and Honduras unlawfully entering the U.S. exceeded the number of UACs from Mexico.<sup>572</sup> In FY2015, apprehensions of UACs slightly declined, however numbers began to increase in July, and by August monthly apprehensions surpassed that of FY2014.

**Table 4. Unaccompanied Alien Children Encountered by CBP<sup>573</sup>**

<b>Country</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404	9,389
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057	13,589
Honduras	968	1,017	974	2,997	6,747	18,244	5,409
<b>Total</b>	<b>3,304</b>	<b>4,444</b>	<b>3,933</b>	<b>10,146</b>	<b>20,805</b>	<b>51,705</b>	<b>28,387</b>

DHS, the State Department, and USAID currently have several programs that attempt to stem the flow of Central American migrants to the U.S.-Mexico border. These efforts are focused on confronting the perceptions of U.S. immigration law, dismantling human smuggling networks, and tackling the corruption and citizen security in Central America.<sup>574</sup> The Administration argues that investing in Central American communities can decrease the need for those countries' citizens to migrate and significantly reduce the business of human smugglers, run by coyotes.<sup>575</sup> To that end, the Administration has proposed a \$1 billion aid package aimed at confronting the root causes of the 2014 UAC surge.<sup>576</sup> However, the U.S. has provided billions of dollars in assistance in the past (see Table 7), and CBP continues to report large numbers of migrants attempting to enter the U.S.<sup>577</sup>

While some outside experts report that the spike in UACs last summer was generated by startling levels of drug and gang-related violence in Central America, according to an EPIC report, perceptions of U.S. immigration policy that led people to believe they would be able to remain in

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<sup>571</sup> *Id.*

<sup>572</sup> *Id.*

<sup>573</sup> *Id.*

<sup>574</sup> *Remarks by the President on Border Security and Immigration Reform*, THE WHITE HOUSE (June 30, 2014), <https://www.whitehouse.gov/the-press-office/2014/06/30/remarks-president-border-security-and-immigration-reform>.

<sup>575</sup> *Unaccompanied Alien Minors: Pressing the Administration for a Strategy: Hearing Before the House SubComm. on the Western Hemisphere of the Comm. on Foreign Relations*, 113th Cong. (2014) (statement of Roberta S. Jacobson, Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State).

<sup>576</sup> WHITE HOUSE, FACT SHEET: PROMOTING PROSPERITY, SECURITY AND GOOD GOVERNANCE IN CENTRAL AMERICA, <https://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame>.

<sup>577</sup> Douglas Farah, *Five Myths about the Border Crisis*, WASH POST (Aug. 8, 2014), [http://www.washingtonpost.com/opinions/five-myths-about-the-border-crisis/2014/08/08/1ec90bea-1ce3-11e4-ab7b-696c295ddfd1\\_story.html](http://www.washingtonpost.com/opinions/five-myths-about-the-border-crisis/2014/08/08/1ec90bea-1ce3-11e4-ab7b-696c295ddfd1_story.html).

the U.S. also drove the surge.<sup>578</sup> Such policies include the President’s DACA, DHS’s catch and release policy, and the TVPRA of 2008.<sup>579</sup> For example, according to interviews conducted by GAO, Guatemalans believe they will be eligible for DACA or amnesty provided in comprehensive immigration reform, while Hondurans told GAO they believed “migrant minors, mothers traveling with minors, and pregnant women” can remain in the U.S.<sup>580</sup> On a recent CODEL to Central America the President of Honduras warned Members of the Committee to be very clear in the laws that they draft, as ambiguities will be exploited by coyotes.

*HHS Response*

Pursuant to the TVPRA, children from noncontiguous countries that unlawfully enter the U.S. must be transferred to HHS within 72 hours of apprehension while waiting for an immigration court hearing; they cannot be immediately repatriated to their home countries.<sup>581</sup> According to HHS Office of Refugee Resettlement (ORR), between October 1, 2013 and August 31, 2015, HHS released a total of 77,220 UACs to sponsors in the United States.<sup>582</sup>

**Table 5. States Accommodating UACs<sup>583</sup>**

State	FY2014	FY2015*	Total
Texas	7,416	2,769	10,185
California	5,842	3,061	8,903
New York	5,956	2,229	8,185
Florida	5,447	2,485	7,932
Maryland	3,885	1,497	5,382
Virginia	3,886	1,375	5,261
Wisconsin	84	33	117
<b>All States</b>	<b>53,550</b>	<b>23,670</b>	<b>77,220</b>

\* FY2015 as of August 31, 2015

ORR believes its responsibility to track and retain custody of UACs ends when the child is released to the sponsor.<sup>584</sup> ORR officials argue that sponsors are responsible for ensuring UACs

<sup>578</sup> EL PASO INTELLIGENCE CENTER, MISPERCEPTIONS OF U.S. POLICY KEY DRIVER IN CENTRAL AMERICAN MIGRANT SURGE (2014) (Children from El Salvador, Guatemala, and Honduras arrived in large numbers after hearing rumors that the U.S. Government would stop issuing free passes or *permisos* after June 2014).

<sup>579</sup> Section 235 of TVPRA codified expedited removals for children from contiguous countries and mandated the transfer of children from non-contiguous countries to the Department of Health and Human Services. Pub. L. No. 110-457 (2008).

<sup>580</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION 10 (2015).

<sup>581</sup> *Id.*

<sup>582</sup> U.S. DEP’T OF HEALTH AND HUMAN SERVICES, OFFICE OF REFUGEE RESETTLEMENT, UNACCOMPANIED CHILDREN RELEASED TO SPONSORS BY STATE, <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>. Unfortunately, data provided by the U.S. Department of Homeland Security (DHS), U.S. Department of Justice (DOJ), and U.S. Department of Health and Human Services (HHS) is inconsistent and fails to match up.

<sup>583</sup> *Id.*

<sup>584</sup> Data provided to Majority Staff by the Office of Refugee Resettlement (June 23, 2015).

attend their court hearing and notifying DHS and the DOJ's Executive Office for Immigration Review (EOIR) if the UAC relocates to a different address.<sup>585</sup> The lack of follow-up and secondary screening by has led to some dangerous situations for these unaccompanied minors.<sup>586</sup> For example, press reports have revealed situations in which a 13-year-old boy was forced to work rather than attend school to pay off his smuggling debt and eventually became homeless.<sup>587</sup> In another case, a 14-year-old Salvadoran girl was placed with distant relatives who later passed her on to other relatives that abused her.<sup>588</sup> And, finally, a 16-year-old Honduran girl was released to a man who had her smuggled in and then molested her.<sup>589</sup>

On June 16, 2015, ORR issued two new requests for proposals (RFPs) for contracts to aid UACs.<sup>590</sup> The first RFP seeks multiple regional contractors who have the capability to provide legal services to UACs. These selected contractors would be responsible for 1) managing the "Know Your Rights" presentations;<sup>591</sup> 2) legal screening procedures to identify UACs that meet the criteria for immigration relief; 3) securing pro-bono legal counsel for hearings before EOIR; and 4) at times directly representing UACs.<sup>592</sup> ORR began the contracting process on August 1, 2015, for a period of three years.<sup>593</sup>

For the second RFP, contractors will be responsible for supporting child advocate programs in Brownsville; Houston; Chicago; Newark; New York City; Washington, DC; Baltimore; Phoenix; San Antonio; and Miami.<sup>594</sup> ORR will spend \$31 million for legal services and direct representation, which, combined with other programs, will total \$58 million in FY2015.<sup>595</sup> As for the child advocate program, ORR will spend \$3.5 million between FY2015 and FY2017.<sup>596</sup>

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<sup>585</sup> *Id.*

<sup>586</sup> Molly Hennessy-Fiske, *Young Immigrants Placed in Sponsor Homes are at Risk of Abuse, Experts Say*, LA TIMES (Aug. 18, 2015), <http://www.latimes.com/nation/la-na-immigrant-sponsors-20150818-story.html>.

<sup>587</sup> *Id.*

<sup>588</sup> *Id.*

<sup>589</sup> *Id.*

<sup>590</sup> U.S. DEP'T OF HEALTH AND HUMAN SERVICES, DIVISION OF ACQUISITION MANAGEMENT (ON BEHALF OF THE OFFICE OF REFUGEE RESETTLEMENT), REQUEST FOR PROPOSAL, RFP 15-233-SOL-00264 (June 15, 2015); U.S. DEP'T OF HEALTH AND HUMAN SERVICES, DIVISION OF ACQUISITION MANAGEMENT (ON BEHALF OF THE OFFICE OF REFUGEE RESETTLEMENT), REQUEST FOR PROPOSAL, RFP 15-233-SOL-00327 (June 15, 2015).

<sup>591</sup> "Know Your Rights" (KYRs) presentations provide information to UACs on why they are in custody, the various forms of immigration legal relief, the sponsorship process, the various government agencies involved in the child's immigration case, and what to expect at immigration court. This information is provided to UACs via a cartoon video. ORR also funds legal service providers local to the shelters to provide these KYRs to UACs.

<sup>592</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF ACQUISITION MANAGEMENT (ON BEHALF OF THE OFFICE OF REFUGEE RESETTLEMENT), REQUEST FOR PROPOSAL, RFP 15-233-SOL-00264 (June 15, 2015).

<sup>593</sup> *Id.*

<sup>594</sup> U.S. DEP'T OF HEALTH AND HUMAN SERVICES, DIVISION OF ACQUISITION MANAGEMENT (ON BEHALF OF THE OFFICE OF REFUGEE RESETTLEMENT), REQUEST FOR PROPOSAL, RFP 15-233-SOL-00327 (June 15, 2015).

<sup>595</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF ACQUISITION MANAGEMENT (ON BEHALF OF THE OFFICE OF REFUGEE RESETTLEMENT), REQUEST FOR PROPOSAL, RFP 15-233-SOL-00264 (June 15, 2015).

<sup>596</sup> U.S. DEP'T OF HEALTH AND HUMAN SERVICES, DIVISION OF ACQUISITION MANAGEMENT (ON BEHALF OF THE OFFICE OF REFUGEE RESETTLEMENT), REQUEST FOR PROPOSAL, RFP 15-233-SOL-00327 (June 15, 2015).

However, earlier this year the Senate Appropriations Committee rejected a \$50 million request by the Administration to pay for legal help for UACs.<sup>597</sup> During a HSGAC hearing ORR was questioned about their authority to pay for legal counsel, as federal law calls on HHS to ensure that unaccompanied minors receive counsel to the greatest extent practicable but at no expense to the government.<sup>598</sup> ORR asserted it believes it has the authority to pay for counsel, but it has an obligation to rely on pro bono services to the greatest extent possible.<sup>599</sup>

### *DOJ Response*

EOIR is responsible for adjudicating immigration cases as well as removal proceedings.<sup>600</sup> According to EOIR, since July 18, 2014, the agency has been prioritizing the cases of: 1) unaccompanied children; 2) adults with a child or children who are a part of DHS's Alternative to Detention program (ATD); 3) adults with a child or children who are detained; and 4) recent border crossers who are detained.<sup>601</sup> Additionally, EOIR has set the goal for scheduling UAC's first master calendar hearing no less than 10 days and no more than 21 days from the date of their issued NTA. For adults with children and those in the ATD program, EOIR attempts to have them appear before an immigration judge no less than 10 days and no more than 28 days from when DHS released them on parole with a NTA.<sup>602</sup>

EOIR began tracking UAC removals in July 2014, establishing a new case recording system that coincided with the agency's announcement of its revised adjudication priorities in response to the UAC surge.<sup>603</sup> EOIR data from July 18, 2014 through August 25, 2015 shows that DHS issued 38,211 NTAs to UACs that unlawfully crossed the U.S. border in the past two fiscal years.<sup>604</sup> As of August 25, 2015, EOIR has processed 31,035 cases requiring UACs to appear before an immigration judge for their initial master hearing.<sup>605</sup>

Of these cases, 14,613 cases have been completed, of which in 7,571 cases the judge ordered the UAC removed.<sup>606</sup> Of these removal orders, 6,611 were rendered in absentia, meaning that the UAC did not show up to the hearing.<sup>607</sup> Decisions rendered in absentia proceed to a final order of removal, generally clearing the legal hurdles for ICE to begin the UAC's removal

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<sup>597</sup> *Led by Shelby, Senate Blocks Legal Fund for Immigrant Children*, AP (June 10, 2015), [http://www.al.com/news/index.ssf/2015/06/led\\_by\\_shelby\\_senate\\_blocks\\_le.html](http://www.al.com/news/index.ssf/2015/06/led_by_shelby_senate_blocks_le.html).

<sup>598</sup> *See The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>599</sup> *Id.*

<sup>600</sup> *Id.* (statement of Juan P. Osuna, Director, Executive Office of Immigration Review, U.S. Department of Justice).

<sup>601</sup> Adults without children are eligible for expedited removal and do not need to go in front of an EOIR judge unless they claim a certain protection, such as asylum.

<sup>602</sup> *Id.*

<sup>603</sup> *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of William Kandel, Analyst in Immigration Policy, Congressional Research Service).

<sup>604</sup> Data provided to Majority Staff by the Executive Office for Immigration Review (Sept, 1 2015).

