

**THE BORDER: ARE ENVIRONMENTAL LAWS AND
REGULATIONS IMPEDING SECURITY AND HARM-
ING THE ENVIRONMENT?**

JOINT HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY,
HOMELAND DEFENSE AND FOREIGN OPERATIONS
OF THE

**COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM**

AND THE
SUBCOMMITTEE ON NATIONAL PARKS,
FORESTS, AND PUBLIC LANDS
OF THE

COMMITTEE ON NATURAL RESOURCES

HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

APRIL 15, 2011

Serial No. 112-34

Committee on Oversight and Government Reform

Serial No. 112-24

Committee on Natural Resources

Printed for the use of the Committees on Oversight and Government Reform
and Natural Resources



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

68-220 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

DAN BURTON, Indiana	ELLJAH E. CUMMINGS, Maryland, <i>Ranking Minority Member</i>
JOHN L. MICA, Florida	EDOLPHUS TOWNS, New York
TODD RUSSELL PLATTS, Pennsylvania	CAROLYN B. MALONEY, New York
MICHAEL R. TURNER, Ohio	ELEANOR HOLMES NORTON, District of Columbia
PATRICK T. McHENRY, North Carolina	DENNIS J. KUCINICH, Ohio
JIM JORDAN, Ohio	JOHN F. TIERNEY, Massachusetts
JASON CHAFFETZ, Utah	WM. LACY CLAY, Missouri
CONNIE MACK, Florida	STEPHEN F. LYNCH, Massachusetts
TIM WALBERG, Michigan	JIM COOPER, Tennessee
JAMES LANKFORD, Oklahoma	GERALD E. CONNOLLY, Virginia
JUSTIN AMASH, Michigan	MIKE QUIGLEY, Illinois
ANN MARIE BUERKLE, New York	DANNY K. DAVIS, Illinois
PAUL A. GOSAR, Arizona	BRUCE L. BRALEY, Iowa
RAÚL R. LABRADOR, Idaho	PETER WELCH, Vermont
PATRICK MEEHAN, Pennsylvania	JOHN A. YARMUTH, Kentucky
SCOTT DESJARLAIS, Tennessee	CHRISTOPHER S. MURPHY, Connecticut
JOE WALSH, Illinois	JACKIE SPEIER, California
TREY GOWDY, South Carolina	
DENNIS A. ROSS, Florida	
FRANK C. GUINTA, New Hampshire	
BLAKE FARENTHOLD, Texas	
MIKE KELLY, Pennsylvania	

LAWRENCE J. BRADY, *Staff Director*

JOHN D. CUADERES, *Deputy Staff Director*

ROBERT BORDEN, *General Counsel*

LINDA A. GOOD, *Chief Clerk*

DAVID RAPALLO, *Minority Staff Director*

SUBCOMMITTEE ON NATIONAL SECURITY, HOMELAND DEFENSE AND FOREIGN
OPERATIONS

JASON CHAFFETZ, Utah, *Chairman*

RAÚL R. LABRADOR, Idaho, <i>Vice Chairman</i>	JOHN F. TIERNEY, Massachusetts, <i>Ranking Minority Member</i>
DAN BURTON, Indiana	BRUCE L. BRALEY, Iowa
JOHN L. MICA, Florida	PETER WELCH, Vermont
TODD RUSSELL PLATTS, Pennsylvania	JOHN A. YARMUTH, Kentucky
MICHAEL R. TURNER, Ohio	STEPHEN F. LYNCH, Massachusetts
PAUL A. GOSAR, Arizona	MIKE QUIGLEY, Illinois
BLAKE FARENTHOLD, Texas	

COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
EDWARD J. MARKEY, MA, *Ranking Democrat Member*

Don Young, AK	Dale E. Kildee, MI
John J. Duncan, Jr., TN	Peter A. DeFazio, OR
Louie Gohmert, TX	Eni F.H. Faleomavaega, AS
Rob Bishop, UT	Frank Pallone, Jr., NJ
Doug Lamborn, CO	Grace F. Napolitano, CA
Robert J. Wittman, VA	Rush D. Holt, NJ
Paul C. Broun, GA	Raúl M. Grijalva, AZ
John Fleming, LA	Madeleine Z. Bordallo, GU
Mike Coffman, CO	Jim Costa, CA
Tom McClintock, CA	Dan Boren, OK
Glenn Thompson, PA	Gregorio Kilili Camacho Sablan, CNMI
Jeff Denham, CA	Martin Heinrich, NM
Dan Benishek, MI	Ben Ray Lujan, NM
David Rivera, FL	John P. Sarbanes, MD
Jeff Duncan, SC	Betty Sutton, OH
Scott R. Tipton, CO	Niki Tsongas, MA
Paul A. Gosar, AZ	Pedro R. Pierluisi, PR
Raúl R. Labrador, ID	John Garamendi, CA
Kristi L. Noem, SD	Colleen W. Hanabusa, HI
Steve Southerland II, FL	Vacancy
Bill Flores, TX	
Andy Harris, MD	
Jeffrey M. Landry, LA	
Charles J. "Chuck" Fleischmann, TN	
Jon Runyan, NJ	
Bill Johnson, OH	

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
Jeffrey Duncan, *Democrat Staff Director*
David Watkins, *Democrat Chief Counsel*

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

ROB BISHOP, UT, *Chairman*
RAÚL M. GRIJALVA, AZ, *Ranking Democrat Member*

Don Young, AK	Dale E. Kildee, MI
John J. Duncan, Jr., TN	Peter A. DeFazio, OR
Doug Lamborn, CO	Rush D. Holt, NJ
Paul C. Broun, GA	Martin Heinrich, NM
Mike Coffman, CO	John P. Sarbanes, MD
Tom McClintock, CA	Betty Sutton, OH
David Rivera, FL	Niki Tsongas, MA
Scott R. Tipton, CO	John Garamendi, CA
Raúl R. Labrador, ID	Edward J. Markey, MA, <i>ex officio</i>
Kristi L. Noem, SD	
Bill Johnson, OH	
Doc Hastings, WA, <i>ex officio</i>	

CONTENTS

	Page
Hearing held on April 15, 2011	1
Statement of:	
Reyes, Hon. Silvestre, a Representative in Congress from the State of Texas	8
Vitiello, Ronald, Deputy Chief, U.S. Customs and Border Patrol; Kim Thorsen, Deputy Assistant Secretary for Law Enforcement, Security, and Emergency Management, U.S. Department of the Interior; and Jay Jensen, Deputy Under Secretary for Natural Resources and Environment, U.S. Department of Agriculture	18
Jensen, Jay	36
Thorsen, Kim	29
Vitiello, Ronald	18
Wood, Gene, National Association of Former Border Patrol Officers, founding member and former sector Chief Patrol Agent, McAllen, TX, and San Diego, CA; George Zachary Taylor, National Association of Former Border Patrol Officers, founding member and retired Supervisory Border Patrol Agent, Nogales, TX; Jim Chilton, Chilton Ranch, Arivaca, AZ; and Anu Mittal, Director, Natural Resources and Environment, U.S. Government Accountability Office, Washington, DC	68
Chilton, Jim	130
Mittal, Anu	138
Taylor, George Zachary	83
Wood, Gene	68
Letters, statements, etc., submitted for the record by:	
Chilton, Jim, Chilton Ranch, Arivaca, AZ, prepared statement of	132
Jensen, Jay, Deputy Under Secretary for Natural Resources and Environment, U.S. Department of Agriculture, prepared statement of	38
Mittal, Anu, Director, Natural Resources and Environment, U.S. Government Accountability Office, Washington, DC, prepared statement of	140
Quigley, Hon. Mike, a Representative in Congress from the State of Illinois, prepared statement of	173
Taylor, George Zachary, National Association of Former Border Patrol Officers, founding member and retired Supervisory Border Patrol Agent, Nogales, TX, prepared statement of	85
Thorsen, Kim, Deputy Assistant Secretary for Law Enforcement, Security, and Emergency Management, U.S. Department of the Interior, prepared statement of	31
Vitiello, Ronald, Deputy Chief, U.S. Customs and Border Patrol, prepared statement of	21
Wood, Gene, National Association of Former Border Patrol Officers, founding member and former sector Chief Patrol Agent, McAllen, TX, and San Diego, CA, prepared statement of	70

THE BORDER: ARE ENVIRONMENTAL LAWS AND REGULATIONS IMPEDING SECURITY AND HARMING THE ENVIRONMENT?

FRIDAY, APRIL 15, 2011

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL SECURITY, HOMELAND DEFENSE AND FOREIGN OPERATIONS, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, JOINT WITH THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS, COMMITTEE ON NATURAL RESOURCES,

Washington, DC.

The subcommittees met, pursuant to notice, at 9:30 a.m., in room 2154, Rayburn House Office Building, Hon. Rob Bishop (chairman of the Subcommittee on National Parks, Forests, and Public Lands) presiding.

Present from the Subcommittee on National Security, Homeland Defense and Foreign Operations: Representatives Chaffetz, Labrador, Tierney, Lynch, and Quigley.

Present from the Subcommittee on National Parks, Forests, and Public Lands: Representatives Bishop, Labrador, and Kildee.

Also present: Representative Pearce.

Staff present: Thomas A. Alexander, senior counsel; Brien A. Beattie, professional staff member; Molly Boyd, parliamentarian; Kate Dunbar, staff assistant; Mitchell S. Kominsky, counsel; Kevin Corbin, staff assistant; Carla Hultberg, minority chief clerk; Chris Knauer, minority senior investigator; and Lucinda Lessley, minority policy director.

Mr. BISHOP. All right. We are ready to start here, and some of our other colleagues will be joining us, and we will see how far we can get in this process. As you all know, there is a change in the schedule today, for truly unusual circumstances, so we will be interrupting as time goes on for votes repeatedly. We apologize for that. What we will do is simply go over. It will be one vote at a time. So we run over, come back, probably no more than a 10, 15-minute interruption as we go with that.

So, with that, I am going to call this hearing to order. I note the presence of a quorum, which is pretty low bar for us here today. The Subcommittee on National Security, Homeland Defense and Foreign Operations and the Subcommittee on National Parks, Forests, and Public Lands are meeting today to hear testimony on how environmental laws and regulations impede border security operations and even harm the borderland environment.

So, under the rules, the opening statements will be limited to the chairmen and the ranking members, whenever they show up, and so we can hear from our witnesses more quickly. However, I will ask unanimous consent to include any other Members' opening statement in the record if submitted to the clerk by the close of business today. Hearing no objection, that will be so ordered.

I also ask unanimous consent that the gentleman from Texas, Mr. Reyes, who has asked if he could make a statement in the hearing, be allowed to be our first witness of the day if he is here when we reach that time, otherwise when he gets here we will interrupt you and allow that to take place. With no objection, that is ordered. I just banged the gavel.

I also ask unanimous consent that the gentleman from New Mexico, Mr. Pearce, when he arrives be allowed to join us on the dais and introduce one of the witnesses and participate in this hearing. Once again, without objection, so ordered.

And I will make my opening statement after my colleagues have had a chance to speak. So I will now recognize the chairman of the Subcommittee on National Security, Homeland Defense and Foreign Operations for his opening statement. Mr. Chaffetz.

Mr. CHAFFETZ. Thank you to my colleague and friend and chairman, Mr. Bishop.

Today, we are examining the extent to which Federal environmental laws and regulations affect the ability of law enforcement to patrol and secure our borders. We also examine the extent to which restrictions placed upon border patrol agents are actually harming the environment.

Since December 2006, the drug cartel-related violence in Mexico has continued to escalate in both frequency and intensity. In Mexico, almost 3,000 people were killed in 2007. That number increased to almost 7,000 in the year 2008, more than 9,500 people killed in 2009, and by 2010 that number is now over 15,000.

According to reports, most of these crimes occurred in or within a short distance of the U.S. border towns, and Americans have also suffered. Three U.S. law enforcement officers have been injured or lost their lives in recent months. On February 15, 2011, two U.S. Immigration and Customs Enforcement agents, Zapata and Avila were both shot in the line of duty. Mr. Zapata later died from his injuries. In December 2010, U.S. Border Patrol agent Brian Terry was fatally shot near Tucson, AZ, while attempting to prevent criminal activity along the border.

Now, at this point, I was going to show you some of the brutal photos. Having reviewed those photos, they are so graphic and so disturbing I worry about sharing them in this format here.

This deep and continuing increase of violence just across our southwest border raises serious concerns for the public and Members on both sides of the aisle. The Department of Homeland Security is responsible for securing the U.S. border. In response to illegal activity at the southwest border, including illegal activities occurring on Federal land, the Department of Homeland Security has in the last few years increased the amount of agents and resources directed toward preventing human smuggling, drug trafficking, kidnapping, and illegal immigration. Despite the increase of Federal resources Richard Stana, Director of Homeland Security issues

at the GAO, the Government Accountability Office, has identified gaping holes in our border security strategy. Just recently Mr. Stana testified that there are only 129 miles of the roughly 1,954 mile long southwest border where the border patrol can actually, “deter or detect and apprehend illegal entries.” So let me repeat, only 129 of the nearly 2,000 miles are adequately secure.

This is unacceptable and the Federal Government should be ashamed. With the Federal Government spending billions of dollars on flawed border security strategy, we must find a better solution that is comprehensive, intelligent, and cost effective. Because of the Department of Homeland Security’s inability to secure much of the border, our national security depends on Border Patrol’s access to Federal lands.

In 2006, the Department of Homeland Security, Department of Interior, and the Department of Agriculture all entered into a memorandum of understanding. The purpose of this MOU was to guide and facilitate Border Patrol activities on Federal lands. It also sought to ensure that concerns about protecting the environment would be addressed.

The MOU emphasized the need for cooperation and timely responses by Federal land managers to requests by the Border Patrol. According to the MOU, the parties agreed to cooperate and do so, “in an expedited manner.” However, a recent GAO report authored by Ms. Mittal indicated that, “cooperation has not always occurred,” between Department of Homeland Security, Interior and the USDA. They will be testifying today all on the same panel.

Border Patrol agents in charge of 16 of the 26 stations have told the GAO that, “when they attempt to obtain a permit or permission to access portions of Federal lands, delays and restrictions have resulted from complying with land management laws.”

I fully support the utmost protection of our environment and multiple uses of public lands, but at the same time we must listen to the Border Patrol agents who put their lives on the line every day. Some agents have asserted that delays resulting from environmental laws have, according to Ms. Mittal’s report, “lessened agents’ ability to detect undocumented aliens.” Again, this is totally unacceptable.

An unsecured border is a national security threat. The sooner this administration realizes this fact and acts accordingly, the safer we will all be.

I look forward to hearing from our panel of witnesses. I appreciate all of you, the time, effort. Many of you have travelled from great distances. We appreciate you being here today. I yield back the balance of my time.

Mr. BISHOP. Thank you. Representative Grijalva, who is the ranking member on my subcommittee I see on the floor. So I know he is here with us in spirit, and as soon as he arrives, he will be recognized to give any opening statement if he would wish to do that.

We do have the ranking member from Government Ops, whatever your title is now, here. I appreciate Mr. Tierney for joining us and I will recognize him for as much time as he wishes to make an opening statement.

Mr. TIERNEY. Thank you, Mr. Chairman, and thank all of our witnesses that will be testifying today.

The question posed by today's hearing is whether environmental laws prevent the Border Patrol from safely securing our border. The unanimous answer in written testimony from the Border Patrol, the Department of the Interior, the Department of Agriculture, and the Government Accountability Office appears to be no.

As Chief Vitiello made clear in his testimony, border security and environmental stewardship are not mutually exclusive. Let's not make an attempt to create a false choice where none exists. Of course, the Wilderness Act and other environmental laws place some restrictions on the Border Patrol's operations in sensitive areas, but according to the bulk of testimony that we will receive today, those restrictions impose a relatively low burden that has been successfully managed through interagency cooperation.

Mr. Chairman, this isn't to say that there are not serious incursions on our border. We know, for example, that drug smugglers and human traffickers continue to use Federal lands to perpetrate their illegal activities. Nonetheless, while some of these lands are used to commit illicit activity, many are also home to precious environmental resources, cultural heritage sites, and endangered species.

The message from today's hearing is that the Border Patrol believes that it can effectively achieve its border security mission and be a responsible steward of the environment at the same time. The Department of the Interior and the Department of Agriculture agree, and the Government Accountability Office, which has studied this issue extensively, concurs.

This committee is no stranger to the challenges posed by securing the southern border and the ongoing violence in Mexico. In the last Congress, for example, the committee held several hearings examining the security threats posed by drug cartels in Mexico and Federal strategies to confront those challenges. Tragically, over 30,000 citizens of Mexico have been killed there in the last 4 years in wanton drug violence.

There are many real challenges that undermine our mission to secure our borders, but almost by all accounts today environmental restrictions are not one of them.

Mr. Chairman, I look forward to working with you to identify and tackle the very real challenges that do confront our border security. Thank you.

Mr. BISHOP. I thank the gentleman for his opening statements. I am prepared to give mine at this particular time.

Look, I am glad that we are all here on this particular process and especially that we will be joined by a couple of people. Representative Grijalva, who will be here soon, Representative Giffords, who we pray for a speedy recovery to soon join us, and Representative Pearce, who has joined us on the dais represent the areas that are most impacted, and I appreciate their significance and their problems as they try to tell their constituents why they are being inundated with a problem that basically has solutions that we could find here in Washington if we wished.

The issue is illegal entrance into this country. I think the bottom line has to be that it is unacceptable, even one is unacceptable, but what is happening today is unacceptable. Homeland Security, the Forest Service, and Department of Interior all have the responsibility in here, and the bottom line is what you are doing isn't working. The status quo is unacceptable. If things are getting better—and the GAO report said in some areas it is getting better—that is positive, but it is not good enough, and it is not just people coming across the border searching for a better life.

What is a concern for us is that the people who are coming across the border are the drug cartels who are destroying the lives of our kids with illegal drugs. There are prostitution rings. There are human traffickers. There are people who are being assaulted and raped and murdered on American land, and that is unacceptable. And what is worse, American citizens living in this area are being threatened and being killed, and that is simply unacceptable.

If I can have map 2 up there which shows all the regions that have been coming here from the last bit of data. Now, some of those regions are doing very well. I think the number of people who have been apprehended in Maine, I think the number is 56, which shows that Canadians from Nova Scotia are not coming here to take our hockey jobs. But in each of the last 2 years for which we have numbers, it is about a half million people have been apprehended. That is the ones we caught, not the ones who came in. And if you look at the numbers, a quarter of a million of all those went through the Tucson sector by itself. Fifty-one percent of those who are coming into this country are coming in through that one sector, and no wonder you can understand why Arizona reacted the way it did and passed legislation in their State legislature because that is almost a thousand people a day being apprehended through their sector alone, and Tucson isn't all of Arizona. You have Yuma in there at the same time.

So the question has to be why is that the access of choice for those coming in here? Can I have map 1. This is the borderland by definition and borderland is a hundred miles above the border. Everything red on that map is owned by the Federal Government. In places where we are having success, there is not a whole lot of red. In the places where the problem exists it is red. The GAO report said 97 percent of all the apprehensions are now coming on Federal lands.

When we built the fence, 36 laws were waived in order to build the fence. One makes the assumption that those 36 may indeed have a reason in the problem that Border Patrol has in securing the borders right now. Department of Interior, I am sorry, but your response so far has been No. 8, which is to set up a sign telling Americans not to go on American property. Now, the outrage at these signs for secure was major, and you pulled them down which is right, but the attitude has not changed. A sovereign country has to control its sovereign lands, and we are not doing that and that is simply unacceptable. It is still unsafe for Americans to go into America, and that is simply unacceptable.

A representative from Homeland Security will come in here and basically tell us that things are fine, we are getting along, we are improving. I just want you to know I don't buy it. I don't buy it

because the logical assumption of that testimony means Border Patrol is incompetent to do their job, and I don't believe that for 1 second. I believe the Border Patrol is competent to do the job, but there are frustrations with the Department of Interior and the Forest Service, and if I can have No. 4, I believe, that prohibits them.

These are the old barriers we used to have along the border. They have been removed as we have gotten better barriers, and now one land manager, under the direction of the Department of Interior, used these borders not to secure the border but to stop the Border Patrol from entering into areas he did not wish them to enter. That is unacceptable.

The Border Patrol can do their job if they are allowed to do their job. Even Senator Bingaman, who is not a hawk on the border, introduced a wilderness bill for New Mexico and recognized in his bill that there should be a 5-mile strip along the border in which the Border Patrol have total access. He got the right idea. He just had the number wrong. Five miles doesn't cut it.

The GAO report that came to us, a lot of people have taken one sentence out of context, which said that 22 of the 26 stations said things are fine, unaffected by land management practices. However, if you read the entire report and went down to page 32, you would see that what they said is, in other words, no portions of these stations' jurisdiction has had their border security status, such as controlled, managed, or monitored, downgraded as a result of land management laws. To me, that is not the same thing, especially if you look at the rest of the report and see how 17 out of 26 of the stations said they did have monitoring delays and portions of their programs were delayed; 14 out of 17 did say they could not get waivers from land managers in a timely manner. The majority did say cooperation has not always occurred. The data is not accurate, as it says some land managers monitor areas in a routine basis, some document on an ad hoc basis, still others collect no data at all.

The EIS statement can take over 75 days to accomplish. Three out of seven said the wilderness restrictions cause a problem for them. Five out of seven said the Endangered Species Act causes a problem for them. There was one area in Arizona it took 4 months to get permission to move a mobile surveillance system, and the reason for it, according to the manager down there, he has limited staff with numerous other priorities. This was not important to him.

In a place in Arizona it took 6 months to get permission to improve roads that the Border Patrol needed on Bureau of Land Management land to conduct patrols and surveillance equipment; 8 months in another area to allow improvements for truck transportation to move an underground sensor that didn't take place.

I find it interesting that in some places it simply never happened. The Border agent in charge told us that maintenance needed for five roads and two surveillance system sites within the station of operation, but they did not receive permission at all. So without these maintained roads the agents could not conduct routine patrols or reach the sites for mobile service systems even in an area of high illegal traffic.

In another area where there are few roads, the agent said one additional road on an east-west corridor close to the border would be effective to combat the 8,000 miles of trails that undocumented workers have produced in this particular system.

In another area of the National Forest, they actually approved for helicopter landings, because of its remoteness, and that is great, but unfortunately everything was delayed until 2011. Contrasting two previous examples when Border Patrol requested additional access in another national park wilderness area, the management land manager determined that additional Border Patrol access would not improve the protection of the resources. So what happened is they put those surveillance on land that is owned by the State of Arizona, not by the Federal Government, and it still created a 3-mile hole in the surveillance for undocumented workers. The land manager requested the Border Patrol to find a different location for the tower because of Wilderness Act restrictions and he explained that the Border Patrol did not demonstrate to him that the proposed tower was critical. He made the final decision, not the experts on the Border Patrol area.

And I am sorry, the witnesses will tell you the memo of understanding is working; no, it is not. I am glad that you are becoming chummier with the memo of understanding, but the memo of understanding is not the same thing as border security. The memo of understanding is not a solution. It is a process and the process that the numbers show you on the first slide is simply not working.

The results of that memo are unacceptable. The memo has failed. It was designed to fail, and it prohibits the Border Patrol from simply, in fact, actually doing their job. What the memo does is confer what people on the ground have contended and what Washington has denied. What we have to do is regain control of our lands from the drug cartels. National security has to be our No. 1 issue. To take the phrase from Bill Clinton, it's national security, stupid.

If the fence needed 36 waivers to be done, Border Patrol needs those same kind of situations. Border Patrol should not be stopped or inhibited in anything they try to do. The environment is being trashed by illegal entry. It is not national security that is threatening our environment. It is the lack of national security that is threatening our environment.

The Department of Interior must have better priorities so that human life takes a higher priority over what they are looking right now with the blinders they have. Environmental laws and border security are in conflict.

You are going to hear a lot of spin today especially from the next panel of witnesses. One may hope, if I can phrase once again from Man for All Seasons, that when your head quits spinning it will be facing toward the front. What is happening right now is not acceptable and it has to change.

All right. I appreciate your patience in that. Once again when Mr. Grijalva arrives, we will have his opening statement. I want to thank you. We have previously recognized Mr. Reyes, who will be here. We approved your presence here. We noted that you would be the first speaker for us. Your timing is impeccable. You came at just the right time to give your statement, and we appreciate the service and the history that you bring to it as one of those Border

Patrol workers that did such a great job in an area where you were allowed to do a great job.

You are recognized, Mr. Reyes.

**STATEMENT OF HON. SILVESTRE REYES, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS**

Mr. REYES. Well, thank you, Mr. Chairman, and Mr. Chairman as well, and Ranking Member Tierney, and I know Ranking Member Grijalva is probably on his way. I just saw him speaking on the floor. But thank you for giving me an opportunity to be here to lend my comments to the very important work that your two respective committees are doing.

I guess one of the real first points I want to make and underscore is oftentimes we that both represent border districts and those that are elected to leadership positions in the border area get frustrated because decisions made here, particularly at the Federal level, often impact the communities and the relationship between communities and the Customs and Border Protection and other law enforcement agencies that have very important work to do to secure the Nation.

So I want to tell you how much I appreciate the opportunity not just to be here this morning, but I actually was part of a field hearing that you did in Brownsville, TX, where the community got a chance both to testify and also to observe a hearing in process.

Just last week the Committee on Homeland Security on the Senate side, Senator Lieberman's committee, asked my county judge to come up and give testimony. So she was up here and in fact made a number of points that I want to reinforce here this morning.

First of all, I represent the safest city in the United States of over 500,000 people or more. It is interesting to note that five of our border cities, to include the two largest ones, El Paso and San Diego, and McAllen, Laredo and Tucson are in fact on the top 10 list of safest cities in the country. The reason I mention that is because oftentimes the rhetoric does not match what we are experiencing, those of us that live on the border. The border is not a lawless region. The border is not an area that is out of control. I can't say enough about the work that Border Patrol is doing. I can't say enough about the cooperation that exists to make sure that border communities are secure, feel secure, and our job is to make sure that the facts come out.

So when we talk about the border region I would strongly recommend that you do a series of hearings, in particular maybe in those cities that are among the safest cities in the country.

I speak from a perspective of having spent 26½ years working the border, working my way up from an agent, working 5 years in the Del Rio area, Del Rio sector, and then being chief in two other areas, South Texas and El Paso, where I was born and raised. So I always wanted to make sure as the only Member of Congress with that background that I get an opportunity to at least provide what I feel is very important, and that is accurate information about what is going on, and I don't expect people to take my word for it. I welcome and in fact, we have had a number of hearings, both in El Paso and other areas that have I joined both this committee and other committees that have that responsibility to take

testimony but, most importantly, to actually go out there and see the work that is being done by our Border Patrol agents, see the work that is being done in concert with other agencies, both Federal, State, and local, which is very important, the cooperation that exists.

I wanted to give one example of how that cooperation is important by citing a recent issue that existed in my community and that was there is one last section of fencing that needs to take place right near our downtown area in El Paso. In that area is also the water source that is literally 12 minutes away from the water treatment plant that when it was initially proposed to fence that area would have put that water source south of the fencing. So thanks to the cooperation of the Customs and Border Protection, consulting with the community, we came up with a compromise that we are going to close off that canal so that people that are intending on maybe taking some kind of a terrorist act against the United States don't have access to that water system. So we will close it off, the Border Patrol will get their fence, and the fence will also protect some infrastructure that the city was concerned about that is critical in controlling the water runoff during storms.

Those are the kinds of cooperative and consultation efforts that make sense in our communities, and I guess today, I would ask that the decisions that are recommended from this committee be done with that spirit in mind, that we oftentimes want to make decisions, for instance, putting up a very expensive fence in areas that really don't need it, in areas where we can monitor it electronically, where agents have sufficient time to respond once those intrusions are known. They are the experts. I retired from the Border Patrol over 15 years ago, but I still am very much interested, keep in contact, and proud to say that they are not just my former colleagues but my friends and we need to do everything we can to support them, both because it is America's first line of defense but, most importantly, because the Border Patrol works on the theory that it is always better to consult with the local community because they are part of that community so that both priorities are reached, both the enforcement priority and the community priority as I just spoke about with the example I gave you.

The last point I want to make is that when I retired we had a little over 5,000 agents in the whole Border Patrol. We have done a very good job of increasing the size of the Border Patrol. Today, there is over 20,000 agents. There is one area that I am concerned about that we haven't focused on and I hope we get a chance to do that, and that is at the ports of entry. Today, we are seeing alarming statistics of the amounts of narcotics that are being intercepted at those ports of entry, and across the Nation those ports of entry are carrying on a normal average about a 31 to 38 percent vacancy ratio in their ranks. That means many different things, including the fact that it creates a vulnerable environment for our country, but it also means long waiting lines for people wanting to cross the border and obviously it also means that based on the statistics we are seeing that more narcotics are coming through those ports of entry because that work force is overwhelmed. So I hope we get a chance to have hearings on increasing the size of officers at those ports of entry.

I know that when you, if you ask Border Patrol here this morning, they can tell you the same thing and verify the fact that it doesn't make sense to have control in between the ports of entry and not at those ports of entry that account for millions of entries every single day from Mexico into the United States and also from Canada into the United States.

So with that, thank you for giving me an opportunity to testify before you this morning and I would be happy to answer any questions you might have.

Mr. BISHOP. Thank you, Mr. Reyes. We are going to be respectful of your time, but does anyone have questions for the gentleman from Texas?

Representative Chaffetz, go ahead.

Mr. CHAFFETZ. Thanks for being here, and I know you care as much about this issue as anybody. From your perspective, Border Patrol agents are putting their lives on the line, they are going into inhospitable areas, people that they don't know, that they are trying to apprehend. Concern is the rural areas, particularly we have some environmental laws that prohibit the use of vehicles and other types of things. Can you really look somebody in the eye and say you know if you do this on foot, you are going to be equally as secure and safe and as effective as you would if you were in a vehicle? That is my concern is that, you know, and part of the testimony that we are about to hear in the written testimony that came before us, Kim Thorsen from Interior said, "on any Federal lands at any time you may patrol on foot or on horseback." I can't imagine looking some Border Patrol agent in the eye and saying you know, sir, sorry you can't use the vehicle here, all the communication tools, safety and security and speed that you can get, you guys go out on foot. Is that really what we should be telling our Border Patrol agents?

Mr. REYES. Well, not so much foot, but I will tell you my experience has always been Border Patrol is a hardy bunch. They love patrolling on horseback. And there are a number of reasons for that, not only does it provide quick access in very rough terrain, but it also allows them to have a higher perspective of whatever is ahead of them and they can ride up on groups of people much faster and much safer. If you rely on—

Mr. CHAFFETZ. Than a vehicle?

Mr. REYES. Than a vehicle. Well, remember what we are talking about are the areas that you just mentioned are very rough terrain, very uneven terrain. Yes, we have things like—

Mr. CHAFFETZ. Some of it is flat as can be, right? I mean, it is not all mountainous.

Mr. REYES. No, no, it is not, but I guess from my perspective, from my experience, it just makes sense to give the tools to the Border Patrol that they need and in some of these areas what they want are the ability to patrol on horseback.

Mr. CHAFFETZ. I guess the core question there is who should make that decision? Shouldn't that be the decision of the Border Patrol to say this is how we are going to secure our folks?

Mr. REYES. Well, the law says that the Border Patrol has the right of access anywhere, unrestricted anywhere within 25 miles of

an international border. They have that authority but the chiefs locally—

Mr. CHAFFETZ. I wish that was true. My understanding is that is not true. My understanding is that is on private property but not on public lands. The issue here is, for instance, the Organ Pipe National Forest is one of the big issues. They can't do that.

Mr. REYES. And I know the area—

Mr. CHAFFETZ. They have to go get permission from somebody who doesn't have the best interests of the Border Patrol in mind, that doesn't have to deal with the fact they are going to ask somebody to go risk their lives out on this public property.

Mr. REYES. I have been there. I have seen that area. I have talked to the chiefs that have been in charge of those areas.

They don't have a problem of access, at least the ones that I have talked to, because they do patrol that area effectively.

They have the same concerns that Chairman Bishop articulated, and that is, from an environmental perspective, the water jugs, the plastic bags, and all of that stuff that undocumented people leave are an issue for them.

But access and the ability to patrol—and I am not speaking for them; they will be testifying.

Mr. CHAFFETZ. Right.

Mr. REYES. But I am telling you, both from my experience and from talking to the chiefs in those areas, they don't—at least they have not told me that they are denied access to that area.

Mr. CHAFFETZ. I want to conclude within my scope of time. I guess the point I am trying to drive home is, the Border Patrol should be making those types of decisions, whether or not they use a horse or foot or vehicle. And that is my driving point. Would you disagree or agree with that point?

Mr. REYES. I would not disagree, although—

Mr. CHAFFETZ. Thank you.

Mr. REYES [continuing]. Don't discount the fact that the chiefs that are in charge of those areas have the best interest of officer safety in mind, first and foremost, but they also—you know, one of the things that I have learned through my experience is, no one is more attuned—and I go back to saying the Border Patrol is a hardy bunch. No one is more attuned to the surroundings, to respecting nature, and those kinds of things. That is why I mentioned to you, one of the biggest complaints that I have heard is about the refuse that is left behind by undocumented people.

Mr. CHAFFETZ. Thank you.

I yield back.

Mr. BISHOP. Mr. Tierney, do you have questions for your colleague?

Mr. TIERNEY. Yes, I do. Thank you.

Mr. Reyes, thank you for joining us here this morning. And I do respect the fact that you have, I think, more experience, certainly, than any Member of Congress at your job on the Border Patrol, but you have also, since been a Member, been very focused on this area and continue because of your district, obviously, to be in touch with people on that. Which strikes me as—we are sort of trying to impose on you here some of the questions, you know, an outsider's

view, that you have the experience but we still want to tell you what works.

Mr. REYES. Right.

Mr. TIERNEY. And what I am hearing from you is that, basically, when there is an environmental law or regulation that might touch up on a conflict with a security issue, that it has been your experience that the agencies involved have been able to work it out pretty reasonably.

Mr. REYES. That is correct.

Mr. TIERNEY. OK. My understanding, also, is the memorandum of understanding between different agencies is that, when there is an area of exigency, whether it be hot pursuit or some other security issue, the Border Patrol actually does have the ability to use motorized vehicles. Is that right?

Mr. REYES. That is correct. That I know of, nowhere on the border under emergency situations is the Border Patrol precluded from doing whatever it needs to do.

Mr. TIERNEY. All right. And there was a question here a moment ago about, you know, who makes the decision. Well, we have laws in this country, and I would suspect that those prevail. Am I right?

Mr. REYES. Correct.

Mr. TIERNEY. And you find the agencies generally try to implement those laws?

Mr. REYES. True.

Mr. TIERNEY. And then the memorandum of understanding is a way to try to reconcile any conflicts that might appear within those laws?

Mr. REYES. Correct.

Mr. TIERNEY. And your experience has been that the agencies have been able to effectively, under that memorandum of agreement and through other cooperative means, resolve any issues or problems, for the most part, that come up under that?

Mr. REYES. That has been my experience, yes.

Mr. TIERNEY. OK.

And I am just reading on that: "The Border Patrol may access lands by motorized vehicle or otherwise in exigent or emergency situations." And that seems to cover any ground—when it comes up to a final decision, the Border Patrol decides it is an exigency or an emergency and they need to have use of a vehicle and they go. Has that been your experience?

Mr. REYES. Yes, it has. And, you know, you have to remember that there are times when perhaps you have an airplane crash, you have some other kind of emergency, an agent is shot; the Border Patrol chiefs are not going to allow anything to interfere with being able to get in there and do whatever needs to be done to both secure the area and, most importantly, take care of whatever officer is injured.

Mr. TIERNEY. Well, it appears, at least from this perspective, that our laws don't interfere with that either, that they are set up—

Mr. REYES. They do not.

Mr. TIERNEY [continuing]. The laws and the agreements under them, to allow that to happen?

Mr. REYES. Absolutely.

Mr. TIERNEY. So has it been your experience that there are other factors involved in sometimes causing difficulty for Border Patrol agents or others to get control over a particular area? Topography or, you know, the geography of an area, are they sometimes more of an impediment for the agency?

Mr. REYES. Well, sure. And that is why—again, the chief in the sector knows that area best. He is in constant communication with both the agent in charge of whatever area is in the station that you are describing. And decisions are made both in terms of being able to secure the area and how they would respond and with what they would respond.

I mean, that is the chief's responsibility, to make sure that, in the case of a national emergency or an emergency affecting officer safety or the safety of maybe a rancher or maybe an undocumented person whose life is in jeopardy, they will make whatever decision needs to be made and have that access without any problem.

Mr. TIERNEY. So how many years, Mr. Reyes, were you a member of the Border Patrol?

Mr. REYES. Twenty-six-and-a-half.

Mr. TIERNEY. So, 26½ years as a Border Patrol agent and chief, 15 years in Congress representing an area that is very involved in that, and your conversations with the various agencies, representatives, and employees along there. How many instances are you aware of where an environmental law or one of the other laws that we are discussing this morning was an insurmountable impediment to the Border Patrol doing its work?

Mr. REYES. I can't think of any.