<sup>605</sup> *Id.*

<sup>606</sup> *Id.*

<sup>607</sup> *Id.*

proceedings. However, ICE has not repatriated most UACs with a final order of removal, claiming instead it prioritizes the repatriations of higher value targets, such as criminal aliens.<sup>608</sup>

*DHS Response*

On November 20, 2014 Secretary Johnson issued a memorandum on enforcement priorities, as part of a larger package of executive actions announced by the President.<sup>609</sup> Currently, ICE’s highest priority is the removal of individuals who represent a threat to U.S. national security, border security, and public safety.<sup>610</sup> Priority 1 removals include illegal aliens engaged in or suspected of terrorism or espionage and illegal aliens convicted or with a violent criminal record.<sup>611</sup> Priority 2 encompasses illegal aliens convicted of three or more misdemeanors and illegal aliens who overstay their visas.<sup>612</sup> Lastly, Priority 3 generally targets illegal aliens with a final order of removal issued after December 31, 2013.<sup>613</sup>

**Table 6. UAC Removals by Country of Citizenship, FY2009-FY2015<sup>614</sup>**

Country	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
El Salvador	96	117	136	136	159	190	167
Guatemala	534	520	515	626	661	686	519
Honduras	352	326	297	430	461	503	339
<b>Total</b>	<b>982</b>	<b>963</b>	<b>948</b>	<b>1,192</b>	<b>1,281</b>	<b>1,379</b>	<b>1,025</b>

Since 2009, DHS has apprehended 122,700 unaccompanied children from El Salvador, Guatemala, and Honduras, but ICE has only repatriated approximately 7,700, or 6 percent.<sup>615</sup> ICE was asked during a Committee hearing what signal is sent to people in Central America that as an unaccompanied child, if you reach the U.S., you have more than a 90 percent chance of being able to stay.<sup>616</sup> ICE did not answer the question.<sup>617</sup> According to El Salvador officials, “when a potential migrant hears from someone in the United States who has managed to arrive and remain there undocumented, the communications can strongly influence their decision on

<sup>608</sup> See *The 2014 Humanitarian Crisis at our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>609</sup> U.S. DEP’T OF HOMELAND SECURITY, MEMORANDUM TO THOMAS S. WINKOWSKI, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, R. GIL KERLIKOWSKA, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, LEON RODRIQUEZ, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, AND ALAN D. BERSIN, ACTING ASSISTANT SECRETARY FOR POLICY, FROM JEH CHARLES JOHNSON, SECRETARY OF HOMELAND SECURITY, POLICIES FOR THE APPREHENSION, DETENTION, AND REMOVAL OF UNDOCUMENTED IMMIGRANTS (Nov. 20, 2014).

<sup>610</sup> *Id.*

<sup>611</sup> *Id.*

<sup>612</sup> *Id.*

<sup>613</sup> *Id.*

<sup>614</sup> Data provided to Majority Staff by the Department of Homeland Security (July 25, 2015).

<sup>615</sup> See *The 2014 Humanitarian Crisis at our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015); *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>616</sup> *Id.*

<sup>617</sup> *Id.*

whether to migrate.”<sup>618</sup> GAO recently testified as a Committee hearing that children use social media to let those in their home countries know they made it to and were able to remain in the U.S., further incentivizing others to embark on the dangerous journey to the United States.<sup>619</sup>

In June 2014, DHS started to challenge perceptions of U.S. immigration policy. Secretary Johnson warned Central American parents that their “child will not benefit from DACA if they come here now,” reminding Central Americans that “DACA is for those who came here 7 years ago.”<sup>620</sup> DHS’s “Danger Awareness Campaign” aimed to dissuade parents from sending their children with smugglers warning that: 1) “the journey is too dangerous;” 2) “children will not get legal papers if they [arrive in the U.S.]”; and 3) children “are the future—let’s protect them.”<sup>621</sup>

The advertisements targeted communities in El Salvador, Guatemala, and Honduras, as well as American cities with significant Central American populations such as Houston, Los Angeles, Miami, and New York.<sup>622</sup> In total, taxpayers spent approximately \$1 million on billboards, TV commercials, and radio announcements between June 30 and October 12, 2014.<sup>623</sup> A recent GAO report has called for more review on the effectiveness of these campaigns before continuing them.<sup>624</sup> According to GAO, DHS and the State Department’s lack of review as to whether these campaigns have been effective is not only costly for the U.S. taxpayer, but also costly to unaccompanied minors and their families who ignore the campaigns and risk their lives to make the dangerous journey to the U.S.<sup>625</sup> Despite this, in August 2015 DHS announced a new \$1.2 million campaign called “Know the Facts” to emphasize that pursuant to U.S. law and policy immediate deportations will be a priority.<sup>626</sup>

Other DHS efforts include working with the State Bureau of Population, Refugees, and Migration (PRM) to employ a new refugee program to provide a legal alternative to parents who

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<sup>618</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION 11 (2015).

<sup>619</sup> *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Kimberly M. Gianopoulos, International Affairs and Trade, U.S. Government Accountability Office).

<sup>620</sup> Transcript of DHS Secretary Jeh Johnson’s Press Conference at U.S. Customs and Border Protection Headquarters. U.S. DEP’T OF HOMELAND SECURITY (July 12, 2014), <http://www.dhs.gov/transcript-dhs-secretary-johnson’s-press-conference>.

<sup>621</sup> U.S. CUSTOMS AND BORDER PROTECTION, CBP ADDRESSES HUMANITARIAN CHALLENGES OF UNACCOMPANIED CHILD MIGRANTS, <http://www.cbp.gov/border-security/humanitarian-challenges>.

<sup>622</sup> *Feds Launch Campaign to Discourage Migrants from Dangerous Trek to U.S.*, CBS NEWS (July 3, 2014), <http://www.cbsnews.com/news/federal-officials-launch-campaign-to-discourage-migrants-from-making-dangerous-trek-to-u-s/>.

<sup>623</sup> *Id.*

<sup>624</sup> See GOV’T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION 40–41 (2015).

<sup>625</sup> See *id.* (“Carrying out ineffective campaigns could lead to higher levels of migration to the United States, which is not only potentially costly in terms of U.S. taxpayer resources but costly and dangerous to the migrants and their families.”).

<sup>626</sup> Marty Graham, *U.S. Ads Target Illegal Immigration from Central America*, REUTERS (Aug. 18, 2015), <http://www.reuters.com/article/2015/08/18/us-usa-border-ads-idUSKCN0QN26920150818>. Ironically, the Majority Staff notes that these are not the facts and that it is actually highly unlikely that unaccompanied minors from Central America will be deported, as indicated by the statistics provided above.

wish to bring their children to the U.S.<sup>627</sup> On November 14, 2014, Vice President Biden announced the in-country refugee/parole program for minors in El Salvador, Guatemala, and Honduras with parents lawfully present in the U.S.<sup>628</sup> This program allows individuals living in the U.S. to request a refugee visa for unmarried children under the age of 21.<sup>629</sup> Additionally, if the second parent in Central America is lawfully married to the parent in the U.S., the second parent will be included with the child's petition, making the second parent a candidate for refugee and parole status.<sup>630</sup>

Pursuant to this program, a parent under one of the following categories can request program access: 1) Lawful Permanent Resident; 2) Temporary Protected Status; 3) Parolee, granted for at least a year; 4) DACA recipient; 5) Deferred Action recipient, granted for at least a year; 6) Deferred Enforced Departure recipient; and 7) Withholding of Removal grantee.<sup>631</sup> The Administration allocated 4,000 refugee visas for this program out of the 70,000 globally available. According to the State Department, as of September 14, 2015, processing centers have received 4,253 applications: 3,636 in El Salvador, 532 in Honduras, and 85 in Guatemala.<sup>632</sup>

Finally, on June 24, 2015, Secretary Johnson announced a change to family detention practices.<sup>633</sup> Due to the TVPRA and *Flores Agreement*, DHS is unable to immediately repatriate or hold unaccompanied minors in detention facilities. However, adults may be immediately repatriated and family units can be detained. At a Committee Hearing, Secretary Johnson attributed the decline in the migration of unaccompanied minors this year to the reduction in the repatriation times for the adults, increased returning flights, and expanded family unit detention space.<sup>634</sup>

Despite this recognition, two month later Secretary Johnson announced the Department's plans to release on bond detained family units able to present a credible fear case.<sup>635</sup> According to DHS, the family's bond will be set "at a level that is reasonable and realistic, taking into account

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<sup>627</sup> *Unaccompanied Alien Minors: Pressing the Administration for a Strategy: Hearing Before the House SubComm. on the Western Hemisphere of the Comm. on Foreign Relations*, 113th Cong. (2014) (statement of Roberta S. Jacobson, Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State).

<sup>628</sup> Ricardo Zuniga, *Promoting Prosperity and Security in Central America*, THE WHITE HOUSE (Nov. 14, 2014) <https://www.whitehouse.gov/blog/2014/11/14/promoting-prosperity-and-security-central-america>.

<sup>629</sup> U.S. DEP'T OF STATE, OFFICE OF BUREAU OF POPULATION, REFUGEES, AND MIGRATION, IN-COUNTRY REFUGEE/PAROLE PROGRAM FOR MINORS IN EL SALVADOR, GUATEMALA, AND HONDURAS WITH PARENTS LAWFULLY PRESENT IN THE UNITED STATES (2014), <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm>.

<sup>630</sup> *Id.*

<sup>631</sup> Data provided to Majority Staff by U.S. Department of State's Office of Bureau of Population, Refugees and Migration (Sept. 22, 2015).

<sup>632</sup> *Id.*

<sup>633</sup> U.S. DEP'T OF HOMELAND SECURITY, STATEMENT BY SECRETARY JEH C. JOHNSON ON FAMILY RESIDENTIAL CENTERS, <http://www.dhs.gov/news/2015/06/24/statement-secretary-jeh-c-johnson-family-residential-centers>.

<sup>634</sup> See *The Homeland Security Department's Budget Submission for Fiscal Year 2016: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (Statement of Jeh Johnson, Secretary, U.S. Department of Homeland Security).

<sup>635</sup> U.S. DEP'T OF HOMELAND SECURITY, STATEMENT BY SECRETARY JEH C. JOHNSON ON FAMILY RESIDENTIAL CENTERS, <http://www.dhs.gov/news/2015/06/24/statement-secretary-jeh-c-johnson-family-residential-centers>.

ability to pay, while also encompassing risk of flight and public safety.”<sup>636</sup> The Department still appears to recognize that a recent ruling prohibiting *all* detention of illegal immigrant families can actually entice more illegal immigration.<sup>637</sup> According to DHS in filings with the court, “the proposed remedies could heighten the risk of another surge in illegal migration across our Southwest border by Central American families, including by incentivizing adults to bring children with them on their dangerous journey as a means to avoid detention and gain access to the interior of the United States.”<sup>638</sup> DHS and the State Department have stated it is too early to determine whether the recent increase in apprehensions at the border is related to this new policy.

### *Mexico Response*

In FY2015, CBP apprehended 28,387 unaccompanied minors from Central America, somewhat down from FY2014 levels.<sup>639</sup> However, it is unclear how impactful U.S. efforts have been in reducing the flow.<sup>640</sup> According to research conducted by GAO, “individuals in El Salvador, Guatemala, and Honduras give more credence to what they hear from relatives and friends than to what they hear on the radio and television.”<sup>641</sup> Instead, many experts point to Mexico’s increased efforts to detain illegal migrants crossing the Mexico-Guatemala border as a major reason behind lower apprehension numbers at the U.S.-Mexico border in FY2015.<sup>642</sup>

According to Mexico’s Ministry of Interior, from January 1 to August 31, 2015, Mexico detained 96,830 adults and 22,400 minors from El Salvador, Guatemala, and Honduras. These figures represent a 64 percent increase in adults and 49 percent increase in minors compared to the same period in the previous year, in which Mexico apprehended 58,930 Central American adults and 15,049 unaccompanied minors.<sup>643</sup>

In 2014, the State Department reprogrammed \$80 million to help Mexico build up its border patrol forces and capabilities to better manage its southern border.<sup>644</sup> While the Mexican Government has significantly increased its presence at the Mexico-Guatemala border, it still faces many challenges.<sup>645</sup> For example, on a recent CODEL to Central America, Members of the

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<sup>636</sup> *Id.*

<sup>637</sup> Stephen Dinan, DHS Admits New Surge of Illegal Immigrant Families, Wash Times (Aug. 7, 2015), <http://www.washingtontimes.com/news/2015/aug/7/dhs-admits-new-surge-illegal-immigrant-families/>.

<sup>638</sup> *Id.*

<sup>639</sup> U.S. CUSTOMS AND BORDER PROTECTION, SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

<sup>640</sup> See GOV’T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION 36 (2015).

<sup>641</sup> *Id.*

<sup>642</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION 4 (2015). (“Recent data indicate the pace of migration from Central America remains high, though fewer migrants are being apprehended in the United States.”).

<sup>643</sup> *Id.*

<sup>644</sup> *Id.*

<sup>645</sup> Douglas Farah and Carl Meacham, *Alternative Governance in the Northern Triangle and Implications for U.S. Foreign Policy: Finding Logic within Chaos*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Sept. 21, 2015), <http://csis.org/event/alternative-governance-northern-triangle-and-implications-us-foreign-policy-finding-logic-with>

Committee visited the Guatemala-Mexico border and witnessed a number of rafts, in broad daylight, being utilized to transport contraband from Guatemala to Mexico.