In fact, I will tell you, Border Patrol agents work very closely in Texas with what we know as "tick riders." And their job and their responsibility is to make sure that cattle does not come over from Mexico because of the kinds of diseases they would have. So Border Patrol works very closely—I worked with them when I was an agent.

We work very closely with the Parks and Wildlife people; on occasion, DPS, the Department of Public Safety; and park rangers in general in the areas that they have a presence. So when you are wearing a badge and you have that responsibility, you want to make sure, to the extent possible, that you have both knowledge of who is there and an understanding that they are going to come to your assistance and you are going to go to their assistance, because of both the environment and the hostility of the area or, perhaps, either a drug smuggler or alien smuggler or others that might not distinguish and not know the difference between a Border Patrol agent, a park ranger, a tick rider, and others.

Mr. TIERNEY. Well, thank you for coming this morning and sharing your extensive experience from a range of perspectives.

Mr. REYES. Thanks.

Mr. BISHOP. My good friend from Michigan, do you have any questions of Mr. Reyes?

Mr. KILDEE. Just a statement.

I am from Michigan, and we border on Canada. So we have to sometimes look at our northern border, also. And, generally, those who do try to get into Michigan either come in by plane from Europe—the one person they caught trying to bring a plane into De-

troit—but by water. And I have been impressed by the cooperation between the Border Patrol and the Forest Service and our Coast Guard. There are three very important—and I think we have to encourage that cooperation.

And sometimes laws have to catch up with changed circumstances. And if there is need for change in laws, hearings like this might help that. I am not sure there is a need if there is already good cooperation.

But I do appreciate your service to your district, your State, this country, and to this Congress. Thank you very much.

Mr. REYES. And I would just add, the Royal Canadian Mounted Police, Border Patrol has an outstanding working relation and history with them, as well, because we—at least it has been the history that most of the resources have been on the southern border with Mexico because that is where the pressure is. So we have less officers, and they depend on relationships with local law enforcement like the RCMP up there.

Mr. KILDEE. Well, one good Border Patrol person, Diana Dean, helped apprehend Ahmed Ressam, who was up to no good at all. She, with her training and her perception, was able to stop that.

Mr. BISHOP. Thank you, Dale. I appreciate it very much.

The chairman, who is an ex officio member of this committee, is here. I will recognize him, and then I will recognize Representative Pearce from New Mexico.

Mr. ISSA. I will be quick.

Have you been sworn in? Because I have a lot of questions for you.

Mr. REYES. I think every time you testify before Congress, the assumption is we are sworn in.

Mr. BISHOP. We have already sworn at him, but we haven't—

Mr. ISSA. Yeah, there you go.

Congressman, thank you for being here, and thank you so much for bringing us an inside view from an outside agency.

So that is the only reason I showed up here, was—I said, wait a second here, not only is this my committee room, this is one of my best friends in Congress and somebody I rely on for the kind of advice you just gave.

So thank you. That is all I wanted to say.

Mr. REYES. Well, and thank you, Mr. Chairman. Because, as I have said publicly on occasion, many times, while we may differ in our politics, I think we all want to do what is best for our national security and the protection. And how we get there really is, I think, the important part, for many different reasons. These guys are the experts.

I thank God that I have that background because I really enjoyed my 26½ years in the Border Patrol. I don't think there is a finer law enforcement group in the world than the Border Patrol. But, as you can expect, I am probably a little biased. But they do great work.

Mr. ISSA. Part of what we know about you is you used to be somebody.

Mr. REYES. Yes. Thank you.

Mr. ISSA. Thank you.

Mr. REYES. Well, thank you, Mr. Chairman.

Mr. ISSA. Thank you, Chairman.

Mr. REYES. And thank you for being here this morning.

Mr. BISHOP. Thank you, Mr. Chairman.

You must be something special. He has never said anything that nice to me. Thanks a lot.

Mr. ISSA. In time, in time.

Mr. BISHOP. Yeah, yeah.

Representative Pearce.

Mr. REYES. Well, remember, he was a member of my committee when I was chairman of the Intelligence Committee. We worked on many different issues. You know, one of the—

Mr. BISHOP. So you are telling me you have photos or something?

Mr. REYES. No, not that I am aware of. But we did work on some really tough stuff that will never—that people will never know publicly. But, again, it is about the national security of our country.

Mr. BISHOP. Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate the opportunity to be here on this committee.

And I thank my neighbor for his decades of service both in the Border Patrol and here in Congress.

More a comment than a question. I am hearing what you are saying, that El Paso is the safest city in the United States, less than 15 miles—I mean, El Paso bumps up against one of the towns in my district.

Mr. REYES. Right.

Mr. PEARCE. And 15 miles from downtown El Paso, they literally bar their windows and doors, and they don't feel like they are in the safest place in the world. In fact, just about 2 weeks ago, in Anthony, they declared their streets to be completely unsafe. And what can be done about it? And so, that is such a contrast from the safest city to just 15 miles away.

Wasn't there a major highway that was shut down in El Paso last year because of gunfire? Was that the year before?

Mr. REYES. No. And just a comment about—Anthony is not on the border. And—

Mr. PEARCE. Sunland Park is on the border.

Mr. REYES. Right.

Mr. PEARCE. But I was in Anthony. Sunland Park is the same. They feel—they express tremendous concern for their safety.

Mr. REYES. Well, if you—we have to separate criminal activity by non-illegal-alien activity that are coming through the area. And Anthony's streets were declared unsafe because of gang activity, the warring gangs there, which occurs throughout anywhere in this country.

But the Border Highway, which literally runs right along the Rio Grande River, is the road that you were referring to. And, yes, there was a gun fight that occurred in Juarez, which may be the most violent city. Certainly, it is the most violent city in the Americas, but may be one of the most violent cities in the world because of the friction among the cartels. But there were bullets. The concern by the police department was that a stray bullet might hit a passing car there. It is just a consequence of the location of that highway.

Mr. PEARCE. Sure.

Mr. REYES. By the way, that—

Mr. PEARCE. If I could reclaim my time—

Mr. REYES. Go ahead.

Mr. PEARCE [continuing]. Mr. Chairman, I would point out that the gang signs, whatever the gang signs are from Mexico, Central America, have appeared on barns in the 2nd District of New Mexico, and it alarms people.

Then we have the rancher that was killed. His ranch butted up against those ranches of ours.

In the 26½ years that you served, what wilderness areas did you actually—were in your jurisdiction right under your command? Which wilderness areas did you—the formal designation of wilderness.

Mr. REYES. Well, as an agent, I worked the—what is known as the Amistad Lake area.

Mr. PEARCE. Is that wilderness? Is that designated wilderness?

Mr. REYES. Sections are. In fact, some of the—because of the excavations of some of the caves there, with hieroglyphics and all of that, they have been put under the jurisdiction of, I believe, the Department of the Interior.

It is an area—Amistad Lake, as you know, like Falcon Lake, is right on the border. Half of it is in Mexico, and the other half is in the United States. And we had the responsibility for the U.S. side.

Mr. PEARCE. OK. Thank you, Mr. Chairman. If I could reclaim my time, I am about to run out of here. But I would just observe that Mr. Bingaman submitted a bill last year and the year before to make wilderness on the area. And, in contrast to your assertion that we had 25 miles access in every wilderness area on any place from the border, he actually had to, as a compromise, designate that we could get wheeled vehicles into a 5-mile stretch. And that was a compromise. Initially, it was not.

And wilderness—the Gila Wilderness—a long time ago, an airplane crashed from my hometown in the Gila. They had to back-pack the bodies out. In other words, wilderness is a very restricted designation. We have had testimony that if we created the wilderness along the Rio Grande, that they would not be able to actually get bulldozers in to replace the earthen dams that washed out in the flood about 3 years ago, and then we would be subject to flooding for the rest of time.

So wilderness area—I have the Gila Wilderness in my district. I went to the Organ Pipe National Monument, and I saw the signs. And we had the formal briefing that half of that was completely off limits to American tourists because of the illegal activity across the border. And if our agents were able to access that, it doesn't seem like that it would be off limits to American tourists because it was so dangerous. Many places in New Mexico, only a barbed-wire fence is there on the border.

But, again, I yield back my time.

Mr. REYES. Mr. Chairman, if I can respond?

Mr. BISHOP. I will give you 15 seconds.

Mr. REYES. OK.

The International Boundary and Water Commission has the authority to do the kind of work that—irrespective of wilderness designations, that Mr. Pearce was talking about, in terms of levees

and dams and all of that. I think if you check that out, it will be clear who has the jurisdiction.

Mr. BISHOP. Mr. Reyes, I just want to give the benediction to your presentation here today by thanking you for being here. The written statement that you gave, I actually agreed with point after point of it.

Our cities are improving. The Border Patrol is doing a great job there. In fact, one of the GAO report studies simply said the Border Patrol has put, in their words, put a strategy on high priority on border enforcement in urban and populated areas. It does work. Border Patrol can do their job when they are allowed to. But it has had the process of diverting large concentrations of illegal traffic to the Federal lands and other remote areas where you are talking.

I agree with you, as well, that the agents should be able to respond as best they can. I agree, also, there are some areas that are so rugged, fencing is not a legitimate option for it, but, indeed, access by the Border Patrol is.

And sometimes they do use horses better. Although Secretary Napolitano did say it may be inadvisable for officer safety to await for the arrival of a horse for the purposes to apprehend somebody. That sometimes is difficult. And, also, we will remember that all of those horses are fed wheat feed pellets, because you can't have perfect kind of horses.

I also agree with you on three other points: that local consultation should be the best basis of making those kinds of decisions. I agree with what you said on the exigent or emergency circumstances. Although I will tell you that the MOU does have a definition of what those are, and they have not always been maintained by the land managers. There have been times land managers have told the Border Patrol different than what the MOU was supposed to. And that will come out in our testimony later.

And the last one is, I definitely agree with the good idea you had on beefing up our port of entries. Actually, you said we should have more officers—I think you said we should have bigger staff there at the port of entry, which means size. So Mr. Chaffetz told me that what he is talking about are portly officers at the port of entries, in which case I took offense at that because he talking right about me.

So, Mr. Reyes, I appreciate your being here. Thank you for your testimony. Thank you for being a part of this. And we thank you for that, and we will let you go back and do some real work now.

Mr. REYES. Thank you so much. And I look forward to working with you and your respective committees on these very important issues for our country. Thank you very much.

Mr. BISHOP. Great.

We now have the next panel that will be joining us. But I understand the practice of the Oversight and Government Reform Committee is for the witness to be sworn in. So I would like Representative Chaffetz—all right.

The next panel will come up very, very slowly, so the panel—as it gets set up for you. So if you want to come up slowly. Don't stand up yet; that is too fast.

It is going to be a couple of seconds before we can get them situated up here.

We will have, though, Ron Vitiello—and you can correct the pronunciation of that; I probably messed up everything—who is the deputy chief of the U.S. Customs and Border Patrol; Kim Thorsen, the Deputy Assistant Secretary for Law Enforcement, Security, the Emergency Management from the Department of Interior; Jay Jensen, Deputy Under Secretary for Natural Resources and Environment, Department of Agriculture.

I didn't mess up you two's because they are just good old Danish names, and I can handle that.

But in 1 second, we would ask you—and I think I am going to turn the chair over to Representative Chaffetz to take care of this portion.

Mr. CHAFFETZ [presiding]. It is the practice of the Oversight and Government Reform Committee that all witnesses would be sworn in. So, those three witnesses, as well as the backup witnesses, to rise and raise your right hands, please.

[Witnesses sworn.]

Mr. CHAFFETZ. Thank you. You may be seated.

And let the record reflect that all participants answered in the affirmative.

Thank you.

Mr. BISHOP [presiding]. Thank you.

All right. It is our hope at this time that, before the next vote occurs, that we can have the testimony of the individuals who are there.

Do you care which order you go? Then let's take you from left to right, and we will start with Homeland Security, go to Interior, and then finish up with the Agriculture Department.

And, once again, thank you for being here. As you should know—you have been here long enough to know this stuff—everything is—your written testimony is in the record. Anything else you want to add, we can put into the record, as well.

The timer is in front of you. When the yellow light comes on, you have 1 minute left. We will try and close it as close to that red light as is possible.

Please.

STATEMENTS OF RONALD VITIELLO, DEPUTY CHIEF, U.S. CUSTOMS AND BORDER PATROL; KIM THORSEN, DEPUTY ASSISTANT SECRETARY FOR LAW ENFORCEMENT, SECURITY, AND EMERGENCY MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR; AND JAY JENSEN, DEPUTY UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

STATEMENT OF RONALD VITIELLO

Mr. VITIELLO. Chairman Bishop, Chairman Chaffetz, ranking members, and distinguished members of the subcommittee, it is my privilege and honor to appear before you today to discuss U.S. Customs and Border Protection's efforts concerning illegal activity on Federal lands.

I am Ronald Vitiello, the deputy chief of the U.S. Border Patrol. I began my career in law enforcement in 1985 as a Border Patrol agent in Laredo, TX. Throughout my career, I have held numerous

positions within the organization, both on the southern and northern borders.

I would like to be clear that the border is a different place today than it was when I began my career. I have personally witnessed the evolution of the border over the past 26 years both in terms of additional resources applied against the threat as well as the change in the adversary's ability to exploit border vulnerabilities. Last year, the Border Patrol apprehended approximately 463,000 illegal aliens, as compared to 10 years ago when we made 1.6 million arrests, a more than 70 percent reduction.

Although we have seen positive indicators of a more secure border, our work continues and will not end as long as those who seek to enter this country illegally. The Border Patrol's national strategy was implemented in 2004 and called for achieving control of the borders with the proper mix of personnel, tactical infrastructure, and technology. We sought to gain, maintain, and expand control at the border. With the assistance of Congress, we have seen an unprecedented influx of resources, and we are currently expanding our security efforts.

In law enforcement, we operate within the confines of the rule of law and regulations. Would our efforts be easier without these legal frameworks? Yes, it would. However, we find a way to reasonably and sensibly solve problems within the parameters of law. Does the Border Patrol face challenges with respect to operating around protected lands when they are in our enforcement zones? Yes. But, again, we have been able to establish practical solutions to allow for mission success.

In 2006, the Secretaries of the Departments of Homeland Security, Interior, and Agriculture signed a memorandum of understanding committing the signatories to ongoing operations on protected lands. It is understood that the Border Patrol cannot routinely patrol protected land in vehicles. Nonetheless, we do have access either on foot, horseback, and without restriction under exigent circumstances.

Essentially, the MOU formalized an informal cooperation that has existed for years. Our field commanders, the chiefs, and the patrol agent in charge are tasked to consider the multiple environments they oversee in order to establish their requirements for where resources are required and how to best supply them.

Each tract of land along the border has to be assessed individually. As our commanders lay out the requirements, we work through the environmental regulations in order to abide by the law, albeit without sacrificing the Nation's security. Some of this activity can be time-consuming, but, in the end, we have in place the necessary tactical infrastructure, technology, or resources.

Additionally, we look at the border. Each area has to be taken individually, as no two stretches are the same. The activity levels and terrain vary widely from San Diego to Brownsville on the southern border.

Through our security efforts, the Border Patrol intends to have a minimal impact on the environment. Agents are on the line every day, day-in and day-out, interacting with the communities in which they live. There are many varying opinions from the border com-

munities, public interest groups, and the media alike, yet our mission is to enforce the laws duly enacted by Congress.

The Border Patrol recognizes that we need many partners in our Nation's security efforts. We have learned that it will take a whole-of-government approach within law enforcement, within each of our duties, responsibilities, and authorities at all levels—Federal, State, local, and tribal. We have strived to move beyond mere collaboration and work toward operational integration with our Federal, State, local, and tribal and our international partners, moving forward in realizing the strength of joint planning and implementation in a targeted and focused manner.

Our path forward and our security efforts applied will be risk-based. Accordingly, we will increasingly depend on information and intelligence to describe the intent and capability of our adversaries, thus defining the threat while continuously assessing our vulnerabilities. In doing so, we must be more mobile, agile, and flexible.

Thank you for the opportunity to testify today. I do look forward to your questions.

[The prepared statement of Mr. Vitiello follows:]

TESTIMONY OF
RONALD VITIELLO
DEPUTY CHIEF
UNITED STATES BORDER PATROL
U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY
BEFORE
HOUSE COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE
ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
AND
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON NATIONAL SECURITY, HOMELAND DEFENSE,
AND FOREIGN OPERATIONS

April 15, 2011
Washington, DC

Chairmen Bishop and Chaffetz, Ranking Members Grijalva and Tierney, and distinguished Members of the Subcommittees, it is a privilege and an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) efforts concerning illegal activity on federal lands. I am Ronald Vitiello, Deputy Chief of the United States Border Patrol.

As America's frontline border agency, CBP's priority mission is to protect the American public while facilitating lawful travel and trade. To do this, CBP has deployed a multi-layered, risk-based approach to enhance the security of the people and goods entering and leaving the United States. This layered approach to security reduces our reliance on any single point or program that could be compromised. It also extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but one of many.

CBP is fully committed to continuing our cooperative relationships with the Department of the Interior (DOI) and the Department of Agriculture (USDA). We respect the missions of these agencies and we recognize the importance of the preservation of the American landscape. CBP enjoys a close working relationship with DOI and USDA that allows CBP to fulfill its border enforcement responsibilities while respecting and enhancing the environment. Our agencies have formed a number of agreements, which I will explain below, that allow us to carry out both of these missions.

Illegal human and vehicle traffic, waste, and trash discarded by illegal aliens and other cross-border violators visibly and significantly negatively impacts the environment. We believe that our efforts to reduce the number of illegal aliens crossing the border have lessened this environmental degradation and have assisted with recovery of damaged resources by providing the opportunity for re-vegetation of areas formerly used by illegal traffic.

Overview of Border Security Efforts

CBP's border security efforts rely on the appropriate combination of personnel, infrastructure, and technology. This three-pronged strategic balance of resources reflects the reality that one of these elements cannot, in and of itself, secure our nation's borders. Personnel provide the

flexibility to engage the criminal element; tactical infrastructure supports response by either providing access or extending the time needed for the response; and technology allows us to detect entries and to identify and classify threats enabling us to interdict illegal activity in the most effective manner possible. In addition, we rely on strong partnerships with federal, state, local, and tribal law enforcement agencies, as well as with the public and private sectors. Coordination and cooperation among all entities that have a stake in our mission is paramount.

Over the past two years, the Department of Homeland Security (DHS) has dedicated historic levels of personnel, technology, and resources to the Southwest border. We increased the size of the Border Patrol to more than 20,700 agents today, more than double the size it was in 2004. As of March 31, 2011, we have constructed 649 miles of fencing out of nearly 652 miles where Border Patrol field commanders determined it was operationally required, including 299 miles of vehicle barriers and 350 miles of pedestrian fence, with the remaining three miles scheduled to be complete by the end of the calendar year.

While there is still work to be done, every key measure shows we are making significant progress along the Southwest border. Border Patrol apprehensions have decreased 36 percent in the past two years, and are less than a third of what they were at their peak. We have matched these decreases in apprehensions with increases in seizures of cash, drugs, and weapons. These numbers demonstrate the effectiveness of our layered approach to security. Violent crime in border communities has remained flat or fallen in the past decade, and some of the safest communities in America are at the border.

Nonetheless, CBP still faces significant challenges. We remain concerned about the violence taking place in Mexico and continue to guard against spillover effects into the United States. We will continue to assess and support the investments in the manpower, technology and resources that have proven so effective over the past two years in order to keep our borders secure and the communities along it safe.

We continue to strengthen our partnerships with federal, state, local and tribal entities in order to benefit both border security and the protection of environmental and cultural resources on federal

lands. The missions of DHS, USDA, and DOI are inextricably linked in protecting and strengthening American communities.

Perhaps the most significant example of our commitment to interagency collaboration on federal lands is the March 2006 Memorandum of Understanding (MOU) that describes cooperative national security and counterterrorism efforts on federal lands along U.S. borders. This MOU was signed by the Secretaries of DHS, DOI and USDA. It provides specific guidance on cooperation related to border security as well as compliance with related environmental laws, regulations, and policies. It also calls for environmental and cultural awareness training, for which the Border Patrol has taken the lead by creating a tri-agency working group called the Environmental and Cultural Stewardship Taskforce. The Taskforce is in the process of jointly developing a broad national training module for Border Patrol agents due for completion this summer. This training will supplement existing training already being developed in our field offices in conjunction with our land management agency partners.

While the 2006 MOU is a landmark, it bears noting that informal collaboration on federal lands has been taking place across our agencies for many years. This collaboration is based on mutual respect for each other's missions, and it continues in many forms. Specific initiatives have been developed to address collaboration on enforcement, as well as on environmental and cultural stewardship.

Border Security Initiatives on Public Lands

CBP continues to engage in collaborative efforts with DOI and USDA to fulfill its enforcement responsibilities at our nation's borders and to counter illegal cross-border activity on federal lands. As part of these efforts, we have developed several initiatives to promote the sharing of intelligence and threat information. In June 2009, DOI and USDA law enforcement partners were invited by the Border Patrol in the Tucson Sector to participate in the Alliance to Combat Transnational Threats (ACTT). ACTT utilizes a collaborative enforcement approach that leverages the capabilities and resources of DHS in partnership with more than 60 law enforcement agencies in Arizona and the Government of Mexico to deter, disrupt, and interdict

individuals and criminal organizations that pose a threat to the United States and Mexico. Through ACTT, we work with our federal, state, local, and tribal law enforcement partners to increase collaboration; enhance intelligence and information sharing; and develop coordinated operational plans that strategically leverage the unique missions, capabilities and jurisdictions of each participating agency.

Within this broader initiative, federal law enforcement officers from CBP, DOI, and USDA are teaming up to counter illegal cross-border activity on federal public lands in Arizona through Operation Trident—a collaborative enforcement approach that leverages the capabilities and resources of these three federal agencies to counter the threats posed by transnational criminal organizations, protect public lands from environmental damage, and deter violations of cultural and environmental laws. Under Operation Trident, members of the U.S. Border Patrol, Bureau of Land Management, National Park Service, Fish and Wildlife Service, and the United States Forest Service carry out joint patrols along the Arizona border.

Along the northern border, the Border Patrol has included DOI and USDA in the Integrated Border Enforcement Teams, comprised of both U.S. and Canadian federal, state/provincial, local and tribal law enforcement personnel that share information and work together on cross-border issues related to smuggling, organized crime and other criminal activities.

In 2008, DHS, DOI and USDA signed an MOU to bridge communication gaps and provide radio interoperability between Border Patrol agents and their law enforcement partners in DOI and USDA. Since the signing of the 2008 MOU, a primary repeater channel has been designated, and a common encryption key has been created and distributed to all Border Patrol agents and DOI and USDA law enforcement personnel. This interoperability is imperative to the success of our cooperative efforts along the border.

In April 2010, the Border Patrol determined that DOI needed more extensive access to Border Patrol communications in the Tucson Sector than was specifically provisioned in the 2008 MOU. In response, the Border Patrol has provided DOI partners with access to all radio frequencies in the Tucson Sector, above and beyond only providing access to joint operations channels.

The Border Patrol also considers the federal land management agencies in our budgetary process. Our budgetary process begins in the field and ultimately flows to headquarters, where each sector's requests are prioritized based upon the National Border Patrol Strategy, which is informed by threat and traffic flow. Budgetary resources are then allocated to support each sector's and station's requests based upon the priority and the amount of funding allocated. The insight and information that DOI and USDA provide related to their needs has allowed the Border Patrol to improve both our operational requirements and the budgetary process.

Environmental and Cultural Stewardship

Even as we continue to carry out our core mission, we remain strongly committed to demonstrating sound environmental and cultural stewardship practices. Border security and environmental stewardship are not mutually exclusive. Through common sense and collaborative efforts, we can achieve these dual missions. Although the Border Patrol's enforcement efforts on federal lands can pose unique challenges, the relationships and partnerships that we have fostered with DOI, as well as other federal, state, local and tribal agencies have enabled us to better execute our border security mission in these areas while minimizing the impact to the environment.

We recognize that despite our efforts to institute a wide variety of best practices, our border security mission can have an impact to the environment. We also know, however, that we can patrol the border in an educated and environmentally conscious manner, and we remain committed to doing so. We continue to work with our federal land management partners to ensure that we effectively comply with environmental laws while we carry out our responsibilities to protect the nation.

It is the Border Patrol's desire to leave a minimal footprint while conducting detection and interdiction activities. When federal lands overlap with our enforcement zones, compliance with associated laws and regulations that apply to those lands may affect the tools available to agents for daily operations within those areas, and may impact the deployment of technology and

tactical infrastructure. In these situations, we work closely with DOI and USDA to find mutually agreeable approaches and solutions.

Recognizing the need for coordination on federal lands, we have created several innovative solutions to strengthen interagency communication. In 2005, the Border Patrol established the Public Lands Liaison Agent (PLLA) Program. Under this program, each sector designates an agent dedicated to interacting with organizations and agencies involved in land management issues. The PLLA's job is to build and maintain solid working relationships with our land management agency counterparts so that we can capitalize on opportunities to collaborate and work through any issues that may arise.

Another significant communication vehicle is an interagency group called Borderland Management Taskforces (BMTF). Although BMTFs originated along the Southwest border, over the past several years BMTFs have also been established along the northern and coastal borders. These taskforces provide a unique opportunity to leverage resources and quickly identify and solve any potential problems.

The Border Patrol continues to take seriously its commitment to environmental and cultural stewardship. DOI and CBP completed the first Interagency Agreement under a 2009 Memorandum of Agreement to fund up to \$50 million in environmental mitigation projects that will benefit several species of fish and wildlife affected by border security projects along the Southwest border. The first agreement funded \$6.8 million in projects in a series of efforts designed to mitigate impacts from the construction of fencing along the U.S. border with Mexico. CBP and DOI are currently working together to define the next installment of mitigation funding under the 2009 MOA focused on acquisition of land to offset lost habitat for endangered species in California and southern Texas.

The Border Patrol has also provided work space to allow the co-location of DOI and USDA liaison personnel at headquarters in Washington, D.C., as well as within the Tucson and Spokane sectors. Their face-to-face presence enables daily interactions on numerous topics ranging from

Border Patrol strategies, objectives, and operations to how to avoid or minimize potential environmental impacts.

Conclusion

Chairmen Bishop and Chaffetz, Ranking Members Grijalva and Tierney, and distinguished Members of the Subcommittees, thank you for this opportunity to testify about the work of U.S. Customs and Border Protection, and our coordination with DOI and USDA to respond to illegal activity on federal lands. I look forward to answering your questions at this time.

Mr. BISHOP. Thank you.
Ms. Thorsen.

STATEMENT OF KIM THORSEN

Ms. THORSEN. Thank you, Chairmen Chaffetz and Bishop and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss the important issues in border security and the Department of the Interior's role in the administration's collaborative efforts to address illegal cross-border activity on Federal lands.

I am Kim Thorsen, and I am the Deputy Assistant Secretary for Law Enforcement, Security, and Emergency Management at Interior. I have been a law enforcement professional for 25 years with both Interior and the U.S. Forest Service, and I have been involved in border issues for the last 8 years.

I am joined here today by Jeanne Van Lancker, the acting director of the Office of Law Enforcement and Security for the Bureau of Land Management; Jim Hall, the chief of law enforcement for the National Wildlife Refuge System of the Fish and Wildlife Service; and Lane Baker, the chief of law enforcement security and emergency services for the National Parks Service.

If I may, I would like to submit our full statement for the record and summarize my testimony.

We appreciate the attention that your subcommittees have given to the issue of securing our borders. The Department of Homeland Security, including U.S. Customs and Border Protection and Border Patrol, has been given the mandate to secure our international borders and deter illegal border-related activity.

At Interior, we have the responsibility of administering uniquely beautiful and environmentally sensitive lands along the borders. We recognize the significant ecological and cultural values of these lands, and we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people.

We also recognize that these two objectives—securing our borders and conserving our Federal lands—are not mutually exclusive. We are not faced with a choice between the two; instead, we can and should do both.

We at Interior are proud of the strong working relationship based on cooperation and a mutual commitment to accomplishing our important agency missions among all of our partner agencies. Federal agencies with law enforcement presence on Federal lands along the borders include the Border Patrol; Interior's agencies, including the Bureau of Land Management, National Park Service, the Fish and Wildlife Service, and, in certain circumstances, the Bureau of Indian Affairs; and the Department of Agriculture's Forest Service.

Our agencies have developed a cohesive, cooperative approach to border security. In March 2006, Interior, DHS, and Agriculture entered into a memorandum of understanding providing the departments with goals, principles, and guidance related to securing the borders, addressing emergencies involving human safety and minimizing the environmental damage arising from illegal cross-border activities on Federal lands.

We believe the guidelines contained in the MOU have been effective in providing both Interior and Border Patrol with the necessary framework to strike the appropriate balance for patrol and infrastructure access to Interior lands by Border Patrol, while continuing to maintain an emphasis on protection of Federal trust resources.

Since entering into this MOU, the three departments have continually and successfully worked together to carry out the tenets outlined in the MOU at both the headquarters and the field levels. At Interior, we have established a department-wide coordination structure to facilitate the regular coordination and collaboration between Border Patrol and Interior agency representatives. Additionally, Interior, Agriculture, and DHS have founded an interagency environmental and cultural stewardship training task force to build on existing environmental and cultural training for Border Patrol agents whose patrol activities include Federal lands.

Collaboration is also taking place with the Border Patrol in the field. The Border Patrol, in cooperation with Interior and Agriculture, established a public lands liaison agent position for each of its 20 sectors. Interior land managers communicate and collaborate on issues of mutual interest or concern with those agents on a regular basis. In addition, Border Patrol agents frequently conduct joint patrols with Interior law enforcement personnel on Interior lands.

This close coordination provides staff with training and orientation on each agency's mission, while enhancing Homeland Security activities and resource-related investigations. These few examples are just a sampling of the ongoing collaborative dialog and strong relationship that Interior agencies and personnel have developed with our colleagues in the Border Patrol.

The deployment of Border Patrol personnel, equipment, and infrastructure along the southwest border has led to significant improvements in border security. We are very pleased with these improvements because of the enhanced security to our Nation and also because these efforts lead to overall healthier conditions on Interior lands along the border.

During this deployment of additional border security resources, we have worked closely and well with the Border Patrol to avoid or mitigate impacts of these operations on Federal lands.

In closing, I would like to recognize the collective efforts that Interior, DHS, and Agriculture have taken to meet the intent of the 2006 interagency MOU and the shared commitment by our departments to accomplishing the missions of our agencies.

Chairmen Chaffetz and Bishop, this concludes my statement. I would be pleased to answer any questions that you or other members of the subcommittees may have.

[The prepared statement of Ms. Thorsen follows:]

**Statement
of
Kim Thorsen
Deputy Assistant Secretary, Law Enforcement, Security, and Emergency
Management
United States Department of the Interior**

**Before the
House Committee on Oversight and Government Reform,
Subcommittee on National Security, Homeland Defense, and Foreign
Operations
And
House Committee on Natural Resources,
Subcommittee on National Parks, Forests, and Public Lands**

April 15, 2011

Chairmen Bishop and Chaffetz, Ranking Members Grijalva and Tierney, and Members of the Subcommittees, thank you for the opportunity to appear before you today to discuss the important issues of border security and the Department of the Interior's (Interior) role in the Administration's collaborative efforts to address illegal cross-border activity on public lands. My name is Kim Thorsen, and I am the Deputy Assistant Secretary for Law Enforcement, Security, and Emergency Management at Interior. I have been a law enforcement officer for twenty-five years with both Interior and the U.S. Forest Service and have been involved in border issues for the last eight years.

Introduction

We appreciate the attention that your Subcommittees have given to the issue of securing our borders. The Department of Homeland Security (DHS), including U.S. Customs and Border Protection (CBP), has been given the mandate to secure our international borders and deter illegal border related activity. At Interior, we have the responsibility of administering uniquely beautiful and environmentally sensitive lands along the borders.

As manager of one in every five acres of the United States, Interior's land managing agencies, the Bureau of Land Management (BLM), the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Indian Affairs (BIA), take this responsibility very seriously. We recognize the significant ecological and cultural values of the extensive lands Interior agencies manage near this border, and we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people.

We also recognize that these two objectives – securing our borders and conserving our federal lands – are not mutually exclusive; we are not faced with a choice between the two. Instead, we can, and should, do both.

We at Interior are proud of the strong working relationship – based on cooperation and a mutual commitment to accomplishing our important agency missions – among all of our partner agencies. In my testimony today, I would like to share with you the many ways that our Departments are working together to achieve our separate and important missions in the context of the dual objectives mentioned above.

Memorandum of Understanding

Cooperative Approach to Operations

Federal agencies with law enforcement presence on federal lands along the borders include DHS' Office of Border Patrol (Border Patrol), a component of CBP; Interior's component agencies, the BLM, NPS, FWS, and, in certain circumstances, the BIA; and the U.S. Department of Agriculture's (USDA's) U.S. Forest Service (USFS). These agencies have developed a cohesive, cooperative approach to border security.

In March 2006, Interior, DHS and USDA entered into a Memorandum of Understanding (MOU) entitled *Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders*. This MOU provides the Departments with goals, principles, and guidance related to securing the borders, addressing emergencies involving human safety, and minimizing the environmental damage arising from illegal cross-border activities on federal lands. The MOU contains provisions related to the development of an efficient means of communication, cooperative identification of patrol routes and operations, conduct of joint enforcement operations, cooperation in the development of environmental and cultural resources awareness training, and guidance on construction and maintenance of tactical infrastructure. And it addresses expedited completion of environmental compliance documents, including documents required by the National Environmental Policy Act and the Endangered Species Act.

Flexible Access to Federal Borderlands

The MOU also contains provisions for access by CBP agents to federal lands along the border, including those lands designated as wilderness areas under the Wilderness Act. Depending on the means of access to these federal lands and the circumstances at the time, little or no consultation may be required. On any federal lands at any time, CBP may patrol on foot or horseback. At any time, CBP may conduct motorized patrols on public and administrative roads and trails, and in areas previously designated by the land management agency for off-road vehicle use.

Under exigent or emergency circumstances, including pursuit of suspected cross-border violators, no consultation is required for CBP to use motorized vehicles to access any of these federal lands.

Our goal is to provide flexibility and realistic options for patrol and infrastructure access to Interior lands by CBP while continuing to maintain an emphasis on protection of federal trust resources such as endangered species, cultural resources, tribal interests, national wildlife

refuges, national parks, public lands, and designated wilderness. We believe the guidelines contained in the MOU have been effective in providing both Interior and CBP with the necessary framework to strike this important balance.

Since entering into this MOU, the three Departments have continually and successfully worked together to carry out the tenets outlined in the MOU at both the Headquarters and the field levels.

Coordinated Federal Responses to Illegal Activity on Federal Lands

Regular Management Collaboration

In order to facilitate efforts with the Border Patrol to address the challenges presented by illegal cross-border activity on our lands, Interior has established at the headquarters level a department-wide coordination structure. This includes the establishment, within Interior's Office of Law Enforcement and Security (OLES), of a Border Management Branch that comprises a full-time Branch Chief, an Interagency Borderlands Coordinator for environmental coordination, a Southwest Border Coordinator in Tucson, Arizona, and a Northern Border Coordinator in Spokane, Washington. The primary function of these positions is to coordinate and collaborate with Border Patrol Sectors and Interior agency representatives on a regular basis. Further facilitating this collaboration, the Border Patrol has agreed to co-location of these Interior field coordinators in applicable Border Patrol Sector offices.

Additionally, at the headquarters level, Interior, USDA, and DHS have formed an interagency Environmental and Cultural Stewardship Training task force to build on existing environmental and cultural training for Border Patrol agents whose patrol activities include federal lands. A first product resulting from this effort will be completed in the summer of 2011 and will consist of a two-hour, on-line training module to be provided to each Border Patrol agent.

On the Ground Collaboration

This collaborative effort is also taking place with the Border Patrol in the field. The Border Patrol, in cooperation with Interior and USDA, established a Public Lands Liaison Agent (PLLA) position in each of its 20 Sectors. Interior land managers communicate and collaborate on issues of mutual interest or concern with these PLLAs on a regular basis. Meetings between the land managers and the PLLAs are held every few months, or as needed, to facilitate open and regular communication, cross-training, and sharing of intelligence.

In addition, Border Patrol agents frequently conduct joint patrols with Interior law enforcement personnel on Interior lands, including national parks, wildlife refuges, and public lands. This close coordination provides staff with training and orientation on each agency's mission, while enhancing homeland security activities and resource-related investigations.

Recently, in the Tucson Sector, joint law enforcement patrol operations were conducted during anticipated peak periods of illegal activity, from January to March 2011, under *Operation Trident Surge*. The operation included the BLM, NPS, FWS, USFS, and the Border Patrol, and consisted of intelligence-supported joint patrols on Interior and USFS lands that were designed to reduce border-related crime and provide additional intelligence to Border Patrol to identify and target Alien Smuggling Organizations and Drug Trafficking Organizations operating on

federal lands. Interior officers focused on resource mission-related violations during this operation. This effort served to deter illegal smuggling into the United States. We additionally are continuing to conduct joint operations under *Operation Trident*.

Shared Intelligence Assessments

With respect to coordinating on intelligence assessments at the field level, the Border Patrol Spokane Sector Intelligence Unit regularly provides briefings and intelligence to Interior law enforcement personnel about current threats and activities on federal lands. This coordination has led to joint Interior-Border Patrol patrols by field personnel and has enabled training and orientation activities on each agency's mission, while enhancing homeland security and resource-related interdictions and investigations.

Similarly, in California, the Border Patrol El Centro Sector and the BLM have coordinated on *Operation Take it Outside*, conducted throughout 2010. This operation allowed for the gathering of intelligence regarding smuggling organizations and traffic patterns that can be used to develop future operational plans and strategies in the area.

These few examples are just a sampling of the ongoing, collaborative dialogue and strong relationship that Interior agencies and personnel have developed with our colleagues in Border Patrol. As discussed in more detail below, the cooperation and collaboration evident in these operations across the border areas, including areas within national parks, wildlife refuges, and public lands, has led to reduced environmental impacts on federal lands along the border.

Addressing the Impacts

The deployment of CBP personnel, equipment and infrastructure along the southwest border has led to significant improvements in border security. We are very pleased with these improvements because of the enhanced security to our Nation, and also because these efforts lead to overall healthier conditions on Interior lands along the border. Many of the natural and cultural resources under Interior's responsibility have been adversely affected by illegal activities due to accumulations of trash, establishment of illegal roads and trails, and overall degradation of the environment. By deploying personnel, equipment and infrastructure, CBP operations have reduced cross-border illegal activity and the environmental impacts of this illegal activity in a number of areas.

During this deployment of additional border security resources, we have worked closely with CBP to avoid or mitigate impacts to the environment from CBP actions. DHS has worked closely and well with Interior and USDA to attempt to offset these impacts through mitigation and coordination with federal land managers to conduct field operations in a manner that avoids or minimizes the impact of those operations on federal lands.

We have made and are continuing to make significant progress and we recognize DHS's leadership on these issues.

Conclusion

Chairmen Bishop and Chaffetz, I want to thank you and the Members of your Subcommittees for your continued interest in the Interior law enforcement program and our role in the Administration's efforts to secure and protect the border region and its natural resources.

In closing, I would like to recognize the collective efforts that Interior, DHS and USDA have taken to meet the intent of the 2006 interagency MOU and the shared commitment by our Departments to accomplishing the missions of our agencies. We are proud of our accomplishments, but at the same time we recognize there is still more to be done. We invite you to come to the border so that we may show you firsthand how successful we have been in cooperating with DHS in achieving our respective missions. We will continue to work with DHS to better our collaborative relationship. We look forward to continuing the positive dialogue to improve our law enforcement and land management capabilities, and to working with the Subcommittees to better understand your concerns.

This concludes my statement, and I am happy to answer any questions that you might have.

Mr. BISHOP. Thank you.
Mr. Jensen.

STATEMENT OF JAY JENSEN

Mr. JENSEN. Thank you. Chairman Bishop, Chairman Chaffetz, Ranking Member Tierney, members of the subcommittees, thank you for the opportunity to appear before you today to provide the Department's views on border security on National Forest System lands.

You have my written testimony for the record, but I would like to take this time to emphasize some key points.

First, the Department and the Forest Service take very seriously the need to secure our Nation's border. We fully support, as it is in our common interest, that we address illegal U.S. border crossings, the smuggling of illicit contraband and people across the border, the crimes committed against those being smuggled, and other unlawful activities.

Through all of this, it is important to recognize and empathize with the plight of those undocumented foreign nationals who are seeking a better life. Yet, there are impacts to national forests on both the northern and southern borders, particularly so on portions of the Coronado National Forest, where we are seeing issues related to excessive trash, human-caused fire, and the safety of the recreating public. We are undertaking successful measures to mitigate these impacts.

Second, I want to emphasize the close working relationship we have with the Border Patrol and our sister agencies in the Department of the Interior. As our testimony indicates, we participate in numerous joint patrol exercises, have assigned a full-time U.S. Forest Service liaison to the Border Patrol, communicate in real-time on the ground with each other, and work expeditiously to allow the Border Patrol the access they need while protecting the environment.

In fact, just a few weeks ago, the Forest Service chief, Tom Tidwell, was in southern Arizona meeting with Chief Hill of the Tucson sector of the Border Patrol. They toured the border by helicopter to see and learn firsthand the challenges we face together.

There is much to do, but we are seeing success. And to re-enforce, the Government Accountability Office has even acknowledged the close cooperation between our agencies.

Third, we are convinced that a well-protected border means well-protected public lands. The more we can assist the Border Patrol with stopping illegal traffic, the less impact there will be on the national forests. To date, we are unaware of any requests made by the Border Patrol where we have not been able to accommodate their needs in an expeditious manner and still protect the environment.

Last, we want to thank the subcommittees for their attention to this important issue. We want to work closely with you and understand your concerns. Our experience to date tells us that we can accomplish our missions of securing the border and protecting the environment, recognizing that these are not mutually exclusive objectives. We will continue to make interagency progress with the

Border Patrol and our sister agencies in the Department of the Interior in the accomplishment of our missions.

This concludes my verbal testimony. Thank you. And I look forward to your questions.

[The prepared statement of Mr. Jensen follows:]

**Statement of
Jay Jensen
Deputy Under Secretary for Natural Resources and Environment
U.S. Department of Agriculture**

**Before the
Subcommittee on National Security, Homeland Defense and Foreign Operations
Committee on Oversight and Government Reform
and the
Subcommittee on National Parks, Forests and Public Lands
Committee on Natural Resources**

U. S. House of Representatives

April 15, 2011

Chairman Chaffetz, Chairman Bishop and members of the Subcommittees, thank you for the opportunity to appear before you today to provide the Department's views on border security on National Forest System Lands.

I would like to open by providing the Subcommittees with a brief overview of the border situation and the capabilities of the U.S. Forest Service. National Forests in the "lower 48" share a border of over 400 miles with Canada and almost sixty miles with Mexico. In addition there are other National Forests such as the Cleveland in southern California, which while not directly adjoining the border, are in close proximity and are impacted by illegal border crossing activity. While there are challenges on both the northern border and southern borders, most illegal border crossings detected take place on the southwest border. It is important to remember that while the Forest Service is dedicating significant law enforcement resources to address challenges on the border, there is much law

enforcement work to be done within the National Forests to address other issues such as marijuana cultivation, enforcing laws regarding recreation and travel management, dumping, theft, and the safety of National Forest visitors.

To begin, I would like to reaffirm that the Department of Agriculture's commitment to support efforts to secure and protect the U.S. border. Achieving the Border Patrol's mission as well as the land conservation and protection mission of the USDA Forest Service (USFS) are not mutually exclusive. We believe we can contribute to the Border Patrol's vital security mission while simultaneously protecting the environment. We have strengthened and are continuing to improve our relationships with the Department of Homeland Security (DHS) and our sister agencies within the Department of the Interior (DOI) to accomplish our mutual objectives. The Department takes very seriously the need to address the illegal crossings of the U.S. border between official points of entry, smuggling of illicit contraband and people, crimes against those being smuggled, and other unlawful behavior. For National Forests along the border, increased border security will increase overall safety and help decrease adverse impacts on the environment. The Department would like to work with your two Subcommittees and the rest of the Executive Branch to better understand your concerns.

The scope of the challenge is significant. Of the tens of thousands of people apprehended entering illegally each year on federal lands in the Border Patrol's Tucson Sector (Tucson Sector extends from Ajo, Arizona to the New Mexico border), a

significant percentage of them are apprehended on the Coronado National Forest, south of Tucson, Arizona. The increasing amount of illegal border crossings and related activity in the more remote and rugged portions of the Coronado National Forest can be attributed to the successful work done to physically close the border in the flatter, more accessible areas closer to population centers. Adding to the challenge, each year hundreds of thousands of pounds of marijuana grown outside the U.S. have been seized from smugglers on the Coronado National Forest.

There is also the issue of human caused wildfire. In 2010, of the fifty wildfires south of U.S. Interstate 10 on the Coronado National Forest, thirty-eight were attributed to abandoned campfires. Data shows that in this area, the number of human started fires over the past twenty-five years is trending upwards. There are other impacts to the environment from illegal activities on National Forests that can be partially attributed to illegal border crossings. For example, the Forest Service collects tons of trash annually in this area and despite these efforts, the overall amount of trash is rising.

Further, recreational use of the National Forests is impacted. Portions of the Coronado National Forest south of Interstate 10 have been posted with warning signs indicating potential danger for the recreating public because of the amount of illegal activity. The agency takes precautions for employees as well, often providing law enforcement escorts for management and fire suppression activities.

In response to illegal border crossings and related activities, the U. S. Forest Service has taken important and effective steps, especially around interagency coordination which is improving the situation. Memoranda of Understanding were signed in 2006 and 2008 that are enabling interagency cooperation, improved radio interoperability, and increased effectiveness while protecting the environment. The Agency has made it a priority and assigned thirteen sworn officers to the "Border Zone" of the Coronado National Forest. Relative to of our law enforcement workforce, this is a significant commitment. Ten of those officers who work particularly close to the border are accompanied by canine units. In addition, the USFS makes all Forest Service Law Enforcement officers in New Mexico, Arizona and across the nation available to assist the officers who work on the border for special operations such as saturation patrols and drug interdiction operations. We regularly conduct joint patrol operations with Border Patrol agents on the Coronado National Forest. And recently, we have been an active participant with Border Patrol and Department of the Interior agencies in Operation Trident Surge joint patrol operations.

To improve the security of our borders and protect important cultural and natural resource values and recreation opportunities, the Forest Service and Border Patrol missions mesh well with one another. The Coronado National Forest is home to the highest number of threatened, endangered and sensitive species of any National Forest in the continental U.S. There are 25 listed threatened or endangered species and 162 sensitive species on the Coronado National Forest. To protect these important resource values we rely on each others' strengths to work towards common goals and mutual interests for the public and the National Forests. For example, we have established full

time liaison positions with the Border Patrol for both the Tucson Sector, based in Tucson, and for the Spokane Sector, based in Kalispell, Montana. The liaison positions are important in coordinating joint patrol efforts, facility development, environmental analyses, and long-term staffing needs. We are currently coordinating and supervising road maintenance work with the Border Patrol on National Forests in Southern Arizona to improve access and patrol capabilities for Border Patrol agents.

We conduct numerous joint saturation patrols with DOI officers and Border Patrol agents, where we flood an area of known illegal activity with officers for a discreet period. Further guided by our 2008 MOU, we are participating in the Interagency Dispatch Improvement Project in order to better communicate between dispatch centers and agents in the field. We are also a partner in the DHS Alliance to Combat Transnational Threats, a DHS led multi-agency initiative. We are a member of and actively participate in an interagency Border Management Task Force which, among other things focuses on site specific problem solving as well as planning for the future.

Shifting to the northern border, where there is a significant amount of land designated as grizzly bear habitat as well as wilderness, our focus is to ensure Border Patrol agents have access, while protecting the environment, as described in the 2006 Memorandum of Understanding signed by then Secretary of Agriculture, Mike Johanns. There is also the 2008 MOU that addresses effective radio communications. These memoranda still guide us today and are proven to be strong tools in our efforts to secure our border. We are also

renewing our commitment to coordinate on travel management planning and implementation across the Spokane Sector. In summary, the close interagency cooperation which GAO has acknowledged in recent reports has been a very successful partnership model that we need to continue to invest in and focus upon.

Border issues have been a focus and priority for the U.S. Forest Service for some time. Scheduled prior to the announcement of this hearing, on March 30, 2011, the Chief of the U.S. Forest Service, Tom Tidwell, visited with Chief Border Patrol Agent of the Tucson Sector, Randy Hill, to look at the challenges first hand. Chief Hill has indicated that one of his highest priorities is to assist the federal agencies in “taking back” public lands from smugglers for the American people. Chief Tidwell recommitted the U.S. Forest Service to work expeditiously in assisting the Border Patrol to have the support and access they need while simultaneously helping the USFS meet its mission in protecting and conserving the environment.

In closing, securing our borders and addressing impacts to our public lands are very important to this Administration. A well protected border means a better protected forest. Securing our border and protecting the environment can go hand in hand. The U.S. Forest Service is continually improving both our coordination and capabilities to work with other agencies so we can do our part to secure our borders and protect our National Forests.

We appreciate the Subcommittees' attention to this important issue. This concludes my statement and I would be happy to answer any questions you may have.

Mr. BISHOP. Thank you. I appreciate all of you being here.

Let me ask the first round of questions.

For all of you, looking at the memo of understanding, it appears that a big part of the entire agreement hinges on access granted in the course of exigent or emergency circumstances.

Ms. THORSEN, you are from DOI; let me deal with you. What is an exigent circumstance?

Ms. THORSEN. Mr. Chairman, as outlined in the MOU, what we tried to do is ensure that the Border Patrol agent and then in their judgment determined what an exigent circumstance was, whether it was in pursuit of aliens—

Mr. BISHOP. Is there a definition in the MOU?

Ms. THORSEN. Yes.

Mr. BISHOP. And what is that definition?

Ms. THORSEN. “Exercising exigent emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CVVs at any time, including in areas designated or recommended as wilderness or in wilderness study areas, when, in their professional judgment, based on articulated facts, there is a specific exigent emergency involving human life, health, safety of persons within the area, or posing a threat to national security.”

Mr. BISHOP. OK, that is the key element. So human life, health, safety of persons within an area, or posing a threat to national security.

Are you aware that when my staff questioned one of your park superintendents and even the director of the National Parks Service told us separately that an exigent circumstance is life or death only? Now, is that what the MOU says?

Ms. THORSEN. No.

Mr. BISHOP. OK. So this incorrect definition is not just the opinion of the Park Service. Unfortunately, the Fish and Wildlife Service director sent two letters to the Border Patrol telling them, in his opinion, that an emergency is defined as life-threatening circumstances, and, otherwise, Border Patrol has to continue to access the refuge on foot or on horseback, and also gave them a warning that if they violated his version of that MOU, within 6 months he would close all access down.

Are you aware of that?

Ms. THORSEN. No, I am not aware of those particular—

Mr. BISHOP. What are you going to do about it?

Ms. THORSEN. Well, what we will do is ensure—and we are continually doing this with our partners, our agencies on the ground and with the Border Patrol—to ensure that the MOU is enforced as written.

Mr. BISHOP. It is nice. So you are now aware that the ground personnel in DOI are not operating under the same definition. You got it?

Ms. THORSEN. Yes, Mr. Chairman.

Mr. BISHOP. OK. Well, you were right when saying that protection of land and protection of the border should not be mutually exclusive, that you should be able to do both. Unfortunately, you are not.

Border Patrol agents in the field have explained to our staff that they believe the MOU could work but, unfortunately, it does not because the land agencies do not follow it.

Mr. Vitiello, have you heard complaints from the field land managers that they are not following the MOU?

Mr. VITIELLO. I think that the MOU does give them the framework to do that. I think in any relationship there are differing sides and interpretations.

Mr. BISHOP. So how would you tell your Border Patrol if, for example, one of the land managers under DOI told them the MOU was no longer in effect because there was a new administration?

Mr. VITIELLO. Well, we have, you know, regular people on the ground that are designed to programmatically work these issues and then operationally understand amongst themselves how we are going to interpret—not how to interpret the MOU, but that the framework exists to solve any of the problems as they are raised.

Mr. BISHOP. So what would you tell that land manager when he said that?

Mr. VITIELLO. I would refer him to the public lands liaison officer. You know, I could call over to Kim's office, and we could talk about what, you know, the perceptions or actual restrictions were or should or should not be.

Mr. BISHOP. So if, especially in the GAO report, you showed multiple examples of where this MOU has broken down, Ms. Jensen, how will the MOU function if your employees don't believe they have to or are obligated to follow it? Or, I am sorry, Ms. Thorsen.

Ms. THORSEN. As Mr. Vitiello said, our responsibility in my office, as well as our folks in the field, is to ensure the appropriate implementation of the MOU. And so we—and, in fact, the MOU describes a mechanism that, if things aren't working out at the local level, that that is to be moved up to the regional and then, ultimately, the headquarters level.

So we have mechanisms in place to ensure that it is being implemented as outlined in the framework in the MOU. So it is our responsibility to followup on those instances and ensure that is, in fact, happening.

Mr. BISHOP. That doesn't work. And I appreciate it, but it doesn't work. It is not working. The reports are telling us, the anecdotal evidence, and, actually, the cumulative evidence is saying, that system flat-out is not working.

Mr. Jensen, the fires you refer to in your testimony, how many of those are intentionally set?

Mr. JENSEN. Intentionally set? We don't track the numbers that actually we know that they are intentionally set. We track numbers of fires by human-caused and through lightning.

Mr. BISHOP. Why don't you track arson? Are the Forest Service employees discouraged from reporting arson?

Mr. JENSEN. Not at all.

Mr. BISHOP. Then why don't you track it?

Mr. JENSEN. We can dig into the numbers, as we conduct investigations on specific fires, to find the cause of those fires. And, in that sense, we can get to the answer, to the bottom of what caused those fires.

Mr. BISHOP. But you don't do that now. That becomes amazing, that it doesn't do it.

You also said you were not aware of any kind of problems with where your agency has been impeding the Border Patrol. Check the GAO report. You will see it very much. I quoted from it here.

My time is over. Mr. Tierney.

There will be another round here.

Mr. TIERNEY. So I guess—I am trying to listen carefully here to this. And it seems to me that there is some allegations here—not so much that the MOU, memorandum of agreement or understanding, doesn't allow for things to work properly, but there seem to be incidents reported where it may not have been implemented or worked effectively.

Is that what you witnesses are hearing, as well? Or correct me if I am not hearing properly.

Mr. VITIELLO. I think that is accurate.

Mr. TIERNEY. Ms. Thorsen.

Ms. THORSEN. Yes, sir. That is my—

Mr. TIERNEY. Mr. Jensen, is that what you are hearing?

Mr. JENSEN. I would agree.

Mr. TIERNEY. OK. So are we getting ample training to the people in the field in all three departments so that they would have an appreciation for the memorandum of understanding in the chain of how they would cooperate and work with others?

Mr. VITIELLO. There is an ongoing, systematic way for folks to be exposed to it. We have it programmatically set up at each of the locations. And so that is a constant kind of process, because we do have turnover in the field, relationships change. And so there is a constant, you know, revolution of people who learn and then need to know and then move on; the next group gets the same kind of thing.

So it is like any other relationship. There are ebbs and flows in the level of contact and its effectiveness.

Mr. TIERNEY. Is there a high percentage of people that are between trainings or haven't been trained yet as they take on responsibilities?

Mr. VITIELLO. I would have to get you specific numbers, but it is our intent at each of the levels to have folks who are subject-matter experts in the MOU and then have the responsibility for the liaison and the operational contact.

Mr. TIERNEY. Are any of you aware of any particular incidents or incidents where the Border Patrol agents have been absolutely impeded from carrying out their responsibilities by interference through the enforcement of some of these environmental and wilderness laws?

Mr. VITIELLO. I am not aware of any specifically, but I will tell you that, with 20,000 agents in the field, there are bound to be within these relationships differences of opinion and issues that get raised through the sector-level commands, the station level, certainly, and then up to the headquarters. We have had instances where we have talked about these things at every level, looking to solve whatever the issue is.

Mr. TIERNEY. OK.

Ms. Thorsen.

Ms. THORSEN. Yes, I would actually agree with Mr. Vitiello's statement. There are instances where folks on the ground need to work through things. But our continual talking to them, meeting with some of our collaborative organizations that we have, the borderland management task forces and so forth, and our constant effort to ensure that any issues that aren't getting resolved at the very local level are bumped up through that mechanism, and, as I said earlier, all the way to headquarters.

We are very involved in my office, personally, to ensure that anytime we hear there is maybe some impediment or there is a difference of opinion on the ground, that we figure that out and we make it happen so the Border Patrol can successfully carry out their mission.

Mr. TIERNEY. Do you have disciplinary proceedings for those recalcitrant individuals that may be giving instructions and misinterpretations of the MOU?

Ms. THORSEN. The folks on the ground are bureau employees, and those bureaus do have performance plans and disciplinary and sort of a whole performance program.

Mr. TIERNEY. Do they use them?

Ms. THORSEN. It is not my—I can't speak to that, actually, since I don't work in those bureaus.

Mr. TIERNEY. Well, I mean, that is part of the problem with bureaucracies, right? I mean, we are here talking about one problem and you are giving us an answer and you can't answer for the other part.

But will it be reasonable to assume that those incidents that may be reported by the Government Accountability Office or those incidents that Mr. Bishop or others here may point out as anecdotes or individual circumstances will be reviewed and action taken if it is warranted?

Ms. THORSEN. Yes, I would agree with that.

Mr. TIERNEY. Mr. Vitiello, do you agree that your agency will do that, as well?

Mr. VITIELLO. Yes, sir.

Mr. TIERNEY. Mr. Jensen.

Mr. JENSEN. Absolutely.

Mr. TIERNEY. All right.

Is any one of you of a mind that there is a mutually exclusive application of the environmental wilderness laws and our security?

Mr. VITIELLO. That they are not exclusive, I agree.

Mr. TIERNEY. You agree they are not exclusive.

Ms. Thorsen.

Ms. THORSEN. Yes, I agree.

Mr. TIERNEY. Mr. Jensen.

Mr. JENSEN. Absolutely not. We are actually seeing examples where we are actually seeing success. And I think, just this year, we embarked upon a joint operation called Operation Trident that is occurring all throughout this year that is proving and demonstrating how we can work together and achieve both those goals.

Mr. TIERNEY. Well, particularly with respect to fires, I would assume that it is in your interest and in the forestry to make sure that the border is protected and people aren't coming in and being a part of the human cause of fires, correct?

Mr. JENSEN. That is absolutely correct.

Mr. TIERNEY. OK.

And, Mr. Vitiello, I will just end with you. Are you, as a representative of the Border Patrol, here to lodge a complaint of any sort about the way that the environmental laws or conservation laws or wilderness laws or anything else are impeding the ability of you and your men and women to protect this country and protect our national security?

Mr. VITIELLO. No complaints. I agree that the framework allows us to solve this problem in a practical way. As Ms. Thorsen said, it is best to do that at the field with the folks that are responsible for implementation directly.

Mr. TIERNEY. And you will do that?

Mr. VITIELLO. Yes.

Mr. TIERNEY. Thank you.

Yield back.

Mr. BISHOP. Thank you.

Mr. Chaffetz.

Mr. CHAFFETZ. Are you all familiar with the border security GAO report, February 15, 2011? This is the one, "Preliminary Observations on Border Control Measures from the Southwest Border." We keep referring to the GAO report. Are you familiar with it?

Mr. VITIELLO. Yes, Mr. Chairman.

Mr. CHAFFETZ. All three of you, yes? Yes?

Mr. JENSEN. Yes.

Ms. THORSEN. Yes.

Mr. CHAFFETZ. All right.

Mr. Vitiello—I hope I am pronouncing your name right—you write in your written testimony, "Border Patrol's enforcement efforts on Federal lands can pose unique challenges." What are the unique challenges?

Mr. VITIELLO. Well, I think the challenges are that they are—like a lot of the enforcement work that is done both for the Border Patrol and in all law enforcement, there is a legal framework which we operate in.

Mr. CHAFFETZ. That is different, that is different because it is—

Mr. VITIELLO. On protected land, yes, it is.

Mr. CHAFFETZ. And the access, your ability to patrol, is different than it is, say, on private land or different types of public land that aren't designated as wilderness, correct?

Mr. VITIELLO. Right. So, depending on the environment.

Mr. CHAFFETZ. It is different.

Mr. VITIELLO. It is different.

Mr. CHAFFETZ. Absolutely. OK.

Seventeen of the 26 Border Patrol stations interviewed by the GAO indicated, "When they attempted to obtain a permit or permission to access portions of Federal lands, delays in restrictions have resulted from complying with land management laws."

Would you agree with that or disagree with that?

Mr. VITIELLO. It is in the report, so I have no dispute about the fact—

Mr. CHAFFETZ. But you also testify that there is no problem, everything is getting along rosy. And yet I go back and read this

GAO report, and you have only secured 129 miles of a 2,000-mile border.

You can't come before the American people and this country and say that everything is rosy and fine. People are dying, they are getting killed because we have those big, gaping holes in our security, and they are going into some of the most inhospitable pieces of land and they are dying. They are being dehydrated. They are going through these cactus-ridden areas, and they are dying. And we are putting Border Patrol out there and saying, "Oh, just go on foot, just go on horse, because we would much rather protect this little cactus and this little roadrunner."

That is what I have a concern about. So for you to testify routinely that everything is fine, it is not different, I am not aware of any instance—and then read that we are having permit and permission troubles is troubling.

Let me go on. According to the GAO, 14 of the 17 agents in charge—agents in charge, people that you should be personally familiar with—of the Border Patrol stations indicated delays by Federal land managers who reported that they have, "been unable to obtain a permit or permission to access certain areas in a timely manner because of how long it takes for land managers to comply with environmental laws."

So how have these delays, based on this report, lessened the agents' ability to detect undocumented aliens in some areas?

Mr. VITIELLO. The report is a snapshot in time. The framework that is within the MOU allows those agents in charge to make those requests. And when those requests are judged by the public lands liaison or the borderlands task force to be reasonable, then we sort through that and make it happen.

To suggest that it is perfect, that is not why I am here. It is a relationship that—

Mr. CHAFFETZ. The reason you are here is because it is not perfect.

Let me move on. As indicated by the GAO in at least one instance, Border Patrol requested permission to move a mobile surveillance system to a certain area. However, by the time the permission was granted 4 months after the initial request, illegal traffic had shifted to another area. As a result, Border Patrol, "was unable to move the surveillance system to the locale it desired. And during the 4-month delay, agents were limited in their ability to detect undocumented aliens within a 7-mile range that could have been covered by the system."

True or false? Is that statement true or false?

Mr. VITIELLO. It is true.

Mr. CHAFFETZ. So how can you testify that everything is fine and that you are working in such a great relationship? You have a surveillance system that I would think that would make your Border Patrol agents and the United States of America safer, and these people over here are giving you a 4-month delay.

How come you are not here with the same type of outrage that I have? How come you are here just saying, "Oh, you know, we work together. Everybody just gets along." We got people dying. How do you respond to that? Because you have testified, and we have listened to what you said, that, oh, everything is fine.

Mr. VITIELLO. The framework allows for us to move through these issues and this problem. Is it perfect, no? If you want to—

Mr. CHAFFETZ. But in this instance, the report that came out, it is a 4-month delay.

Ms. THORSEN, how do you respond to this? Mr. Jensen, jump in here. Four-month delay, why does that happen?

Mr. JENSEN. I am looking at—I am asking my folks here to find examples on the National Forest System land here. And we are working as quickly as possible to work through the requests that come through. And we have examples in front of us now: the Zone 20 project, where we are actually moving to build roads on restricted lands, where we are seeing success.

It does not happen immediately in every single case, but we are actually—we are making tremendous progress in working together to address these concerns as they arise.

Mr. CHAFFETZ. My time has expired. I yield back.

Mr. BISHOP. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

All of us feel on this issue certainly as strongly as Mr. Chaffetz, but I think, you know, some of us express ourselves differently. And I have been here 34 years, and I always find it a great opportunity when you have people from the field who know this issue very well to keep the level of trying to learn at a high level. So I really appreciate your helping to enlighten us. We are not always going to agree, but I think that we have this opportunity to learn from you.

Let me ask you this question. I will address it to Ms. Thorsen, but any of you may answer. If there is an incident or a pattern of ignoring the MOU that we have been talking about, what is your reaction or response to that? And should there be something stronger than an MOU? Should there be something in law?

Ms. THORSEN. Thank you, Congressman.

Our actions, if there was a consistent pattern of ignoring the MOU, as I stated earlier, we have a mechanism in place to bring that to our attention at headquarters. And in numerous instances, I personally get involved, and other members of my staff, talking to Mr. Vitiello or Chief Fisher with the Border Patrol to come together to figure out what is going on. And then we also talk to our bureau representatives, bureau directors and/or their regional directors, who have direct control over those local units, and come together to discuss what the issues are and to resolve those issues.

So we do it very—we do it very high-level. For any incident on the border that gets to our attention that we know about, we will take action such as that to ensure that it gets resolved on the ground. We hope most of those are resolved locally, but they are not all, as we have heard earlier. They do get to our attention.

Mr. KILDEE. Anyone else have any comment?

Well, I would encourage you to, you know, keep it at a high level or even raise the level of importance. Because when agreements are made, very often they aren't easy to arrive at but they are done for a reason.

So I would encourage you to keep it at the high level. I think it is very important. I would not want to stop a chase because someone didn't want to follow a memorandum of understanding which

makes very good sense and is so important for, very often, our national security.

So I would keep it at the high level; if necessary, raise it to a higher level.

Thank you very much.

Mr. BISHOP. Thank you, Mr. Kildee.

Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

Ms. Thorsen, are you familiar with the operating memorandum of understanding between the Las Cruces BOM and the Border Patrol?

Ms. THORSEN. Not particularly, sir.

Mr. PEARCE. Well, in it, it states very clearly that a mobile command—the mobile communications site there in the Big Hatchet Peak will be moved as soon as possible if the area is designated as wilderness. So it is there now, but if it is wilderness it can't be there.

Doesn't that sound like a little bit of an impediment? Why wouldn't the people have decided to put it somewhere else to start with if that were a better place? Doesn't that sound like a little bit of an impediment?

Ms. THORSEN. In that instance—that is an example—I understand that the repeater is on Big Hatchet Mountain. And if, in fact, legislation were passed, we would need to work to ensure that it could stay there. It is an opportune location.

Mr. PEARCE. No, I mean, it calls for it to be moved if it is designated wilderness. That says that conservation is trumping protection.

Mr. Vitiello, you declare that wilderness and security are not mutually exclusive. And I know it is not exactly wilderness area, but the Organ Pipe National Monument that I visited in 2006 as chairman of the Parks Subcommittee and they declared it to be inhospitable for American travelers, about half of it, is it still that way?

Mr. VITIELLO. No, we—

Mr. PEARCE. It is wide open? It is completely open to American tourists with no warnings?

Mr. VITIELLO. Well, I don't know the status of the visitation for folks—

Mr. PEARCE. Staff tells me it is still very alarming and that the warnings are still given to American tourists that you shouldn't be in this area.

Mr. VITIELLO. Yeah.

Mr. PEARCE. If the two are not mutually exclusive, why have you not—why doesn't that area fit into your 129 miles of secure border?

Mr. VITIELLO. The definition that gets us to the 129 miles is probably a lot longer conversation. But that—

Mr. PEARCE. Well, just—

Mr. VITIELLO [continuing]. Tactical measure for agents in the field is designed for—

Mr. PEARCE. I want to know why Organ Pipe has not been cleaned up. Why haven't you stopped the traffic that is polluting the area but also making it dangerous?

Mr. VITIELLO. We have made good progress at Organ Pipe and throughout the sector to—

Mr. PEARCE. You would send the Boy Scout troop down there that has your kids in it without your presence? I don't think so, sir. I am sorry, I was there. I saw the stuff. I don't believe you would.

Mr. VITIELLO. We have made excellent progress since 2006, Congressman.

Mr. PEARCE. I hear that. I also know that just last year or the year before that the rancher was killed right down in that area, and that was in retribution for him turning in the drug smugglers.

Mr. JENSEN, we visited in the Sequoia in that same 2006 time period, and they actually showed us places where booby traps, sawed-off shotguns, the growing massive areas of drugs in the forest itself. Is that cleaned up?

Mr. JENSEN. I would have to go back and look at that specific area to know the status there. I do not know.

Mr. PEARCE. Do you have any other forest where—but you are familiar with the circumstances that I refer to?

Mr. JENSEN. The circumstances—

Mr. PEARCE. Do you have any other forests that have that many incursions of illegal activity in it so that people are warned, "Don't backpack in this area; you could get your head blown off with a sawed-off shotgun that has a tripwire on it?"

Mr. JENSEN. We don't quite talk about it that way, but we do make sure—

Mr. PEARCE. Were the pictures that were given to me by the Forest Service incorrect?

Mr. JENSEN. I would have to see these those photos to know for sure.

Mr. PEARCE. Yeah. Yeah. So you wouldn't talk about it, but the pictures may have been correct. They were given to me in an official capacity, in an official briefing. So you wouldn't think it is incorrect that, if you hit a tripwire and it blows your head off with a sawed-off shotgun that is protecting a marijuana field—

Mr. JENSEN. No, what I wanted to say was we, want to make sure that visitors that come to the national forests are aware of the risks that are out there, as in any time you head into the back country. I couldn't speak to the specific situation—

Mr. PEARCE. Do you have any other forests where that sort of danger exists?

Mr. JENSEN. We are dealing with some similar issues down in the Coronado National Forest. And we make sure that the visitors to those areas are aware of the situation.

Mr. PEARCE. So Sequoia is one of two in a very, very dangerous category. And you don't know if it has been cleared up? That is alarming, my friend.

Mr. JENSEN. I would like to followup with you to understand a little more of the concerns you have.

Mr. PEARCE. I mean, still it is alarming that you are in the position you are in and don't know if we have eliminated those. That is what concerns me about the testimony of all three of you here today, that you are saying that there is no problem with wilderness. There is no problem with environment rules, and yet you can't explain some of the most dangerous areas that exist right in my back door.

Thank you, Mr. Chairman.

Mr. BISHOP. Thank you.

It is my intention to turn now to Mr. Lynch.

And what we will try and do is get through this round of questioning. We have still a good 5 or 6 minutes, and a whole lot of people haven't yet voted. We will then suspend for a few minutes, go vote, then come back here probably around a 10-minute break, if that is OK. Representative Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

And I want to thank the witnesses for trying to help the committee with its work. I do want to—I think the part of the frustration exhibited by Mr. Chaffetz was well founded, I think. And it is really a result of a GAO report. And I think this was this is an October 2010 GAO report on the Southwest border. And Gene Dodaro was acting then, and I have enormous respect for him. I have worked with him on a lot of different issues.

But this report invites Mr. Chaffetz' frustration. It says basically that everything is fine. At least that is what the political appointees and the higher level folks are saying, everything is fine, we are working together. But then when you do talk to the agents in charge on the ground there, they are saying, 17 of the 26 stations, you know, reported that there were limitations put on their ability to patrol those areas, specifically the patrol agents in charge; 14 of 17 stations reported that they have been unable to obtain a permit or permission to access certain areas in a timely manner because of how long it takes to work with land management folks.

And then earlier, Ms. Thorsen, you conceded that the folks on the ground, based on the chairman's questioning, were applying a different standard for border agents to get into certain areas. That is of great concern. And I think by this inconsistency in what we want to happen down there and what is happening is going to invite legislation here, because the MOU is not being followed. And it is against the backdrop of a very serious situation.

I have a report here that says we had 600 more civilian homicides in one border town, Ciudad Juarez, in 2010 than we had in all of Afghanistan. And Afghanistan is 30 million people. Ciudad Juarez is 1 million, 1.3 million. And we had 600 more homicides, and it is right on our border. I will tell you, I would be more angry than Mr. Chaffetz has been this morning if I thought that the safety of the people that I represented was being ignored.

So you got to get your act together here. We expect you to protect the border, and we don't think that that is happening. Now, you say that you can do this, that you can get together on this and make sure the environmental concerns are addressed and still conduct robust security on the border. You need to do it. You need to do it. This is a—you know this is a problem. You know I think I have been to Iraq and Afghanistan about 22 times. I think I should be spending more time in Mexico from reading these reports.

And this is right on our border, and we can't afford to be slack anymore. So I am hoping that either you address it with a tighter description of what is permissible for the border security folks, or you just come to Congress and say, we can't resolve this, and why don't you do it on our behalf?

But you know this can't continue, this cannot continue. You know the folks that live in those border towns on the Mexican side deserve better, and so do the U.S. citizens in that area, and we got to get serious about this.

And so, you know, I think, Ms. Thorsen, if you have folks on the ground who are applying a different standard that restricts Border Patrol folks from going into some of those wilderness areas in a timely fashion to protect the American people, then you need to have some consequences here. And I didn't hear a real clear answer on that when the chairman asked you whether you—actually, I think it was the ranking member asked you, are folks being disciplined when they stop border security folks from going in there and doing their job? And I didn't hear a yes. I heard, well, we have you know guidelines that allow us to do that, but I didn't hear of anybody being fired for blocking access to certain areas on the part of the security folks.

Mr. Vitiello, I know you give a rather rosy picture, but the facts don't bear that out, sir, I am sorry to say. So we got to, we have to be better at this. And you know, like I said before, I will close my remarks, but you are inviting, you know, Congress to go in there and decide what the rules are going to be. And 435 people are going to make that decision in the House and 100 in the Senate. It may not come out the way you think it will. It may not be a better solution than an MOU, a cooperative MOU between the two agencies, is what I am saying.

So I just ask you to, as Mr. Kildee has suggested, you got to work together better and start living up to the terms of the MOU and making sure that our Customs and Border Patrol folks have access to that area. Thank you. I yield back.

Mr. BISHOP. Thank you, Mr. Lynch.

Let me explain the process. Just for a point of information for Mr. Pearce's question, 68 percent of Organ Pipe is still off limit to Americans, and 95 percent of it is wilderness.