Moreover, some observers suggest that increased UAC apprehensions in the U.S. in August and September could be a result of smugglers finally finding new routes to avoid detection in Mexico. This may explain why the Yuma and Big Bend sectors are seeing very large increases in UACs, as compared to FY2014, as human smugglers begin to change their routes.

#### *U.S. Assistance to Central America and the Dependency on Remittances*

Including State Department and USAID regional programs, from FY2014 to FY2015, Congress appropriated \$754.8 million in bilateral assistance to El Salvador, Guatemala, and Honduras.<sup>646</sup>

Also, established in 2008 to assist Central American nations combatting TCOs, the Central America Regional Security Initiative (CARSI) provides equipment, technical assistance, and counternarcotic training to identify and dismantle TCOs and drug cartels.<sup>647</sup> In FY2014, most of CARSI's \$161.5 million budget was spent in El Salvador, Guatemala, and Honduras.<sup>648</sup>

Moreover, in 2006, El Salvador received a \$461 million five-year compact through the Millennium Challenge Corporation (MCC)<sup>649</sup> to invest in education, public services, and transportation infrastructure in its least developed region located near the border with Guatemala and Honduras.<sup>650</sup> Additionally, in 2014, El Salvador secured another \$277 million compact to fund a project to connect a border-crossing corridor with Honduras and to fund reforms aimed at attracting foreign direct investment.<sup>651</sup>

While Guatemala has not received an MCC compact, in 2014 the MCC board approved a \$28 million threshold program to support policies aimed at developing public-private partnerships and to enhance the education system to meet 21st century workforce demands.<sup>652</sup> Finally, Honduras secured a \$205 million five-year grant in 2005 to fund transportation projects and to improve rural development.<sup>653</sup> This grant was not renewed because the government did not

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<sup>646</sup> U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATIONS FOR FOREIGN OPERATIONS AND RELATED PROGRAMS, FISCAL YEAR 2016 (2015), <http://www.state.gov/s/d/rm/rls/ebs/2016/>.

<sup>647</sup> U.S. DEP'T OF STATE, OFFICE OF WESTERN HEMISPHERE PROGRAMS (INL/WHP), <http://www.state.gov/j/inl/whp/>.

<sup>648</sup> Peter J. Meyer, Clare Ribando Seelke, Maureen Taft-Morales, and Rhonda Margesson, CONG. RESEARCH SERV., R 43702, UNACCOMPANIED CHILDREN FROM CENTRAL AMERICA: FOREIGN POLICY CONSIDERATIONS (2015).

<sup>649</sup> In 2004, Congress established the Millennium Challenge Corporation (MCC) to provide economic assistance to developing countries committed to investing in its society, principles of economic freedom, and good governance.

<sup>650</sup> MILLENNIUM CHALLENGE CORPORATION, EL SALVADOR COMPACT, <https://www.mcc.gov/where-we-work/program/el-salvador-compact>.

<sup>651</sup> MILLENNIUM CHALLENGE CORPORATION, EL SALVADOR INVESTMENT COMPACT, <https://www.mcc.gov/where-we-work/program/el-salvador-investment-compact>.

<sup>652</sup> MILLENNIUM CHALLENGE CORPORATION, GUATEMALA THRESHOLD PROGRAM, <https://www.mcc.gov/where-we-work/program/guatemala-threshold-program>.

<sup>653</sup> Maria Rizza Leonzon, *No MCC Aid Renewal for Honduras*, DEVEX (Jan. 7, 2011), <https://www.devex.com/news/no-mcc-aid-renewal-for-honduras-72002>.

address corruption. However, in 2013, the MCC approved a \$15.6 million threshold program to build Honduras’s public finances management capacity.<sup>654</sup>

A recent GAO report highlighted concerns with the effectiveness of current U.S. assistance.<sup>655</sup> Specifically, GAO examined an interagency agreement between the State Department and DOJ to train Honduran prosecutors and found upon its visit to Honduras that there were no active prosecutors trying cases in Tegucigalpa, the country’s capitol.<sup>656</sup> In El Salvador, GAO observed “a computer lab filled with computers recently provided by USAID but with no teacher present.”<sup>657</sup> Apparently, the Salvadoran Ministry of Education had not yet provided salaries for the teachers.<sup>658</sup>

**Table 7. U.S. Assistance to El Salvador, Guatemala, and Honduras<sup>659</sup>**  
FY2012-FY2016 in million dollars\*

Country/Program	FY2012 (expended)	FY2013 (expended)	FY2014 (expended)	FY2015 (allocated)	FY2016 (requested)	
El Salvador	54	50	44.5	46.6	119.2	
Guatemala	102.6	91.2	88.1	107.2	220.6	
Honduras	93.2	91.6	78.0	71.2	163	
USAID regional	N/A	N/A	N/A	49.2	64.5	
State regional	N/A	N/A	N/A	N/A	127.1	
CARSI	Incl.	Incl.	Incl.	270	286.5	
<b>Total</b>	<b>250</b>	<b>232.8</b>	<b>210.6</b>	<b>544.2</b>	<b>980.9</b>	<b>2,218.5</b>

\*FY2012 to FY2014 figures include aid provided by the State Department, USAID, DHS, and the Inter-American Foundation. FY2015 to FY2016 figures only include funds from the State Department and USAID.

In an op-ed published earlier this year, Vice President Biden wrote about the Administration’s response to the large migration from Central America in 2014 stating, “The challenges ahead are formidable. But if the political will exists, there is no reason Central America cannot become the next great success story of the Western Hemisphere.”<sup>660</sup> Showing their commitment to improving conditions in El Salvador, Guatemala, and Honduras, on November 14, 2014, the presidents of the Central American countries announced the Plan of the Alliance for Prosperity in the Northern Triangle.<sup>661</sup> The four goals of the plan are to: 1) stimulate the private sector; 2) develop opportunities for the people of Central America; 3) improve public safety and access to

<sup>654</sup> MILLENNIUM CHALLENGE CORPORATION, THRESHOLD PROGRAM (2013), <https://www.mcc.gov/pages/docs/story/story-cbj-fy2015-threshold-program>.

<sup>655</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-707, CENTRAL AMERICA: IMPROVED EVALUATION EFFORTS COULD ENHANCE AGENCY PROGRAMS TO REDUCE UNACCOMPANIED CHILDREN MIGRATION (2015).

<sup>656</sup> *Id.* at 39.

<sup>657</sup> *Id.*

<sup>658</sup> *Id.*

<sup>659</sup> *Id.*

<sup>660</sup> Joseph R. Biden Jr., *Joe Biden: A Plan for Central America*, NY TIMES (Jan. 29, 2015),

[http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?\\_r=0](http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?_r=0).

<sup>661</sup> PLAN OF THE ALLIANCE FOR PROSPERITY IN THE NORTHERN TRIANGLE: A ROAD MAP (2014).

the justice system; and 4) strengthen institutions to increase people's trust in the state.<sup>662</sup> Each country is responsible for contributing \$5 billion to fund these initiatives.<sup>663</sup>

In January, the Administration released its FY2016 budget request to implement the "U.S. Strategy for Engagement in Central America."<sup>664</sup> The budget requests a total of \$1.005 billion for Central America, the majority of which is allocated for programs in El Salvador, Guatemala, and Honduras.<sup>665</sup>

During the last two years, El Salvadorians, Guatemalans, and Hondurans living abroad, mostly in the U.S., sent over \$25.1 billion to relatives in their countries of origin.<sup>666</sup> In 2014, remittances accounted for 16.8 percent of the GDP (\$4.2 billion) in El Salvador, 9.9 percent (\$5.5 billion) in Guatemala, and 17.7 percent (\$3.44 billion) in Honduras.<sup>667</sup> However, the numbers might be higher because each Central Bank uses a different methodology and some might not record all transfers processed through private accounts.<sup>668</sup> One theory by DHS and the State Department for the recent surge at the border is that children and family units are now traveling to the U.S. when a family member already in the U.S. sends them money to make the journey.

### Unauthorized Immigrant Populations

In general, illegal immigration occurs in two ways: either "when immigrants cross the U.S. border without authorization, or when they overstay a legal visa after it expired."<sup>669</sup>

As of 2014, the Pew Research Center estimates the population of illegal immigrants in the U.S. to be 11.3 million, or 3.5 percent of the total U.S. population of 316.1 million.<sup>670</sup> In 2007 the

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<sup>662</sup> *Id.*

<sup>663</sup> *Slowing Migrants to U.S. will Cost \$15 Billion, Guatemala says*, BLOOMBERG (Jan. 26, 2015), <http://www.bloomberg.com/news/articles/2015-01-26/slowing-migrants-to-u-s-will-cost-15-billion-guatemala-says>.

<sup>664</sup> THE WHITE HOUSE, FACT SHEET: PROMOTING PROSPERITY, SECURITY AND GOOD GOVERNANCE IN CENTRAL AMERICA (2015) <https://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame>.

<sup>665</sup> Of the \$1 billion requested, \$24 million is allocated for programs in Belize, Costa Rica, Nicaragua, and Panama. U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATIONS FOR FOREIGN OPERATIONS AND RELATED PROGRAMS, FISCAL YEAR 2016 (2015) <http://www.state.gov/s/d/rm/rls/ebs/2016/>.

<sup>666</sup> Manuel Orozco, Laura Porras, and Julia Yansura, *Trends and Remittances to Latin America and the Caribbean in 2014*, *Inter-American Dialogue* 5 (Inter-American Dialogue 2015), <http://www.thedialogue.org/wp-content/uploads/2015/06/TrendsInRemittancesIn2014forLatinAmericaandtheCaribbeanFINAL.pdf>; see also World Bank, *Personal Remittances, Received (% of GDP)*, <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>.

<sup>667</sup> *Id.*

<sup>668</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-06-210, INTERNATIONAL REMITTANCES: DIFFERENT ESTIMATION METHODOLOGIES PRODUCE DIFFERENT RESULTS (2006).

<sup>669</sup> Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 14 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

<sup>670</sup> Jens Manuel Krogstad & Jeffrey S. Passel, *5 Facts about Illegal Immigration in the U.S.*, PEW RESEARCH CENTER (July 24, 2015), <http://www.pewresearch.org/fact-tank/2015/07/24/5-facts-about-illegal-immigration-in-the-u-s/>. In January 2013 it is estimated that there were 13.1 million lawful permanent residents (LPRs), making up 4.14 percent of the U.S. population and 11.3 million illegal residents, making up 3.54 percent of the U.S. population.

illegal population peaked at 12.2 million, or 4 percent of the U.S. population, and declined during the recent recession.<sup>671</sup> In 2012, unauthorized immigrants made up about a quarter of the foreign-born population of approximately 42 million.<sup>672</sup>

In 2012, more than half of the unauthorized immigrant population—approximately 60 percent—lived in the following six states: California, Florida, Illinois, New Jersey, New York, and Texas.<sup>673</sup> Also of note, today African, Guatemalan and Salvadoran immigrants “have a substantial presence in the Washington, DC, metropolitan area.”<sup>674</sup> At the opposite end of the spectrum, in 2012 fewer than 5,000 unauthorized immigrants lived in Maine, Montana, North Dakota, South Dakota, Vermont, and West Virginia.<sup>675</sup>

According to some estimates, between 2008 and 2012, approximately 8.1 million unauthorized immigrants were born in Mexico and other Central America countries (71 percent); 1.5 million from Asia (13 percent); 817,000 from South America (7 percent); 455,000 from Europe, Canada, or Oceania (4 percent); 317,000 from Africa (3 percent); and 225,000 from the Caribbean (2 percent).<sup>676</sup> While Mexicans constitute a majority of unauthorized immigrants (52 percent in 2012), their numbers have declined in recent years.<sup>677</sup> As the number of people unlawfully in the

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779,929 LPRs naturalized to become U.S. citizens, resulting in 18 million naturalized citizens. That same year the U.S. saw approximately 3.9 million births (12.4 per 1,000) and 2.6 million deaths (8.2 per 1,000). U.S. DEP’T OF HOMELAND SECURITY, ESTIMATES OF THE LAWFUL PERMANENT RESIDENT POPULATION IN THE UNITED STATES: JANUARY 2013, [https://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_pe\\_2013.pdf](https://www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2013.pdf); *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, PEW RESEARCH CENTER (Sept. 3, 2014), <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>; U.S. DEP’T OF HOMELAND SECURITY, U.S. NATURALIZATIONS: 2013, [http://www.dhs.gov/sites/default/files/publications/ois\\_nat\\_fr\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_nat_fr_2013.pdf); CENTER FOR DISEASE CONTROL AND PREVENTION, BIRTH DATA, <http://www.cdc.gov/nchs/births.htm>; CENTER FOR DISEASE CONTROL AND PREVENTION, DEATHS AND MORTALITY, <http://www.cdc.gov/nchs/fastats/deaths.htm>.

<sup>671</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 6 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

<sup>672</sup> *Id.* at 14; UNITED STATES CENSUS BUREAU, STATE & COUNTY QUICKFACTS: USA, <http://quickfacts.census.gov/qfd/states/00000.html>.