We have a vote that is taking place right now, a second 5 minute vote, and then a third vote that is 15 minutes. Although I am going to ask Members to come back here, to vote on that last one very quickly and then come back here. So I am still estimating about a 10-minute break that we will have to take right now and do voting.

I apologize for this. This is an abnormal day. Under our new schedule, the morning should have been reserved for this, so I am sorry about that. I hate to walk out on you. We are going to try and get this through as quickly as possible, but we will have to take that break right now. So thank you and we will be back shortly.

[Recess.]

Mr. BISHOP. All right. We are going to try and step up here. Obviously, some of our Members are en route, and we will work that through as the time comes on, because I think there is going to be another vote coming up here quickly. We would like to get this panel and let you get on your way afterwards.

So let me do a couple of questions from my end as well. I want to set the stage in the right frame for the first time, because I think some of our conversation a bit earlier was somewhat

disingenuous. When we were talking about the MOU not being able to be worked and the people weren't understanding, we are not talking about folks on the ground or some pions out there; we are talking about high level individuals. We are talking about the person in charge of the National Park that should know what those definitions of exigent circumstances are and should not have a tizzy fit when the Border Patrol comes to an end and then he gets upset because when they decided to leave that dead end, they made a circle route instead of the three-point Y turn that he insisted that they make in his particular park.

We are talking about the National Park director who did not know the definition. We are talking about the director of the Utah—the U.S. Fish and Wildlife Service. He was the one that sent the letter to Border Patrol and did not put the definition and threatened them with closure if they did not by his definition of the MOU.

The MOU is not working because people on the field don't understand it; it is people here in Washington that aren't getting it. The MOU may actually be working for the Department of Interior, but it is not helping national security. And that is the key issue to do with it.

Now, I want to go for a few minutes with the Ajo project that was done in Organ Pipe National Monument. We already said that is 95 percent wilderness. This was dealing with 30 mile section of the border that was there.

Once again, Ms. Thorsen, the result of the negotiations with—what was the result of the negotiations with Border Patrol over this Ajo project?

Ms. THORSEN. At this point in time, Chairman, the Ajo project includes four towers that are situated on Organ Pipe Cactus and operating now and actually been very successful in their operation in supporting the Border Patrol security mission and actually our folks as well.

Mr. BISHOP. And what did Homeland Security have to do to get that permission?

Ms. THORSEN. Well, my understanding, they met with the folks on the ground, the superintendent and his staff, to find the appropriate locations for those towers.

Mr. BISHOP. And what did they have to pay for that? Like I am running out of time here, I am sorry. They paid millions of dollars in mitigation fees for those towers. Were those towers eventually moved from where the Border Patrol wanted them? It should be a yes/no answer.

Ms. THORSEN. My understanding is that some were moved.

Mr. BISHOP. Yeah, OK.

Ms. THORSEN. Some were not. And in the end—

Mr. BISHOP. So what we are talking—

Ms. THORSEN. If I may finish, Mr. Chairman. In the end the Border Patrol did agree and we all came to the conclusion on where those towers could be situated and still allow them to succeed in their border security mission.

Mr. BISHOP. But it was moved over 3 miles and we had a coverage blackout in areas of heavy alien ingress into this particular country because they were moved, and still Border Patrol had to

pay millions of dollars to the Department of Interior to get that. When you demand money of Border Patrol for these mitigation fees, does the mitigation have to be specifically directed to the entity in which it is being mitigated, or can you use that anywhere?

Ms. THORSEN. The purpose of mitigation funds, for instance, in this situation, any activity—

Mr. BISHOP. No answer the question. Does it have to be to the area where mitigation occurs, or can you use it anywhere?

Ms. THORSEN. The funding has to be used in relation to the mitigation for that purpose, for the activity that took place for the tower.

Mr. BISHOP. All right. Good. Then tell me why, in January 2009, you and the Border Patrol once again entered into an agreement dealing with the fencing in the Rio Grande Valley sector. You got \$50 million from the Department of Interior, and \$22 of that money went to buy more land in Texas for impact of ocelots, who supposedly were impacted because of the construction noise and lighting while that fence was being built.

Now, Ms. Thorsen, do you know when the last time any know ocelot was found in the lower Rio Grande natural wildlife refuge before this fence was constructed in 2009?

Ms. THORSEN. I do not know that, sir.

Mr. BISHOP. Good. I will give you the answer. It wasn't in this century. So if there is not existing ocelot population within 20 miles of the project, how come you have to have an ocelot impactment from noise and lighting that couldn't possibly have reached them?

Ms. THORSEN. The Fish and Wildlife Service's and our Department of the Interior's mission is to conserve our resources, including the wildlife habitat.

Mr. BISHOP. I only got 30 seconds. Give me a specific answer to the question. If there are no ocelots down there why did you bill the resource from them with this type of money that has nothing to do with the project.

Ms. THORSEN. It does have to do with the project, sir. The mitigation funding for the fence and the \$50 million that you address, Secretary Chertoff and Kempthorne agreed that the expenditure of that funding was appropriate for those mitigation measures.

Mr. BISHOP. There are no ocelots down there.

Ms. THORSEN. The wildlife habitat in those locations down there, the purpose of that is to maintain habitat for the ocelot. Whether or not we have seen one recently, it still habitat for the ocelot.

Mr. BISHOP. Recently? In the last 20 years, you haven't seen one, and yet you put half of the money from this extortion down there for that particular project. Later I am going to ask you about \$5 million that was supposed to be for jaguar prevention, but half of that went to Mexico instead. We got a lot more questions about how you are using this mitigation fund and where these moneys are going, and I have run out of time so I am going to have to yield to the ranking member, Mr. Tierney.

Mr. TIERNEY. Well, again, I want to thank you for being here. I mean, I get it. I get what the issues are here. I assume by this time all of you get it as well. And I don't want to keep beating a dead horse, but I—you know, I guess the point is that I think there have

been some situations where people have thought that it has been affected to some degree by the memorandum of agreement by the laws that exist or whatever, but you believe there is a way to work it out with the memorandum of agreement and by working together cooperatively on that.

I was taken aback by Mr. Chaffetz' remark that people are dying, people are dying. Can you give me any instances of a person who has died as a result of a wildlife regulation or environmental regulation?

Mr. VITIELLO. No.

Mr. TIERNEY. Ms. Thorsen, can you?

Ms. THORSEN. No.

Mr. TIERNEY. Mr. Jensen, can you?

Mr. JENSEN. No, I am not aware.

Mr. TIERNEY. Certainly, if there were, I assume you would be with heightened urgency to resolve this in some fashion, am I right?

Mr. VITIELLO. Yes, sir.

Ms. THORSEN. Yes, sir.

Mr. TIERNEY. I mean, I think it is disturbing to all of us that, you know, if there is a notion that there is some inability of the Border Patrol to get to an area they need to get to protect our national security, I think we would all be hopping up and down. But I am going to give you an opportunity. Again, I am not hearing that from you. Where there might be an isolated incidence of something being delayed, you are telling me, as far as you know, that in any particular anecdote or incident, there has not been one that has resulted in danger or death or anything of that nature and that, you know, we probably need some processes to expedite resolution of some of these issues, and that is something you are all charged with. Does that sound reasonable?

Mr. VITIELLO. Agreed. The framework exists to solve these problems in an expeditious way. Now, we can all recognize that within any relationship, you are going to have different expectations, but the MOU is designed to set those expectations uniformly.

Mr. TIERNEY. So what is a bigger problem. Is the remoteness of these areas, the ruggedness of the terrain, is that a bigger problem than trying to work on differences over, you know, any conflict with national security and some of these environmental or wildlife regulations, or is it about the same, or is it not a problem at all?

Mr. VITIELLO. Well, there are various challenges that agents have while patrolling the border, terrain among them, this particular issue among them, the frameworks about their authority and how they exercise it. There are concerns about private land as well within the immediate border. So that is the role of the patrol agent, to sort through those things. That is the role of leadership, to give them the vision and the plans to make that work and be effective as they possibly can within those frameworks. There are limits on all the authorities and the activity of Federal agencies, and we are not excluded from that.

Mr. TIERNEY. There was one incident report that was mentioned here earlier about a request to put up some technology or review cite us for that. It got delayed 4 months before it was implemented.

Is that a particular situation that any of you have been made aware of?

Mr. VITIELLO. I know of the issue in preparation for the hearing.

Mr. TIERNEY. Can you tell me a little bit about it?

Mr. VITIELLO. As I understand it, briefly, there was a mobile scope truck that we wanted to move from one area to the other. Eventually, that got sorted through, and we moved it.

Mr. TIERNEY. And was there a 4-month delay.

Mr. VITIELLO. As I understand it, yes.

Mr. TIERNEY. And what consequences were likely to have occurred because of that delay?

Mr. VITIELLO. I am not aware of specific things. So in the context of the operation, people wanted to move that equipment and that capability from one location to the other. And so under the terms, we need to sort through that. Under the terms of the MOU, those are the conversations that we are supposed to have.

Mr. TIERNEY. You would agree that 4 months seems extraordinary for a time to resolve such an issue.

Mr. VITIELLO. I don't know the specifics in that regard, but it seems reasonable that 4 months is something that we ought to be thinking about.

Mr. TIERNEY. I mean, it strikes me as being extraordinary, and that is something we all ought to be thinking about on that.

Mr. VITIELLO. Agreed.

Mr. TIERNEY. So we can trust that is being worked on, that that kind of delay is—

Mr. VITIELLO. In this case, as I understand it, but the piece of equipment after that time period did get moved.

Mr. TIERNEY. Much more quickly.

Mr. VITIELLO. Right.

Mr. JENSEN. Congressman, I may not be able to speak to the specific circumstances of that one example, but I think it is important that we have had reference to the GAO report numerous times today. And if I could, I would like to read two sentences from the report.

Mr. TIERNEY. Sure. What page are you on?

Mr. JENSEN. This is on the summary page, right off the front, the highlights. We have heard this now numerous times from various members: Patrol agents in charge for 14 of the 17 stations reported that they have been unable to obtain a permit or permission to access certain areas in a timely manner because of how long it takes for land managers to conduct required environmental and historic property assessments. That is in the GAO report. You need to read all the way through. And I hope that our witnesses on the second panel—

Mr. TIERNEY. Well, give us a synopsis of what the rest of it would give us if you read through.

Mr. JENSEN. The other sentence is, despite the access delays and restrictions—and this is what really counts—22 of the 26 agents in charge report that the overall security status of their jurisdiction is not affected by land management laws.

Mr. TIERNEY. So we have to work on the other four.

Mr. JENSEN. Yes. We do have areas we need to work. The MOU helps with that, and we are working to address those.

Mr. TIERNEY. Thank you for clarifying that, and I yield back my balance.

Mr. BISHOP. Representative Chaffetz.

Mr. CHAFFETZ. I yield to the gentleman from Utah.

Mr. BISHOP. Do you have the report there that you just read?

Mr. JENSEN. I have the cover page here.

Mr. BISHOP. The cover page doesn't deal with that. Because on top of that, it tells how 17 to 26, 14 to 26, and I went through eight pages of documented evidence where the delays were causing problems. That data you said, 22 out of 26, you actually go to page 32 in the report and find out what it says, is that the agents in charge of those particular areas told us their ability to maintain operational control in this area of responsibility have been unaffected by land management laws. In other words, no portion of their station's jurisdiction have had their border security status downgraded as a result of land management laws. That is not the same thing.

And yet if you will go through that report, page after page, example after example, is an experience in which there had been delays for Border Patrol, and it is directly because of the land managers on the ground there from your department and your department. Ms. THORSEN, is there ever, ever an opportunity when you do this MOU debate, MOU workout, where the Border Patrol does not have to ask your department for something? Is there ever where you actually go and have to ask them, or is Border Patrol always having to come to you and you get to make the decision on whether it is allowed or not?

Ms. THORSEN. No, the purpose of the MOU, and particularly the exigent circumstances situation, they make that decision. That is why we drafted the framework for those—

Mr. BISHOP. No. To whom do they have to go for permission.

Ms. THORSEN. The permission lies in the MOU. It is in their judgment, the Border Patrol agent's judgment, to execute operation—exigent circumstance or emergency pursuit in—when they feel the need.

Mr. BISHOP. Then go back to the report and read what happens there, because that request has to be approved by the land manager, and if the land manager doesn't, then all hell is there to pay. This MOU does not work because it is an unfair MOU, which means Border Patrol has to come to you and beg for permission. And time after time after time, you are not granting that permission, and you are not doing it in a timely fashion. And when you do do it, then you ask for unmitigated amounts of money which Congress has no control. We do not know how much money you are getting from Border Patrol. We don't know where you're spending it. And the one time we tried to get an appropriations act, you actually gave us a list of what you are getting and where you are spending it, and it was removed in a conference committee report. There are so many problems that are down there, it makes one's head spin, especially with the rhetoric that we are getting here today. I yield back to the chairman.

Mr. CHAFFETZ. Reclaiming my time.

Mr. Vitiello, my understanding, according to GAO, they classify about 129 miles, or 15 percent, were classified—of the border—

were classified as, “controlled” and that the remaining 85 percent were classified as managed. Can you explain the difference from your understanding of the two?

Mr. VITIELLO. It has to do with the revision of the national strategy in 2004. We defined what we believed was operational control for the context of building resources along the border. So specific to the plans that were made in sectors and in station level planning, what we decided was operational control meant that you had the ability to detect, identify, classify, respond and resolve to intrusions at the immediate border. It as a very tactical definition designed for the local people to understand what they believe the capabilities and resources were.

Mr. CHAFFETZ. So what is managed.

Mr. VITIELLO. The difference between managed and control is the amount of timing from our resolution to—from the incursion. So control at the immediate border would happen in realtime at the immediate border and managed would be some portion less than that, or it would take longer to get to that.

Mr. CHAFFETZ. And you have talked about how over the course of your career, you have gone from just a few thousand agents to roughly 20,000 agents.

Mr. VITIELLO. We are currently just over 20,000; that is correct.

Mr. CHAFFETZ. Just over 20,000. Yet I look here at this map, and I look at the Tucson region, as compared to say either Yuma or El Paso or Del Rio or whatever you want; why is it that 51 percent of the problem seems to be in the Tucson region? Why is that?

Mr. VITIELLO. We believe it is because of our success in other areas. We have managed—when I came on the Border Patrol—

Mr. CHAFFETZ. I am trying to figure out why you are having little to no success in Tucson.

Mr. VITIELLO. We are having great success in Tucson.

Mr. CHAFFETZ. How can you say that?

Mr. VITIELLO. Listen, I have watched us build resources in Tucson.

Mr. CHAFFETZ. You are the head of this agency and you—

Mr. VITIELLO. Sir, I was in Tucson in the year 2000 when we were catching 1½ million people across the Southwest border, and over 600,000 of those people were coming in through the Tucson sector. Last year alone, we are at 51 percent; this year we are 44 percent. Now, is that wild success? Is that, you know—

Mr. CHAFFETZ. You just said it was great success.

Mr. VITIELLO. We have done a lot of work this year, last year, the year before and since 2000, when it was completely out of control there. We are maintaining what we have—the gains we have made in Tucson and are proceeding to give that area resources like they have never seen before. CBP has over 6,000 employees in the State of Arizona. We alone have, in the Tucson sector alone, nearly 4,000, and we are moving toward a number over 4,000. There is more technology out there than there has ever been. We spoke about the Ajo towers and the Tucson—

Mr. CHAFFETZ. My time has expired. I think you are—

Mr. BISHOP. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Vitiello, you mentioned earlier in your testimony that in carrying out various responsibilities, that you consult with the tribes. How is that working out? Is that running as you would want it to run?

Mr. VITIELLO. Sure. So we have—within the public lands liaison apparatus, we have people who are designed to do liaison work. The leadership also pays attention to the relationships that exist for the Indian nations that are at the immediate border.

Mr. KILDEE. I am very happy to hear that. Sometimes agencies tend to forget that. We know that Article I, Section 8 of the Constitution says that Congress shall have the power to regulate commerce with foreign nations, the several States and Indian tribes. So that is the constitutional basis for that.

And I am always, with any group, whenever you are called upon to work with the Indian tribes—it all works well in Michigan. We have 12 tribes in Michigan, and it works well there, and you find it is working well in your area also, or your area is very broad.

Mr. VITIELLO. Similarly, you know, relationships are—you need constant maintenance, and so things ebb and flow. But we understand the import of our responsibilities there, and leadership in the field takes those responsibilities seriously.

Mr. KILDEE. Thank you for that. Thank you very much.

Mr. VITIELLO. Thank you.

Mr. BISHOP. Representative Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. Jensen, how many miles of roads are in the border zone of the Coronado Forest?

Mr. JENSEN. I would have to get back to you on the specific number of miles of roads.

Mr. PEARCE. You wouldn't happen to know that, would you, Mr. Vitiello?

Mr. VITIELLO. I do not.

Mr. PEARCE. You all don't do patrols out there.

Mr. VITIELLO. Coronado is part of the area Tucson sector covers, yes.

Mr. PEARCE. Do you have anybody in the audience that might know that?

Mr. JENSEN. We will have to get back to you, sir.

Mr. PEARCE. Mr. Vitiello, you just stated in response to a question that the framework exists to solve the problem with respect to getting into areas with limited access by Federal law, that would be wilderness and such areas as that. Did I hear you correctly?

Mr. VITIELLO. That is correct.

Mr. PEARCE. And then did I hear you correctly that in cases of danger and death, that you would have a heightened sense of emergency?

Mr. VITIELLO. Yes.

Mr. PEARCE. Can you explain why 68 percent of Organ Pipe is still—people are advised not to go in there, American citizens are advised not to go in there? Doesn't it qualify as an area if you tell people don't go in there, that they might not come out alive, wouldn't that be danger or death? Wouldn't that move at sort of the top of the list of your heightened sense?

Mr. VITIELLO. Zone by zone, area by area, we are concerned with our responsibilities within the area of the immediate border. And so Organ Pipe is a challenge because of its status. It is also a challenge because of the activity that is there. But we are making—we have made plans. We are making investments to put that situation in hand.

Mr. PEARCE. It has been that way for—when did they first start putting that off limits to people?

Mr. VITIELLO. I don't know that specifically, but I am going to guess it is somewhere around the 2000 timeframe when it was a lot busier than it is now.

Mr. PEARCE. So you have had 10 or so years, 11 or whatever.

Ms. THORSEN, I am interested, again we are talking about how easy it is to work with wilderness, and it doesn't affect us in the least. I mean, that is sort of the testimony. Can you explain the reasoning behind not allowing a surveillance tower in the Organ Pipe Wilderness, and it was forced to be placed outside the wilderness in a place that couldn't see as much of the border and as well? Wouldn't that be an effect? Or is that just sort of come into the close but not qualify category?

Ms. THORSEN. Under the provisions of the Wilderness Act, one of the challenges we have had is placement of permanent structure, which would be a tower. In negotiations and discussions that we have had with the Border Patrol and the park, they moved those towers in locations within the boundary of the wilderness but that are not designated, that chunk of land is not designated specifically wilderness. So they are actually generally in the same vicinity; they are just are not sitting on what is designated as wilderness.

Mr. PEARCE. And so, in this case, are you trying to tell me that the alternate site had as good visibility as the site that was in the wilderness? Because we have exactly the opposite testimony. And if that is the case, if you choose a case with less surveillance capacity, then I still along, with my colleagues, don't understand how you can sit here with a straight face and say that it doesn't affect, that everything is OK, that framework exists.

I yield back, Mr. Chairman.

Ms. THORSEN. If I may respond, Congressman.

Mr. PEARCE. That is up to the chairman.

Ms. THORSEN. If I may respond, Mr. Chairman, to the Congressman's point.

Mr. BISHOP. Go ahead.

Ms. THORSEN. In working with the Border Patrol, the Border Patrol, and I am going to speak some for Mr. Vitiello here, there if the tower does not give them the totality of what they want to see, what they will do is implement additional measures to fill that gap.

For instance, in their new approach, SBI net has gone away, the integrated tower—integrated fixed tower approach, they will supplement those areas with mobile surveillance units or RVSS sites or other types of technology to fill those gaps, so they will not go uncovered between technology and resources.

Mr. PEARCE. I will pass your assurances along to the constituents of mine that live along the border who are scared to death every day, who witnessed or who know the family who was killed and

whose family itself lives in our district, I will give them your reassurances. Thank you.

Mr. BISHOP. Are there other questions people have for another round?

Raul, did you have a question you wanted to ask?

Mr. LABRADOR. I yield my time for Mr. Chaffetz.

Mr. CHAFFETZ. Thank you.

Mr. Vitiello, I want to clarify. Are you aware of anybody who has been killed along this border region that we are talking about here?

Mr. VITIELLO. Which—

Mr. CHAFFETZ. I mean, I talked specifically about the problems that we are having in Arizona, and Mr. Tierney's questions about people are dying. Are they not dying?

Mr. VITIELLO. There have been deaths along the border, and there have been that directly impact the Border Patrol, yes.

Mr. TIERNEY. Will the gentleman yield?

Mr. CHAFFETZ. Yes, please.

Mr. TIERNEY. Just so we understand, my question was, was there people dying in direct correlation to the lack of enforcement of an environmental or one of these other laws that we are discussing today, not whether people are dying. So let's be genuine about this.

Mr. VITIELLO. Correct. In the context of that question, this specific issue has not caused deaths that I am aware of.

Mr. TIERNEY. Thank you very much.

Mr. CHAFFETZ. So you are not aware of anybody dying that is coming north, trying to go through the areas, going through the Organ Pipe National, you are not aware of anybody who has died doing that?

Mr. VITIELLO. Look, there are deaths along the immediate border for people who dehydrate or get—

Mr. CHAFFETZ. And coming north, correct.

Mr. VITIELLO. That is right.

Mr. CHAFFETZ. I mean, I don't know how you define the immediate border, but the legal definition is 100 miles. So you are telling me that you are not aware of anybody.

Mr. VITIELLO. That has died as a result of our lack of ability to move in mechanized vehicles on protected lands, no, I am not aware of that.

Mr. CHAFFETZ. We will go through this in greater detail.

Anyway, let's go to Mr. Jensen here. Your written testimony states that the Forest Service has dedicated 13 officers to the border zone of the Coronado Forest; 10 of them are accompanied by canine units. What is the Forest Service total commitment to the border zone across the Southwest border? Are those officers armed, and what capacity do they have to stop illegal activity and defend themselves against criminals with high-powered weapons?

Mr. JENSEN. I will stand to be corrected, but I understand there is on the range of perhaps 50 agents in the Southwestern region of the Forest Service.

Mr. CHAFFETZ. Are they armed?

Mr. JENSEN. To my understanding, yes, they are.

Mr. CHAFFETZ. And are they able to apprehend somebody?

Mr. JENSEN. Yes, they are.

Mr. CHAFFETZ. How often does that happen?

Mr. JENSEN. I would have to get back to you on the specifics of how often that happens, but they are in constant contact and undertake joint operations with the Border Patrol in apprehension activities, so I would imagine that it would be a fairly routine duty.

Mr. CHAFFETZ. Your written testimony states that the Forest Service and the Border Patrol, "rely on each other's strengths to work toward the common goals and mutual interests for the public and the National Forests," basically to protect the endangered and sensitive species. According to the Coronado National Forest Web site, this includes the Mexican gray wolf, cactus, the pygmy owl, the desert pupfish and the Pima pineapple cactus. Are we to believe that the Forest Service and the Border Patrol are balancing our national security with the Pima pineapple cactus and the desert pupfish?

Mr. JENSEN. It is not that sort of tradeoff, sir. We look at the existing laws in the books that require us to protect those threatened and endangered species.

Mr. CHAFFETZ. But as Mr. Bishop pointed out, why is it deferred to—in the balance of the MOU, why is it that you are given deference, that they can't do what they think is best to secure the United States of America and secure their officers. They have to come get permission. That is the problem. That is why we are here today.

Mr. JENSEN. As Ms. Thorsen has testified, it is our experience in the Forest Service that the Border Patrol has all full authority to pursue suspects in all cases and circumstances around the border.

Mr. CHAFFETZ. In all circumstances, that is your understanding of the MOU, in all circumstances.

Mr. JENSEN. We have not run into any trouble on Forest Service lands in this regard.

Mr. CHAFFETZ. They have full and unfettered access to use motorized vehicles.

Mr. JENSEN. In the exigent and emergency circumstances.

Mr. CHAFFETZ. OK. So that is different than full and unfettered access, which you have just said.

Mr. JENSEN. Allow me to clarify then. In the case that is outlined within the MOU, the Border Patrol has the ability to pursue suspects, be it on foot, be it on horseback or be it on vehicle, when the terrain and the circumstances dictate, and it is their decision and control when they do that.

Mr. CHAFFETZ. I have a—Mr. Chair, I—and to the ranking member, everybody here, I have a serious problem where we are prioritizing desert pupfish above national security. I just personally believe that we really ought to be protecting the United States of America and protecting those officers who are putting their lives on the line every single day.

Mr. TIERNEY. Will the gentleman yield?

Mr. CHAFFETZ. When we have delays the way we have, I just find it unconscionable.

Mr. TIERNEY. Will the gentleman yield?

Mr. CHAFFETZ. Sure.

Mr. TIERNEY. I think the delay issue we all have an issue with, and that is one of the things I left you, but I want to try and nail something down here, the three of you.

When we have laws, the environmental law or the wilderness law, things of those nature, the laws are in effect, but you have memorandums of agreement as to how you will strike a balance when there is a competing interest, am I right on that?

Mr. VITIELLO. Correct.

Mr. TIERNEY. And one of the competing interests would be a national security issue when somebody from the Border Patrol thought that it was an exigent circumstance or an emergency that they get into the area, correct?

Mr. VITIELLO. Correct.

Mr. TIERNEY. And in those instances, where they think the national security is at risk or there is an emergency or an exigent situation, it is the Border Patrol agent and no one else who uses their professional judgment and determines whether or not they will go in there by mechanized vehicle or any other way, is that correct?

Mr. VITIELLO. That is correct.

Mr. TIERNEY. So they are not setting up some pupfish or whatever it is up against something else; their determination, their professional judgment is, does national security require that we go in there by whatever means necessary and when they make that decision, it overrides Interior, it overrides Forestry, it overrides everybody else, am I correct?

Mr. VITIELLO. Yes, sir.

Mr. TIERNEY. Thank you. I yield back.

Mr. CHAFFETZ. I would say to my friend from Massachusetts: A, exigent circumstances has not been clearly defined; it has not been clearly delineated. No. 2, routinely the Border Patrol is not able to do what it is able to do in other areas in terms of locating towers, operating with vehicles.

You know, I wasn't going to do this, but I think I am going to do this. If you have a sensitive heart, I am telling you, this is the most graphic thing I have ever seen. If you are a young child, don't watch this. I am going to show you four slides that are happening right near our border; this is on the Mexican side of the border. And this is what I am concerned about, what we are putting our men and women down there and saying go protect us, but we are not going to give you the resources because we are worried about the pupfish, so, you know, you go on horseback, you go just walk it. Go ahead, just show the first slide and just roll through these. We are going to do this swiftly. Don't look if you are sensitive to any sort of graphic image, OK. This is the kind of thing that we are sending our agents to deal with on a daily basis.

Mr. TIERNEY. Mr. Chairman, a point of clarification. Is there a contention that our Border Patrol people and Interior people and others are responsible for the Mexican side of the border where these films are from?

Mr. CHAFFETZ. Let's keep going. They are dealing with this threat coming through the United States of America. They are having to deal with this by the hundreds—you can turn them off. Please, turn them off.

They are having to deal with this by the hundreds of thousands. I in good conscience cannot be a participant in the U.S. Congress and not give every tool and resource to the Border Patrol to secure that border. I don't give a crap about the pupfish. I do care about

America, and I do care about those Border Patrol agents. And when you tell them they have to go on horseback when they much rather be in a vehicle, that is fundamentally wrong. I yield back.

Mr. BISHOP. OK. Do you want another minute in fairness?

Mr. TIERNEY. No, no. I mean, look, I think we have made the point a hundred times here that the Border Patrol people are in whatever vehicle they think they need to be in at the appropriate time, and I think we can leave it at that.

Mr. BISHOP. Thank you.

I appreciate that, the answers you gave him. Make sure they are enforced in some way. And you can be happy the pupfish has a 52-acre buffer zone that has been paid for by border security. So we wish that—we appreciate the witnesses for your testimony. Members of both committees have—if they have additional questions for the witnesses are asked to submit those, and we will ask for you to respond for them in writing.

We are now ready for the next panel of witnesses. And do you need some time to reconfigure the table here? For the next panel of witnesses, we are also going to have to—they will need to be sworn in. But I would like, and especially while Mr. Pearce is here, to welcome up to the panel George Zachary Taylor, who is a retired Border Patrol officer and a founding member of the National Association of Former Border Patrol Officers. We will invite Gene Wood, who is also a retired Border Patrol officer and founding member of the National Association of Former Border Patrol Officers. Mr. Wood will be introduced by our colleague Mr. Pearce, if you would like to take a few minutes to do it justice.

Mr. PEARCE. Chairman Chaffetz and Chairman Bishop, members of the subcommittee, thanks for allowing me to be here on the dais with you today. I would like to take this opportunity to introduce my friend and constituent Gene Wood, Las Cruces, NM. Gene spent 30 years in the Border Patrol and served as sector chief in McAllen, TX, and San Diego, CA. I look forward to his testimony and to the testimony of the other witnesses here.

But thanks again, and welcome him from New Mexico, sir. Thanks.

Mr. BISHOP. Thank you. I also want to recognize Jim Chilton, who is a fifth generation cattleman, whose land stewardship practices have won him awards. His family ranch is 55 miles southwest of Tucson and includes 4 miles of border.

As well as Ms. Mittal—is the first name Anu?

Mr. MITTAL. Yes.

Mr. BISHOP. That is the first name I have right today. Thank you.

Anu Mittal, who is the director of Natural Resources and Environment for the Government Accountability Office. And I understand you are the author of the GAO report that we have been referencing throughout this case.

Mr. Chaffetz.

Mr. CHAFFETZ. It is the custom of the Oversight and Government Reform Committee to swear in all witnesses. If you would please rise and raise your right hands.

[Witnesses sworn.]

Mr. CHAFFETZ. Let the record reflect they answered all in the affirmative. Thank you, Mr. Chairman.

Mr. BISHOP. We thank you all for being here.

As mentioned to the earlier panel the practice—I just said that. As mentioned to the earlier panel, all of your written testimony will appear in the hearing record. You will have 5 minutes to summarize it. The lights in front of you will I hope give you a countdown. If the yellow light comes on, that means you have a minute left. The red light means we will ask you to finish your testimony as you can. Now, I will also tell you that we are going to have another series of votes sometime soon. What I would like to do is try to get as far along as we can so we don't have to hold you. I hope none of you have afternoon plane flights going out of here because it ain't gonna happen.

So if we could, Mr. Wood, we will just go left to right again. If you will be the first one to give your testimony, we would appreciate hearing from you.

STATEMENTS OF GENE WOOD, NATIONAL ASSOCIATION OF FORMER BORDER PATROL OFFICERS, FOUNDING MEMBER AND FORMER SECTOR CHIEF PATROL AGENT, MCALLEN, TX, AND SAN DIEGO, CA; GEORGE ZACHARY TAYLOR, NATIONAL ASSOCIATION OF FORMER BORDER PATROL OFFICERS, FOUNDING MEMBER AND RETIRED SUPERVISORY BORDER PATROL AGENT, NOGALES, TX; JIM CHILTON, CHILTON RANCH, ARIVACA, AZ; AND ANU MITTAL, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

STATEMENT OF GENE WOOD

Mr. WOOD. Thank you very much, Chairman Chaffetz and Bishop, and thank you to Mr. Pearce for his gracious—

Mr. BISHOP. Sir, if that thing moves, can it move any closer to you so we can hear you a little bit better? It is hard to hear.

Mr. WOOD. Is that better?

Mr. BISHOP. That is much better.

Thank you, sir.

Mr. WOOD. My name is Gene Wood. As a retired member of the U.S. Border Patrol and founding member of the National Association of Former Border Patrol Officers, it is a real honor for me to talk today on the merits of the proposed legislation.

I do not represent the Border Patrol in today's proceedings. Instead, my testimony will rely largely on personal knowledge and the expertise of hundreds of former agents who are members of our organization. Their many years of collective experience I believe will enhance my ability to present to you informative, accurate information and conclusions.

The Border Patrol was established in 1924, and for nearly 87 years, the supervisors and their agents have successfully developed techniques and strategies to prevent the illegal entry of aliens into our country. One of the most effective of these techniques is deterrence. It has proven to be a desirable strategy because it does not involve the dangers involved in physical arrests. It does not involve costs always incurred in the detention and removal of aliens.

Today I would like to address part of my testimony to enforcement efforts in the Tucson sector of the Border Patrol. I have chosen that sector because I served there before I was chief as the deputy chief. It is one of the largest sectors on our southern border. It has 261 miles of common border with Mexico. Additionally, the sector area of responsibility contains large areas with various restrictive land designations. Since 2004, leadership of that sector has changed frequently with successive assignments of some of the most distinguished and experienced chiefs in the Border Patrol. With the support of Congress, the agency work force has increased, and we have even experimented with the assignment of National Guard troops. Technology has been improved.

I believe, gentlemen, as does the National Association of Former Border Patrol Officers, that the difficulties encountered by the Border Patrol to gain operational control are not the result of poor management or lack of resources, it is simply an issue of denied access.

Unfortunately, our country's willingness to accept these unwise restrictions has been aggravated in recent years by the unrelenting pressure of drug cartels and other international criminal enterprises. That brings us to one of the most difficult questions facing present Border Patrol supervisors and agents. How do we protect our national security successfully in these highly restricted areas? The time-proven and effective technique gained through years of experience are severely limited or at times completely eliminated because of these self-imposed restrictions. Expensive technologies cannot be efficiently implemented, and manpower assets become more difficult to utilize.

For these reasons, the leadership of the National Association of Former Border Patrol Officers enthusiastically endorses the decisive remedies proposed by Congressman Bishop. This includes the 100-mile limits and waiver of all the restrictions listed in that proposed legislation. We believe that if enacted, it will have a high probability of success, and it is an absolute necessary first step to achieve our goal, our national goal of operational control.

We also believe that the approval of this proposed legislation will help convince the American public that Congress is now seriously seeking remedies to improve national security and the public safety of our citizens. There is another reason it makes perfect sense to do this. My time is up.

[The prepared statement of Mr. Wood follows:]

ORAL TESTIMONY
FOR
THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
&
THE COMMITTEE ON NATURAL RESOURCES

PRESENTED BY:

MR. GENE WOOD
APRIL 15, 2011

Good Morning: Chairman Chaffetz and Chairman Bishop. Distinguished members of the Committees. Thank you for allowing me to testify on behalf Mr. Bishop's draft legislation.

My name is Gene Wood. As a retired member of the U.S. Border Patrol, and founding member of the National Association of Former Border Patrol Officers (NAFBPO), it is a distinct honor for me to testify today on the merits of proposed legislation titled "National Security and Border Patrol Protection Act."

I do not represent the active Border Patrol in today's proceedings. Instead my testimony will rely largely on personal knowledge and experience and from support of the National Association of Former Border Patrol Officers (NAFBPO) and their membership throughout the United States. Their many years of collective experience, I believe, will enhance my ability to present to you, informative, accurate information and conclusions.

The Border Patrol was established on May 24, 1924, and for nearly 87 years Agents and their supervisors have successfully developed techniques and strategies to prevent the illegal entry of persons and contraband into the United States. One of the most effective of these techniques has been that of deterrence. It has proven to be a desirable strategy because it does not involve the dangers present in physical apprehension, nor does it involve costs always incurred in the detention and removal of those apprehended.

Today, I would like to address part of my testimony to enforcement efforts in the Tucson Sector of the U.S Border Patrol. I have chosen that sector since I served there as Deputy Chief Patrol Agent, and because it is one of the country's largest, with 261 miles of common border with Mexico. Additionally, the Sector area of responsibility contains large areas **with** various restrictive land use designations.

Since 2004, leadership of that sector has changed frequently with successive assignments of some of the most distinguished and experienced Chiefs in the Border Patrol. With the support of Congress the agency workforce has been increased, and the acquisition of the latest technology has

been made possible. There have also been experiments made by the intermittent assignment of National Guard troops.

I believe, as does the National Association of Former Border Patrol Officers, that the difficulties encountered by the Border Patrol to gain operational control are not the result of poor management or lack of resources. It is simply an issue of denied access. Unfortunately, our Country's willingness to accept these unwise restrictions **has been aggravated** in recent years by the unrelenting pressure of drug cartels and other international criminal enterprises.

That brings us to one of the most difficult questions facing present border patrol supervisors and agents assigned to the various sectors along our border. That question is: How do we protect our National Security **successfully** in these highly restricted areas? The time proven and effective techniques gained through years of experience are severely limited, or at times completely eliminated **because of these self-imposed restrictions**. Expensive technologies cannot be efficiently implemented, and manpower assets become more difficult to utilize **successfully**.

It is for these reasons that the leadership of the National Association of Former Border Patrol Officers enthusiastically endorses the decisive remedies proposed by Congressman Bishop. This includes the 100 mile limits and waiver of all of the restrictions listed in that legislation. We believe it has a high probability of success, and is an absolute necessary first step to **achieve** the goal of operational control. We also believe that approval of this proposed legislation will help convince the American public that Congress is now seriously seeking remedies to improve national security and the public safety of our citizens. They also make perfect sense.

Proponents of wilderness designations claim that exceptions to the exclusionary provisions of that law can be negotiated. They are correct. As an example, after two years of consultations, meetings between various federal agencies, field hearings, and border tours, **the following was achieved**: a five mile wide strip was to be allowed. This was to be the sole access for enforcement along a 25 mile portion of the Mexican border in New Mexico on the southern end of a 359,600 acre wilderness area as was proposed in S.1689.

It is actions such as this that **legitimize** the passage of legislation we are discussing today.

For clarity, I believe it is important to describe, in a condensed form, provisions of the Wilderness Act of 1964 as defined in P.L. 88-577 (16U.S.C. 1131 – 1136). Specifically, that law **prohibits** temporary roads, use of motor vehicles, motorized equipment or motor boats. No landing of aircraft, or other forms of mechanical transport, and no structure or installation within any area designated as Wilderness. Clearly, this is a direct contradiction to Section 102 of the illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103) which directs that the Department of Homeland Security maintain operational control of the borders of the United States.

Proponents often refer to a Memorandum of Understanding (MOU) between agencies dated in March 2006 to help justify wilderness designations. They represent it to be the mechanism to resolve all of the conflicts between Agencies. Nothing could be further from the truth. To give those on the committee a real world perspective of what effect this MOU has had on the Agencies involved, I have attached to this testimony a **written** communication by the Regional Director of the U.S. Department of the Interior, Fish and Wildlife Service to the Chief Patrol Agent of the Tucson, Arizona Border Patrol Sector. This documents relates to Border Patrol access for enforcement purposes into the San Bernardino National Wildlife Refuge in Cochise County, Arizona. Even a casual reading of this letter clearly demonstrates a demanding, confrontational, and threatening attitude toward CBP enforcement operations. I hope Committees will agree that environmental considerations should never be allowed to **supersede** legitimate efforts to secure our borders and protect the safety of all citizens.

It has not gone **unnoticed** to those of us who have studied this document that it contains nine pages of single spaced script. **In contrast** the federal statute that allows Border Patrol unrestricted entry within a distance of 25 miles from any external boundary and to have access to private lands but not dwellings for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States contains only four lines of paragraph (a)(3) of Section Sec., 287 of the INA. (8U.S.C. 1357)

Proponents of wilderness consistently maintain that Border Patrol Agents "have been interviewed, and are satisfied with the restrictions imposed by those designations". To help determine the validity of these claims, on August 7, 2010, NAFBPO made a FOIA request to CBP seeking among other things, copies of records pertaining to communications or meetings between the Department of Homeland Security, the Department of the Interior, and any members of the US. Congress to include staffers from January 20, 2009 to present relating to Senate Bill 1689 and Wilderness land proposals within the state of New Mexico since January 20 2009. On February 23, 2010 our organization was advised by CBP that our request had produced approximately 570 pages of pertinent information. I regret to advise you that although all 570 pages were paid for pursuant to their requirements, subsequent requests from us have been ignored, and now, more than seven months later, only 77 heavily redacted pages have been released to us.

I have personally reviewed all the pages thus far furnished by CBP, and even with the very limited response there was some useful information. (1) There is no evidence in any of the documents that any Border Patrol field Agent was ever interviewed by congressional staff as claimed. (2) There was evidence however, that Senior members of the Border Patrol at the Sector level did fully inform Congressional staffers and others of the restrictions encountered in every Wilderness designation. There may be additional information in the documents that CBP have thus far refused to release.

Within days following the March 10, 2010 murder of rancher Robert Krantz, the New Mexico Congressional delegation requested the Secretary of Homeland Security to establish forward operating bases (FOB) in the area described as the **Boothel of** New Mexico. The purpose of

these forward operating bases was to provide a deterrent to the illegal entry of aliens, and to provide protection of American citizens residing in that part of the state. Ironically, those same individuals who were supporting legislation to add additional wilderness designations on the border were the same as those recommending the establishment of **high** visibility forward operation bases.

Of special concern to us as former agents is the prospect of violent reactions as criminal enterprises fight to protect what until now has been almost exclusively their turf. Recent drug related murders of Border Patrol Agents Brian Terry, Robert Rosas and Luis Aguilar are sobering reminders that protection of our sovereignty is not without cost.

In addition to the enforcement constraints listed above, devastation to natural habitat and other aspects of the environment in general has been well documented. Border wilderness areas, without exception, demonstrate all of the unintended consequences of the intent of the wilderness concept. However, even these unintended consequences seem insignificant in national importance when compared to the potential dangers that exists if our nation is unable to finally gain sustainable control of our borders.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
P.O. Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS-SUPV/041063

MAY 29 2009

Mr. Robert W. Gilbert
Chief Patrol Agent
U.S. Customs and Border Protection
2430 South Swan Road
Tucson, Arizona 85711

Dear Chief Gilbert:

The issue of emergency vehicle access by the U.S. Customs and Border Protection (CBP) on San Bernardino National Wildlife Refuge (Refuge), Cochise County, Arizona, has been in dispute over the past few months. The recent exchange of letters from our respective offices failed to clearly identify the needs of our two agencies and reach agreement on how best to proceed. I am proposing the following structured emergency vehicle access onto the Refuge as a means by which we can get beyond our current impasse and proceed with the important work of border security and the conservation and protection of our natural resources.

By way of this letter, we are documenting our expectations of the circumstances under which the CBP will utilize emergency vehicular access on San Bernardino National Wildlife Refuge. For the purpose of this access, we understand that emergency circumstances exist only when human life, health, and safety of persons within the area must be immediately addressed. Access to the Refuge by CBP for emergency purposes will be limited to use of established administrative roads (see enclosed map). CBP may continue to access any part of the Refuge on foot or on horseback at any time to patrol, pursue or apprehend suspected cross-border violators.

In the instance where emergency vehicular access to the Refuge is required, the CBP will report directly in writing or electronically to Refuge Manager William R. Radke within 3 days following the incident. These reports will include detailed information on the nature of the specific emergency response, from initiation through final outcome. When emergency circumstances require off-road vehicle use within the Refuge, CBP will provide the Refuge Manager with a written or electronic report regarding this activity within 24 hours of the incident. To facilitate the emergency CBP vehicle access onto the Refuge, we will permit the placement of a CBP lock (Master Lock Pro Series 6327 or comparable) on the green Refuge entrance gate located near Geronimo Trail Road.

On a 6-month cycle, the U.S. Fish and Wildlife Service (Service) will conduct an overall assessment of the instances in which CBP conducted emergency vehicular access on the Refuge.

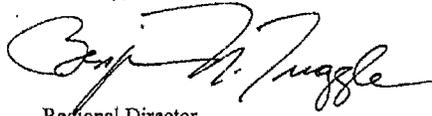
Mr. Robert W. Gilbert

2

Should the predominance of these instances of vehicular access to the Refuge not constitute true emergency incidents, the Service will suspend CBP access. The CBP will then be required to submit a request for any future access to the Refuge Manager for evaluation under the Special Use Permit process.

If you concur with these conditions of access, please sign the enclosed duplicate copy of this letter and return it to the attention of Mr. Chris Pease, Assistant Regional Director of Refuges, at the above address. If you have additional questions, please contact Mr. Pease at 505-248-7419.

Sincerely,



Regional Director

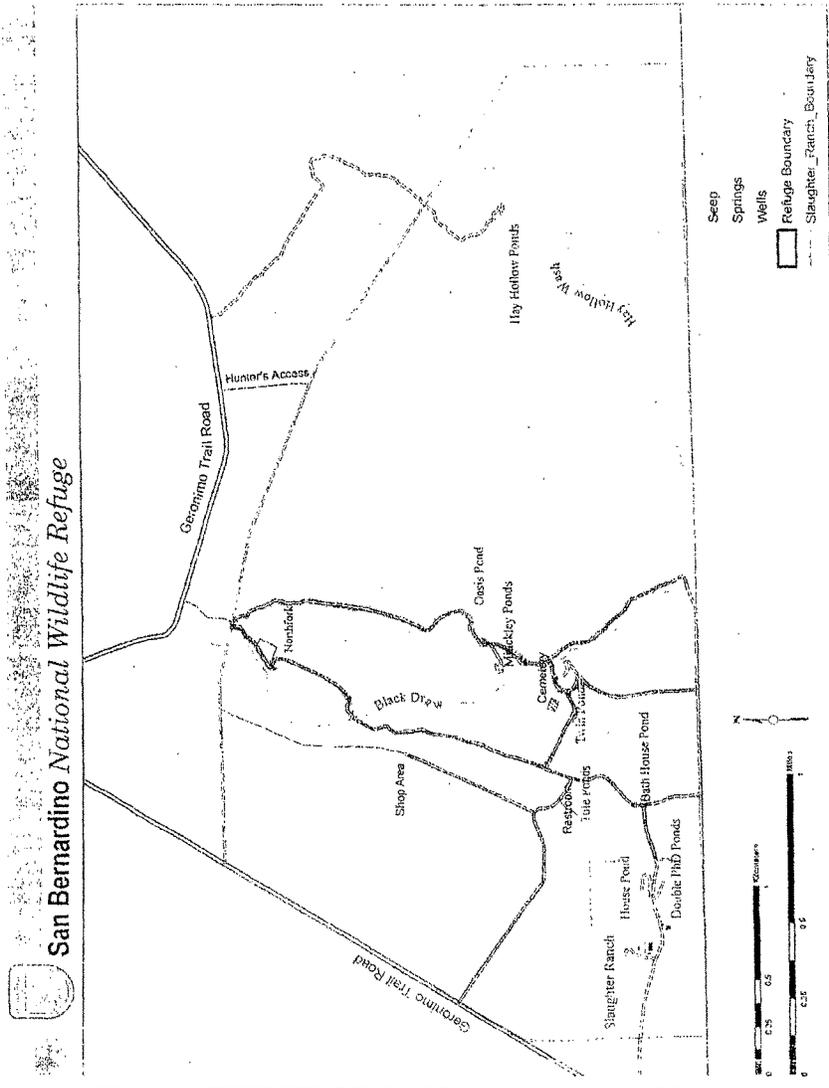
Enclosures

Concurrence: _____ Date: _____
Sector Chief Robert W. Gilbert

Mr. Robert W. Gilbert

3

cc: Refuge Manager, San Bernardino/Leslie Canyon NWRs
Rick Schultz, U.S. Department of the Interior





United States Department of the Interior

FISH AND WILDLIFE SERVICE
P.O. Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS-SUPV/042858

OCT 23 2009

Mr. Robert W. Gilbert
Chief Patrol Agent
U.S. Customs and Border Protection
2430 South Swan Road
Tucson, Arizona 85711

Dear Chief Gilbert:

Over the past several months, U.S. Fish and Wildlife Service (Service) staff and U.S. Customs and Border Protection (CBP) Douglas Station agents have continued to meet and discuss ways to resolve our common objectives to prevent negative impacts to the landscape while providing for emergency vehicular access by CBP agents onto the San Bernardino National Wildlife Refuge (Refuge) in southeastern Arizona. Through this letter, I describe a structured procedure to help both agencies meet their individual legal mandates while at the same time establishing a process for emergency vehicular access onto the Refuge by CBP.

In general, the Service and CBP should mutually agree that an emergency is defined as a life-threatening circumstance that requires an immediate action to ensure the safety of humans within the Refuge. CBP may continue to access the Refuge on foot or on horseback at any time to patrol, pursue, or apprehend suspected cross-border violators.

To facilitate emergency vehicular access by CBP onto the Refuge, the Service will permit placement of a CBP combination lock on the green Refuge entrance gate located adjacent to Geronimo Trail Road. The combination on the CBP padlock will be changed at least annually to help ensure Refuge security. In instances where emergency vehicular access onto the Refuge is required, CBP should not delay in responding to an emergency. As soon as possible following an emergency response, CBP must contact the Refuge Manager, Mr. Bill Radke, at 520-364-2104 ext 101 during normal business hours.

Through the existing CBP radio dispatch system, an electronic log will be used to document any emergency vehicular access by CBP agents onto the Refuge. I understand this system ensures that a CBP supervisor follows up on any emergency access to document who, what, when, where, why, and how the access occurred. Within 2 days following an emergency response, CBP should provide the Service with as much detail as possible about the location and severity of the emergency incident and the CBP response.

On no more than a 6-month cycle, the Service will conduct an overall evaluation of the instances in which CBP used vehicles to respond to emergencies on the Refuge. If the majority of these instances of vehicular access onto the Refuge do not constitute true emergency incidents, the

Mr. Robert W. Gilbert

2

Service will suspend CBP vehicular access and CBP will then be required to apply to the Service for a Special Use Permit, which will require an appropriateness finding and possibly, a compatibility determination.

The Refuge, along with designated critical habitat, was initially established in 1982 in order to conserve several fish species that are Federally listed as threatened or endangered. The Endangered Species Act (Act) of 1973, as amended, ensures interagency cooperation by requiring all Federal agencies to consult with the Service on any agency action that is likely to adversely affect any threatened or endangered species or critical habitat of such species. The Service recognizes that during emergency events, protecting human life must come first every time, and during any emergency situation, a primary objective of the Service is to provide recommendations to avoid and minimize adverse effects to listed species without impeding response efforts. A Section 7 consultation is not required to address the emergency itself; rather, consultation is conducted to address the agency response to the emergency. Therefore, any emergency vehicular access onto the Refuge by CBP would be addressed by emergency consultation as described.

In an instance where emergency vehicular access onto the Refuge is required, CBP should not delay in responding to the emergency. After an emergency access event, the Refuge Manager will determine if there have been any potential adverse effects on threatened or endangered species or their habitats. In the event adverse effects are preliminarily determined, the Refuge Manager will notify the Service's Ecological Services Office to coordinate an emergency Section 7 consultation with CBP and Refuge personnel. The Service recognizes that take of a listed species is sometimes unavoidable. If incidental take of a listed species occurs during the emergency event, the Service will provide an incidental take statement for the CBP emergency action as part of a biological opinion, which would subsequently be developed to help document the issue.

If you have additional questions, please contact me at 505-248-6282.

Sincerely,



Regional Director

Mr. Robert W. Gilbert

3

cc: Refuge Manager, San Bernardino/Leslie Canyon NWRs
ARD-Ecological Services, Region 2
Field Supervisor-Arizona ESFO, Region 2
Susan Sferra, Arizona ESFO, Region 2



United States Department of the Interior

FISH AND WILDLIFE SERVICE
P.O. Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS-SUPV/040778

APR 30 2009

Mr. Robert W. Gilbert
Chief Patrol Agent, U.S. Customs and
Border Protection
2430 South Swan Road
Tucson, Arizona 85711

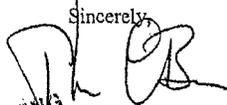
Dear Chief Gilbert:

We are in receipt of your letter dated April 15, 2009, to Refuge Manager William R. Radke requesting non-emergency motor vehicle access by U.S. Border Patrol Douglas Station onto San Bernardino National Wildlife Refuge (Refuge) in Cochise County, Arizona. During our April 13, 2009, conference call you indicated you would be forwarding the U.S. Fish and Wildlife Service (Service) a written request for access to the Refuge for emergency purposes. However, in your letter dated April 15, you requested access to the Refuge "in the form of a Border Patrol lock on the refuge access gate off of Geronimo Trail Road for the purposes stated in paragraph IV.B.3 of the 2006 MOU." Paragraph IV.B.3 pertains only to requests for the purposes of "routine patrols" and "non-emergency operational access." Since your request was limited to non-emergency purposes, Service policy requires the Refuge Manager to conduct an evaluation to determine if the proposed activity would constitute an appropriate use of the Refuge.

For an adequate evaluation of your request for non-emergency, routine access, we need more details regarding your request. Specifically, we require more information justifying why your request is being made, identifying which personnel and when they may be accessing the Refuge, and specifying where and how such access is proposed. Providing this information will allow a more thorough, efficient, and timely evaluation by the Service and help document our decisionmaking process.

Regarding emergency situations, we wish to reiterate that protecting human life must come first every time. Emergency access onto the Refuge may occur by removing a portion of the Refuge boundary fence or by other means you deem necessary to respond to an emergency. After an emergency event, the Refuge Manager must be contacted as soon as possible to provide specific information about the location and severity of the emergency and nature of your response.

We look forward to further coordination with you to evaluate your vehicle access proposal. If you have additional questions, please contact Refuge Manager Radke at 520-364-2104 x101 or Refuge Supervisor Thomas Harvey at 505-248-6650.

Sincerely,

 ACTING Regional Director

Mr. Robert W. Gilbert

2

cc: Refuge Manager, San Bernardino/Leslie Canyon NWRs
Rick Schultz, U.S. Department of the Interior

Mr. BISHOP. Thank you.

You do have your written report as well, and there will be questions for you at the same time. And I still think we are going on the floor, so we have more time here.

Mr. Taylor, if you would like to go, you are recognized for 5 minutes.

STATEMENT OF GEORGE ZACHARY TAYLOR

Mr. TAYLOR. Thank you, sir.

Chairman Bishop, Chairman Chaffetz, members of the committee, thank you for allowing the National Association of Former Border Patrol Officers to address this distinguished assembly. I am here to speak for passage of Mr. Bishop's legislation, H.R. 1505, the National Security and Federal Lands Protection Act.

This bill is brilliant in its simplicity. Why? Because the primary purpose of border security is to ensure national security and promote public safety for all Americans, including Border Patrol agents on the border. Each of you represent constituents, towns and communities that have been adversely affected by illegal immigration and drug smuggling. No community in the United States is safe from these transnational criminals and criminal organizations.

As long as the external borders of the United States remain open to them, they will continue to come. The level of violence these groups are capable of and routinely employ is incomprehensible to any civilized person. Border Patrol agents in Arizona spend a significant amount of time patrolling public lands because much of the land along the Arizona border is public land.

These agents report that the Department of Homeland Security and Bureau of Customs and Border Protection are intentionally misrepresenting the situation along the southern border, especially concerning the relative safety of the border area and the number of aliens detected that get away.

Therefore, I am here today to tell you what rank and file Border Patrol officers are unwilling to tell you, even if subpoenaed and placed under oath, for fear of reprisal from their employer. The agents in the field are saying that the Nogales, AZ, urban border area has become a more dangerous place to work and that the Federal public lands surrounding Nogales have evolved into a lawless area routinely prowled by heavily armed drug and alien smugglers from Mexico.

Additionally, agents do not have unencumbered access on all public lands to patrol the border. The concept is simple. If you cannot access the border, you cannot patrol the border, and therefore, you cannot secure the border. Limited access areas, including wilderness and refuge areas, present a greater likelihood that agents will encounter armed criminals who will not hesitate to fire upon them and that the probability that if anyone is seriously injured they will surely die before that injured person can be safely transported or evacuated because of access issues.

There is also the fact that they are reluctant to patrol these areas effectively because they may find themselves the subject of a dispute between their agency and the agency controlling the land they seek to patrol. So the agent on the ground, the very idea that

a plant or some obscure animal is more important than their life is an unsettling reality that further discourages them in their efforts to secure the border.

You need to protect our Border Patrol agents. An existing palpable concern is the perceived lack of interest on the part of the Department of Homeland Security to aggressively pursue criminals that kill or do—attempt to kill or do kill Border Patrol agents. To sweep these issues under the carpet is reprehensible.

Here I have a copy of the Arizona hunting and trapping regulation showing, and I quote from the—Homeland Security issues along the international border may affect the quality of a person's hunt. The delineated area goes from the California border to the New Mexico border and includes all land south of interstate highways 8 and 10 and north as far as Arizona City, that line passing to the near west of Tucson. We have briefers' reports of agents following tracks of an all-terrain vehicle that cross the border illegally near Lukeville, AZ. They followed the trail across public lands north into Maricopa County, which is Phoenix, and apprehended a load of marijuana on an all-terrain vehicle driven by 15-year-old illegal alien with a rifle. Department of Interior employees have erected vehicle barriers 70 to 80 miles north of the Mexican border in the Table Top Wilderness to prevent smuggling vehicles from driving further north.

I can go on for hours with individual examples of why this legislation is necessary. However, my 5 minutes is nearly up. We urge you to support Mr. Bishop's bill, H.R. 1505, to protect Federal lands and our Border Patrol agents by signing on as a co-sponsor as soon as possible to give the Border Patrol agent on the ground the unencumbered access to Federal public lands within 100 miles of the border they must have to secure the border and provide them the reassurance that the U.S. Congress is behind them in that effort.

[The prepared statement of Mr. Taylor follows:]

Written Testimony Submission
Oversight and Government Reform and Committee on Natural Resources
April 15, 2011
Room 2154 Rayburn House Office Building
By
George Zachary Taylor
National Association of Former Border Patrol Officers

Page 1

There is a tremendous difference of opinion between what the Law Enforcement Officers working along the Arizona-Mexico Border believe is the current state of National Security and Public Safety there and what the Department of Homeland Security Officials represent as the current state of National Security and Public Safety along that very same border.

In this written testimony I will cover some important points that the time constraints at the hearing do not permit in my oral presentation.

I entered on duty with the U.S. Border Patrol in 1976 at Brackettville, Texas, transferred to McAllen, Texas, in 1979, and was then promoted and transferred to Nogales, Arizona, in 1988, where I was again promoted in 1988. I retired as a Supervisory Border Patrol Agent at Nogales, Arizona in 2003. I continue to live north of Nogales overlooking the dual Cities of Nogales and the Mexican Border. During my entire tenure with the U.S. Border Patrol I was a field agent and field supervisor. Working the field provides insights and experience that cannot be developed in any other assignment in the Border Patrol. In that capacity no one needs to tell you what is happening along the border you live it on a day to day basis. I always found it somewhat amusing that apparently intelligent people that were visiting the border area for the first time would tell me what was taking place in my world. Primarily, I saw the wide disparity between what perceptions as a whole were concerning the border and what reality on the ground actually was. As time has gone by that disparity has widened to the point where we find ourselves today.

Today I am writing as a founding member of National Association of Former Border Patrol Officers which is a non-partisan, non political group of former officers dedicated to protecting America by giving Americans the facts as we see them. We support legislation that will help America and we oppose legislation that will hurt America. We support Mr. Bishop's Bill, cited as the "*National Security and Federal Lands Protection Act*." This legislation is necessary to promote the securing of the external borders of the United States and to protect our Border Patrol Agents while they engage in that endeavor. This bill is needed to protect the Agents working on the federal public lands along the border.

Page 2

After living and working on the Mexican Border for approximately 35 years I have not seen a better representation of the impact illegal immigration has on the environment than does the oral presentation by Rosemary Jenks of Numbers USA that was presented at the Brownsville, Texas, Field Hearing on April 28, 2008. For our purposes today this view of the situation is timeless: <http://www.youtube.com/watch?v=N-FPUGibvqI>

Also at that hearing was testimony that I presented regarding the situation at the border: <http://www.youtube.com/watch?v=LjgawcKn81w> , or, <http://www.youtube.com/watch?v=5ukMz2Q49sE> , in 2008.

These presentations are highly recommended to anyone seeking to better understand the origins of why we are here today. The problem is historic, apparent, it is ongoing and it must be addressed effectively by Congress.

Some useful information can be gleaned from radio, television, newspapers and various blogs. The problem is that so much of what is available is biased to the extent that it is useless because it is written with a political motive rather than presenting the whole picture. Politicizing the situation makes it more difficult to draw a distinction between fact and fiction and therefore fact is more difficult to discern by the ordinary observer. Good or bad these are the mediums we are working with today. Occasionally the alert eye can spot a dot on the radar screen that connects with a corresponding dot observed elsewhere. Once a collection of these dots are assembled a picture begins to emerge on the landscape when viewed by the experienced eye. In some pursuits this is called intelligence gathering. It is descriptively called connecting the dots. Unfortunately, this process takes time and diligence and few people having both resources available to them over time. I have been connecting the dots from my perspective with a law enforcement officer's point of view for about 43 years now and will share some insights with you about the situation on the border. What I am going to relate to you is not a secret at all but it is obviously hidden in plain sight. To illustrate this phenomenon I am attaching 15 current news articles that provide a glimpse into the extent of the problems that currently exist.

It is true that foreign nationals and citizens alike are using our public lands in the United States to grow marijuana, principally U.S. Forest Service lands. It is true that illegal alien smugglers and illegal drug smugglers heavily use the federal public lands along the external borders of the United States. It is true that they are causing extensive damage to the ecosystems and the various attractive features of these federal public lands. It is also true that no one is saying they want this destruction to continue. So, why is the smuggling, violence and destruction increasing at such a rapid pace? You already know that drug and alien smuggling is an evil enterprise. It involves rape, prostitution, human slavery, kidnapping, extortion, robbery, assault and murder on a daily basis within the United States. The evidence is everywhere of this evil. So why does it continue? I will follow with some snapshots of what the root of the problem is.

Page 3

The answer, in a word, is money. If love of money is the root of all evil, logically it is at the heart of the extreme evil that takes place along our southern border on a daily basis.

Drug and illegal alien smuggling is a for profit business. The drug and illegal alien smuggling business feeds the demand of a service and commodity market which in our case is located in the interior of the United States. It is fueled by greed. The point of sale is inside the United States to the market where the demand for these services and commodities exists. This is where the sale is made. To avoid tortuous details I will simply say that demand drives supply and price for the commodity or service is determined by demand. Inside the United States, where the financial transaction is consummated, are interests that are making huge amounts of money from this business and never directly interact with the service or the commodity. To them, it is a tremendously profitable, low risk business enterprise. It is in their best interest for our borders to remain open and no one else's. It is an organized, criminal enterprise.

This situation has created two polarized factions. On one side you have the people that want these evil businesses to stop. On the other side you have people that want their highly profitable businesses to continue. The organized, criminal enterprise has amassed huge amounts of money and can influence public opinion by buying people to support issues that will allow their enterprise to continue. This is a simplification of the origin of the how problem came about and why it continues to grow.

As Americans we naturally look for solutions to these evil enterprises in our federal government. In the federal government are agencies. Governing the illegal alien smuggling business through these agencies, in this case, now is principally centered in the Department of Homeland Security.

We know 19 mid-eastern aliens that should not have been in the United States brought down the World Trade Center which lead to the creation of the Department of Homeland Security. The Department of Homeland Security was born and justified in crises created by the illegal immigration situation. Illegal Immigration is the reason DHS exists.

We know that a considerable amount of the funds granted to the Department of Homeland Security by Congress are to address the illegal alien situation in the United States by enforcing immigration law.

Commissioner Bersin of Bureau of Customs and Border Protection has said that the function of his agency is to manage the illegal immigration situation. Note, he did not say the agency function is to put these evil businessmen out of business. Yet, our Border Patrol Agents are being slaughtered while patrolling on the southern border as he presides over the management of the illegal immigration situation from Washington, D.C.

Page 4

Moreover, no town, city or state within the United States is safe from the influence of these criminal enterprises flowing from drug and illegal alien smuggling that are allowed to exist and prosper in America.

From a strictly political and agency management point of view, why would Commissioner Bersin or Secretary Napolitano want to solve the illegal immigration situation in the United States and remove the primary purpose for their agency and jeopardize a significant part of their budget, especially when they see the escalating situation as an opportunity to justify increased funding? Managerially speaking, to DHS, isn't illegal immigration a cash cow? Without illegal immigration, how large would the DHS budget be?

Next we have to factor in the various other agencies that have a 'budgetary' interest in the illegal immigration situation on Public Lands. The first hint as to the extent of this problem is the laundry list of laws that Congressman Bishop's Bill specifically enumerates.

Various agency representatives are keenly aware of 'the cash cow' of congressional funding and how to pull the teat. They too do not want to give up their seat at the table of funding distribution when illegal immigration is the subject.

Witness the mitigation funds DHS negotiated with Department of Interior to mitigate damages done by Border Patrol Agents in southwestern Arizona while they were attempting to secure the border. Were those funds transferred improperly? Surely they were not appropriated for that purpose, were they?

Then we have the issue of an MOU. A Memorandum of Understanding is nothing more than a piece of paper. It is a distraction from the real issue. The real issue is unencumbered access to all federal public lands along the border. Unencumbered access is necessary to secure the border. These agencies do not want to release any of their influence or authority through legislation so they appear to solve this issue indirectly. That is how and why this MOU was invented. Any one could sue either signer or group of signers to an MOU, citing a violation of the controlling statute and win their case in court. Not only that, the federal government would probably reimburse their costs after they won in court. Beware anyone advocating an MOU that contradicts statute.

There is the snapshot of some of the forces that are moving and shaking around the issue of the drug and illegal alien smuggling across federal public lands. Obviously the real issue here that is at stake is National Security and Public Safety which the Congress and these agencies have been fully aware of for years.

Page 5

Now I am going to out to the chase and talk about cause and effect and how certain events take place from the point of view of an experienced Field Supervisory Border Patrol Agent. I am going to present part of my view of the Border Patrol Agent Brian Terry murder that you probably will not hear anywhere else. For ongoing operational security concerns there are some details that I will not divulge. Please pay attention.

West of Nogales, Arizona, on the U.S. Mexico border lies the Pajarita Wilderness. The Pajarita Wilderness is an open corridor to criminals seeking to operate in the Tumacacori Highlands to the north. Immediately to the North of the Pajarita Wilderness is the Proposed Tumacacori Highlands Wilderness area, comprised of the Atascosa Mountains and the Tumacacori Mountains. Peck Canyon, from Corral Nuevo through Hells Gate, to Peck Well and eastward separates the two mountain ranges, north to south. House of Representatives Bills HR-3287 and HIR-2593 sought to make these mountains permanent Wilderness designations and basic protections were being considered and to some extent implemented in 2007-2008.

Wilderness does not permit use of any mechanized equipment, not even a helicopter or bicycle. Wilderness is supposed to not reflect the hand of man. Several years before the temporary Wilderness designation was granted to this area the drug and alien smugglers had already established a relatively tenuous presence. When law enforcement was essentially removed a vacuum was created. The criminals quickly filled the vacuum in their absence when temporary Wilderness designation was granted. Problem is, in filling the vacuum they attracted other drug and alien smugglers who began to contest the access rights through the area. With law enforcement out of the equation violence ensued, the law of the gun emerged and the area became lawless. The violence continued to escalate. Thousands of pounds of illegal drugs and thousands of illegal aliens from all over the world were traversing the area and the smugglers saw it was good for their business and they hired armed criminals to protect their interests which prompted a similar response from the criminals preying on the drug and illegal aliens smugglers. Something like predators fighting over a territory for the rights to wreak mayhem in that territory. But the official reports touted by Homeland Security ignored these federal public land issues.

As the violence became more common it began to spread out and become more prevalent. Wounded, robbed, raped and murdered humans began showing up in the periphery, on streets, in yards and at homes. God only knows what atrocities those mountains hold secret for we are only aware of a small fraction of the carnage and human suffering, and even that which is known is under reported by the press and public agencies.

The enforcement absence because of lack of access in the Pajarita Wilderness facilitates the occupation of the Tumacacori Highlands by an emboldened criminal element. While they were robbing, raping and murdering they one day shot at a few agents near Pena Blanca Lake, then in Bellatosa Canyon, then near Wise Mesa, reportedly near Rock Corral Canyon and eventually they shot another agent December 2009 in Ramanote

Page 6

Canyon and nothing happened. Then they shot and killed Agent Brian Terry at Peck Well in December 2010. Their expectation at that time, based on past practice, would likely be that nothing would happen. All of these places are on federal public land.

Consider this: Brian Terry's team knew the night of December 14, 2010, that the people they were looking for had been in gun fights with the Border Patrol on previous occasions. Brian Terry's team knew these were ruthless killers. Brian Terry's supervisors knew how dangerous these criminals were based on what they had already done. The agency knew how remote and difficult the terrain in Peck Canyon and the surrounding area was because in the December 2009 agent shooting it took them several hours to lift out the wounded agent after the helicopters arrived on scene. Reasonable preparations should have been made and put in place before Brian Terry and his team went out on December 14, 2010. Specifically, training and preparations should have been made and put in place to extract wounded by helicopter in a very short time frame. Such preparations were not made and I understand they were not even considered.

Reasonably experienced Border Agents obviously did not have a hand in planning or executing the operations plan that lead to Brian Terry's murder. That operation appears to me to have been a token effort to appease critics or give the impression of dealing with an inconvenient problem by throwing resources at the problem. What else would you expect from an agency that seeks to manage the drug and illegal alien smuggling situation rather than resolve it?

All of these events are inconvenient for the Department of Homeland Security because their mere existence speaks volumes against their assertion that the border is safe by any measure. However, when it was discovered that non lethal force was encouraged for use by the agents, (Bean Bags), and the military rifles found at the scene used by the criminals were walked into Mexico by Agents of the Department of Justice, the whole matter predictably went into protecting the government mode and away from the investigation mode and will be there until as much of the truth as can be discerned is pried out of those agencies.

In the meantime the root problem remains, Federal Wildlife Refuges, Wilderness and Designated Wildernesses of various varieties serve to keep Border Patrol Agents from effectively and safely securing the border and apprehending those that have already crossed the border. A reading of the statutes creating these variously protected public lands clearly reveals that these rules and laws prevent agents from engaging in the work necessary to secure the border on federal public lands. The concept is so simple it is painful to observe that anyone can misunderstand it. To secure the border, agents must have necessary unencumbered access to federal public lands. That is why Congressman Bishop's Bill has a long list of laws that are in the way of securing the border.

Page 7

Agents need unencumbered access to all federal public lands within 100 miles of the external border to safely patrol them. This is why Congressman Bishop's Bill must pass and send a clear message that Americans want the border secured and they are willing to give the Border Patrol Agent on the ground the tools necessary to secure the border.

Attachments:

- 1.- Federal Agents Told to Reduce Border Arrests, Arizona Sheriff Says, One Page
- 2.- Sheriff Larry Dever article from AFGE Local 2544 website, One Page
- 3.- Undercover Agent Shot by Drug Suspects in Peoria, Arizona, One Page
- 4.- Feds Finding It Harder and Harder to combat escalating presence of Mexican drug cartels in New York City, Three Pages
- 5.- Gwinnett County, Georgia is experiencing an illegal alien crime wave, Four Pages.
- 6.- Barriers aren't just for the border now, Four Pages
- 7.- Danger on the U.S.-Mexico Border, Three Pages.
- 8.- 2 Suspected Immigrants Found Dead, One Page.
- 9.- Police fired at during chase involving suspected human smugglers, One Page.
- 10.- Mexican Woman Has Foot Severed by Train in Rio Rico, One Page.
- 11.- The Washington Times, Human Bondage Hits U.S. Heartland, Four Pages.
- 12.- Tucson Weekly, Spilling Over? As federal officials talk tough, local officers express concern about cartel violence, Three Pages.
- 13.- The Best and Worst of FOIA gate, Two Pages.
- 14.- Fox News Phoenix, Sheriff Calls "Operation Desert Sky" a Success, One Page.

And Last But Not Least by Far

- 15.- How a Big U.S. Bank Laundered Billions from Mexico's Murderous Drug Gangs, Eight Pages of prescient information.



Print Close

EXCLUSIVE: Federal Agents Told to Reduce Border Arrests, Arizona Sheriff Says

By Sara Walter

Published April 01, 2011 | FoxNews.com

An Arizona sheriff says U.S. Border Patrol officials have repeatedly told him they have been ordered to reduce — at times even stop — arrests of illegal immigrants caught trying to cross the U.S. border.

Cochise County Sheriff Larry Dever told FoxNews.com that a supervisor with the U.S. Border Patrol told him as recently as this month that the federal agency's office on Arizona's southern border was under orders to keep apprehension numbers down during specific reporting time periods.

"The senior supervisor agent is telling me about how their mission is now to score people back," Dever said in an interview with FoxNews.com. "He said, 'I had to go back to my guys and tell them not to catch anybody, that their job is to chase people away. ... They were not to catch anyone, arrest anyone. Their job was to set up posture, to intimidate people, to get them to go back.'"

Dever said his recent conversation with the Border Patrol supervisor was the latest in a series of communications on the subject that he has had with various federal agents over the last two years. Dever said he plans to relay the substance of these conversations when he testifies under oath next month before the Senate Committee on Homeland Security and Governmental Affairs.

"I will raise my hand to tell the truth and swear to God, and nothing is more serious or important than that," he said. "I'm going to tell them that, here's what I hear and see every day. I had conversation with agent A, B, C, D and this is what they told me."

Dever's charges were vigorously denied by a commander with the U.S. Customs and Border Protection.

"The claim that Border Patrol supervisors have been instructed to underreport or manipulate our statistics is unequivocally false," Jeffrey Self, commander of the U.S. Customs and Border Protection Joint Field Command in Arizona, said in a written statement.

"I took an oath that I take very seriously, and I find it insulting that anyone, especially a fellow law enforcement officer, would imply that we would put the protection of the American public and security of our nation's borders in danger just for a numbers game," he said. "Our mission does not waiver based on political climate, and it never will. To suggest that we are ambiguous in enforcing our laws betrays the work of more than 6,000 CBP employees in Arizona who dedicate their lives to protect our borders every day."