<sup>673</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 6 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>; see also Jie Zong and Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INSTITUTE (Feb. 26, 2015), <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

<sup>674</sup> Marc R. Rosenblum and Ariel G. Ruiz Soto, *An Analysis of Unauthorized Immigrants in the United States by Country and Region of Birth*, MIGRATION POLICY INSTITUTE 1 (2015), <http://www.migrationpolicy.org/research/analysis-unauthorized-immigrants-united-states-country-and-region-birth> (meanwhile, Hondurans are largely located in Texas, Florida, and the Southeast).

<sup>675</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 7 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

<sup>676</sup> Jie Zong and Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INSTITUTE (Feb. 26, 2015), <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

<sup>677</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 9, 18 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

U.S. from Mexico declined, the “unauthorized immigrant populations from South America, Europe, and Canada held steady” and the “unauthorized immigrant populations from Asia, Central America and the rest of the world” increased.<sup>678</sup>

From 2009 to 2012, seven states saw an increase in their unauthorized immigrant population: Florida, Idaho, Maryland, Nebraska, New Jersey, Pennsylvania, and Virginia.<sup>679</sup> For example, “[i]n Maryland, the estimated number of unauthorized immigrants grew to 250,000 in 2012, compared with 220,000 in 2007.”<sup>680</sup> In 14 states, the populations of unauthorized immigrants decreased from 2009 to 2012: Alabama, Arizona, California, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Nevada, New Mexico, New York, and Oregon.<sup>681</sup> In 13 of these states, this decline was due to a decrease in illegal immigrants migrating from Mexico.<sup>682</sup> Illegal populations also decline when immigrants move to other states, “when fewer new immigrants arrive, when a greater number decide to leave the country or through deaths.”<sup>683</sup>

### *Demographics of the Foreign-Born and Native Born Population*

According to the Department of Labor, “the demographic composition of the foreign-born labor force differs from the native-born labor force.”<sup>684</sup> In 2014, the foreign born labor force had more men and working adults between the ages of 25 to 54, as compared to the native-born labor force.<sup>685</sup> On the other hand, in 2014, “23.8 percent of the foreign-born labor force age 25 and over had not completed high school, compared with 4.6 percent of the native-born labor force.”<sup>686</sup> The proportion of foreign-born (34.2 percent) and native-born (38.2 percent) persons holding a bachelor’s degree or higher was more comparable.<sup>687</sup> From 2013 to 2014, the unemployment rate of foreign-born workers declined from 6.9 percent to 5.6 percent and fell for the native-born from 7.5 percent to 6.3 percent.<sup>688</sup>

According to the Congressional Budget Office (CBO), the labor force is expected to expand more slowly in the future than in the 1980s and 1990s, slowing potential output.<sup>689</sup> Overall,

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<sup>678</sup> *Id.*; see also Marc R. Rosenblum and Ariel G. Ruiz Soto, *An Analysis of Unauthorized Immigrants in the United States by Country and Region of Birth*, MIGRATION POLICY INSTITUTE 6 (2015),

<http://www.migrationpolicy.org/research/analysis-unauthorized-immigrants-united-states-country-and-region-birth>.

<sup>679</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 11 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

<sup>680</sup> *Id.*

<sup>681</sup> *Id.* at 12.

<sup>682</sup> *Id.*

<sup>683</sup> *Id.*

<sup>684</sup> U.S. DEP’T OF LABOR, LABOR FORCE CHARACTERISTICS OF FOREIGN-BORN WORKERS (2014),

<http://www.bls.gov/news.release/forbrn.nr0.htm>.

<sup>685</sup> *Id.* (foreign-born men: 58.1 percent; native-born men: 52.2 percent; foreign-born ages 25-54, 74.3 percent; native-born ages 25-54, 62.7 percent).

<sup>686</sup> *Id.*

<sup>687</sup> *Id.*

<sup>688</sup> *Id.*

<sup>689</sup> CONGRESSIONAL BUDGET OFFICE, THE BUDGET AND ECONOMIC OUTLOOK: 2015 TO 2025 4 (2015),

<https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49892-Outlook2015.pdf>.

CBO predicts that “growth in the potential labor force will be held down by the ongoing retirement of the baby boomers; by a relatively stable labor force participation rate among working-age women, after sharp increases from the 1960s to the mid-1990s; and by federal tax and spending policies set in current law.”<sup>690</sup> The labor force participation rate has dropped in recent years, and is expected to continue to do so. CBO estimates that by the end of 2019, the labor force participation rate will decline to 62 percent, most importantly due to the continued retirement of the baby-boomer generation.<sup>691</sup>

Today, the U.S. is currently at a fertility rate of 1.9.<sup>692</sup> According to one study, “as the eighty-million-strong baby-boomer generation [retires]. . . . The sixty-million Generation Xers that follow will . . . leave[] approximately five million open jobs by 2018.”<sup>693</sup> Many other countries are facing decreasing fertility rates as well.<sup>694</sup> Japan’s declining birth rate, for example, is expected to result in less than 20 million people by 2050, from its peak of 127.5 million in 2005.<sup>695</sup> Even Mexico is facing a decline in birthrates, forcing the country to import farm workers from Guatemala.<sup>696</sup> If current fertility rates in Europe remain constant, the total population of the continent will go from 738 million in 2015 to 646 million by the end of the century.<sup>697</sup>

Social Security is greatly affected by the number of workers in the labor force. While the number of workers paying into Social Security has risen, it has not risen to the level of the number of people retiring. In 1940, there were 35.4 million workers supporting 222,000 retirees, or 160 workers for every pensioner.<sup>698</sup> By 1950, the ratio fell to 16.5 workers for every retiree, by 1980, 3.2 workers for every retiree, and by 2010, 2.9 workers were paying for the benefits of each retiree.<sup>699</sup> The Social Security Administration predicts that by 2034, the ratio of workers-to-retirees will fall to just 2.1 workers for every retiree as a result of retiring baby boomers and declining fertility rates.<sup>700</sup> As the worker-to-retiree ratio drops, the tax burden increases.<sup>701</sup>

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<sup>690</sup> *Id.*

<sup>691</sup> *Id.* at 43.

<sup>692</sup> United Nations, *World Population Prospects The 2015 Revision* (New York, 2015).

<sup>693</sup> Shannon K. O’Neil, *Two Nations Indivisible: Mexico, The United States, and the Road Ahead 57* (Oxford University Press 2013) (citing Barry Bluestone and Mark Melnik, *After the Recovery: Help Needed the Coming Labor Shortage and How People in Encore Careers Can Help Solve It* (Civic Ventures, 2010)).

<sup>694</sup> S. Philip Morgan, *Is Low Fertility a Twenty-First Century Demographic Crisis?* 2 (Demography 2003) (Just 3 percent of the world’s population lives in countries that are not seeing fertility decline).

<sup>695</sup> UNITED NATIONS POPULATION DIVISION, REPLACEMENT MIGRATION: JAPAN, <http://www.un.org/esa/population/publications/migration/japan.pdf>.

<sup>696</sup> Miriam Jordan, *U.S., Mexico Increasingly Competing for Farm Labor*, WALL STREET JOURNAL (Jan. 23, 2015), <http://www.wsj.com/articles/u-s-mexico-increasingly-competing-for-farm-labor-1422043153> (citing the birthrate in Mexico to be 2.05 children per woman); see also Shannon K. O’Neil, *Two Nations Indivisible: Mexico, The United States, and the Road Ahead 57* (Oxford University Press 2013) (“After 2020, somewhere between one hundred thousand and two hundred thousand fewer Mexicans will be coming of age each year compared to 2010. This translates to at least a half million to a million fewer Mexican looking for jobs in the 2020s. The thirty-year wave of supply-led migration between the United States and Mexico has now passed, and will likely never happen again”).

<sup>697</sup> United Nations, *World Population Prospects The 2015 Revision* (New York, 2015).

<sup>698</sup> SOCIAL SECURITY ONLINE, RATIO OF SOCIAL SECURITY COVERED WORKERS TO BENEFICIARIES CALENDAR YEARS 1940-2010, <http://www.ssa.gov/history/ratios.html>.

<sup>699</sup> *Id.*

<sup>700</sup> SOCIAL SECURITY ADMINISTRATION, *THE FUTURE OF SOCIAL SECURITY* (2008).

## *Labor Participation and Incentives*

In 2013, the foreign born share of the U.S. civilian labor force “accounted for nearly 17 percent (26.2 million) of the 158.6 million workers in the civilian labor force.”<sup>702</sup> From 1990 to 2013, “the percentage of foreign-born workers in the civilian labor force more than tripled, from 5 percent to 17 percent.”<sup>703</sup> As to wages, “[i]n 2014, the median usual weekly earnings of foreign-born, full-time wage and salary workers (\$664) were 81.0 percent of the earnings of their native-born counterparts (\$820).”<sup>704</sup>

In 2012, 8.1 million illegal immigrants “were working or looking for work,” accounting for 5.1 percent of the civilian labor force.<sup>705</sup> In testimony before the Committee, Pew stated that “[u]nauthorized immigrants are more likely than the overall U.S. population to be of working age.”<sup>706</sup> Pew estimates that of the 11.2 million unauthorized immigrants in 2012, only 800,000 are children and approximately 150,000 are over 65—half of which remain in the labor force despite being of retirement age.<sup>707</sup> “Among the states, the share of unauthorized immigrants in the labor force is highest in Nevada (10.2 percent in 2012),” followed by California (9.4 percent) and Texas (8.9 percent).<sup>708</sup>

According to another study, in 2013, of the 7,741,185 unauthorized population in the workforce nationwide, 704,726 (9.1 percent) worked in managerial or professional specialty roles; 1,157,583 (15 percent) worked in technical, sales and administrative support; 2,128,729 (27.5 percent) worked in services, such as janitors, maids, housekeepers, groundskeepers; 731,347 (9.4 percent) worked in farming, forestry, and fishing; 1,175,890 (15.2 percent) worked in precision production, craft, and repair; and 1,671,511 (21.6 percent) worked as operators, fabricators, and laborers.<sup>709</sup>

Of course, the numbers and percentages vary by state. In Wisconsin, for example, of the 61,254 unauthorized population in the workforce in 2013, 9,538 (15.6 percent) of the unauthorized

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<sup>701</sup> THE TAX FOUNDATION, SOCIAL SECURITY AND MEDICARE TAX RATES, 1937-2009.

<sup>702</sup> Jie Zong and Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INSTITUTE (Feb. 26, 2015), <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

<sup>703</sup> *Id.*

<sup>704</sup> U.S. DEP’T OF LABOR, LABOR FORCE CHARACTERISTICS OF FOREIGN-BORN WORKERS (2014), <http://www.bls.gov/news.release/forbrn.nr0.htm>.

<sup>705</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 8 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

<sup>706</sup> *Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Jeffrey S. Passel, PH.D., Senior Demographer, Hispanic Trends Project, Pew Research Center).

<sup>707</sup> Data provided to Majority Staff by Pew Research Center.

<sup>708</sup> Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEW RESEARCH CENTER 8 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/>.

<sup>709</sup> CENTER FOR MIGRATION STUDIES, ESTIMATES OF THE UNAUTHORIZED POPULATION FOR STATES, <http://data.cmsny.org/>.

population worked in farming, forestry, and fishing and 16,450 (26.9 percent) worked as operators, fabricators, and laborers.<sup>710</sup> On the other hand, In Delaware, of the 14,852 unauthorized population in the workforce, 2,524 (17 percent) worked in managerial or professional specialty roles and 2,792 (18.8 percent) worked in technical, sales, and administrative support roles.<sup>711</sup>

“The main economic factor influencing migration is the wage gap, or the difference between what a potential migrant can earn in the U.S. compared to the migrant’s home country. Differences in average wages for similar workers between developed and developing countries constitute the single largest price distortion remaining in global markets.”<sup>712</sup>

Over the last several decades, migrant survey data suggested that the wage gap based on actual labor market outcomes in the U.S. and Mexico was approximately \$7 to \$1, if valued at the commercial exchange rate.<sup>713</sup> Today, this gap has fallen to as low as \$5 to \$1.<sup>714</sup> However, this wage gap is expected to continue to be above \$3 to \$1 until 2075.<sup>715</sup> The wage gap between the U.S. and Central American countries in terms of income is larger than the wage gap between the U.S. and Mexico.<sup>716</sup> According to economists, people will relocate if the ratio is above \$2 to \$1.<sup>717</sup>

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<sup>710</sup> *Id.*

<sup>711</sup> *Id.*

<sup>712</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 8 (2013) (citing Michael Clemens, Claudio E. Montenegro, and Lant Pritchett, *The Place Premium: Wage Differences for Identical Workers across the U.S. Border*, CENTER FOR GLOBAL DEVELOPMENT (2008)).

<sup>713</sup> Bryan Roberts, Edward Alden, John Whitley, *Managing Illegal Immigration to the United States: How Effective is Enforcement?*, COUNCIL ON FOREIGN RELATIONS 8 (2013).

<sup>714</sup> *Id.*

<sup>715</sup> *Id.* at 9.

<sup>716</sup> *Id.* at Appendix 2: Wage Gap and Other Trends in Central American Source Countries, <http://www.cfr.org/immigration/managing-illegal-immigration-united-states/p30658>.

<sup>717</sup> Michael Clemens, Claudio E. Montenegro, and Lant Pritchett, *The Place Premium: Wage Differences for Identical Workers across the U.S. Border*, CENTER FOR GLOBAL DEVELOPMENT (2008).

## **Conclusion and Recommendations for Proposed Legislation**

It cannot be overstated: our borders are not secure. According to DHS Secretary Jeh Johnson, we will not even have 100 percent situational awareness, much less operational control of our borders, by the time this Administration leaves office.<sup>718</sup> Rather than stall important reforms that will make our country safer, the Chairman encourages the Administration to work with Congress toward important, incremental improvements at our border.

This report makes the following recommendations for improving border security on America's southwest, northern, and maritime borders, as well as at our ports of entry. To truly secure our borders, we must identify, eliminate, or drastically reduce the incentives for illegal immigration. We also must add more boots on the ground, tactical infrastructure, and technology across all our border sectors. This report does not propose major reforms to America's border security policies. Instead, it offers a list of realistic, important steps toward continuous improvement that the Chairman believes could be achieved in the upcoming months.

- Require adequate metrics to measure border security across all U.S. borders—land, air, and sea, with appropriate oversight and transparency.

Over the course of the Committee's border security hearing series, the Majority Staff found it challenging to obtain basic and consistent information from DHS. One way to improve border security is to properly define the problem. Therefore, DHS should utilize metrics that truly define the threats across all of our borders. In order to ensure appropriate oversight, GAO should confirm the adequacy of these metrics and the data used to arrive at these metrics should be made available to the academic and law enforcement community, as well as the general public. Ultimately, understanding these threats will help inform both elected officials and the public as to what exactly our border security problems are. Getting this information now will put us on an important path towards solving our immigration problems in the future.

Earlier this year, the Chairman introduced a bill outlining important metrics DHS should utilize and provide to the public in order to fully define the security across our borders. This bill cleared the Committee on a bipartisan basis. However, a small group of Democrats are currently preventing this bill from proceeding, noting that it is not comprehensive immigration reform and therefore should not advance.

- Ensure sufficient safeguards are in place in both the U.S. Refugee Resettlement Program and Visa Waiver Program.

After the horrific attacks in Paris, both citizens and elected official across the country have called for a review of U.S. security programs. Particular focus had been on the U.S. Refugee Resettlement Program and the Visa Waiver Program.<sup>719</sup> In November, the House passed a veto-

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<sup>718</sup> See *The Homeland Security Department's Budget Submission for Fiscal Year 2016: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>719</sup> *The Impact of ISIS on the Homeland and Refugee Resettlement: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

proof bipartisan bill that would require supplemental certifications and background investigations on certain refugees before they are admitted to the United States. Other Members are considering legislation to update the security safeguards in the Visa Waiver Program, particularly since the known attackers in Paris were nationals of countries that are part of the program.

Earlier this year, the President announced plans to raise the refugee ceiling to 85,000 for FY2016 and to 100,000 for FY2017.<sup>720</sup> During a hearing focused on the topic, Chairman Johnson pointed out to the Director of U.S. Citizenship and Immigration Services (USCIS) that this plan would increase the agency's caseload by 21 percent and 43 percent, respectively.<sup>721</sup> USCIS was questioned whether the management solution to this increase would be to streamline the vetting process.<sup>722</sup> To provide the American public with assurances that the U.S. will not short-circuit the vetting process, the Chairman introduced the Senate companion to the house-passed legislation mentioned above. As this bill advances and new information regarding U.S. vulnerabilities emerges, the Chairman is considering amending the bill to also include Visa Waiver Program enhancements.

- Initiate a concentrated public relations campaign to dissuade all Americans, but in particular young people, from using and becoming addicted to drugs.

America's insatiable demand for drugs is one root cause (perhaps the root cause) preventing the achievement of a secure border. And yet, we have not had a significant, nationwide ad campaign regarding the harms associated with drug abuse since Ronald Regan's "Campaign Against Drug Abuse" in the 1980s.<sup>723</sup> While appropriate safeguards are needed to identify the costs and expected results of such campaigns, it is important that the public understands the risks associated with drugs use. Further, we must begin to break down the stigma associated with drug use so people feel free to talk about their struggles and seek recovery options.

This year, the Committee has explored, and will continue to explore, how the country's heroin epidemic has devastated communities across the nation. In New Hampshire, the Committee heard a father tell the story of his young daughter's heroin addiction.<sup>724</sup> The father explained that for too long his family kept their daughter's addiction quiet, ashamed that this was happening to them.<sup>725</sup> In November, the Committee traveled to Arizona to understand both how heroin is crossing into the country and how its effects impact the Phoenix community. The Committee also plans to travel to Milwaukee for an upcoming field hearing, as statistics show

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<sup>720</sup> U.S. Dep't of State, U.S. Dep't of Homeland Security, U.S. Dep't of Health and Human Services, Proposed Refugee Admissions for Fiscal Year 2016 Report to Congress Submitted on Behalf of the President of the United States to the Committees on the Judiciary United States Senate and United States House of Representatives (2015).

<sup>721</sup> *Id.*

<sup>722</sup> *Id.*

<sup>723</sup> *Campaign Against Drug Abuse*, WETA (Sept. 14, 1986),

<http://www.pbs.org/wgbh/americanexperience/features/primary-resources/reagan-drug-campaign/>.

<sup>724</sup> *All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Doug Griffin, Father of Courtney Griffin).

<sup>725</sup> *Id.*

that between 2008 and 2012, heroin overdose deaths in Wisconsin tripled.<sup>726</sup> The first step in problem solving is to admit that you have one. The Committee will continue to work to bring public awareness to this issue.

- Reform the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to eliminate incentives for illegal immigration.

Children entering the U.S. from Mexico and Canada are screened within 48 hours.<sup>727</sup> Upon determining that a child does not qualify for asylum or is not a victim of human trafficking, DHS can then offer the minor voluntary removal or expedite their repatriation.<sup>728</sup>

Conversely, pursuant to the TVPRA, children from noncontiguous countries such as El Salvador, Guatemala, and Honduras, must be transferred to HHS within 72 hours of apprehension while waiting for an immigration court hearing; they cannot be immediately transferred back to their home countries.<sup>729</sup> HHS releases under parole authority over 90 percent of UACs into the interior of the country to relatives and sponsors living in the U.S.<sup>730</sup>

Institutionalizing a single, consistent procedure to process all UACs can reduce the incentive to embark on the dangerous journey to the United States. DHS resources are better utilized when legislation is consistent with how we treat those who unlawfully enter the U.S. While some also advocate for additional immigration judges to resolve the crisis, a clearly defined definition of an unaccompanied minor can simplify processing procedures and increase the number of expedited removals, while continuing to protect victims of human trafficking. Moreover, additional judges are of little value if minors are not showing up for their court dates.

As unaccompanied minors and family units arriving at the southwest border is again on the rise, the Chairman is considering legislation that would allow for the expedited removal of all illegal crossers in order to discourage children and families from taking the dangerous, sometimes deadly journey, through Central America and Mexico and across the southwest border.

Not only would eliminating an incentive to migrate illegally to the U.S. protect the lives of many children and families, it would also ensure that the very people who are eager to seek opportunity remain in and improve their own countries. The Migration Policy Institute estimates that close to one in five Salvadorans and approximately one in 15 Guatemalans and Hondurans already reside in the U.S.<sup>731</sup> On a recent CODEL to Central America, the president of Honduras told the

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<sup>726</sup> DEA Strategic Intelligence Section, *National Heroin Threat Assessment*, U.S. Dep't of Justice, Drug Enforcement Administration, DEA-DCT-DIR-022-15 at 44 (April 2015).

<sup>727</sup> Pub. L. No. 110-457 (2008).

<sup>728</sup> *Id.*

<sup>729</sup> *Id.*

<sup>730</sup> Dara Lind, *Thousands of Children are Fleeing Central America to Texas-Alone*, VOX (June 4, 2014), <http://www.vox.com/2014/6/4/5773268/children-migration-central-america-texas-unaccompanied-alien-children-border-crisis>.

<sup>731</sup> Marc R. Rosenblum, *Unaccompanied Child Migration to the United States: The Tension between Protection and Prevention*, MIGRATION POLICY INSTITUTE 12-13 (2015), <http://www.migrationpolicy.org/research/unaccompanied-child-migration-united-states-tension-between-protection-and-prevention>.

delegation that witnessing his people leave their country for opportunities in the U.S. was a “slap in the face.” Meanwhile, the President-elect in Guatemala argued for a renewed sense of nationalism in his country to motivate his people to remain in and fight for Guatemala.

- Provide Border Patrol agents access to federal lands.

Various federal land agencies have different missions, guidelines, and management plans regarding CBP access to federal land under their respective jurisdictions, which has historically slowed or impeded CBP—and its predecessor agency—in conducting border security operations on such land.<sup>732</sup> In Arizona, 80 percent of the border has restricted access due to national forests, wildlife refuges, military training ranges, and a Native American Reservation.<sup>733</sup>

In 2006, in an attempt to resolve ongoing conflicts between federal land managers and CBP over access to federal lands, DHS, the U.S. Department of the Interior (DOI) and the U.S. Department of Agriculture (USDA) entered into a nationwide MOU concerning border security operations on federal lands.<sup>734</sup> However, the MOU has not worked as intended, causing delays and impediments that threaten the security of our border.

For example, a 2011 GAO report found that “14 of the 26 Border Patrol stations along the southwestern border reported experiencing delays” in operations due to the time it took land managers to complete environmental and historic assessments.<sup>735</sup> In 2010, GAO cited a case where Border Patrol needed to improve a road so that a truck could relocate an underground sensor, but the federal land agency took eight months to perform a historic property assessment.<sup>736</sup> In another example, Border Patrol was required to wait four months for land managers to make a decision to approve the relocation of a mobile surveillance system to a different location.<sup>737</sup> By the time the land manager completed the environmental assessments, “illegal traffic had shifted to other areas.”<sup>738</sup> During this delay, Border Patrol agents lost their ability to detect illegal crossers within a seven-mile radius.”<sup>739</sup>

At a Committee mark-up, the Committee considered a bill introduced by Senator McCain that would provide Border Patrol agents access to federal lands in the Tucson and Yuma sectors. While the Majority Staff recommends expanding this bill to all border sectors, the Chairman

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<sup>732</sup> E.g., GOV’T ACCOUNTABILITY OFFICE, GAO-11-38, SOUTHWEST BORDER: MORE TIMELY BORDER PATROL ACCESS AND TRAINING COULD IMPROVE SECURITY OPERATIONS AND NATURAL RESOURCE PROTECTION ON FEDERAL LANDS 22 (2010).

<sup>733</sup> U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF INTELLIGENCE, ARIZONA INTELLIGENCE OVERVIEW (2015) (on file with Majority Staff).

<sup>734</sup> Memorandum of Understanding Among U.S. Department of Homeland Security and U.S. Department of the Interior and U.S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States’ Border (Mar. 2006).

<sup>735</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-11-573T, SOUTHWEST BORDER: BORDER PATROL OPERATIONS ON FEDERAL LANDS 10 (2011).

<sup>736</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-11-38, SOUTHWEST BORDER: MORE TIMELY BORDER PATROL ACCESS AND TRAINING COULD IMPROVE SECURITY OPERATIONS AND NATURAL RESOURCE PROTECTION ON FEDERAL LANDS 24 (2010).

<sup>737</sup> *Id.* at 23.

<sup>738</sup> *Id.*

<sup>739</sup> *Id.*

supports a piecemeal approach to this solution. Importantly, an amendment offered by Senator Heitkamp called for a GAO study to consider the impacts of this access and implications for applying this bill across all border sectors. The bill passed the Committee on a bipartisan basis.

- Require DHS to examine the threats on the northern border.

During the Committee’s hearing on the northern border, a clear pattern emerged—the northern border is far from secure, and this insecurity poses various threats to America. Experts have testified that it is “commonly accepted” that the more significant terrorist threat comes from the U.S.-Canada border.<sup>740</sup> Canadian cities have seen a recent increase in terrorist threats, as illustrated by the incident in October 2014, in which a Canadian soldier on duty was killed at the National War Memorial in Ottawa.<sup>741</sup>

Additionally, the northern border presents significant opportunities for those looking to smuggle illicit narcotics into America. A significant portion of the U.S.-Canada border is remote, dense forest, making it easier for drug traffickers to cross the border undetected.<sup>742</sup> Investigations have shown that drug traffickers are utilizing these rural areas, as not only does the terrain provide natural concealment, but law enforcement agencies lack cross-border detection equipment such as radar in those areas.<sup>743</sup>

In addition to threats from terrorists and drug traffickers, the U.S.-Canada border is also transited by human smugglers and traffickers. DHS HSI and Canadian law enforcement recently intercepted an operation that involved the trafficking of young Romanian women through the northern border.<sup>744</sup>

Because the threats at the northern border significantly differ from the threats associated with the southwest border, Congress should call on the Department to conduct a threat analysis specifically on the northern border. The Chairman joined Senators Ayotte, Heitkamp, and Peters in introducing a bill that required this threat assessment. This bill unanimously passed the Committee and is set to unanimously clear the Senate in the upcoming weeks.

- Call on the Chief of the Border Patrol to move agents to areas of high risk.