In recent days, Homeland Security Secretary Janet Napolitano has said the U.S.-Mexican border is more secure than ever, and Homeland Security officials have used recent statistics to support those claims.

"There is a perception that the border is worse now than it ever has been," Napolitano said at the El Paso border crossing last week. "That is wrong. The border is better now than it ever has been."

Dever doesn't agree.

"Janet Napolitano says the border is more secure than it's ever been. I've been here for 60 years, and I'm telling you that's not true," he said.

The sheriff of Santa Cruz County, which borders Dever's Cochise County to the west, said, "This is news to me," when asked about reports that border agents were being told to turn illegal immigrants back to Mexico rather than arrest them.

"It comes as a complete surprise that that would be something that's going around," Santa Cruz County Sheriff Tony Estrada said. "I meet with Dever all the time and I have great respect for him, so I expect he'd come forward and say what he knows and give the source."

"Not knowing who the source is, how reliable that source is, I really don't have much of a position," Estrada said. "I've been around a real long time and haven't heard anything like this. By the same token, you learn new things every day."

Both sheriffs are elected officials. Dever is a Republican, Estrada, a Democrat.

Others have questioned the methodology and conclusions of the Homeland Security numbers showing the border is more secure.

Refi Rates Hit 3.19% APR*

30 year fixed rate	15 year fixed rate	10 year fixed rate	5 year fixed rate
\$125,000 Loan for \$562/mo	\$175,000 Loan for \$774/mo	\$250,000 Loan for \$1,059/mo	\$350,000 Loan for \$1,547/mo
RateMarketplace®		*Click for Terms & Conditions	



Larry Dever

04-07-11 Update: Sheriff Dever is now under assault from BP management. It is likely that management has already launched an intensive "investigation" directed at finding the source of Dever's information. If that person is found, he or she will be faced with giving a statement under oath about his or her dealings with Sheriff Dever. Low-level managers have very little protection, and speaking out on a topic that is unpopular with upper management is career suicide. Just remember, for years now we have been told from the highest ranking managers in our agency that "every apprehension is a FAILURE" (Johnny Williams - former INS Western Region Director), and that we "are NOT immigration officers" (current CBP Deputy Commissioner David Aguilar to Border Patrol agents when he was the Chief of the Border Patrol).

Aguilar crony and then Laredo Sector Chief Carlos Carrillo echoed that it wasn't our job to catch illegal aliens. An uproar ensued, and Carrillo promptly retired. Aguilar has been more careful about what he says since his famous nationwide tour a few years ago, but the cat was out of the bag with us at that point. We have been told that - Apprehensions = failure, we are not "immigration" officers, we should not "lower" ourselves to the status of an immigration officer, and our primary job is not apprehending illegal aliens. Couple all this with Secretary Napolitano's recent public announcement about what she expects our apprehension numbers to be this fiscal year, and it's not hard to figure this thing out. Dever will be faced with exposing his source or eating crow. We fully expect that his source is wishing he or she hadn't said anything about now.

Lastly, it is appalling when some managers trot out the old tired line about how conversations about these topics somehow hurt the reputation of the "hard working" and "dedicated" agents. We have news for them. We don't make the rules. We have to follow all the rules made by the politicians and management. We don't like many of their rules. We don't like the constant political gamesmanship that goes on in regards to illegal immigration. We don't like that we are so closely tied to political bureaucrats who often aren't interested in truly letting us do our jobs effectively and succeeding at our mission.

Read the latest here.

04-01-11 Sheriff Dever is right. We have seen so many slick shenanigans pulled in regards to "got-aways" and entry numbers that at times it seems David Copperfield is running the Border Patrol. Creating the illusion that all is well and you can start having family picnics in the areas where we work has been going on far too long. Has there been improvement in some areas? Absolutely. Is the border anywhere near "under control"? Absolutely not. Do some in management play games with numbers and cater to the wishes of politicians like Janet Napolitano and David Aguilar? Resoundingly, yes. Time for the foolish political games to stop. Read the article here.

Undercover agent shot by drug suspects in Peoria

April 11, 2011 |

9:51 am | 81°

Valley & State

- Type: News: AAA
- Print
- Email
- Most Popular
- Share
- Display

Undercover agent shot by drug suspects in Peoria

by Lisa Hylverseth and Mary Shinn - Apr. 8, 2011 08:50 PM
The Arizona Republic

Recommend Be the first of your friends to recommend this

A special agent of the state Attorney General was shot late Friday while following two cars believed to be involved in a Mexican drug cartel, the Arizona Department of Public Safety said.

The undercover agent was shot in the shoulder and neck around 4:15 p.m. by one of the suspects he was following in the area of 31st Avenue and Mountain View Road in Peoria, DPS Capt. Steve Harrison said.

When the suspects realized they were being followed, they began driving aggressively, Harrison said. The driver of a white pickup truck circled back behind the officer and began ramming the agent's car. The second car, a gold Chrysler Pacifica, remained in front of the agent. The truck then pulled parallel with agent's car and the driver shot the agent, Harrison said. The agent was treated and released from the hospital, said Amy Rezzonico, an AG's spokeswoman.

Harrison said the agent is part of a multi-agency drug task force and that other officers in the area were monitoring him and responded when he was shot.

The driver of the white truck has been arrested, and police were still looking for the occupants of the Pacifica late Friday.

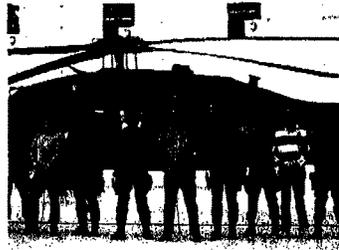
Peoria police and DPS are investigating the shooting.

- Type: News: AAA
- Print
- Email
- Most Popular
- Share
- Display

NYDailyNews.com
DAILY NEWS Crime

Exclusive
Feds finding it harder and harder to combat escalating presence of Mexican drug cartels in New York

By Edgar Bonavol
DAILY NEWS STAFF WRITER
Money, APR 11th 2011, 4:50 AM



Manhattan
Federal officers weren't groused drug traffickers and two other alleged drug cartel members in Mexico City in November. New York cops think more than doubled the drug spent breaking up the growing network between local gangs and Mexican drug cartels. U.S. Immigration and Customs Enforcement agents went from spending 13,472 hours in 2009 to more than 30,000 hours last year looking into street-oriented turned-backpacks of Mexican drug riffs, officials said.

ICE also added three agents in the past few years to fight the drug gangs' escalating presence. The shift in manpower and time was based on intelligence showing local gangs' illicit activities had evolved into more sophisticated and businesslike enterprises.

ICE agents also have seen a rise in dirty money and weapons confiscated in the New York area.

Last year, the feds seized more than \$25 million and 97 firearms, a record number in New York, according to ICE figures.

"We spent these hours investigating violent, transnational street gang members who are now working closely with sophisticated drug trafficking organizations," said James Hayes, special agent in charge of Homeland Security Investigations in New York.

"We see more and more a correlation between Mexican drug organizations and gangs here in New York," Hayes added.

"New York is a big market for drugs. Mexican cartels want to increase their presence here."

For decades, New York was a Colombian drug playground. But when federal agents rained on it with Caribbean corner, Colombian drug cartels had to rethink smuggling routes and embrace their Mexican counterparts, who had access to potent heroin guns, ICE said.

Mexican cartels established roots in the city by recruiting local gangs - the MS 13 and the Latin Kings - with the promise of hefty payoffs, safe sex.

"Mexican cartels were built on being relatively street players in playing a much larger role in the transportation of drugs into the country," said Michael Bandera of the Drug Enforcement Administration.

Some former drug gang members said the money pushes many life youth into working for gangs. "It's not working for gangs. It's not working for Mexican cartels."

"These kids have no future. The promise of money seems like a good way out, and next thing you know you're involved in a dangerous drug world," said Frank Hernandez, 53, of the Bronx, who spent several years in prison for selling drugs.

Paco, a former gang member who won't use his real name for fear of rival drug gangs, told New York's appetite for drugs kept him hooked.

"It's hard to stay clean and away from the gangs and the easy money," Paco said.

"The drugs come from Mexico, and we sell them here. It never ends."

bandera@nydailynews.com

From NYDailyNews.com

From Around the Web

- [Bribery teacher Carrie Wheeler caught partially nude with 17-year-old student in Manhattan police](#)
- [Girl, 11, jumped into park bathroom in Menasha Valley, Calif., and gang raped by 7 teens, 10/9](#)
- [Charlie Sheen joined by ex-baseball player Danny Bonaduce, TV host James Lipton at Playboy NYC show](#)
- [Gov. Cuomo was right to recall hundreds of often-abused parking permits but wrong to issue new ones](#)
- [Republican 'proposals' showed over-ambition \(Fox News\)](#)
- [10 Things Not to Say to a Coworker \(Man of the House\)](#)
- [Hersey Breakfast for 8 in 6 Minutes \(Man of the House\)](#)
- [Nigerian ruling party set to lose election \(Financial Times\)](#)
- [Where We Live Now \(Home Goes Strong\)](#)

Ads by Yahoo!
 Refinance Rates as Low as 4.44%
 \$160,000 Mortgage for 405/mo No DDN req Free Quotes! (3.0% apr)
 (.and3.com/Mortgage)
 Hot! 9000 Update - 0780
 CTRC Realty helps to Acquire New Arizona Rare Earth Mining Properties
 (www.RareEarthExpansions.com)
 UFOG - Oh Back To Work!

U.S. Immigration and Customs Enforcement agents went from spending 13,472 hours in 2009 to more than 30,000 hours last year looking into street criminals-turned-lackeys of Mexican drug rings, officials said.

ICE also added three agents in the past few years to fight the drug gangs' escalating presence.

The shift in manpower and time was based on intelligence showing local gangs' illicit activities had evolved into more sophisticated and businesslike enterprises.

ICE agents also have seen a rise in dirty money and weapons confiscated in the New York area.

Last year, the feds seized more than \$35 million and 57 firearms, a record number in New York, according to ICE figures.

"We spent these hours investigating violent, transnational street gang members who are now working closely with sophisticated drug-trafficking organizations," said James Hayes, special agent in charge of Homeland Security investigations in New York.

"We see more and more a correlation between Mexican drug organizations and gangs here in New York," Hayes added.

"New York is a big market for drugs. Mexican cartels want to increase their presence here."

For decades, New York was a Colombian drug playground. But when federal agents caught on to their Caribbean corridor, Colombian drug cartels had to rethink smuggling routes and enlisted their Mexican counterparts, who had access to porous border towns, officials said.

Mexican kingpins established roots in the city by recruiting local gangs - like MS 13 and the Latin Kings - with the promise of hefty paydays, feds say.

"Mexican cartels went from being relatively small players to playing a much larger role in the transportation of drugs into the country," said Michael Sanders of the Drug Enforcement Administration.

Some former drug gang members said the money pushes many idle youth into working for gangs hired by Mexican cartels.

"These kids have no future. The promise of money seems like a good way out, and next thing you know you're involved in a dangerous drug world," said Frank Hernandez, 53, of the Bronx, who spent several years in prison for selling drugs.

Paco, a former gang member who won't use his real name for fear of rival drug gangs, said New York's appetite for drugs kept him hooked.

"It's hard to stay clean and away from the gangs and the easy money," Paco said.

"The drugs come from Mexico, and we sell them here. It never ends."



examiner.com
the number source for local

Print Close [X]



Gwinnett County, Georgia is experiencing an illegal alien crime wave

By Dave Gibson, Immigration Reform Examiner
March 18th, 2011 11:45 pm ET

Last month, two very high profile crimes in which children were killed occurred in Gwinnett County, Georgia. In addition to the tragic loss of young lives, both cases had something else in common...both of the suspects charged in each of the horrific crimes were illegal aliens.

-On February 9, Gwinnett County police responded to a gruesome crime scene and found two boys, 1-year-old Edward Garcia and 3-year-old Bradley Garcia stabbed to death, and the boys' father and 3-year-old brother also suffering from severe stab wounds.

The surviving toddler was taken by helicopter to Children's Healthcare of Atlanta at Egleston, and the father, Elvis Garcia, 23, was also taken to a local hospital. Both survived.

Police arrested Antonio Cardenas-Rico, 28, and charged him with two counts of murder.

However, the father's story quickly unraveled and police soon charged Garcia with killing his own sons.

Elvis Garcia is now awaiting trial, charged with two counts of murder and one count of aggravated assault.

While the murder charges against Antonio Cardenas-Rico (also an illegal alien) were dropped, he is also currently being held in the Gwinnett County Detention Center on unrelated drug charges.

-On February 17, firefighters responded to a house fire in Lilburn in which three children, ages 18 months to 4 years, died from smoke inhalation. It was quickly determined that the deadly fire was the result of an explosion from chemicals used to make methamphetamine.

Narcotics investigators also found more than \$192,000 hidden in the walls of the home, nine pounds of liquid meth and one pound of "finished" product.

Gwinnett County police are now searching for Ivan Gonzalez, 26, who has been charged with murder and arson. He was apparently living with the children's mother, Nelbi Brito, 22, who has been charged with drug trafficking.

Gonzalez is believed to be hiding in Mexico.

Gwinnett County, Georgia is experiencing an illegal alien crime wave - National Immigra... Page 2 of 4

The two cases have highlighted how Gwinnett County has been overrun with illegal aliens in recent years, and the ensuing crime wave that has county residents understandably worried.

On November 16, 2009, the Gwinnett County Sheriff's Department (GCSD) joined the federal program which allows local law enforcement to identify and report illegal aliens in their custody, known as 287 (g).

Since that day, the GCSD has identified 3,918 illegal aliens in their custody. Those detainees accounted for a total of 8,641 various charges.

What follows is a list of the most serious crimes with which those illegal aliens were charged:

- Felony drug charges...321
- Rape...31
- Child molestation...81
- Other sex crimes...40
- DUI...627
- Aggravated assault...97
- Robbery...49
- Battery...222
- Murder...5

Mexico represents the country of origin for most of the illegal aliens arrested in the county since the GCSD began identifying and reporting them, with 3,000. Honduras follows with 358, then Guatemala with 357 and El Salvador with 219.

An examination of GCSD's online records showed that between March 18-18, immigration holds were placed on the following inmates:

- Julio Cesar Picasso-Sanchez...charged with passing emergency vehicle, failure to yield after stop sign.
- Santiago Arnaldo Domingo...charged with driving without a license, open container of alcohol, DUI.
- Jose Alfredo Gutierrez-Munoz...charged with driving without a license, HOV lane violation.
- Freddy Manuel Suarez...charged with passing emergency vehicle, driving while license suspended/revoked.
- Gregoria Lara-Gomez...charged with driving without a license.
- Juan Jaime Martinez...charged with driving without a license.

Advertisement



Gwinnett County, Georgia is experiencing an illegal alien crime wave - National Immigra... Page 3 of 4

-Gabriel Nava-Garcia...charged with DUI, driving without a license, driving witho...ut headlights.

-Juan Martin Rendon...charged with improper equipment, driving without a license.

-Armando Basillo-Castro...charged with driving without a license.

-Jorge Barajas...charged with failure to appear.

-Moises Reyes-Oxlaj...charged with failure to appear, driving without a license.

-Rudy Lopez-Cabrera...charged with open container of alcohol, DUI, driving without a license.

-Luis Albarran...charged with DUI.

-Silvano Guillen...charged with improper equipment, driving without a license.

-Seung Woo Park...charged with three counts of armed robbery, 11 counts of unlawfully entering an automobile, 11 counts of possession of tools for commission of crime, probation violation.

The fact that 15 arrestees were identified as suspected illegal allans over a three day period in a county jail that is 1,600 miles from the Mexican border is truly amazing, and speaks to how illegal immigration is no longer a problem isolated to the American southwest, but is now a national crisis.

If there is any one group of Americans who have the right to be angry with the federal government, it is the people of Gwinnett County who are being victimized by illegal allens on a daily basis.

They are being robbed, their children are being raped, they are being over-burdened financially with undoubtedly higher auto insurance rates and on top it all off—they have to shoulder the costs of incarcerating these criminal allens who should not have been in the country in the first place.

Tags: Illegal Alien Crime

From around the web

About Camping at National Parks (USA Today)

Betty on the News: Randy Quaid and Wife Arrested Over Hotel Bill (Betty Confidential)

Mom Brings Dead Son to Soccer Game (The Stir by CafeMom)

[what's this]

We recommend

Gwinnett County, Georgia is experiencing an illegal alien crime wave - National Immigra... Page 4 of 4

Police: Lawrenceville father stabbed his children to death, blamed another man
Jersey Shore star voted 'Best Abs in Italy'; Move over Michelangelo's David!
Illegal alien charged with murdering his girlfriend in Indiana
Former DMV employee charged with issuing licenses to illegal aliens



70 miles north of the line, they protect sensitive lands from illegal crossers' trash

Barriers aren't just for the border now

Brady McCombs Arizona Daily Star | Posted: Tuesday, January 25, 2011 2:00 pm

Editor's note: This story first appeared Sunday as an exclusive for our print readers.

TABLE TOP WILDERNESS AREA - The landscape of saguaros, mesquite trees and prickly pear cactus here has a new feature - steel railroad rails welded into crisscrosses and connected by flat rails.

This rusting structure is a vehicle barrier designed to stop drug and people smugglers who barrel across the desert in trucks. The barriers are common at the international line - there are more than 139 miles of them along Arizona's stretch of U.S.-Mexico border.

But this isn't the border.

This 1.3-mile stretch of "Normandy-style" vehicle barriers was recently erected 70 miles north of the border on the Bureau of Land Management's Sonoran Desert Monument, just south of Interstate 8 and southwest of Casa Grande.

It is likely the first time border barriers have been used this far north, and the latest example of how managing public lands along the U.S.-Mexico border is now as much about dealing with trash and trails left behind by illegal border crossers as it is about monitoring endangered animals or watering holes.

BLM officials put up the barrier to redirect traffic around the federally protected Table Top Wilderness Area, where cars are prohibited. They know it won't stop drugs from reaching cities across the United States, but they couldn't sit back and watch the beautiful landscape get trampled.

Skinny, knee-high signs proclaim Table Top as protected wilderness.

"The public might respect our little signs, but they are not an issue for the smugglers," said Damian Hayes, a BLM law enforcement ranger who patrols the area.

The barrier is on the southern boundary of Table Top, which borders the northern edge of the Tohono O'odham Nation. Smugglers have carved a grid of illegal roads through the wilderness area as they cross the O'odham land and cut through Table Top on their way toward Phoenix, inflicting serious damage to the habitat.

The recently completed barrier has already diverted vehicle smuggling around the wilderness area, and BLM crews have begun restoring the lands damaged by the roads, Hayes said.

"It's been amazing that it's done exactly what it was intended to do," said Hayes, who has patrolled the area for four years. "It's hard to gauge exactly where they are going, but they are definitely not using the wilderness area."

The problem isn't unique to the Table Top Wilderness. From Organ Pipe Cactus National Monument in Southwestern Arizona to Buenos Aires National Wildlife Refuge southwest of Tucson to the multiple patches of Coronado National Forest across Arizona's border, land managers grapple with a multitude of issues related to being the hazy stretch of border for illegal immigration and drug smuggling. Including the Tohono O'odham Nation, nearly 86 percent of the Arizona-Mexico borderlands are federal or tribal lands.

Dealing with border issues is nothing new - Arizona has been the route of choice for a decade. But the national attention about

http://azstarnet.com/news/local/border/article_e1986b5f-ab07-5d81-9249-326ca0da28a6.ht... 4/1/2011

Barriers aren't just for the border now

Page 2 of 4

how federal public-land managers deal with the cross-border traffic and work with federal law enforcement agencies has amplified in the past year with two high-profile killings in which suspects may have passed through federal lands.

BLM officials put up signs south of I-8 in the Table Top Wilderness Area warning visitors that the area was an active human- and drug-smuggling corridor and that they may encounter "armed criminals and smuggling vehicles." The signs became political fodder in the 2010 election and became a symbol to some that the United States had ceded territory to smugglers.

When BLM officials took them down and replaced them in October with toned-down notices, they were criticized for trying to make it seem that the problem had gone away. The irony - similar signs have been up for years across Southern Arizona.

The agency is considering putting up more vehicle barriers in Ironwood Forest Monument just northwest of Tucson. There are already vehicle barriers or fences up along the international border in the Organ Pipe Cactus National Monument, Cabeza Prieta National Wildlife Refuge, Buenos Aires National Wildlife Refuge and the Coronado National Forest.

Materials to build vehicle barriers are plentiful - hundreds of miles of old barriers were uprooted in the past three years to make way for Department of Homeland Security border fences and walls. Some of that excess supply went into the Table Top barriers, which cost the BLM about \$66,000 each, said spokesman Dennis Godfrey.

Threat to employees

"The United States and Mexico border is 1,969 miles long," says a woman narrating over vaguely Mexican-sounding music and video of cactus and mesquite at the border. "It is a land that is both beautiful and fragile with a rich diversity of plants and animals."

"The management and protection of many of these areas has been entrusted to federal and state agencies," she says, as logos of the U.S. Fish and Wildlife Service, the BLM and the National Park Service, among others, flash on the screen.

"The employees working for these agencies not only have to protect the land and serve the public, but also have to deal with a unique situation: a tremendous amount of drug smuggling and illegal immigration in a harsh desert environment. These illegal activities pose a very real threat to employees."

This video - titled "Working along the United States-Mexico border" - is shown to federal employees and volunteers to make them aware of the situation and how to protect themselves.

Though illegal crossings have dipped along with the economy in recent years, federal lands in Arizona continue to be high-risk areas for illegal immigration and drug smuggling, says a November report from the Government Accountability Office.

The number of apprehensions by the Border Patrol on federal lands has not kept up with the number of estimated illegal entries there, the report found. Border patrol agents made more than 91,000 apprehensions on federal lands in the Tucson Sector in fiscal 2009, but the agency estimated there were nearly three times as many illegal entries on these lands, the report said.

There's no way around it - working or volunteering on public lands near Arizona's border carries a level of risk.

At Organ Pipe, where ranger Kris Eggle was fatally shot in 2002 by a drug smuggler, about half the 330,000-acre park is closed to the public. That's an improvement over 2007, when the park was 97 percent closed, but still nothing like the 1980s, when park staffers planned their work around the weekends - not law enforcement schedules.

The monument is divided into three zones: red zones where staffers can go only with security escorts; blue zones where staffers must go with at least one other person and call hourly to check in; and white zones that are open to the public and where the staff can work freely.

When staffers need to work in the red zones and none of the monument's 20 law enforcement officers is available, Organ Pipe Superintendent Lee Balza has to contract security officers to escort them.

"It adds to the cost of doing business," Balza said.

And it prevents or delays the staff from getting regular land-management work done. The Quitobaquito natural spring, about 100 yards north of border on the monument, is prime habitat for the endangered pupfish. Monument staffers sometimes have to travel

http://azstarnet.com/news/local/border/article_c1986b5f-ab07-5d81-9249-326ca0da28a6.ht... 4/1/2011

Barriers aren't just for the border now

18 miles from the visitor center to make sure water levels there are adequate.

But since the spring is in the monument's red zone, staffers can't go alone without being accompanied by law enforcement officers. Staffers have to inform officers days ahead of such trips, too, so the officers can patrol the area one or two days before to make sure it's safe.

Monument officials outline these security concerns in recruitment material sent out to college students considering participating in field work at the monument, Baiza said. For some, it's not a big deal; for others, it's a deal-breaker.

"It's not just anybody that comes," Baiza said.

Federal law enforcement officers at the six border public lands visited by GAO officials this year said they spend 75 to 97 percent of their time responding to threats from illegal cross-border activity, the report found. At Organ Pipe, drug smugglers regularly use the visitor center parking lot as a staging area, says a Border Patrol threat assessment in the GAO report.

Keeping up with all the trash left behind keeps the BLM's Kathy Pedrick busy. Since 2002, the BLM has run an organized a trash-pickup program called the Southern Arizona Project. In fiscal 2009, the project picked up 234 tons of trash.

"They'll leave backpacks, food, whatever they want to jettison before a vehicle takes them," said Pedrick, special assistant to the BLM state director and chairperson of the Borderland Management Task Force, a group of officials from federal agencies that meets every two months to discuss border issues.

The estimated 2,000 tons of trash left behind by smugglers and illegal immigrants has harmed the fragile Sonoran Desert, landing Buenos Aires, Organ Pipe and Cabeza Prieta on lists of most imperiled federal lands at different points this decade.

There is even a website devoted to the trash (www.azbordertrash.gov). The site, run by the Arizona Department of Environmental Quality, is designed to coordinate cleanups and track results.

Under more pressure

While the strain of dealing with illegal cross-border activity is nothing new, the pressure on border land managers has escalated in the last year, led by a Republican lawmaker from Utah.

A month after Robert Krentz was killed on his Cochise County ranch, U.S. Rep. Rob Bishop introduced a bill that would give Border Patrol agents total access to public lands, where they now must adhere to some restrictions. He justified the legislation based on authorities' belief that the person who killed Krentz fled into Mexico through the San Bernardino National Wildlife Refuge, 17 miles east of Douglas.

Bishop was the ranking member of the House Natural Resources subcommittee on national parks, forests and public lands. He was recently named chairman.

In June, Bishop's office sent a press release saying the Buenos Aires National Wildlife Refuge had just days earlier announced the closure of 3,500 acres to the public due to dangers posed by Mexican drug smugglers. The press release missed a key fact: This section of the Buenos Aires Refuge has been closed since October 2006.

The erroneous report prompted several national media outlets to report a 4-year-old story as if it were new. The office of Buenos Aires refuge manager Sally Gall was flooded with inquiries, forcing the refuge to issue a press release to clarify things. The increased pressure from Bishop and others and the spreading of inaccuracies has given border public lands in Arizona a bad image, Gall said.

"Yes, there probably is increased drug traffic and the drug issue is definitely a concern, but I just think it's created a lot more fear in people than what was needed," Gall said. "It portrayed this area as really dangerous and that people should fear coming here."

In fact, illegal immigration has slowed so much through the refuge that Gall and the refuge staff will consider reopening the closed section later this year, after National Guard troops stationed there leave, she said. The estimated number of illegal crossings has dropped to about 100 per day, compared with more than 1,000 a day just a few years ago, she said.

Since last fall the GAO has been evaluating the relationship between federal land managers and federal law enforcement, issuing

http://azstarnet.com/news/local/border/article_e1986b5f-ab07-5d81-9249-326ca0da28a6.htm 4/1/2011

APR-12-2011 03:52 PM G Z TAYLOR

520 281 7148

P. 22

Barriers aren't just for the border now

Page 4 of 4

two reports in the past four months about an improving but flawed relationship.

The first report concluded that federal rules governing public lands along the border cause some delays but do not prevent the Border Patrol from handling its assignment to secure the border.

The Dec. 14 fatal shooting of Border Patrol agent Brian Terry near Peck Canyon northwest of Nogales added fuel to the fire, too, since it apparently occurred within the Coronado National Forest. The exact location of the shooting has not been made public by the FBI or the Border Patrol.

Bishop sent out a statement the day after, lamenting the murder: "It's no secret why criminal organizations entering the U.S. from Mexico strategically target federal lands as the most ideal and secure route to traffic drugs, smuggle humans and carry out a host of other criminal acts. Strict environmental regulations are enabling a culture of unprecedented lawlessness that has led to numerous deaths on federal lands, including yesterday's tragic death of agent Terry."

All the increased attention on the border creates an opportunity for federal officials in Arizona to educate people across the country about the reality on the ground, Pedrick said.

"The fact that people are aware and recognizing the problem," Pedrick said, "can help solve the problem."

Contact reporter Brady McCombs at 573-4213 or bmccombs@azstarnet.com

On StarNet: Find extensive coverage of border and immigration issues at azstarnet.com/border

Danger on the U.S.-Mexico border

By Sheriff Clint McDonald, Thursday, March 31, 7:34 PM

There is a storm brewing along our border with Mexico, and our nation is relegating responsibility for quelling that storm to some of our poorest communities. In a visit to El Paso last week, Homeland Security Secretary Janet Napolitano claimed that there has been no "spillover" violence from Mexico into the United States. Regardless of the veracity, her point is irrelevant.

It is not spillover violence but spillover *effects* of hostilities in Mexico that pose the real threat to the United States.

Spillover effects are the direct results of Mexican violence that influence U.S. citizens living in communities along the border. For example, Mexican gangs fighting to control territory around the frontier village of El Porvenir, in Chihuahua, have threatened for almost a year to kill its residents. To escape the violence, nearly the entire village eventually relocated to Texas border communities — without, of course, being screened or processed. The results include schoolchildren fearing for their safety as their Mexican schoolmates talk of violence and murder, school buses "tailed" by armed private security guards and criminals relocating to the United States with their families and conducting their operations from this country. The single greatest spillover effect: U.S. citizens living in fear.

While border security is undeniably a federal responsibility, spillover effects are principally dealt with by local jurisdictions — and along the U.S.-Mexico border, this is mostly sheriff's offices operating in large, sparsely populated county areas supported by small tax bases.

Border counties are among the poorest in the United States and can barely afford to hire and equip sufficient, qualified law enforcement personnel to meet citizens' needs.

While billions of federal dollars are spent each year to increase the number and technical capabilities of Border Patrol agents, little is being done to improve security beyond the border area. An increase in border patrol agents gives the appearance of more security. But what about the soil past those agents' narrow jurisdiction?

Consider: Together, the seven West Texas counties to the east of El Paso County comprise 27,370 square miles, some 3,140 square miles larger than the state of West Virginia. Yet they employ fewer than 70 law enforcement officers year-round. This translates to one officer to patrol 396 square miles. And these are the counties that endure the greatest spillover effects of Mexican violence, as innocents and others seek refuge.

Much is said about the need for immigration reform, but comprehensive reform remains stalled. Border security is promoted as an aspect of this issue, but no one is taking on the real deficiencies. Efforts among all agencies — federal, state, local and tribal — must be aligned and provided adequate resources. A unified effort requires interagency adherence to a comprehensive national border security strategy that outlines goals, measurable objectives, well-defined priorities and common methods.

Without a comprehensive security plan from which officials at all levels can draw, we cannot create the conditions for true security. When Congress appropriates emergency funds, as it did in August, it sounds like a lot is being done. But in the absence of an agreed-upon plan, lawmakers will continue to spend on projects that fail to contribute efficiently to progress, and it's not clear how we justify the resources needed to adequately staff, train and equip law enforcement agencies for coordinated border security operations.

U.S. border security cannot continue to be left to various law enforcement agencies that employ different procedures, lexicons and equipment, and whose objectives and priorities may conflict. Conducting operations in jurisdictional stovepipes precludes interagency coordination and cooperation. Maintaining the status quo means we will continue to give up miles of U.S. territory to criminals who threaten our citizens as they pass through our border counties to the depths of our country.

Napolitano announced on her El Paso trip that the Department of Homeland Security will deploy as many as 550 more border agents in the next year. Meanwhile, a handful of deputies and I will be the principal non-federal law enforcement within a border county of nearly 2,400 square miles. We will not have the benefit of the new technologies developed for Customs and Border Protection agents, nor the information they process.

In short, our nation is not developing the law enforcement teams capable of securing our borders.

Americans rightly expect a unified effort among all law enforcement agencies operating along the border. We will not get there until our leaders in Washington recognize that need.

The writer is sheriff of Terrell County, Tex., and a past president of the Texas Border Sheriff's Coalition.

http://www.washingtonpost.com/opinions/danger-on-the-us-mexico-border/2011/03/30/AFOp4KCC_print.html

2 suspected immigrants found dead

By JB Miller
For the *Nogales International*
Published Friday, March 25, 2011 11:10 AM CDT

 Share The sheriff's office is investigating the reported assault of a migrant woman from El Salvador and the deaths of two suspected border-crossers, one found by chance when deputies responded to a report of another set of human remains discovered near Tubac.

At 5:33 a.m. on March 17, the U.S. Border Patrol asked deputies to respond to the vicinity of Ruby Road and Tres Bellotas Road after agents found a woman on Dead Horse Ridge, a half-mile northeast of Tres Bellotas Ranch in Arivaca. Haydee Alvarado-Rodriguez, 38, of Santa Ana, El Salvador, was subsequently transported to University Medical Center in Tucson for treatment of injuries she allegedly received from her guide after she crossed into the United States illegally the day before.

Alvarado-Rodriguez told investigators at approximately 2 p.m. the guide struck her on the head with a rock after she refused his advances. She then lost consciousness and awoke a short time later.

"In an interview conducted with Ms. Alvarado-Rodriguez she denied and is certain she was not sexually assaulted," said Lt. Raoul Rodriguez of the Santa Cruz County Sheriff's Office.

Later that morning at 11:35 a.m., sheriff's dispatch received a call from a hiker who reported finding skeletal remains approximately 5 miles south of Arivaca Road. Deputies responded to Hunter's Access Road and Forest Service Road 3146 in Tubac where they proceeded to the location and retrieved the remains.

Rodriguez said as officers were leaving the area, they discovered additional skeletal remains one mile away from the initial reported location. He said the remains included a skull, vertebrae, and a portion of a hip, all of which were transported to the Medical Examiner's Office in Tucson to determine the cause of death.

Rodriguez said that due to the location of the remains, they are believed to belong to undocumented border-crossers. If confirmed, they would be the fifth and sixth undocumented immigrants found dead in Santa Cruz County so far in 2011.

<http://www.nogalesinternational.com/articles/2011/03/25/news/doc4d8cbb12de3dd821713206.txt>



Published on *The Sierra Vista Herald* (<http://www.svherald.com>)

[Home](#) > BREAKING NEWS: Police fired at during chase involving suspected human smugglers

BREAKING NEWS: Police fired at during chase involving suspected human smugglers

March 16, 2011

SIERRA VISTA — Individuals involved in a suspected human smuggling operation eluded local police and other assisting authorities after fleeing from a home on Swan Drive on Tuesday afternoon.

The investigation is still unfolding, but law enforcement radio traffic indicated that the pursuit took officers onto Quail Run Drive, Avenida Cochise and Buffalo Soldier Trail. Spike strips were laid at several locations before the suspects managed to get west of Buffalo Soldier Trail onto Fort Huachuca and into the Garden Canyon area.

Fort Huachuca Military Police were called in to assist in locating the SUV, as was a U.S. Border Patrol helicopter. Scanner traffic indicated shots were fired at the helicopter.

The suspects remain at large late Tuesday night with the search and investigation continuing through the night.

Sierra Vista Police Sgt. Brett Mitchell said officers were unsure if any other suspects remained inside the residence on Swan Drive after the two suspects in the SUV fled. Officers were gearing up to prepare to enter the residence at about 5 p.m.

More information is expected to be made available Wednesday.

Mexican woman has foot severed by train in Rio Rico

*By the Nogales International
Published Monday, March 14, 2011 8:13 PM CDT*

Share An 18-year-old woman from Mexico was flown to University Medical Center in Tucson on advanced life support Saturday after her foot was severed by a train in Rio Rico.

At 7:14 p.m. on Saturday, Union Pacific Police called sheriff's dispatch to report two people carrying a third person along the railroad tracks in the area of Ojo Court. The person being carried appeared to have an injured or severed foot, the caller said.

The Santa Cruz County Sheriff's Office later identified the victim as Ines Flores-Melo, 18, from Colcoyan de las Flores, Oaxaca, Mexico, and said she was traveling with a group of illegal immigrants when she tried to board a northbound train, fell and lost her left foot.

You are currently viewing the printable version of this article, to return to the normal page, please [click here](#).

The Washington Times



House panel subpoenas ATF for documents on gun program

Human bondage hits U.S. heartland

Illicit trade for labor, sex generates billions in profits

By Chuck Neybauer

The Washington Times

8:18 p.m., Sunday, March 27, 2011



People were shocked when federal prosecutors charged the owners of a motel in Oacoma, S.D., a town of fewer than 500, with keeping Philippine women in virtual slavery, forcing them to work 20-hour days under the threat of violence and taking back their paychecks after they had been endorsed to deposit in their own accounts.

Prosecutors said the enslaved women performed cleaning and front-desk duties at the motel and were expected to work second jobs at fast-food restaurants. Every aspect of their lives, according to records in the 2007 case, was controlled, including what they ate, where they lived, what they wore and to whom they spoke.

Human traffickers had crept unnoticed into the small Lyman County community, located on the west bank of the Missouri River 80 miles southeast of Pierre, the state's capital. But the townsfolk soon learned that Interstate 90, which roars right by Oacoma, is part of the "Midwest Pipeline," the superhighway used to deliver trafficking victims to cities across the country.

In November, federal prosecutors struck again in South Dakota, this time bringing sex-trafficking charges against a couple in Tea, a city of 4,600 also just off Interstate 90. They were convicted of using coercion and threats to force underage girls, some as young as 15, into prostitution.

"It was a shock to me to learn that people had been trafficked through South Dakota," said state Sen. Joni Cutler, a Sioux Falls Republican who sponsored legislation in January making human trafficking a state crime. She said South Dakotans like to think of the state as a place "where everybody knows everybody or is related."

"We don't want a quiet, rural area like South Dakota to become a place where people are trafficked," she said.

South Dakota Gov. Dennis Daugaard signed the Cutler bill into law on March 16.

Human trafficking generates billions of dollars each year in illicit profits, in the United States and globally, through the entrapment and exploitation of millions of people, mostly women and children. The growing illegal trade in human beings for sex or forced labor isn't limited to either rural outposts or the world's largest cities.