Over time, different sectors of the border experience different levels of activity. San Diego was previously one of the most highly trafficked areas of the border, but added resources and fencing

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<sup>740</sup> *Improving Security and Facilitating Commerce at America's Northern border and Ports of Entry: Hearing Before the S. Subcomm. on Immigration, Refugees and Border Security of the S. Comm. on the Judiciary*, 112th Cong. (2011) (statement of Alan Bersin, Commissioner, U.S. Customs and Border Protection).

<sup>741</sup> *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Richard Hartunian, U.S. Attorney for the Northern District of New York, U.S. Attorney’s Office, U.S. Department of Justice).

<sup>742</sup> *Id.* (statement of David Rodriguez, Northwest High Intensity Drug Trafficking Area (HIDTA), Office of National Drug Control Policy).

<sup>743</sup> *Id.*

<sup>744</sup> *Id.* (statement of Richard Hartunian, U.S. Attorney for the Northern District of New York, U.S. Attorney’s Office, U.S. Department of Justice).

shifted focus away from that sector (see Figure 2).<sup>745</sup> The Tucson sector then became the most heavily trafficked area until the recent influx in children from Central America, which made the Rio Grande Valley the busiest sector.<sup>746</sup>

Given the ever-changing levels of traffic in the different sectors, the Chief of Border Patrol should have the ability to move agents to the areas that are in the most need of more agents. By allowing this, Border Patrol can ensure that the sectors of the border that require the most attention are getting the manpower needed in order to ensure the security of the border.

- Provide and maintain adequate manpower on our border and satisfy hard to fill vacancies at our POEs.

One of the main problems with securing the border is the lack of manpower.<sup>747</sup> The National Border Patrol Council has testified at three Committee hearings that an additional 5,000 agents are needed in order to fully secure the northern and southwest borders.<sup>748</sup> At another Committee hearing, witnesses spoke about Operation Strong Safety, in which Texas Governor Rick Perry deployed the Texas Department of Public Safety to the border.<sup>749</sup> According to the Texas DPS report and witness testimony, the operation was extremely successful.<sup>750</sup>

Today, both officer and agent positions remain open on both the northern and southwest border, as well as across our POEs. Members of the Committee have expressed concerns during Committee hearings about the need to fill these positions.<sup>751</sup> In FY2013, Congress appropriated to the Department additional funding to hire 2,000 officers at our POEs. However, due to attrition and the time it takes to bring on new officers, CBP has only realized a net gain of 818 officers. CBP should consider creative options to fill these positions, including utilizing partnerships with the Department of Defense, the National Guard, and state and local governments.

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<sup>745</sup> *San Diego Fence Provides Lessons in Border Control*, NPR (Apr. 6, 2006), <http://www.npr.org/templates/story/story.php?storyId=5323928>.

<sup>746</sup> H. COMM. ON HOMELAND SECURITY, U.S. HOUSE OF REPRESENTATIVES, BLUEPRINT FOR SOUTHERN BORDER SECURITY (2014).

<sup>747</sup> *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Chris Cabrera, National Border Patrol Council).

<sup>748</sup> *Id.*; see also *Deferred Action on Immigration: Implications and Unanswered Questions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Shawn Moran, Vice President, National Border Patrol Council); *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Chris Cabrera, National Border Patrol Council).

<sup>749</sup> See generally *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>750</sup> *Id.*; TEXAS DEP'T OF PUBLIC SAFETY, OPERATION STRONG SAFETY REPORT TO THE 84TH TEXAS LEGISLATURE AND OFFICE OF THE GOVERNOR (2015) (Unclassified Version).

<sup>751</sup> *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015) (statement of Senator Heidi Heitkamp).

To begin to address this problem, the Chairman introduced a bill with Senators Flake, McCain, and Schumer that would require CBP and DOD to identify separating service members with duties that are transferable to CBP officer duties and make them aware of job opportunities within CBP. This bill also requires that the agencies use existing authorities to expeditiously hire these separating service members to fill open CBP officer positions at U.S. ports of entry. The Border Jobs for Veterans Act of 2015 passed the Committee and Senate by unanimous consent. Shortly thereafter, a companion bill cleared the House and Senate and was signed into law.

- Complete the Congressionally-mandated fencing requirement along the southwest border and understand our country’s fencing needs and current assets to determine what more is necessary.

The U.S.-Mexico border is nearly 2,000-miles long. Today, according to DHS, there is approximately 653 miles of front-line fencing on the southwest border: 353 miles of primary fence, 36 miles of secondary fencing, and 300 miles of vehicle barrier fence. To reach its statutory requirement to construct fencing “along not less than 700 miles of the southwest border,”<sup>752</sup> deploying additional fencing is necessary. As the Department does not appear to be prioritizing resources to complete this Congressional mandate,<sup>753</sup> it is imperative that Congress continue to provide oversight to ensure additional fencing is deployed.

Moreover, it is important to understand where current fencing exists along the southwest border, what fencing is most effective, and what fencing needs to be repaired. Many of these questions were asked at a Committee hearing but adequate answers could not be provided in an unclassified setting.<sup>754</sup> More information should be provided to the Committee and the public at large on our fencing and tactical infrastructure needs. The Committee has called on GAO to study this important issue and awaits that report to determine next steps.

- Require each border security technology acquisition program to demonstrate it has an approved baseline for cost, schedule, and performance.

At several hearings, the Committee heard how technology acts as an important force multiplier towards border security enforcement.<sup>755</sup> However, since 2005, GAO has identified DHS’s acquisition management as an activity on their “High Risk List.”<sup>756</sup> In March 2014, GAO found that CBP had a schedule for seven programs within the Arizona Technology Plan—and “four of

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<sup>752</sup> Pub. L. No. 104-208, div. C, §102(a)-(c) (1996), as amended by Pub. L. No. 109-13, div. B, §102 (2005); Pub. L. No. 109-367, §3 (2006); and Pub. L. No. 110-161, div. E, §564(a) (2008).

<sup>753</sup> Michael John Garcia, CONG. RESEARCH SERV., R 43975, BARRIERS ALONG THE U.S. BORDERS: KEY AUTHORITIES AND REQUIREMENTS 9 (2015).

<sup>754</sup> See *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>755</sup> See, e.g., *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Ronald Vitiello, Deputy Chief, Office of Border Patrol, U.S. Customs and Border Prot.).

<sup>756</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-171SP, HOMELAND SECURITY ACQUISITIONS: MAJOR PROGRAM ASSESSMENTS REVEAL ACTIONS NEEDED TO IMPROVE ACCOUNTABILITY 1 (2015).

the programs would not meet their originally planned completion dates.”<sup>757</sup> Additionally, the status of the Integrated Fixed Tower program’s initial operational capability date moved from the end of FY2013 to the end of FY2015.<sup>758</sup> While full operational capability was scheduled to occur by September 2015, the date has now been pushed back seven years to March 2022.<sup>759</sup>

At a Committee hearing, GAO testified that “CBP has identified the mission benefits of its surveillance technologies such as improved situational awareness and agent safety.”<sup>760</sup> However, per GAO recommendations, “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.”<sup>761</sup>

There is a clear need for DHS to acquire and implement technologies in a timely manner, which, to date, has not occurred. Technology and other force multipliers play an important role in securing the border, and will reach their maximum effectiveness if they are both acquired and installed in accordance with set timelines. Once the technologies are installed, there should be stated and achievable performance metrics that will determine whether these technologies are meeting their performance thresholds.

Senator McCain recently introduced a bill requiring that each border security technology acquisition program demonstrate that it has a cost, schedule, and performance baseline approved by the relevant DHS authority, and who also certifies that each program meets the thresholds. This bill was unanimously approved by the Committee.

- Ensure that successful state and local programs, such as Operation Stonegarden, are used appropriately and efficiently to maximize manpower at and near U.S. borders.

Operation Stonegarden, a grant program operated through FEMA, has proven beneficial to those who live and work at the border.<sup>762</sup> The program provides funding to state and local governments to increase operational capacity at the border as well as enhance coordination among local, state, and federal enforcement agencies. However, in order to ensure that Operation Stonegarden remains successful, it is important to confirm that funds are used

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<sup>757</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-595T, BORDER SECURITY: PROGRESS AND CHALLENGES IN DHS’S EFFORTS TO IMPLEMENT AND ASSESS INFRASTRUCTURE AND TECHNOLOGY 3 (2015) in *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Rebecca Gambler, Director, Homeland Sec. and Justice, Gov’t Accountability Office).

<sup>758</sup> *Id.*

<sup>759</sup> *Id.*

<sup>760</sup> *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Rebecca Gambler, Director, Homeland Sec. and Justice, Gov’t Accountability Office).

<sup>761</sup> *Id.*

<sup>762</sup> See *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015); see also U.S. CUSTOMS AND BORDER PROTECTION, PERFORMANCE AND ACCOUNTABILITY REPORT, FISCAL YEAR 2013,12 (2014) (“Stonegarden funds increase operational capabilities for multijurisdictional law enforcement entities, promoting a layered, coordinated approach to law enforcement.”).

appropriately for actual border security functions. To that end, the Majority Staff will continue to conduct oversight on the use of these funds.

- Cut off federal funding for sanctuary cities that release criminal aliens into local communities, endangering public safety, and provide immunity to law enforcement officers so that courts cannot prevent them from honoring detainers.

At a Committee hearing, ICE testified that it is not repatriating unaccompanied minors that unlawfully entered the country last summer because it prioritizes its resources on criminal aliens.<sup>763</sup> However, recently a young woman was shot by a criminal alien who had been deported five times and had seven felony convictions.<sup>764</sup> ICE testified that in that particular case, the criminal alien was released because San Francisco did not honor the ICE detainer.<sup>765</sup> In fact, the criminal alien located to San Francisco because of its lenient enforcement policies.<sup>766</sup>

Sanctuary jurisdictions that do not cooperate with the enforcement of federal immigration laws or do not honor federal immigration detainers should not receive federal funding. Moreover, legislation should be passed that provides immunity to jurisdictions that honor federal detainers and hold criminal aliens until ICE can pick them up. This is necessary, as recent court decisions have led many jurisdictions to release criminal aliens due to liability concerns.

In October, the Senate considered a bill offered by the Chairman, along with Senators Vitter, Toomey, Grassley, Cruz, Cornyn, Sullivan, Perdue, Isakson, Rubio, and Barrasso, that cut off federal funding of certain grants for jurisdictions that follow sanctuary city policies. Unfortunately, the Democrats chose to block this important reform.

- Ensure the continuation of current Border Patrol programs, such as Operation Streamline, that provide penalties to recent border crossers in order to reduce recidivism.

Border Patrol has created a Consequence Delivery System guide to demonstrate what consequences are most effective in reducing recidivism for various types of unlawful crossers. According to the guide, voluntary returns and similar programs are the least effective and efficient.<sup>767</sup> On the other hand, programs that emphasize expedited removal have been shown to

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<sup>763</sup> See *The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>764</sup> Michelle Moons, *Breaking: Pier 14 Murder Suspect Had Been Deported 5 Times With 7 Felonies*, BREITBART (July 3, 2015), <http://www.breitbart.com/texas/2015/07/03/breaking-pier-14-murder-suspect-had-been-deported-5-times-with-7-felonies/>.

<sup>765</sup> See *The 2014 Humanitarian Crisis at our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>766</sup> Jonah Lustig and Emily Shapiro, *San Francisco Pier Shooting Suspect Francisco Sanchez Allegedly Used Federal Agent's Gun, Sources Say*, ABC NEWS (July 8, 2015), <http://abcnews.go.com/US/san-francisco-pier-shooting-suspect-francisco-sanchez-meant/story?id=32281587>

<sup>767</sup> U.S. CUSTOMS AND BORDER PROTECTION, PERFORMANCE AND ACCOUNTABILITY REPORT, FISCAL YEAR 2013,64 (2014).

be extremely effective and efficient. According to CBP, recidivism has decreased each year since the implementation of the Consequence Delivery System in 2011.<sup>768</sup>

Operation Streamline expedites the criminal processing of illegal border crossers by allowing groups to have their charges heard at the same time, often resulting in jail time.<sup>769</sup> According to the Consequence Delivery System, Operation Streamline has shown itself to be the most effective and efficient with those who are apprehended for the first time, those who have been apprehended two or three times, and those who are a “persistent alien.”<sup>770</sup> In addition, Operation Streamline has shown itself to be highly effective and efficient with suspected smugglers, targeted smugglers, and criminal aliens.<sup>771</sup> Despite its successes, the Committee has recently been notified that the DOJ has indicated that Operation Streamline should no longer apply to first time border crossers.<sup>772</sup>

Policies that eliminate or reduce incentives for illegal immigration should be continued, not limited. Therefore, at a future mark-up, the Committee will consider a bill the Chairman introduced with Senators Flake, McCain, and Grassley that expresses the Sense of the Senate that Operation Streamline is a successful program that should continue to apply to first time border crossers.

- Emphasize intelligence-based strategies at our borders.

The Committee has heard that smugglers recruit high school and middle school students because they believe students are less likely to be identified by law enforcement and this age group will not be prosecuted.<sup>773</sup> Smuggling networks also utilize scouts who operate along both sides of the border with impunity, notifying smugglers of when to cross.<sup>774</sup> To get to the source of the problem, DHS should use intelligence-based strategies to investigate, arrest, and prosecute scouts and smugglers. DHS should also impose heavier penalties for smugglers who utilize minors to carry out their criminal activity.