Young women have been forced into prostitution over the past year through deception, fraud, coercion, threats and

physical violence in Denton County, Texas; rural Tennessee; St. Paul, Minn.; Norcross, Ga.; Memphis, Tenn.; Fremont, Calif.; Harrisburg, Pa.; New York City; Los Angeles; Honolulu; Woodbridge, Va.; Gaithersburg; Annapolis; and many other cities.

Just last week, a 36-year-old Mexican national was sentenced to 40 years in prison by a federal judge in Georgia on charges that he tricked girls into leaving their families in Mexico, beat them and forced them into more than 20 acts of prostitution a night in Atlanta. The man had promised to get them jobs in restaurants. Five co-defendants previously pleaded guilty in the case.

In Columbus, Ohio, dozens of illegal immigrants from Russia, Estonia, Belarus and Ukraine were forced to work as housekeepers and laundry workers after their passports were seized. In Buford, Ga., Nigerian women were forced to work as nannies and housekeepers after being threatened and physically abused. In Falls Church, 20 Indonesian women were sold as housekeepers after their passports were seized; some were sexually assaulted and their families were threatened.

Tougher laws

Texas state Sen. Leticia Van de Putte, San Antonio Democrat, introduced legislation this month to strengthen laws against human trafficking. She said 25 percent of the people trafficked into the United States pass through the state.

"We are trying to get at those who profit from selling our children," she said, adding that she became interested in the issue in 2004 when two runaways from Oregon - a 16 year-old-boy and his 14 year-old-sister - were forced into prostitution.

"Nobody wants to think there is human slavery in their neighborhood," she said.

Attorney General Eric H. Holder Jr. said nearly every country is affected by human trafficking, either as a source or destination of the many victims. He told a human trafficking conference in Arlington last year that the problem was "an affront to human dignity" and warned that in the United States, "it is, unfortunately, growing."

"Human trafficking has become big business - generating billions of dollars each year through the entrapment and exploitation of millions," Mr. Holder said. "The poorest and most vulnerable among us are being robbed of basic rights to dignity, security and opportunity."

Assistant Attorney General Thomas E. Perez, who heads the Justice Department's Civil Rights Division, compared human trafficking to drug and gun smuggling in that it frequently involves complex organized-crime cartels. In October, during the 10th anniversary celebration of the passage of the Trafficking Victims Protection Act, he said, the number of prosecuted cases has risen from four in 2001 to more than 50 last year.

"We're not just bringing more cases, we're bringing cases of unprecedented scope and impact, taking on international organized criminal networks," he said. "But this work isn't about how many cases we've charged or how well we work together; it's about the human lives restored to freedom and dignity."

Nathan Wilson, creator of the Project Meridian Foundation, which seeks to assist law enforcement in identifying traffickers and their victims, said the illegal trade in human beings for sexual exploitation or forced labor has reached epidemic proportions.

"Sex trafficking has become so widespread that no country, no race, no religion, no class and no child is immune," he said, adding that 1.6 million children younger than 18 - native and foreign born - have been caught in the sex trade in the United States. But, he said, the actual number of victims is hard to quantify because of the lengths to which traffickers go to keep their crimes hidden.

Billions in profits

The Washington, D.C.-based Polaris Project, which advocates stronger federal and state laws on human trafficking and provides help to victims, has said traffickers generate billions of dollars in profits by victimizing millions of people around the world and in the United States. It has said human trafficking is one of the fastest-growing criminal industries in the world.

With an estimated annual revenue of \$32 billion, law enforcement authorities, government agencies and others have said human trafficking is tied with arms dealing as the second-largest criminal industry in the world - behind only drug smuggling.

U.S. Immigration and Customs Enforcement (ICE), the lead agency for investigating and dismantling human-trafficking organizations, has estimated that 800,000 people are trafficked into commercial-sex trade and forced-labor situations throughout the world every year.

ICE Deputy Assistant Director James C. Spero described human trafficking as "a global problem ... driven by profit." He said the agency opened 650 trafficking investigations during fiscal 2010, up from 560 in 2009 and 430 in 2008, and he is still trying to determine the scope of the trafficking problem.

"You don't know what you don't know," he said.

In a 2010 report, the State Department also said human trafficking claimed 800,000 victims every year. Earlier reports estimated that 80 percent of the victims were female and half of them were minors. The department also said in the 2010 report that 17,500 people were thought to be trafficked into the United States each year.

Secretary of State Hillary Rodham Clinton has said some Americans are trapped by abusive employers and others are held in sexual slavery and that the department has sent "a clear message to all of our countrymen and women: Human trafficking is not someone else's problem."

The report, for the first time, ranked the United States as a "Tier 1" country, meaning it fully complies with the Trafficking Victims Protection Act, but also identified it as a "source, transit and destination country" for human traffickers.

Lucrative way

The complex criminal nature of human trafficking as noted by Mr. Perez also has been reported by the Congressional Research Service, which said last year that in many parts of the world, "trafficking in money, weapons and people is largely conducted by criminal gangs or mafia groups." The research service called human trafficking a "lucrative way" for organized criminal groups to fund other illicit activities.

"In Latin America, Mexican drug cartels are increasingly involved in the trafficking of people as well as drugs," the report said. The Congressional Research Service also said the links between organized crime and terrorism may be significant, noting that the language school that provided some visas for the Sept. 11, 2001, hijackers also is reported to have provided visas for prostitutes of a human trafficking ring.

A Department of Health and Human Services fact sheet said that after drug dealing, human trafficking is tied with the illegal arms industry as the world's second-largest criminal industry and is the fastest growing.

That rapid rise is worrisome to Mr. Wilson, who said he is concerned that profits from human trafficking could be used to fund terrorists. He said trafficking profits were used to fund terrorists in Iraq and that some of the proceeds from businesses such as prostitution "may be diverted toward supporting terrorist groups."

Mr. Spero said ICE had not found any evidence that terrorists were benefiting from human trafficking, but acknowledged that any financial crime has the potential to be exploited by terrorists.

The Justice Department also has identified human trafficking as one of the threats posed by international organiza-

crime networks. It said in a 2010 report that global crime cartels were involved in Asian massage parlors in Massachusetts, Ukrainian criminal networks exploited janitorial service workers in Pennsylvania, and an Uzbek organized-crime ring exploited Philippine, Dominican Republic and Jamaican guest workers in 14 states.

The department said human traffickers know no boundaries or borders. It said the crimes exploit men, women and children, whether they be citizens, guest workers or illegal immigrants - extracting profit from the toil of others in farm fields, factories, strip clubs, suburban mansions, brothels and bars.

Major piece

William Carroll, a former district director for the now-defunct U.S. Immigration and Naturalization Service, said human trafficking is a "major piece of operating income for the cartels and other organized criminal organizations. He said the cartels are attracted to its lucrative nature and because it does not require a distribution system like drugs.

Justice brought 52 human trafficking cases in fiscal 2010, its largest single-year total. It noted in its latest report th human traffickers often prey on those who are poor, frequently unemployed or underemployed, and who may lack access to social safety nets.

"Victims are often lured by traffickers with false promises of good jobs and better lives, and then forced to work under brutal and inhumane conditions," the department said, noting that Somali gangs forced girls younger than 14 into prostitution in Minnesota, Tennessee and Ohio - passing them around like chattel for sex with other gang members or to paying customers.

Calling the trafficking of children for sex as "intolerable," U.S. Attorney Jerry E. Martin, whose office brought the case against the Somali gangs, said the problem is widespread and difficult to prosecute. The victims, he said, "are not likely to complain to the police."

blog comments powered by DISQUS

Ads by Google

Child Safety

Child Safety Video

Child Safety Fence

Child Protection

Child Safety Tip

Tucson Weekly

CURRENTS - CURRENTS FEATURE

March 31, 2011

Spilling Over?

As federal officials talk tough, local officers express concern about cartel violence

by Leo W. Banks

We have a mess on the Arizona-Mexico border, and the people of Arizona can't make an honest assessment of it without pondering the concept of spillover.

The word has become a mantra that appears in just about every pronouncement by the feds, and it gets repeated by a compliant mainstream media.

In a speech in January, Alan Bersin, commissioner of U.S. Customs and Border Protection, said he's thought a lot about why so many Americans think the border is out of control.

"The answer has to be," he said, "that the violence in northern Mexico is real and unprecedented. Because of that violence, the threat that it will spill over is there. While we haven't seen the spillover violence, the risk is clearly there."

Last week in El Paso, Homeland Security Secretary Janet Napolitano repeated the no-spillover canard. This came on the heels of the bizarre challenge she issued to the drug cartels in January, saying, "Don't even think about bringing your violence and tactics across this border. You will be met by an overwhelming response."

If by "violence and tactics," Napolitano means the shootouts and mass murders that have become commonplace in Mexico's drug war, fair enough; violence of that proportion has not spilled over here.

But otherwise, this mantra presents a misleading image—of a federal phalanx at the border capable of preventing anything bad from entering this country.

However, the whole reason the Arizona-Mexico border today is fraught with danger is *because of spillover*.

"I don't know how people are defining spillover, but it's here now and ongoing," says Nogales Police Chief Jeff Kirkham. "The fingers of the cartels reach all the way to the Tucson and the Phoenix metropolitan areas, and other states."

The conflict in Southern Arizona is a fight to control American land. We're experiencing constant incursions by armed cartel soldiers. In a *Washington Post* story last May, Robert Boatright, deputy chief of Border Patrol's Tucson Sector, said border agents here have "close to daily" encounters with armed smugglers.

These are hardened men—mostly "prior deportees," as Border Patrol calls them—who know Arizona's borderlands as well as their own faces. They're motivated enough to use our remotest lands as contraband highways, and athletic enough to vanish into the canyons when agents give chase.

And if challenged on the hugely profitable routes they've fought and shed blood to "own" for their particular gang, they will shoot. This became clear with the murder of Border Patrol agent Brian Terry, part of an elite BORTAC team sent into the Peck Canyon Corridor outside of Nogales on Dec. 14.

"Certainly, most Americans don't know these incursions go on all the time, but they do."



Marjorie backpack wrapped in bus.

says Kirkham. "It's sad that conditions on our border have gotten to where we have to send in special interdiction teams. But these incursions are a significant threat that needs to be solved."

A dramatic example of spillover occurred in Tucson on Aug. 5, 2009, when 15-year-old Brenda Arenas was murdered in an attempted southside carjacking. In late January 2011, three Mexican nationals, admitted drug-smugglers suspected in the slaying, surrendered to American officials at Nogales.

Why? One of the men told a Tucson TV station that their cartel bosses told them they were bringing too much attention, and they had a choice: Turn yourselves in, or we'll kill you. They chose to roll the dice with American jurisprudence. They were dropped off at the border crossing and booked into the Santa Cruz County jail.

"I've never heard of anything like that happening in my 43 years in law enforcement in Nogales," says Sheriff Tony Estrada.

The spillover is everywhere. In the past year in Pinal County, Sheriff Paul Babeu reports that violent crimes related to drug-smuggling include two-officer involved shootings, two cartel hits in Casa Grande, the killing of two illegals transporting drugs, and the shooting of a Phoenix kidnap victim unable to meet a ransom demand. In Maricopa County, authorities recently confirmed that a man found beheaded in a Chandler apartment in October had been murdered for stealing from a cartel.

In Cochise County, Sheriff Larry Dever counts the unsolved March 27, 2010, murder of rancher Rob Krentz as spillover, along with break-ins and home invasions along the Chiricahua Corridor above Douglas.

The toll from these crimes, he says, falls on more than the immediate victims and involves more than material possessions. They damage the sense of security and well-being of everyone in the area. And violent episodes in Mexico compound the impact, because so many Southern Arizonans have friends, acquaintances or family in Sonora.

"These events are changing lives forever, and I count that as spillover, too," says Dever.

The 262-mile-wide Tucson Sector is prime spillover country, especially on federal lands. Last November, the Government Accountability Office, the watchdog arm of Congress, issued a report stating that Border Patrol agents had arrested 91,000 aliens on federal land in Arizona in fiscal 2009.

But entries outpaced arrests by three to one. The report stated that not only is illegal cross-border activity "a significant threat" to federal lands in Arizona, but it "may be increasing."

Another GAO document, released in mid-February, said Border Patrol had achieved "varying levels of operational control"—defined as a high likelihood of crossers being apprehended—over only 44 percent of the roughly 2,000-mile Southwest border.

The good news is that the border land under control increased by 126 miles per year from 2005 to 2010. About 68 percent of the Tucson Sector is under control—but that still leaves 32 percent, or about 86 miles, relatively open to illegal activity.

The drug cartels are exploiting the gaps, and they're a different beast from a few years ago, says Richard Valdemar, a retired Los Angeles County sheriff's detective now living in Bullhead City. They've become more militarized, and include elements of former police and the Mexican army and marines.

"Having a military presence on the border loyal to the cartels is a whole different thing from a law-enforcement presence," says Valdemar, former supervisor of Los Angeles County's prison gang unit who now works training police on gang activities. "We're not talking about some guy with a Saturday-night special popping a few rounds off at Border Patrol."

On the weaponry, Kirkham agrees: "It's amazing how much firepower they have. We're talking AK-47s; we're talking MAC-10s, fully auto."

Valdemar says this militarization—and the apparent end to the taboo against killing American law enforcement—requires a strong response to stop incursions at our border. Instead, he says, we erect signs warning citizens about

traveling on heavily trafficked federal lands, or we close lands to the public because of the danger.

At present, as GAO noted, Organ Pipe Cactus National Monument is 55 percent closed, and the chief ranger at the Sonoran Desert National Monument proposed closing that entire 480,000-acre preserve, on the Interstate 8 smuggling corridor. Border sheriffs call those lands "almost America."

"To the cartels, that's weakness," Valdemar says. "They already think we're decadent, soft and unmanly. Then to cede parts of our own country only encourages them to be more violent. They think we're fucking punks."

As for the future, Valdemar, Dever and Kirkham all say they expect more spillover violence.

"There are certainly going to be more incidents, because we now have interdiction efforts meeting it head-on," says Kirkham. "Whether it's human beings or drugs, they're becoming more desperate to get their product across, one way or another."

Currents Feature [archive](#)

Facebook Recommendations

-  **SB 1321, Featuring the Stick-Bite Sheriff Dupelle Clause | The Range: The Tucson Weekly's Daily Dispatch**
135 people shared this.
-  **Local Students, Musicians Join the Fight Against Human Trafficking | The Range: The Tucson Weekly's Daily Dispatch**
33 people shared this.
-  **City Week | City Week | Tucson Weekly**
25 people shared this.
-  **Gabriel Ayala Trio | Tubac Presidio State Historic Park | Music | Tucson Weekly**
25 people shared this.

 [Facebook social page](#)

Fox News: March 31, 2011

My good friends, Maricopa County is not a border county. Yet, relatively untrained civilians worked with the Maricopa County Sheriff's Office to make significant border related arrests. Obviously, they only interdicted a fraction of the illegal activity present north of the border counties.

Zack Taylor, NAFBPO.org



Sheriff Calls "Operation Desert Sky" a Success

Updated: Thursday, 31 Mar 2011, 6:47 PM MDT
Published: Thursday, 31 Mar 2011, 8:47 PM MDT

PHOENIX - Just days after Maricopa County Sheriff Joe Arpaio announced a plan to have posse members search for drugs by air, he's calling the mission a success.

On Monday, Sheriff Arpaio announced "Operation Desert Sky."

About 30 posse members volunteered their time and aircraft to help deputies patrol the desert.

On Thursday, Arpaio showed off the mission's haul so far: more than a ton of marijuana, 116 arrests.

Six of those arrests were illegal immigrants smuggling drugs.

"So it is a big problem when you talk about drugs (slash) illegal immigration, it's getting more connected every day," said Arpaio.

Of the 115 arrests, 80 of the suspects were illegal immigrants.

monitor cash used to ship 22 tons of cocaine.

More shocking, and more important, the bank was sanctioned for failing to apply the proper anti-laundering strictures to the transfer of \$378.4bn – a sum equivalent to one-third of Mexico's gross national product – into dollar accounts from so-called *casas de cambio* (CDCs) in Mexico, currency exchange houses with which the bank did business.

"Wachovia's blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations," said Jeffrey Sloman, the federal prosecutor. Yet the total fine was less than 2% of the bank's \$12.3bn profit for 2009. On 24 March 2010, Wells Fargo stock traded at \$30.86 – up 1% on the week of the court settlement.

The conclusion to the case was only the tip of an iceberg, demonstrating the role of the "legal" banking sector in swilling hundreds of billions of dollars – the blood money from the murderous drug trade in Mexico and other places in the world – around their global operations, now bailed out by the taxpayer.

At the height of the 2008 banking crisis, Antonio Maria Costa, then head of the United Nations office on drugs and crime, said he had evidence to suggest the proceeds from drugs and crime were "the only liquid investment capital" available to banks on the brink of collapse. "Inter-bank loans were funded by money that originated from the drugs trade," he said. "There were signs that some banks were rescued that way."

Wachovia was acquired by Wells Fargo during the 2008 crash, just as Wells Fargo became a beneficiary of \$25bn in taxpayers' money. Wachovia's prosecutors were clear, however, that there was no suggestion Wells Fargo had behaved improperly; it had co-operated fully with the investigation. Mexico is the US's third largest international trading partner and Wachovia was understandably interested in this volume of legitimate trade.

José Luis Marmolejo, who prosecuted those running one of the *casas de cambio* at the Mexican end, said: "Wachovia handled all the transfers. They never reported any as suspicious."

"As early as 2004, Wachovia understood the risk," the bank admitted in the statement of settlement with the federal government, but, "despite these warnings, Wachovia remained in the business". There is, of course, the legitimate use of CDCs as a way into the Hispanic market. In 2005 the World Bank said that Mexico was receiving \$8.1bn in remittances.

During research into the Wachovia Mexican case, the *Observer* obtained documents previously provided to financial regulators. It emerged that the alarm that was ignored came from, among other places, London, as a result of the diligence of one of the most important whistleblowers of our time. A man who, in a series of interviews with the *Observer*, adds detail to the documents, laying bare the story of how Wachovia was at the centre of one of the world's biggest money-laundering operations.

Martin Woods, a Liverpudlian in his mid-40s, joined the London office of Wachovia Bank in February 2005 as a senior anti-money laundering officer. He had previously served with the Metropolitan police drug squad. As a detective he joined the money-laundering investigation team of the National Crime Squad, where he worked on the British end of the Bank of New York money-laundering scandal in the late 1990s.

Woods talks like a police officer – in the best sense of the word: punctilious, exact, with a roguish humour, but moral at the core. He was an ideal appointment for any bank

Wells Fargo. "In consideration of Wachovia's remedial actions," concludes the prosecutor, "the United States shall recommend to the court ... that prosecution of Wachovia on the information filed ... be deferred for a period of 12 months."

But while the federal prosecution proceeded, Woods had remained out in the cold. On Christmas Eve 2008, his lawyers filed tribunal proceedings against Wachovia for bullying and detrimental treatment of a whistleblower. The case was settled in May 2009, by which time Woods felt as though he was "the most toxic person in the bank". Wachovia agreed to pay an undisclosed amount, in return for which Woods left the bank and said he would not make public the terms of the settlement.

After years of tribulation, Woods was finally formally vindicated, though not by Wachovia: a letter arrived from John Dugan, the comptroller of the currency in Washington DC, dated 19 March 2010 – three days after the settlement in Miami. Dugan said he was "writing to personally recognise and express my appreciation for the role you played in the actions brought against Wachovia Bank for violations of the bank secrecy act ... Not only did the information that you provided facilitate our investigation, but you demonstrated great personal courage and integrity by speaking up. Without the efforts of individuals like you, actions such as the one taken against Wachovia would not be possible."

The so-called "deferred prosecution" detailed in the Miami document is a form of probation whereby if the bank abides by the law for a year, charges are dropped. So this March the bank was in the clear. The week that the deferred prosecution expired, a spokeswoman for Wells Fargo said the parent bank had no comment to make on the documentation pertaining to Woods's case, or his allegations. She added that there was no comment on Sloman's remarks to the court; a provision in the settlement stipulated Wachovia was not allowed to issue public statements that contradicted it.

But the settlement leaves a sour taste in many mouths – and certainly in Woods's. The deferred prosecution is part of this "cop-out all round", he says. "The regulatory authorities do not have to spend any more time on it, and they don't have to push it as far as a criminal trial. They just issue criminal proceedings, and settle. The law enforcement people do what they are supposed to do, but what's the point? All those people dealing with all that money from drug-trafficking and murder, and no one goes to jail?"

One of the foremost figures in the training of anti-money laundering officers is Robert Mazur, lead infiltrator for US law enforcement of the Colombian Medellín cartel during the epic prosecution and collapse of the BCCI banking business in 1991 (his story was made famous by his memoir, *The Infiltrator*, which became a movie).

Mazur, whose firm Chase and Associates works closely with law enforcement agencies and trains officers for bank anti-money laundering, cast a keen eye over the case against Wachovia, and he says now that "the only thing that will make the banks properly vigilant to what is happening is when they hear the rattle of handcuffs in the boardroom".

Mazur said that "a lot of the law enforcement people were disappointed to see a settlement" between the administration and Wachovia. "But I know there were external circumstances that worked to Wachovia's benefit, not least that the US banking system was on the edge of collapse."

What concerns Mazur is that what law enforcement agencies and politicians hope to achieve against the cartels is limited, and falls short of the obvious attack the US could

make in its war on drugs: go after the money. "We're thinking way too small," Mazur says. "I train law enforcement officers, thousands of them every year, and they say to me that if they tried to do half of what I did, they'd be arrested. But I tell them: 'You got to think big. The headlines you will be reading in seven years' time will be the result of the work you begin now.' With BCCI, we had to spend two years settling it up, two years doing undercover work, and another two years getting it to trial. If they want to do something big, like go after the money, that's how long it takes."

But Mazur warns: "If you look at the career ladders of law enforcement, there's no incentive to go after the big money. People move every two to three years. The DEA is focused on drug trafficking rather than money laundering. You get a quicker result that way – they want to get the traffickers and seize their assets. But this is like treating a sick plant by cutting off a few branches – it just grows new ones. Going after the big money is cutting down the plant – it's a harder door to knock on, it's a longer haul, and it won't get you the short-term riches."

The office of the comptroller of the currency is still examining whether individuals in Wachovia are criminally liable. Sources at FinCEN say that a so-called "look-back" is in process, as directed by the settlement and agreed to by Wachovia, into the \$378.4bn that was not directly associated with the aircraft purchases and cocaine hauls, but neither was it subject to the proper anti-laundering checks. A FinCEN source says that \$20bn already examined appears to have "suspicious origins". But this is just the beginning.

Antonio Maria Costa, who was executive director of the UN's office on drugs and crime from May 2002 to August 2010, charts the history of the contamination of the global banking industry by drug and criminal money since his first initiatives to try to curb it from the European commission during the 1990s. "The connection between organised crime and financial institutions started in the late 1970s, early 1980s," he says, "when the mafia became globalised."

Until then, criminal money had circulated largely in cash, with the authorities making the occasional, spectacular "sting" or haul. During Costa's time as director for economics and finance at the EC in Brussels, from 1987, inroads were made against penetration of banks by criminal laundering, and "criminals' money started moving back to cash, out of the financial institutions and banks. Then two things happened: the financial crisis in Russia, after the emergence of the Russian mafia, and the crises of 2003 and 2007-08.

"With these crises," says Costa, "the banking sector was short of liquidity, the banks exposed themselves to the criminal syndicates, who had cash in hand."

Costa questions the readiness of governments and their regulatory structures to challenge this large-scale corruption of the global economy: "Government regulators showed what they were capable of when the issue suddenly changed to laundering money for terrorism – on that, they suddenly became serious and changed their attitude."

Hardly surprising, then, that Wachovia does not appear to be the end of the line. In August 2010, it emerged in quarterly disclosures by HSBC that the US justice department was seeking to fine it for anti-money laundering compliance problems reported to include dealings with Mexico.

The best and worst of FOIAgate

By Mike Riggs - The Daily Caller 4:00 PM 03/30/2011

1.) DHS attorney Reid Cox attempted to "steal" evidence from a FOIAgate hearing (page 107)

After months of investigating, the House Oversight Committee has released its report on allegations of FOIA abuse in the Department of Homeland Security. At 180 pages (PDF), "A New Era of Openness? How and Why Political Staff at DHS Interfered with the FOIA Process" is chock-full of testimony and evidence to make your jaw drop. In order to help our readers get to the juiciest parts, The Daily Caller has compiled a list of the most fascinating facts from the committee's report, including evidence of incompetence, theft, and intentional deceit.

"After a witness interview on March 4, 2011, a Department lawyer attempted to remove Committee documents from the interview room. All documents entered as exhibits during the interview were obtained by the Committee in the course of its investigation into political interference with the Department's FOIA function," reads the Oversight Committee's report.

"After the interview concluded and the court reporter packed her equipment, Attorney Reid Cox attempted to leave the room with the Committee's exhibits in his bag. Committee staff asked Cox if he had the exhibits in his bag, and he confirmed that he did. Cox was admonished by Republican and Democratic staff that [sic] he was not permitted to leave with the exhibits. Democratic staff advised Cox that the exhibits are Committee documents and as such, they are the property of the Committee and cannot be removed without permission. Cox explained that the Department disagreed with that position and he moved toward the door."

Cox later returned to the committee room to give the following statement:

As counsel for DHS, I object to counsel for the committee's refusal to allow exhibits they had shown to the witness and that all are e-mail messages from DHS personnel to DHS personnel on their official DHS-issued accounts and use of e-mail services. These are not committee records, these are, rather, DHS records; and so there is no reason the committee should be able to prevent us from taking them, since they have shown them to the witness and used them in this interview.

I mean, I guess I would note also for the record that because the committee – because the records have no origination nor creation or editing by the committee, other than redactions, it seems to me the committee has no reason to be able to exercise any control over those documents, and that they retain the nature of being DHS documents.

2.) Napolitano's personal FOIA team has no idea how FOIA works (page 24)

Front office staff know very almost nothing about the Freedom of Information Act according to various testimonies.

One front office staffer described her colleagues' grasp of the act thusly: "And they [sic] were questions, you know, what does this exemption mean? What does this processing mean? Questions about – again, the weekly report standard was the same since 2008, but asking, this request came in on Tuesday, when is the response due? When are we going to send the response out? So, again, it was a basic explanation of what the Freedom of Information Act requires and what it does not require."

Meanwhile, a career FOIA staffer explained to the Oversight Committee that the Front Office wanted to be able to redact or deny FOIA requests based on the politics of the requester. "Do you know anything about this investigation or why it is of interest/significant," a Napolitano aide asked a career FOIA staffer. The career FOIA staffer responded that requesters' identities are moot, telling Oversight, "Typically disclosure to one is a disclosure to all. So why a requester wants them doesn't – can't factor into our analysis of whether or not they are releasable. Whether or not the requester falls – the identity of the requester, for example, doesn't matter with respect to releasability."

When the front office's questions persisted, a career FOIA staffer scheduled a meeting to help the political staff learn more about FOIA. The political staff treated the meeting as a joke. "This woman is a lunatic," wrote Napolitano staffer Amy Schlossman to colleague John Sandweg. "You have to attend this mtg—if nothing else, for the comic relief."

3.) Secretary Napolitano's political staff encourage FOIA underlings to deceive their direct supervisors (page 88)

Mark Dorgan is a career DHS employee and a FOIA specialist. His boss, Catherine Papol, is a FOIA chief, meaning she supervises the FOIA process for career DHS employees (career means "non-political").

"In January 2010, Dorgan was detailed to the Office of the Secretary to serve as the point of contact for FOIA requests with Front Office equities (Political employees and those closest to Napolitano comprise the front office.) Dorgan's move to the Front Office was intended to help streamline the Front Office processing, decrease delays, and help answer Front Office questions on FOIA."

Shortly after joining Napolitano's team, Dorgan requested a transfer. According to Papoi, Dorgan was repeatedly asked by Napolitano's team to route requests around his FOIA colleagues in order not to raise their suspicions about inappropriate redactions. "They repeatedly asked him to go around my office, to not make waves, statements of that nature," Papoi testified.

In July 2010, after just six months working in the front office at DHS, Dorgan was transferred back to his old job.

Read more: <http://dailycaller.com/2011/03/30/the-best-and-worst-of-foiagate/#ixzz1IFs1yb8T>

Mr. BISHOP. Thank you very much.
Mr. Chilton, you are recognized for 5 minutes.

STATEMENT OF JIM CHILTON

Mr. CHILTON. Thank you, Mr. Chairman.

I am a rancher, and ranchers shoot straight. And it was really upsetting to sit here and listen to the bureaucratic double-talk by the Forest Service, Fish and Wildlife—the BLM and the Border Patrol.

I live on the border. Four miles of my ranch is the international border. The border is not signed or marked and consists of a five-strand barbed-wire fence, similar to the ones one sees along highways. There is no wall, and you would never know it was the international border by viewing it. But the cartels know.

We strongly believe that the Border Patrol must control the border at the border, not 10, 20, or 100 miles inside America. We have heard that—and it was a few years ago—that the Border Patrol found several backpacks near our ranch which contained Yemeni passports. We wonder whether the owners of the backpacks were tourists or terrorists.

We must protect the national security above all else. National security must not be trumped by environmental laws or Federal land managers. It would seem impossible to win World War II if the military had been forced to comply with current laws, such as the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act, and other acts enacted by Congress after World War II. The construction of thousands of military bases and airfields and port facilities inside the United States during the war would have been delayed for years.

Wouldn't it make sense to control the border at the border by completing the border fence? There is no border fence from Nogales to Sasabe of about 50, 60 miles. And wouldn't it make sense to have functioning 21st-century communications near the border, installing cameras and sensors and using drones and helicopters and satellites and other proven technologies developed by the military?

The Border Patrol needs to be able to construct roads, helicopter pads, and place forward operation bases at very close or next to the border and be free of impediments caused by environmental laws and Federal land managers. Land managers must not be allowed to interfere with the access of the essential use of land to protect we, the citizens.

Recently, environmental mitigation diversions resulted in \$50 million of Border Patrol funds being transferred to the U.S. Fish and Wildlife Service for alleged environmental damage. The real environmental damage is being caused by drug and people traffickers, whose impact is enormously more harmful to the border than the Border Patrol.

We are told by the Border Patrol that approximately 20 percent of the undocumented border crossers have criminal records. Criminals who engage in human and drug transportation find it convenient to use wildlife refuges and wilderness areas as easy corridors to hide and travel. My fellow rancher, Rob Krentz, was murdered, with the killer escaping back to Mexico through the San Bernardino National Refuge. Emphatically we oppose the designa-

tion of any and all new wilderness areas, wildlands, or refuges within 100 miles of the southern border. Such designations are virtual gifts to Mexican cartels.

It is outrageous that hundreds of Mexican cartel scouts, with the best binoculars, night vision, and encrypted satellite phones, have been found to occupy the tops of mountains near our ranch and near our house and dozens of miles inside the border. As a consequence, the foreign cartel scouts know where the Border Patrol is located at all times and can then carefully guide AK-47-gun-packing druggers and people smugglers through the mountains and valleys without being spotted by the Border Patrol.

We have been burglarized twice. Ranchers in the border area cannot leave their houses unguarded for a few hours, since their homes are likely to be broken into if someone is not there. We live with weapons near our bed. Our doors have weapons next to them. We have weapons in our vehicles, and we attach weapons in our scabbards on our saddles.

The Border Patrol must control the border at the border so that citizens' civil rights, property rights, and human rights are protected. Ranchers along the border cannot have peace of mind until the border is, in fact, secured.

[The prepared statement of Mr. Chilton follows:]

132

Statement by Jim Chilton

Chilton Ranch, LLC

With regard to The National Security and Federal Lands
Protection Act

Submitted to

**United States House of Representatives - a joint hearing of the Natural
Resources Committee and the Oversight and Government Reform Committee**

April 15, 2011

James K. Chilton, Jr.

April 15, 2011

My name is Jim Chilton. I am a 5th generation Arizona rancher. My address is Box 423, 17691 W. Chilton Ranch Road, Arivaca, Arizona 85601. Arivaca is approximately 55 miles southwest of Tucson, Arizona in native mesquite and oak grassland grazed for over 300 years since the explorer priest Fr. Kino brought cattle ranching to the area. The north end of our 50,000-acre ranch is adjacent to the town of Arivaca. The ranch continues south to the **international border with Mexico**. The ranch includes private property, State School Trust land, three federal grazing permits within the Coronado National Forest and a private land farm.

We have been in the cattle business in Arizona for over 125 years preserving our western ranching customs, culture and heritage dating back to our pioneering ancestors who settled in Arizona Territory in the 1880's. Our multi-generational responsibility has given us a long-term view of the necessity to be excellent stewards of the grasslands and water resources we respectfully manage in Arizona. The Arizona Cattle Growers' Association presented me with the Cattleman of the Year award in 2002.

However, we are challenged by the fact that **4 miles of the southern boundary** of our ranch is the international border. The border is not signed or marked and consists of a five-strand barbed wire fence similar to most ranch fences. Our ranch house and headquarters are located 19 miles from the border. We have been burglarized twice by drug packers on their way back to Mexico. Our losses have been great and our sense of security in our own country has been severely damaged. We live with weapons near our bed, at the doors, in our vehicles and attached to our saddles.

I am pleased to testify on behalf of The National Security and Federal Lands Protection Act addressing the need to strengthen the U. S. Border Patrol's ability to carry out its mission to manage, control and protect U.S. borders at and between official ports of entry. We believe the Border Patrol must be enabled to keep terrorists and terrorist weapons out of the United States. In addition, the Border Patrol, together with other local, state and federal agencies, must not be unduly hampered in their efforts to stop drug runners and undocumented aliens from entering the United States.

It would have been impossible to win World War II if the military had been forced to comply with current laws such as the National Environmental Policy Act, Endangered Species Act, Clean Water Act and dozens of other laws enacted by Congress after World War II. The construction of thousands of military bases, airfields, port facilities, training facilities and ammunition storage areas inside the United States would have been delayed for years. There is no way the war would have been won if the military had been obliged to complete endless Environmental Impact Statements, fund or carry out mitigation projects and suffer through years of radical environmental corporations' lawsuits and appeals. We must not tie up our national defense at the border with red tape.

National Security demands that drug traffickers, terrorists and undocumented aliens be prevented from entering the United States at the border. Currently, on our ranch these people often travel 10 to 20 miles inside our country before the Border Patrol attempts to apprehend them. We have heard that, a few years ago, the Border Patrol found seven backpacks near our ranch which contained Yemeni Passports. Were the owners of the backpacks tourists or terrorists? We understand that significant numbers of persons apprehended--the ones who are caught--are not just Mexican citizens looking for work. The entrants include others with various motives. We strongly believe the Border Patrol must CONTROL THE BORDER AT THE BORDER.

The Border Patrol reported to the Government Accountability Office that by October 2010 it had control of 873 miles of the nearly 2,000 miles of the Southwest border, or 44%. This is not an acceptable situation for those of us who live along the other thousand-plus miles, nor is it a reassuring report when one considers that terrorists and criminals both have enormous areas through which they can pass. Wouldn't it make sense to CONTROL THE BORDER AT THE BORDER by completing the border fence, establishing functioning 21st century communications, installing cameras and sensors, using drones, helicopters, satellites and other proven technologies developed by the military at the border rather than to trying to apprehend illegal crossers ten and 20 miles and often 70 to 100 miles inside the border?

Of course, back-up personnel should be deployed for a second and third line of defense to catch crossers who manage to penetrate border controls. As a practical matter, with about 22,500 people guarding our borders (21,000 Border Patrol and 1,500 National Guard) one third might be deployed along the Canadian Border while the balance could guard the southern border. As a consequence, there could be at least 5 or 6 personnel per mile stationed at or very near the border. Past strategies of letting border crossers of all kinds freely travel well into the United States prior to any attempted interdiction *have left us and our neighboring ranchers and communities in a no-man's land.*

The Border Patrol needs to be able to construct roads and place forward operating bases at or very close to the border to CONTROL THE BORDER AT THE BORDER. Currently, the Tucson, Arizona Sector personnel report to work in downtown Tucson, check out weapons and vehicles and then drive between one and a half and three hours to reach the border. The waste of time and the high cost of each officer traveling to and from the border in his or her individual Border Patrol vehicle are outrageous. The largest number of vehicles on the 23-mile Arivaca Road are Border Patrol vehicles going to and from shifts of duty. Perhaps a forward operating base in Arivaca, Sasabe and other places near the border would be a step forward. In summary, the Border Patrol must be able to construct the remainder of the promised fence, construct appropriate access roads, reduce the unacceptable daily commute from a distant city, and construct forward operating bases now without the burden and limitations resulting from existing environmental laws which are often given higher priority than national security.

Checkpoints on highways 30 and 40 miles north of the border should not be permanent since terrorists, druggers and undocumented aliens simply bypass the permanent locations on foot or on secondary roads. Systematically changing the location of checkpoints creates an element of surprise. Permanent checkpoints have proven to funnel illegal traffic into nearby communities forcing residents of border communities including Arivaca, Tubac, Green Valley, and Rio Rico to contend with shootings, robberies, and threatening trespassers. We are told by the Border Patrol that approximately 20% of the undocumented border crossers have criminal records or one in five is a known MS-13 gangster, burglar, murderer or just a common criminal.