- Authorize the Department’s preclearance agreements.

DHS components and the American intelligence community benefit from preclearance partnerships. By posting immigration and customs officials in foreign countries, DHS expands

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<sup>768</sup> *Id.*

<sup>769</sup> Lisa Seghetti, CONG. RESEARCH SERV., R 43356, BORDER SECURITY: IMMIGRATION ENFORCEMENT BETWEEN PORTS OF ENTRY 8 (2014).

<sup>770</sup> U.S. CUSTOMS AND BORDER PROTECTION, TUCSON SECTOR: CONSEQUENCE DELIVERY SYSTEM GUIDE, FY2014 (2015) (on file with Majority Staff).

<sup>771</sup> *Id.*

<sup>772</sup> Letter from Leon N. Wilmot, Sheriff, Yuma County to the Honorable Jeff Flake (Aug. 19, 2014), [http://www.flake.senate.gov/public/\\_cache/files/9d45f51e-521b-42e1-9df8-407e5d24388f/flake-jeff-re-operation-streamline-08192014.pdf](http://www.flake.senate.gov/public/_cache/files/9d45f51e-521b-42e1-9df8-407e5d24388f/flake-jeff-re-operation-streamline-08192014.pdf). This letter was subsequently confirmed by Customs and Border Protection.

<sup>773</sup> See *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015).

<sup>774</sup> On a CODEL in South Texas, Chairman Johnson, Ranking Member Carper, and Senator Sasse observed a presumed scout perched along the Mexican side of the Rio Grande.

America's virtual borders to the point of departure. Preclearance operations help U.S. law enforcement authorities better understand threats emanating from participating countries and identify terrorists and criminals before they arrive at a U.S. port of entry.<sup>775</sup>

In addition, preclearance operations increase efficiencies because foreign travelers are screened and cleared abroad, reducing immigration lines and transit times at major international airports in the United States.<sup>776</sup> In 2013, 69.6 million foreign travelers visited the United State, representing a 2.6 million increase from FY2012, a growth pattern of about four percent expected to continue through 2018.<sup>777</sup>

By reducing the number of foreign travelers that need to be processed at U.S. ports of entry, DHS components can allocate resources to target high-risk travelers. However, Congress should ensure that the 10 new international airports DHS is considering expanding preclearance agreements to meet the same rigorous standards as U.S. airports prior to approving them for such operations. The Committee recently took up and passed a bill that would address this issue.

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<sup>775</sup> *The Abu Dhabi Pre-Clearance Facility: Implications for U.S. Businesses and National Security, Hearing Before the House SubComm. on Terrorism, Nonproliferation, and Trade of the Comm. on Foreign Affairs, 113th Cong (2013)* (statement of Kevin McAleenan, Acting Deputy Commissioner, U.S. Customs and Border Protection).

<sup>776</sup> *DHS Announces Intent to Expand Preclearance to 10 New Airports*, U.S. DEP'T OF HOMELAND SECURITY (May 29, 2015), <http://www.dhs.gov/news/2015/05/29/dhs-announces-intent-expand-preclearance-10-new-airports>.

<sup>777</sup> Mark Johanson, *US Received Record Number of Visitors in 2012 Thanks to These 15 Countries*, INT'L BUSINESS TIMES (June 11, 2013), <http://www.ibtimes.com/us-received-record-number-visitors-2012-thanks-these-15-countries-1300347>.

## Appendix A: Key Findings of Fact from Border Security Hearings and Roundtables

### 2/04/2015 — *Deferred Action on Immigration: Implications and Unanswered Questions*

- Individuals granted deferred action under the President’s executive actions will receive a Social Security number, which is a permanent identifier that enables individuals to receive Social Security and Medicare benefits.
- Questions remain regarding what financial benefits will flow to non U.S. citizens; how DHS plans to combat against fraudulent documents; and the adequacy of background checks.
- If past is prologue, the President’s unilateral actions create the potential for renewed surges at our borders, similar to the surge of minors last summer in response to DACA.

### 3/10/2015 — *Visa Waiver Program: Implications for U.S. National Security*

- The Visa Waiver Program was designed to ease travel and promote commerce and today is utilized by 40 percent of travelers to America, or 19 million visitors annually.
- However, with the rising concern of Western foreign fighters, the U.S. and European Union Members must work together to prevent terrorist travel and address vulnerabilities: the Government Accountability Office (GAO) has found loopholes that have allowed travelers to arrive in the U.S. without proper approval and identified ICE’s inability to locate individuals who overstay their 90 day visa free period.

### 3/17/2015 — *Securing the Southwest Border: Perspectives from Beyond the Beltway*

- Four out of five witnesses testified: the southwest border is not secure.
- Chris Cabrera, a Border Patrol agent in the Rio Grande Valley sector testified that we are only interdicting 30 to 40 percent of illegal crossers, contrary to testimony from U.S. Border Patrol leaders, claiming interdiction rates of over 70 percent.
- Cabrera also testified that Border Patrol agents have “a lot of problems” accessing Federal lands and Native American Reservations, which drug smugglers and coyotes use to their advantage. According to Cabrera, smugglers “know exactly what we can and cannot do, where we can and cannot go, and they exploit it.”
- Cochise County, Arizona Sheriff Mark Dannels confirmed that due to limited resources, some local jurisdictions along the border will not prosecute smugglers possessing less than 500 pounds of marijuana.
- Sheriff Dannels also testified that drug traffickers often use teenagers to smuggle drugs, as it is unlikely that minors will be prosecuted.
- Many witnesses raised the issue of collaboration: the federal, state, and local levels of government need to work together.

### 3/17/2015 — *Central American Ministers of Northern Triangle (Member Roundtable)*

- In 2013, remittances from the U.S. accounted for 16.4 percent of the Gross Domestic Product (GDP) in El Salvador, 10 percent in Guatemala, and 16.9 percent in Honduras.
- Central American Ministers are strongly supportive of receiving \$1 billion in aid from the U.S. and believe now is the time to invest in Central America.

3/24/2015 — *U.S. Ambassadors to Central America (Member Roundtable)*

- Plan Colombia (a partnership between the U.S. and Colombia) worked because of strong leadership and the political will to solve the problem of crime and terrorism. Corruption is still present (if not rampant) in Central American countries. According to the Ambassador from Guatemala, “corruption is killing Guatemala; there is no confidence in government.”
- According to the Ambassadors, the wage differential between the U.S. and Central American countries is as high as \$8 to \$1.

3/24/2015 — *Securing the Border: Understanding the Presence of Transnational Crime*

- According to former drug czar General Barry McCaffrey, the U.S. is only interdicting 5 to 10 percent of illegal drugs crossing our southwest border.
- McCaffrey also testified that in 1,000 communities, 200 major metropolitan areas, “the principle threat to the American people and organized crime comes out of Mexican cartels.”
- Benny Martinez, Chief Deputy Sheriff of Brooks County, Texas asserted “until the United States is serious about securing the border, the transnational criminal organizations will continue to operate on the border and within small communities throughout the major cities of the Nation.”
- Several witnesses confirmed there is a difference in equivalence between problems in Mexico and problems in Canada, and importantly, “there is first-rate intelligence cooperation between Canadian and U.S. authorities.”
- Witnesses also confirmed that it is extremely difficult to prosecute scouts that are apprehended and “a very good percentage of them walk.”

3/25/2015 — *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States*

- More than 50,000 unaccompanied minors and a similar number of families from Central America were apprehended in FY2014, three times more than in FY2009.
- While numbers are down this year—they are still significantly higher than pre-2012 levels.
- Before the Administration’s DACA announcement, fewer than 5,000 Central American minors arrived at the border annually (3,304 in 2009; 4,444 in 2010; 3,933 in 2011).
- According to the Congressional Research Service, 62 percent of unaccompanied minors failed to show up for their court date from July 2014 through February 2015.
- A former Assistant for Latin America and the Caribbean at USAID quoted a journalist who interviewed dozens of people in Guatemala in the summer of 2014, “Coyotes may appear to be unformed and unsophisticated smugglers, but they pay close attention to U.S. immigration laws. One smuggler asserted, quote, ‘Obama has helped us with the children because they are able to stay in the United States. That is the reason so many children are coming.’”
- Another witness testified that human smuggling is a \$6 billion business.

3/26/2015 — *Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows*

- Many witnesses agreed: the wage gap is a primary incentive for illegal immigration.
- According to the Pew Research Center, in 2012 the illegal population stood at 11.2 million.
- Of the 11.2 million, 8.1 million people are working or looking for work.
- Witnesses testified that a good guest worker program is flexible, market driven, allows for circularity and portability, and ensures more interior enforcement.

4/22/2015 — *Securing the Border: Understanding Threats and Strategies for the Northern Border*

- Experts testified that the northern border threats are different from those of the southwest border, as there are less illegal crossings and better information sharing with Canada.
- The U.S.-Canada border is a “vast, over-5,000-mile border, with incredibly diverse terrain” and “areas that are tremendously porous.” The government appears to be addressing this vulnerability through “working closely with the Canadians.”
- We should continue working with Canada to improve information sharing, particularly as it relates to information on the U.S. and Canadian watchlist and no-fly lists, which today are separate and not shared.

4/28/2015 — *Securing the Border: Biometric Entry and Exit at our Ports of Entry (Public Roundtable)*

- While DHS has implemented biometric entry, biometric exit is still being developed and no timeline for completion has been provided.
- It will be expensive and more difficult to fully implement biometric exit along our air, sea, and land ports of entry, but biometrics will offset the costs with the added benefit and security of catching things such as name misspellings and forged documents that biographic information will not.

4/29/2015 — *The Homeland Security Department’s Budget Submission for Fiscal Year 2016*<sup>778</sup>

- Secretary Johnson recognizes that those migrating from Central America are “very market-sensitive” and that “you have to show the population in Central America that you are sending people back.”
- Secretary Johnson attributed the decline in the migration of unaccompanied minors this year to the reduction in the repatriation times for the adults, increased returning flights, and expanded family unit detention space, expressing the Department’s interest in expanding detention centers, saying that “detention is appropriate in many circumstances.”
- Secretary Johnson admitted that the U.S. will not achieve “100 percent situational awareness” of our borders before the end of this Administration.

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<sup>778</sup> While border security was significantly discussed during this hearing, the Committee does not count this towards the number of border hearings held, as this is an annual hearing to discuss various Homeland Security issues.

5/13/2015 — *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers*

- In 2006 Congress mandated DHS construct at least 700 miles of reinforced fencing across the 2,000 mile U.S.-Mexico border but DHS has only constructed 653 miles; half of which is primary fencing and half of which is vehicle barrier fencing.
- DHS considers the location and type of fencing across the border “law enforcement sensitive,” making it difficult for Congress and the public at large to fully understand our country’s fencing resources and future needs.
- Previous legislation has provided DHS with waiver authorities from environmental and other laws but does not waive the constitution or people’s claims during condemnation cases.

7/07/2015 — *The 2014 Humanitarian Crisis at our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later*

- Since 2009, DHS has apprehended approximately 122,700 unaccompanied children from El Salvador, Guatemala, and Honduras, but we have only repatriated approximately 7,700, or 6 percent.<sup>779</sup>
- ICE claims it is prioritizing the deportation of criminal aliens over unaccompanied minors, but current events indicate many criminal aliens are being released by sanctuary cities and avoiding ICE deportation.
- ICE could not dispute that it sends a strong signal to those living in Central America when those illegally entering the U.S. are able to remain.
- The number of unaccompanied minors unlawfully entering the U.S. this fiscal year is down because “Mexico is doing a far better job of policing its southern border, increasing their apprehensions by 79 percent.”
- HHS says its responsibility to track and retain custody of unaccompanied minors ends when the child is released to the sponsor. This lack of follow-up and secondary screening has led to dangerous situations for children.

7/15/2015 — *Securing the Border: Understanding Threats and Strategies for the Maritime Border*

- The maritime border constitutes the U.S.’s longest border, and yet we have very little domain awareness of this environment.
- Multiple federal agencies, including various components within DHS, work in partnerships to secure the maritime border.
- According to the U.S. Coast Guard, it only interdicts 11 to 18 percent of the estimated drug flow entering the U.S. from our maritime borders.
- U.S. policies create direct incentives and disincentives for illegal immigration. For example, when the U.S. temporarily suspended expedited removal for Haitians, the illegal entry of Haitians spiked until expedited removal was re-employed.

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<sup>779</sup> At the time of the hearing, 109,000 unaccompanied minors from Central America had been apprehended and ICE figures indicated we had only repatriated just over 6,000, or 5.7 percent. The figure above has been updated to reflect FY2015 data.

9/14/2015 — *All Hands on Deck: Working Together to End the Trafficking and Abuse of Prescription Opioids, Heroin, and Fentanyl*

- Heroin is not produced in America but instead is manufactured outside the country and smuggled across the U.S. border via Mexican Cartels, particularly the Sinaloa Cartel.
- According to the DEA, “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.”
- To deter drug trafficking, CBP “interdict[s] heroin in all modes, air, land, and sea, and in both the travel and cargo environments.”
- Several witnesses talked about the need for increased information sharing, with the DEA suggesting that “bad guys really count on law enforcement not talking to each other and not connecting the dots.”
- Ultimately, we must target criminal organizations, not addicts.

10/21/2015 — *Ongoing Migration from Central America: An Examination of FY2015 Apprehensions*

- Although the apprehensions of UACs were down 50 percent in FY2015, this is no cause for celebration. We still apprehended 30,000 UACs and 40,000 family groups this fiscal year.
- A representative of the U.S. Conference of Catholic Bishops recognized that when children leave Central America, the countries are “losing their best and their brightest, and it’s tragic.”
- According to GAO, “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.”
- Another witness testified that we are “very far” from having low enough levels of corruption and a strong enough rule of law to provide for opportunities lacking in Central America.

11/23/2015 — *America’s Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking*

- According to the Arizona HIDTA, “Arizona is a primary entry point, trafficking corridor and distribution hub for drugs transported from Mexico to the United States by the Sinaloa Cartel.”
- Mexican DTOs are highly sophisticated—an Arizona sheriff testified that “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.”
- One key indicator of the increased supply of drugs into this country is the significant price drop in heroin, nationwide. In 1981, the average price per gram of pure heroin was \$3,260 (in 2012 U.S. dollars) by 2012 the price per gram decreased to \$465 (in 2012 U.S. dollars).

## **Appendix B: Key Findings of Central America Trip**

### Guatemala

#### *International Bridge between Guatemala and Mexico Borders:*

- While the bridge had a check point at the Mexico side, contraband crossed the river on both sides of the bridge with impunity.
- The thriving contraband trade across the river indicates that the Mexico-Guatemala border is totally open and uncontrolled.
- The border checkpoint is only used if doing so is to the person's advantage.
- According to Mexican immigration officials, approximately 2,000 individuals use the formal crossing point, while thousands use informal alternatives.

#### *Guatemalan Migrant Repatriation Center*

- Members of Congress watched 136 Guatemalan adults (31 of which were women) offload an ICE flight from the U.S. to a "Welcome Center" in Guatemala.
- The Welcome Center was clean, professional, and well managed, and the Guatemalans were given clothing, food, and transportation.
- Non-Governmental Organizations (NGOs) representatives waited outside the center to provide assistance and information to the deportees and their families.
- During the re-orientation speech the Guatemalans were told "it doesn't matter how poor or rich, small or big, your country is, this is still your motherland. Remember that you have to love your country. Please consider that before attempting to leave for the United States." Upon this statement, the Guatemalans erupted in applause.

#### *El Refugio de la Ninez, Guatemala City*

- This home without an address protected little girls—the youngest age 11— who had been victims of trafficking and were prepared to testify against their trafficker.
- This particular shelter was designed to house 20-25 girls, but 40 girls were currently living there. The average age of the girls was 14. Cribs were also located in this shelter.
- What the Members of Congress saw were a bunch of little girls, playing board games, hugging everyone as they entered the shelter, and joyfully singing.
- The girls can only stay at the shelter until they are 18 years old. The programs offered there attempt to prepare them for an independent life if they cannot be returned to their hometown to live with their families.

#### *Meeting with Catholic Relief Services (CRS) in Guatemala*

- Guatemala should leverage the Catholic Church to help its citizens. The church is a way out for those who are part of the gangs.
- Civil society and NGOs should get U.S. funding. There is a concern when you give funding to government officials that it will not be used effectively.
- While broad concepts of funding transportation, economic opportunity, and education have been outlined, there needs to be more granular detail of which programs and organizations will actually receive U.S. funding.

### *Meeting with Guatemala President-Elect Jimmy Morales*

- Morales won his election on Oct. 25, by 70 percent of the vote on an anticorruption platform.
- President-Elect Morales has a keen intellect and understands what he needs to do. He recognizes that impunity is a national problem and must be dealt with quickly.
- Morales plans to re-instill civic love for country and a nationalistic pride. He believes Guatemalans must love Guatemala in order to fix it and plans to create opportunities that ensure that his people want to stay in Guatemala.
- Morales also talked about reforming the public ministry, tax administration, general controller, and prisons. He said they had the will, just needed the patience.

### *Final Guatemala Takeaways:*

- People pay smugglers, up front, \$10,000-\$15,000 for three tries to get into America. Most children are able to remain once they reach the U.S.—the U.S. repatriates about 700 Guatemalan UACs a year. Due to U.S. law, UACs spend 4-5 years in the U.S. going through the courts system, at a cost of approximately \$100 million a year per child.
- There is an 80 percent chance that a girl will be assaulted during her journey to the U.S.
- We must stop incentivizing Guatemalan children from leaving their home country. It is not compassionate to incentive a country to de-populate itself.
- Those migrating to the U.S. to seek opportunities are the ones who want a stable, secure system.
- In Guatemala there are the extortionists that prey on the middle and lower class and drug cartels that generally want to be left alone. In fact, in some cases drug lords have provided security in certain regions. One of the first things that must be done is to solve the layers of violence and corruption in Guatemala.
- Guatemala also suffers from its lack of capability to collect money in order to fund its budget. Businesses may not be paying their fair share, although they argue this is because they are concerned about where their money goes when they give it to the government.

### *Honduras*

#### *Honduran National Police, Special Interagency Response Force (TIGRES)*

- Both the U.S. and Colombians are providing advisors to train the Honduran National Police
- The Honduran National Police is very small, with only 10,000 police officers for a population of close to 9 million. As a comparison, New York City has a similar sized population with 35,000 police officers.
- 90 percent of the Honduran National Police's budget goes towards salaries, often forcing officers to pay for their own uniforms and bullets. Low salaries and extra expenses could incentive the police to work with the drug cartels.
- Women were well-represented in the TIGRES training and historically have always been a part of the Honduran National Police.
- The Honduran government's policy to shoot down known "narco planes" has actually hampered its progress in deterring traffickers.

### *Model Police Precinct, Tegucigalpa*

- At this model police precinct, the U.S. has helped the Hondurans create an economic, educational, community safe zone where Hondurans felt confident they could trust the police. This is a valid strategy that has been successfully implemented in this particular community.
- Again, Colombians are working with the U.S. to assist the Hondurans.
- Model police precincts are vital, as security is the first condition for a successful society.
- When Members asked Honduran children about their dreams, they all talked about future professions *in* Honduras. No one said they dreamed of migrating to the U.S.
- One 12-year-old stated: “the youth of Honduras decide what this country is going to be.”
- These children knew what they wanted but a conversation later with the Honduran adults in the community made it clear that we need a clear path forward on better education. Funding to Central America should be spent on teachers and schools.
- Honduran mothers and teachers argued that their society is losing its family values and respect for one another because men and children are migrating to the United States. The pillars of a healthy society are disintegrating.

### *U.S. Customs and Border Protection Road Checkpoint*

- CBP and ICE have vetted units in Honduras in which one agent trains 30-50 Hondurans on conducting border checkpoints.
- Impressive technology is being used in Honduras, such as technology that slows down traffic in order to scan vehicles to locate illicit drugs and occupants.
- While the checkpoint was impressive, there is a concern that this will just redirect the flow of illegal contraband and people to somewhere else.
- At this checkpoint Members were told that Hondurans caught close to 50 Cubans a day. Close to 90 percent of the “Special Interest Aliens” caught in Honduras are Cuban nationals. Honduras has a catch and release policy.
- During the observation, Members witnessed the Hondurans pull two females from a bus, suspected of trying to unlawfully migrate to the U.S. Both were sent to Child Protective Services in Honduras.

### *Don Bosco Vocational School, Tegucigalpa*

- This vocational program provided Hondurans with skills and training to help them obtain internships and jobs.
- For programs like this to really work, you need a growing, successful economy. In order for economies to grow, you need security.
- One business owner mentioned that he gets 1,400 applications per vacancy. This demonstrates that Honduras’s economy is not growing at a significant rate to keep up with the increasing number of young adults who are joining the workforce each year.

### *Private Sector Roundtable*

- In order for businesses to be successful, they need the government to provide security and infrastructure. For example, agriculture requires roads and tourism requires that people who travel to the country feel safe.

- Honduras also may have access to geothermal electricity. If the country can find ways to tap into that and have cheap power, there is the potential for manufacturing.
- The business class in Honduras is prepared to pay their fair share, but they want transparency in where their tax dollars go.
- Of a country of close to 9 million, only 100,000 are registered with the country's tax administration.

*Meeting with Honduran President Juan Orlando Hernandez*

- President Hernandez said it was a “slap in the face” to him personally that so many people would want to flee his country.
- President Hernandez expressed that he did not want to see children leave Honduras and that the U.S. needs to be clearer when developing its laws. Unclear laws create mixed messages, which coyotes misrepresent and use to encourage children and families to migrate.
- The President also talked about how the country was improving under his leadership, with the economy growing at 2.8 percent and the murder rate decreasing.

*Briefing and Tour at Soto Cano Base*

- Honduras is falling victim to the trafficking of serious weapons, such as RPGs.
- Hand guns appear to be moving from the U.S. to Central America. Meanwhile Honduras is sending marijuana southbound (not northbound).
- The Honduran military does not have control of an eastern state slightly larger than Connecticut. Drug trafficking organizations take advantage of this situation and fill the power vacuum created by the lack of government presence.

*Final Honduras Takeaways*

- There are not major differences from the Northern Triangle (Honduras, Guatemala, and El Salvador) and Costa Rica and Belize. The real difference between the countries is marketing.
- American workers, the state department, and all the agencies represented in Honduras are doing extraordinary work that they care about.
- Unfortunately, often the goal in Honduras is to divert the flow of illicit drugs away from the country. While this will help Honduras, it ultimately will harm the country where the flow is redirected to.

## Appendix C: Acronyms

ADIS	Arrival and Departure Information System
AEER	Air Entry/Exit Re-Engineering
AMOC	Air and Marine Operations Center
AMSP	Area Maritime Security Plan
AoR	area of responsibility
ARSS	Advanced Radar Surveillance System
ATD	DHS Alternative to Detention program
BC Bud	Canadian British Columbia Bud, a type of marijuana
BEST	Border Enforcement Security Taskforce
BTB	Beyond the Border Initiative
CARSI	Central America Regional Security Initiative
CBO	Congressional Budget Office
CBP	Customs and Border Protection
CBSA	Canada Border Service Agency
CODEL	Congressional Delegation
CTCEU	U.S. ICE Counterterrorism and Criminal Exploitation Unit
DACA	Deferred Action on Childhood Arrivals
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DNDO	DHS Domestic Nuclear Detection Office
DOI	Department of the Interior
DOJ	Department of Justice
DPS	Department of Public Safety
DTO	drug trafficking organization
EOIR	Executive Office for Immigration Review
EPIC	El Paso Intelligence Center
ESTA	Electronic System for Travel Authorization
eTA	Electronic Travel Authorization
FAST	Free and Secure Trade
FEMA	DHS Federal Emergency Management Agency
FY	Fiscal Year
GAO	U.S. Government Accounting Office
GDP	Gross Domestic Product
HAMC	Hells Angel Motorcycle Club
HHS	Department of Health and Human Services
HIDTA	High Intensity Drug Trafficking Area
HSI	ICE Homeland Security Investigation team
IBET	Integrated Border Enforcement Team
ICE	U.S. Immigration and Customs Enforcement
ICMLEO	Integrated Cross-border Maritime Law Enforcement Operation
IDENT	Automated Biometric Identification System
IFT	Integrated Fixed Tower
IIRIRA	Illegal Immigration Reform and Responsibility Act of 1996

IS	Imaging Sensor
ISIL	Islamic State in the Levant
JIATF	Joint Interagency Task Force
LEDET	U.S. Coast Guard Law Enforcement Detachment Team
LPR	lawful permanent resident
MCC	Millennium Challenge Corporation
MDMA	3,4-methylenedioxy-methamphetamine, commonly known as ecstasy
MOU	Memorandum Of Understanding
MS-13	Mara Salvatrucha
MSC	Mobile Surveillance Capability
MVSS	Mobile Video Surveillance System
NGO	Non-Governmental Organization
NTA	Notice to Appear
NTC	CBP National Targeting Center
OAM	CBP Office of Air and Marine
ORR	HHS Office of Refugee Resettlement
OTM	other-than-Mexicans
PED	Processing, Exploitation, and Dissemination
PNR	Passenger Name Record
POE	port of entry
PRM	State Bureau of Population, Refugees, and Migration
RCMP	Royal Canadian Mounted Police
RFP	request for proposal
RGV	Rio Grande Valley
RPG	Rocket-Propelled Grenade
RVSS	Remote Video Surveillance System
SAFE Port Act	Security and Accountability for Every Port Act
<i>SBI</i> net	Secure Border Initiative-network
SENTRI	Secured Electronic Network for Traveler's Rapid Inspection
S&T	DHS Science and Technology Directorate
TARS	tethered aerostat radar system
TCO	Transnational Criminal Organization
TECS	Treasury Enforcement Communication System
TVPRA	William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC	Unaccompanied Alien Children
UAS	unmanned aircraft systems
UGS	Unattended Ground Sensor
USAID	U.S. Agency for International Development
USCIS	U.S. Citizenship and Immigration Services
USD	U.S. Dollars
USDA	Department of Agriculture
VADER	Vehicle and Dismount Exploitation Radar
VWP	Visa Waiver Program