There also needs to be a serious look into conflicts between the Border Patrol's mission and the power of other federal land managers to put their agendas ahead of national security. One example of appalling funding losses faced by the Border Patrol is that Homeland Security had to give US Fish and Wildlife Service \$50 million of its funds (which were of course deficit funds

borrowed from China in the first place) so US Fish & Wildlife Service could study bats and other wildlife. This interagency agreement was for “mitigation” of the impacts of building the border fence. We find it difficult to understand how bats can be affected by a fence and wonder how such low-priority agendas have been empowered to divert appropriations from national security. The scientific intent of studying bats should be evaluated and prioritized openly in national science funding or Fish and Wildlife funds, not hidden where it raises serious questions of national priorities.

Upon some research we find that the initial \$6.8 million “border security fence mitigation projects” include:

Projects to Benefit Environment on the Southwest Border

10/13/2010

Organ Pipe Cactus NM Biological Opinion	Arizona	\$980,000
San Bernardino Valley Mitigation	Arizona	\$657,480
Río Yaqui Fish Studies	Arizona	\$441,250
Peninsular Bighorn Sheep Study	California	\$230,000
Coronado NM Agave Restoration	Arizona	\$274,873
Northern Aplomado Falcon Reintroduction and Habitat Restoration	New Mexico	\$499,700
Border-wide Bat Conservation	Arizona	\$925,000
Sasabe Biological Opinion	Arizona	\$2,119,000

<http://tucsoncitizen.com/view-from-baja-arizona/2010/10/18/highway-robbery-federal-style-how-us-fish-wildlife-gets-funds-to-study-bats-because-us-customs-and-border-protection-built-a-fence-on-the-border/>

First, the title, “Projects to Benefit Environment on the Southwest Border” is preposterous in the face of the critical need for actually improving the environment on the southwest border by reducing the cross-country driving by drug packers and the garbage piles mounting in virtually every secluded border canyon. Second, for what purpose is the balance of the \$50 million going to be spent (**\$43,200,000**). Are these moneys just waiting for diversion to another “study?” Could these funds be recovered to apply to reducing the national debt or dedicated to enhancing border infrastructure, roads and hiring more border patrol.

Our ranching operation has been the proud recipient of two environmental awards and the subject of articles in conservation magazines. We monitor and manage our grasslands and riparian areas to maintain and enhance their biodiversity and productivity. The constant cross-country driving, and attendant damage directly caused by illegal vehicle traffic, visibly affect the environment miles inside the border. This situation is not confined to our ranch but is absolutely typical on every border ranch. To address a bit of the problem, hunting groups conduct huge garbage collection drives on border ranches each year just to make a dent in the plastic milk jugs, plastic bags and unmentionable other items littering the border area. If the Border Patrol CONTROLLED THE BORDER AT THE BORDER the environment 50 and 100 miles into America would no longer suffer this genuine abuse.

Consequently, since we see REAL environmental damage resulting from the failure to CONTROL THE BORDER AT THE BORDER, we view bat studies and all the rest of the supposed "projects to benefit the border environment" with a highly dubious eye. It appears to me that U.S. Fish and Wildlife should be funded by Congress directly to carry out those aspects of its mission deemed genuine priorities and should NOT be statutorily authorized to use a back door to wring money out of other agencies, money that you voted for on the belief it would advance national security and not be diverted to other purposes.

Another serious concern facing border ranchers and residents of border communities is that criminals engaged in human and drug transportation find it convenient to use Wildlife Refuges and Wilderness areas as easy corridors to hide and travel. My fellow rancher, Rob Krentz, was murdered with the killer escaping back to Mexico through the San Bernardino National Refuge. Emphatically, we oppose the designation of any and all new Wilderness Areas, Wild Lands or Refuges within 100 miles of the southern border. Such designations are virtual gifts to Mexican drug cartels.

In addition, the Border Patrol must have the ability to immediately construct helicopter landing pads on mountain tops and any other locations so that Mexican cartel scouts occupying mountain tops inside the United States can be easily and quickly rooted out. Waiting for months or years for NEPA analysis, Endangered Species Act concerns and slow federal land management decisions is not compatible with the Border Patrol mission to CONTROL THE BORDER AT THE BORDER.

I have conducted several interviews with ranchers in Cochise County with respect to instances when Federal Land managers have caused serious delays for the Border Patrol. In every interview, ranchers described months of delays in the construction of the border wall. More specifically, the Bureau of Land Management delayed construction of parts of the wall for about six months while archeological surveys were conducted. In addition, the BLM's two-mile wide and fifty-mile long San Pedro National Conservation Area (along both sides of the San Pedro River) excludes any mechanical entry or exit resulting in a druggie's dream path to enter Arizona and walk unhindered and hide in heavy vegetation for 50 miles. The only way the Border Patrol can patrol that contraband highway is on foot or horseback. The net result is that the Border Patrol tries to patrol the outside boundary of the National Conservation Area, an extra approximately 100 miles of difficult terrain.

Along other sections of the international border east of Douglas, Arizona brush and trees are so thick that it is nearly impossible for the Border Patrol to see border crossers as they enter the United States. Attempts have been made to clear miles of brush and trees, but the NEPA process and other rules and regulations have thus far prevented the clearing of the land just north of the border.

Unfortunately, Mexican cartel scouts, with the best binoculars, night vision and encrypted satellite phones, have been found to occupy the tops of mountains near our ranch headquarters and other locations all along the border and dozens of miles inside Arizona. As a consequence, the foreign cartel scouts know where the Border Patrol is located at all times and can then carefully guide the druggers and people smugglers through the mountains and valleys without being spotted. Not only do the scouts know where the Border Patrol is at all times, but they can observe me, my brother and our three cowboys riding horseback conducting our daily ranch work. Our houses are also easily monitored from mountains surrounding our headquarters. The cartel scouts must be immediately taken out of action by force if the border is to be secured.

I have an acquaintance who is a retired federal worker whose house has been burglarized 10 times by illegal border crossers on their way back to Mexico after having dumped their drug loads. We have been burglarized twice with serious losses. Many of our neighbors have suffered similar loss of security and property. Most all ranchers in the border area can not leave their houses since experience demonstrates that their homes will certainly be broken into if someone is not there. The Border Patrol must CONTROL THE BORDER AT THE BORDER so that citizens' civil rights, property rights and human rights are protected. Ranchers along the border can not have peace of mind until the border is secured.

Mr. BISHOP. Thank you. I appreciate that.

Just so you know, there is a vote that is going on right now, and what we have told Members is to go quickly vote and then come back. So we are not walking out of this. There will be people coming back here again.

Ms. Mittal.

STATEMENT OF ANU MITTAL

Ms. MITTAL. Chairman Chaffetz and members of the committees, I am very pleased to be here to participate in your joint hearing on environmental laws and Border Patrol operations.

As you know, 40 percent of the southwest border is Federal land, managed by the Departments of the Interior and Agriculture. Even though these lands are characterized by remote and rugged terrain, they have not deterred illegal border crossers, whose activities have damaged the environment by creating thousands of miles of illegal trails, dumping tons of trash, and causing wildfires to escape on these lands.

Border Patrol and land agency officials both recognize that stopping illegal traffic as close to the border as possible is essential not only to protect national security but also to protect the natural and cultural resources on Federal lands.

Last fall, GAO issued two reports on Border Patrol operations on Federal lands along the southwest border. My testimony today will summarize the key findings of both of these reports. These reports were prepared collaboratively by staff in GAO's Homeland Security and Justice team and GAO's Natural Resources and Environment team.

Accompanying to me today is Rich Stana, the director who leads GAO's work on border security issues.

First, we found that Border Patrol must comply with various land management laws such as NEPA, ESA, and the Wilderness Act when conducting operations on Federal lands. Under these laws, Border Patrol, like other Federal agencies, must obtain permission from the land agencies before agents can undertake activities such as maintaining roads and installing surveillance equipment on Federal lands.

To help implement these laws, Border Patrol and the land agencies have developed several interagency agreements. We heard today about the 2006 MOU. And these have led to numerous instances of enhanced cooperation and better access for Border Patrol on some Federal lands.

However, we also found instances where, despite these interagency agreements, land management laws had impacted Border Patrol's access to Federal lands. For example, 14 of the 26 stations, as was earlier mentioned, responsible for patrolling Federal lands along the southwest border told us that they sometimes face delays because of the length of time it takes land managers to complete NEPA requirements before a permit can be issued.

We found that some of these delays could have been reduced if Border Patrol had used its own resources to perform required NEPA environmental assessments, and other delays could have been reduced if the agencies had conducted programmatic environmental impact statements for the region, as allowed under the act.

We recommended that the agencies take these steps to avoid such delays in the future.

In addition, five stations told us that, because of the ESA and the presence of endangered species, they had to change the timing or location of their ground and air patrols. However, they also told us that these changes had not affected their ability to detect or apprehend illegal aliens on Federal lands.

Second, we found that while land management laws had caused delays and restrictions, they had not impacted the operational control status for 22 of the 26 Border Patrol stations along the southwest border. Instead, we found that 18 of these stations reported that the remoteness and ruggedness of the terrain and dense vegetation had affected their level of operational control on Federal lands more than access delays or restrictions caused by the land management laws.

According to these stations, the key to obtaining operational control on Federal lands on the southwest border is to have a sufficient number of agents, have access to additional technology, and have additional tactical infrastructure. They did not identify changing the environmental laws as a key requirement.

Four stations along the southwest border did tell us that their ability to achieve or maintain operational control for Federal lands under their jurisdiction had been affected by land management laws. However, only two of these stations had requested additional resources to facilitate increased or timelier access to regain operational control. In both of these cases, their requests were denied by senior Border Patrol officials because of other higher agency priorities.

Finally, 7 years ago, we were very critical of the lack of information sharing and communication that existed between the Border Patrol and the land agencies. In 2010, however, we found that the agencies had made significant progress in some areas as a result of the implementation of various interagency agreements, but we also found that they could still take additional steps to ensure that coordination of threat information occurs in a timely manner and that agencies have compatible radio communications. The agencies are currently taking actions to implement our recommendations.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you have.

[The prepared statement of Ms. Mittal follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, and the Subcommittee on National Security, Defense, and Foreign Operations, Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
Expected at 9:30 a.m. EDT
Friday, April 15, 2011

SOUTHWEST BORDER

**Border Patrol Operations
on Federal Lands**

Statement of Anu K. Mittal, Director
Natural Resources and Environment



April 15, 2011

SOUTHWEST BORDER

Border Patrol Operations on Federal Lands



Highlights of GAO-11-573T, a statement before the Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, and the Subcommittee on National Security, Defense, and Foreign Operations, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

To stem the flow of illegal traffic from Mexico into the United States over the last 5 years along the U.S. southwestern border, the Border Patrol has nearly doubled the number of agents on patrol, constructed hundreds of miles of border fences, and installed a variety of surveillance equipment. About 40 percent of these border lands are managed by the Departments of the Interior and Agriculture, and coordination and cooperation between Border Patrol and land management agencies is critical to ensure national security. As requested, this statement summarizes GAO's findings from two reports issued on southwest border issues in the fall of 2010. The first report, GAO-11-38, focused on the key land management laws that Border Patrol must comply with and how these laws affect the agency's operations. The second report, GAO-11-177, focused on the extent to which Border Patrol and land management agencies' law enforcement units share threat information and communications.

What GAO Recommends

This statement contains no new recommendations. In its 2010 reports, GAO made several recommendations to the Departments of Agriculture, Homeland Security, and the Interior to help expedite Border Patrol's access to federal lands and recommended that the agencies take actions to improve communication and information sharing. The departments concurred with GAO's recommendations in those reports.

View GAO-11-573T or key components. For more information, contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

What GAO Found

When operating on federal lands, Border Patrol must comply with the requirements of several federal land management laws, including the National Environmental Policy Act, Wilderness Act, and Endangered Species Act. Border Patrol must obtain permission or a permit from federal land management agencies before agents can undertake operations, such as maintaining roads and installing surveillance equipment, on federal lands. To fulfill these requirements, Border Patrol generally coordinates with land management agencies through national and local interagency agreements. The most comprehensive agreement is a 2006 memorandum of understanding between the Departments of Homeland Security, Agriculture, and the Interior that is intended to guide Border Patrol activities on federal lands.

Border Patrol's access to some federal lands along the southwestern border has been limited because of certain land management laws, according to 17 of 26 patrol agents-in-charge that GAO surveyed. For example, these patrol agents-in-charge reported that implementation of these laws had resulted in delays and restrictions in their patrolling and monitoring operations. Specifically, 14 patrol agents-in-charge reported that they had been unable to obtain a permit or permission to access certain areas in a timely manner because of the time it takes for land managers to conduct required environmental and historic property assessments. The 2006 memorandum of understanding directs the agencies to cooperate and complete, in an expedited manner, all compliance required by applicable federal laws, but such cooperation has not always occurred. For example, when Border Patrol requested permission to move surveillance equipment, it took the land manager more than 4 months to conduct the required historic property assessment and grant permission, but by then illegal traffic had shifted to other areas. Despite the access delays and restrictions experienced by these stations, 22 of the 26 patrol agents-in-charge reported that the overall security status of their jurisdiction had not been affected by land management laws. Instead, factors such as the remoteness and ruggedness of the terrain have had the greatest effect on their ability to achieve operational control in these areas. Four patrol agents-in-charge reported that delays and restrictions had affected their ability to achieve or maintain operational control, but they either had not requested resources for increased or timelier access or their requests had been denied by senior Border Patrol officials because of higher priority needs of the agency.

Information sharing and communication among the agencies have increased in recent years, but critical gaps remain in implementing interagency agreements. Agencies established forums and liaisons to exchange information; however, in the Tucson sector, agencies did not coordinate to ensure that federal land law enforcement officials had access to threat information and compatible secure radio communications for daily operations. GAO found that enhanced coordination in these areas could better ensure officer safety and a more efficient law enforcement response to illegal activity along the southwest border.

United States Government Accountability Office

Chairman Chaffetz, Chairman Bishop, Ranking Member Tierney, Ranking Member Grijalva, and Members of the Subcommittees:

I am pleased to be here today to participate in your joint hearing on Border Patrol operations on federal lands along the southwestern border. Enhancing the security of the nation's border with Mexico has emerged as a significant policy issue, particularly on federal lands, where illegal cross-border activity threatens not only people but also natural resources. In the mid-1990s, the U.S. Border Patrol increased its personnel and resources in large urban areas along the United States-Mexico border to curtail illegal human and narcotics trafficking. With this strategy, Border Patrol successfully reduced illegal border crossings in places like San Diego, California, and El Paso, Texas. Border Patrol's strategy puts a high priority on border enforcement in urban and populated areas, which can divert large concentrations of illegal traffic to federal lands and other remote areas where vast landscapes and often rugged terrain may take days to cross—giving agents more time to detect undocumented aliens and make apprehensions.

The remoteness and harsh conditions found across much of the southwestern border, however, have not deterred illegal traffic as much as expected. Instead, it has increased substantially since the mid-1990s on federal lands managed by the Departments of the Interior and Agriculture, whose borderlands encompass over 40 percent of the 1,900 miles of southwestern border in Arizona, California, New Mexico, and Texas. In response to the increase in illegal traffic on federal lands along the southwestern border, over the last 5 years, Border Patrol has nearly doubled the number of its agents on patrol, constructed hundreds of miles of pedestrian fences and vehicle barriers, and installed surveillance equipment on and near federal lands. Border Patrol and land management agency officials recognize that Border Patrol's presence can help protect natural and cultural resources on federal lands by deterring undocumented aliens, and they have stated that interagency coordination is therefore needed in the southwestern borderlands region.¹

This testimony will cover (1) the key land management laws Border Patrol operates under and how it coordinates responsibilities under these laws with land management agencies, (2) how

¹The borderlands region encompasses the area extending from the United States-Mexico border north to 100 miles.

Border Patrol operations are affected by these laws, and (3) the extent to which Border Patrol, Interior, and Forest Service law enforcement units operating in these areas are sharing threat information and communications. This statement is based on two GAO reports published in October and November 2010.² We conducted our work in accordance with generally accepted government auditing standards for each engagement.

Background

The southwestern borderlands region contains many federally managed lands and also accounts for over 97 percent of all apprehensions of undocumented aliens by Border Patrol. Over 40 percent of the United States-Mexico border, or 820 linear miles, is managed by Interior's land management agencies and the Forest Service.³ Each of these land management agencies has a distinct mission and set of responsibilities, which are, respectively, managing federal land for multiple uses, such as recreation, minerals, and the sustained yield of renewable resources; conserving the scenery, natural and historical objects, and wildlife of the national park system; preserving and enhancing fish, wildlife, plants, and their habitats; and managing resources to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations.

Border Patrol is organized into nine sectors along the southwestern border. Within each sector, there are stations with responsibility for defined geographic areas. Of the 41 stations in the borderlands region in the 9 southwestern border sectors, 26 have primary responsibility for the security of federal lands, according to Border Patrol sector officials.⁴ Apprehensions of undocumented aliens along the southwestern border increased steadily through the late 1990s, reaching a peak of 1,650,000 in fiscal year 2000. Since fiscal year 2006, apprehensions have

²GAO, *Southwest Border More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands*, GAO-11-38 (Washington, D.C.: Oct. 19, 2010); and GAO, *Border Security Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177 (Washington, D.C.: Nov. 18, 2010).

³Land management agencies include the Bureau of Land Management, Fish and Wildlife Service, and National Park Service within Interior, and the Forest Service within Agriculture.

⁴Depending on size and location, individual federal borderlands may fall within one or more stations' area of patrol responsibility and across one or two sectors.

declined, reaching a low of 540,000 in fiscal year 2009. This decrease has occurred along the entire border, with every sector reporting fewer apprehensions in fiscal year 2009 than in fiscal year 2006. The Tucson Sector, however, with responsibility for central and eastern Arizona, continues to have the largest number of apprehensions.⁵ Border Patrol shares with land managers data on apprehensions and drug seizures occurring on federal land, providing such information in several ways, including in regularly occurring meetings and e-mailed reports.

Border Patrol measures its effectiveness at detecting and apprehending undocumented aliens by assessing the border security status for a given area. The two highest border security statuses—“controlled” and “managed”—are levels at which Border Patrol claims the capability to consistently detect entries when they occur; identify what the entry is and classify its level of threat (such as who is entering, what the entrants are doing, and how many entrants there are); effectively and efficiently respond to the entry; and bring the situation to an appropriate law enforcement resolution, such as an arrest.⁶ Areas deemed either “controlled” or “managed” are considered by Border Patrol to be under “operational control.”⁷

The volume of undocumented aliens crossing federal lands along the southwestern border can overwhelm law enforcement and resource protection efforts by federal land managers, thus highlighting the need for Border Patrol’s presence on and near these lands, according to DHS

⁵Targeted enforcement efforts in other Border Patrol sectors in previous years caused a shift in illegal cross-border activity to the Tucson Sector, according to Border Patrol officials. The Congressional Research Service has stated that the overall borderwide decline in apprehensions is likely due to a combination of decreased opportunities for work in the United States and increased enforcement at the border. Congressional Research Service, *Border Security: The Role of the U.S. Border Patrol*, RL32562 (Washington, D.C., 2010).

⁶Border Patrol is developing a new method for classifying an area’s border security status to be used in Fiscal Year 2012.

⁷Border Patrol classifies an area’s border security status as one of five levels: An area is considered “controlled” when Border Patrol can deter or detect entries at the border, and continual, real-time surveillance and enforcement activities result in a high probability of immediate apprehension at the border. An area is considered “managed” when sufficient Border Patrol resources are available to deter or detect entries in time to apprehend, although not always at the immediate border, and sufficient resources exist to fully implement the sector’s border control strategy and tactics. An area is considered “remote/low activity” when the sector has not defined issues affecting Border Patrol and has not developed a meaningful Border Patrol strategy. An area is considered “low-level monitored” when detection or apprehension is inhibited by a lack of resources or infrastructure. An area is considered “monitored” when the probability of detection is high, but the ability to respond is limited because the terrain is remote and rugged, Border Patrol has limited resources, or both.

and land management agency officials. The need for the presence of both kinds of agencies on these borderlands has prompted consultation among DHS, Interior, and Agriculture to facilitate coordination between Border Patrol and the land management agencies. The departments have a stated commitment to foster better communication and resolve issues and concerns linked to federal land use or resource management.

Border Patrol Responsibilities under Key Land Management Laws and Coordination with Land Management Agencies

When operating on federal lands, Border Patrol has responsibilities under several federal land management laws, including the National Environmental Policy Act of 1969, Wilderness Act of 1964, and Endangered Species Act of 1973. Under these laws, Border Patrol must obtain permission or a permit from federal land management agencies before its agents can undertake certain activities on federal lands, such as maintaining roads and installing surveillance equipment. Because the land management agencies are responsible for ensuring compliance with land management laws, Border Patrol and the land management agencies have developed several mechanisms to coordinate their responsibilities. The most comprehensive of these is a national-level agreement—a memorandum of understanding signed in 2006 by the secretaries of Homeland Security, the Interior, and Agriculture—intended to provide consistent principles to guide their agencies’ activities on federal lands. At the local level, Border Patrol and land management agencies have also coordinated their responsibilities through various local agreements.

Several Land Management Laws Govern Border Patrol Operations on Federal Lands

Under key federal land management laws, Border Patrol, like all federal agencies, must obtain permission or a permit from the appropriate federal land management agency to conduct certain activities—such as road maintenance—on federal lands.⁸ These land management laws include, but are not limited to, the following:

⁸Third parties, including Border Patrol, generally cannot undertake any road activities, except for public access, without a permit from a land management agency, and that permit would need to be consistent with the applicable land and resource management plans, which govern road construction, access, maintenance, and decommissioning.

- *National Environmental Policy Act of 1969.*⁹ Enacted in 1970, the National Environmental Policy Act's purpose is to promote efforts that will prevent or eliminate damage to the environment, among other things. Section 102 requires federal agencies to evaluate the likely environmental effects of proposed projects using an environmental assessment or, if the projects would likely significantly affect the environment, a more detailed environmental impact statement evaluating the proposed project and alternatives. Environmental impact statements can be developed at either a programmatic level—where larger-scale, combined effects and cumulative effects can be evaluated and where overall management objectives, such as road access and use, are defined—or a project level, where the effects of a particular project in a specific place at a particular time are evaluated. If, however, the federal agency determines that activities of a proposed project fall within a category of activities the agency has already determined has no significant environmental effect—called a categorical exclusion—then the agency generally does not need to prepare an environmental assessment or an environmental impact statement. The agency may instead approve projects that fit within the relevant category by using one of the predetermined categorical exclusions, rather than preparing a project-specific environmental assessment or environmental impact statement.¹⁰
- *National Historic Preservation Act of 1966.*¹¹ The National Historic Preservation Act provides for the protection of historic properties—any prehistoric or historic district, site, building, structure, object, or properties of traditional religious and cultural importance to an Indian tribe, included, or eligible for inclusion in, the National Register of Historic Places. For all projects receiving federal funds or a federal permit, section 106 of the act requires federal agencies to take into account a project's effect on any historic property. In accordance with regulations implementing the act, Border Patrol and land management agencies often

⁹Pub. L. No. 91-190 (1970), codified at 42 U.S.C. § 4321-4347.

¹⁰For a project to be approved using a categorical exclusion, the agency must determine whether any extraordinary circumstances exist in which a normally excluded action or project may have a significant effect. Border Patrol has numerous categorical exclusions in place, including, for example, installation and operation of security equipment at existing facilities to screen for or detect dangerous or illegal individuals and routine monitoring and surveillance activities, such as patrols, investigations, and intelligence gathering.

¹¹Pub. L. No. 89-665 (1966), codified as amended at 16 U.S.C. §§ 470 to 470x-6.

incorporate compliance with the National Historic Preservation Act into their required evaluations of a project's likely environmental effects under the National Environmental Policy Act. Thus, the agency or agencies must determine, by consulting with relevant federal, state, and tribal officials, whether a project or activity has the potential to affect historic properties. The purpose of the consultation is to identify historic properties affected by the project; assess the activity's adverse effects on the historic properties; and seek ways to avoid, minimize, or mitigate any of those effects.

- *Wilderness Act of 1964.*¹² The Wilderness Act of 1964 provides for federal lands to be designated as "wilderness areas," which means that such lands are to be administered in such a manner that will leave them unimpaired for future use and enjoyment and to provide for their protection and the preservation of their wilderness character, among other goals. If Border Patrol proposes to patrol or install surveillance equipment on federal land that has been designated as wilderness, the agency must comply with the requirements and restrictions of the Wilderness Act of 1964, other laws establishing a particular wilderness area, and the relevant federal land management agency's regulations governing wilderness areas.¹³ Section 4 of the act prohibits the construction of temporary roads or structures, as well as the use of motor vehicles, motorized equipment, and other forms of mechanical transport in wilderness areas, unless such construction or use is necessary to meet the minimum requirements for administration of the area, including for emergencies involving health and safety. Generally, the land management agencies have regulations that address the emergency and administrative use of motorized equipment and installations in the wilderness areas they manage. For example, under Fish and Wildlife Service regulations, the agency may authorize Border Patrol to use a wilderness area and prescribe conditions under which

¹²Pub. L. No. 88-577, codified at 16 U.S.C. §§ 1133-1136.

¹³While a few of the wilderness areas along the United States-Mexico border were designated in the 1964 act, most were established later. In one case, the law establishing the area specifically addressed border security: the Arizona Desert Wilderness Act of 1990 established the Cabeza Prieta Wilderness Area in the Cabeza Prieta National Wildlife Refuge and stated that the land's designation as wilderness must not preclude or otherwise affect border operations in accordance with any existing interagency agreement.

motorized equipment, structures, and installations may be used to protect the wilderness, including emergencies involving damage to property and violations of laws.¹⁴

- *Endangered Species Act of 1973.*¹⁵ The purpose of the Endangered Species Act is to conserve threatened and endangered species and the ecosystems upon which they depend. Under section 7 of the act, if Border Patrol or the land management agencies determine that an activity Border Patrol intends to authorize, fund, or carry out may affect an animal or plant species listed as threatened or endangered, it may initiate either an informal or a formal consultation with the Fish and Wildlife Service—which we refer to as a section 7 consultation—to ensure that its actions do not jeopardize the continued existence of such species or result in the destruction or adverse modification of its critical habitat. The agencies are to initiate informal consultation if they determine that an activity may affect—but is not likely to adversely affect—a listed species or critical habitat.

National and Local Agreements Facilitate Coordination of Responsibilities among the Agencies

To help implement key federal land management laws, Border Patrol and the land management agencies have developed several mechanisms to coordinate their responsibilities, including a national-level memorandum of understanding and local agreements. The national-level memorandum of understanding was signed in 2006 by the secretaries of Homeland Security, the Interior, and Agriculture and is intended to provide consistent principles to guide the agencies’

¹⁴The National Park Service does not have general regulations governing administration of wilderness areas in national parks. Instead, each Park Service unit administers its wilderness areas in accordance with a wilderness management plan that it develops and the National Park Service’s Wilderness Management Policy. Under the policy, administrative use of motorized equipment or mechanical transport is authorized only (1) in emergency situations—for example, homeland security and law enforcement—involving the health or safety of persons actually within the area or (2) if the unit’s superintendent determines it to be the minimum requirement needed by management to achieve the purposes of the wilderness area. Determining the minimum requirement is a two-step process that first determines whether the proposed management action is appropriate or necessary for administration of the area as wilderness and does not cause a significant impact to wilderness resources and character and then determines the techniques and types of equipment needed to ensure that impacts on wilderness resources and character are minimized.

¹⁵Pub. L. No. 93-205 (1973), codified as amended at 16 U.S.C. §§ 1531-1544.

activities on federal lands along the U.S. borders.¹⁶ Such activities may include information sharing; placing and installing surveillance equipment, such as towers and underground sensors; using roads; providing Border Patrol with natural and cultural resource training; mitigating environmental impacts; and pursuing suspected undocumented aliens off road in wilderness areas. The memorandum also contains several provisions for resolving conflicts between Border Patrol and land managers, such as directing the agencies to resolve conflicts and delegate resolution authority at the lowest field operations level possible and to cooperate with each other to complete—in an expedited manner—all compliance that is required by applicable federal laws.

We found several instances where Border Patrol stations and land management agencies have coordinated their responsibilities through use of this national-level memorandum of understanding. For example, Border Patrol and land managers in Arizona used the 2006 memorandum of understanding to set the terms for reporting Border Patrol off-road vehicle incursions in Organ Pipe Cactus National Monument, as well as for developing strategies for interdicting undocumented aliens closer to the border in the Cabeza Prieta National Wildlife Refuge and facilitating Border Patrol access in the San Bernardino National Wildlife Refuge. In addition, we found that guidance provided by the 2006 memorandum of understanding has facilitated local agreements between the Border Patrol and land management agencies. For example, for the Coronado National Forest in Arizona, Border Patrol and the Forest Service developed a coordinated strategic plan that sets forth conditions for improving and maintaining roads and locating helicopter landing zones in wilderness areas, among other issues.

We also found that several other mechanisms have been used to facilitate interagency coordination. For example, Border Patrol and Interior established interagency liaisons, who have responsibility for facilitating coordination among their agencies. Border Patrol's Public Lands Liaison Agent program directs each Border Patrol sector to designate an agent dedicated to interacting with Interior, Agriculture, or other governmental or nongovernmental organizations

¹⁶Department of Homeland Security, Department of the Interior, and U.S. Department of Agriculture, *Memorandum of Understanding on Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Border* (Washington, D.C., March 2006).

involved in land management issues. The role of these designated agents is to foster better communication; increase interagency understanding of respective missions, objectives and priorities; and serve as a central point of contact in resolving issues and concerns. Key responsibilities of these public lands liaison agents include implementing requirements of the 2006 memorandum of understanding and related agreements and monitoring any enforcement operations, issues, or activities related to federal land use or resource management. In addition, Interior established its own Southwest Border Coordinator, located at the Border Patrol Tucson Sector, to coordinate federal land management issues among Interior component agencies and with Border Patrol. The Forest Service also established a dedicated liaison position in the Tucson Sector to coordinate with Border Patrol, according to Forest Service officials. In addition to these liaison positions, a borderlands management task force provides an intergovernmental forum in the field for officials, including those from Border Patrol, the land management agencies, and other state and local governmental entities, to regularly meet and discuss challenges and opportunities for working together. The task force acts as a mechanism to address issues of security, safety, and resources among federal, tribal, state, and local governments located along the border.

Land Management Laws Have Limited Border Patrol's Access in Some Areas, but Most Agents-in-Charge Reported No Effect on Their Stations' Border Security Status

Border Patrol's access has been limited on some federal lands along the southwestern border because of certain land management laws, according to patrol agents-in-charge in the borderlands region. Specifically, patrol agents-in-charge at 17 of the 26 stations that have primary responsibility for patrolling federal lands along the southwestern border reported that when they attempt to obtain a permit or permission to access portions of federal lands, delays and restrictions have resulted because they had to comply with land management laws. Despite these delays and restrictions, patrol agents-in-charge at 22 of the 26 Border Patrol stations reported that the border security status of their area of operation had not been affected by land management laws.

More Than Half of Border Patrol Stations Reported That Land Management Laws Have Affected Their Access on Federal Lands

Patrol agents-in-charge of 17 of 26 stations along the southwestern border reported that they have experienced delays and restrictions in patrolling and monitoring portions of federal lands because of various land management laws.

Implementation of the National Environmental Policy Act and the National Historic Preservation Act Have Caused Delays

Patrol agents-in-charge at 14 of the 26 Border Patrol stations along the southwestern border reported experiencing delays in getting a permit or permission from land managers to gain access to portions of federal land because of the time it took land managers to complete the requirements of the National Environmental Policy Act and the National Historic Preservation Act. These delays in gaining access had generally lessened agents' ability to detect undocumented aliens in some areas, according to the patrol agents-in-charge. The 2006 memorandum of understanding directs the agencies to cooperate with each other to complete, in an expedited manner, all compliance required by applicable federal laws, but such cooperation has not always occurred, as shown in the following examples:

- *Federal lands in Arizona.* For the Border Patrol station responsible for patrolling certain federal lands in Arizona, the patrol agent-in-charge reported that it has routinely taken several months to obtain permission from land managers to move mobile surveillance systems. The patrol agent-in-charge told us that before permission can be granted, land managers generally must complete environmental and historic property assessments—as required by the National Environmental Policy and National Historic Preservation acts—on roads and sites needed for moving and locating such systems. For example, Border Patrol requested permission to move a mobile surveillance system to a certain area but by the time permission was granted—more than 4 months after the initial request—illegal traffic had shifted to other areas. As a result, Border Patrol was unable to move the surveillance system to the locale it desired, and during the 4-month delay, agents were limited in their ability to detect undocumented aliens within a 7-mile range that could have been covered by the

system.¹⁷ The land manager for the federal land unit said that most of these lands and the routes through it have not had a historic property assessment, so when Border Patrol asks for approval to move equipment, such assessments must often be performed. Moreover, the federal land management unit has limited staff with numerous other duties. For example, the unit has few survey specialists who are qualified to perform environmental and historic property assessments. Thus, he explained, resources cannot always be allocated to meet Border Patrol requests in an expedited manner.

- *Federal lands in New Mexico.* In southwestern New Mexico, the patrol agents-in-charge of four Border Patrol stations reported that it may take 6 months or more to obtain permission from land managers to maintain and improve roads that Border Patrol needs on federal lands to conduct patrols and move surveillance equipment. According to one of these patrol agents-in-charge, for Border Patrol to obtain such permission from land managers, the land managers must ensure that environmental and historic property assessments are completed, which typically entails coordinating with three different land management specialists: a realty specialist to locate the site, a biologist to determine if there are any species concerns, and an archaeologist to determine if there are any historic sites. Coordinating schedules among these experts often takes a long time, according to a Border Patrol public-lands liaison. For example, one patrol agent-in-charge told us that a road in his jurisdiction needed to be improved to allow a truck to move an underground sensor, but the process for the federal land management agency to perform a historic property assessment and issue a permit for the road improvements took nearly 8 months. During this period, agents could not patrol in vehicles or use surveillance equipment to monitor an area that illegal aliens were known to use. The patrol agent-in-charge told us that performing such assessments on every road that might be used by Border Patrol would take substantial time and require assessing hundreds of miles of roads.¹⁸ According to federal land managers in the area, environmental and historic property specialists try to expedite support for Border Patrol as much as possible, but these

¹⁷Mobile surveillance systems perform a 180-degree sweep every 10 seconds.

¹⁸The federal land management agency does not always approve access for the entire road needed to reach requested areas; for example, the agency may in some cases perform environmental and historic property assessments only at the location where Border Patrol wants to put the surveillance equipment.

specialists have other work they are committed to as well. Moreover, the office has not been provided any additional funding to increase personnel to be able to dedicate anyone in support of the Border Patrol to expedite such requests.

For some of the stations, the delays patrol agents-in-charge reported could have been shortened if Border Patrol could have used its own resources to pay for, or perform, environmental and historic property assessments required by the National Environmental Policy Act and National Historic Preservation Act, according to patrol agents-in-charge and land managers with whom we spoke. On the Coronado National Forest, agency officials told us that Border Patrol and the Forest Service had entered into a cooperative agreement whereby in some situations Border Patrol pays for road maintenance and the necessary environmental and historic property assessments. According to two patrol agents-in-charge, the development of the Coronado National Forest coordinated strategic plan has helped the agencies shorten the time it takes to begin road maintenance because it allows Border Patrol to use its resources and therefore begin environmental and historic property assessments sooner.¹⁹ The Coronado National Forest border liaison added that without this agreement, Forest Service would have been unable to meet Border Patrol's road maintenance needs in a timely fashion.

In other situations, using Border Patrol resources to pay for or perform road maintenance may not always expedite access; instead, land managers and Border Patrol officials told us that a programmatic environmental impact statement should be prepared under the National Environmental Policy Act to help expedite access. For example, some patrol agents-in-charge, such as those in southwestern New Mexico, told us that to conduct environmental and historic property assessments on every road that agents might use, on a case-by-case basis, can take substantial time and require assessing hundreds, if not thousands, of miles of roads. Moreover, when agents request to move mobile surveillance systems, the request is often for moving such systems to a specific location, such as a 60-by-60-foot area on a hill. Some agents told us, however, that it takes a long time to obtain permission from land managers because

¹⁹The one outstanding issue, one agent-in-charge explained, is for the land management agencies to more clearly define all roads that Border Patrol can maintain. According to the Coronado National Forest road manager, special use permits will soon be issued for the roads Border Patrol needs, and the roads will be mapped and identified for Border Patrol.

environmental and historic property assessments must be performed on each specific site, as well as on the road leading to the site. As we stated earlier, National Environmental Policy Act regulations recognize that programmatic environmental impact statements—broad evaluations of the environmental effects of multiple Border Patrol activities, such as road use and technology installation, in a geographic area—could facilitate compliance with the act. By completing a programmatic environmental impact statement, Border Patrol and land management agencies could then subsequently prepare narrower, site-specific statements or assessments of proposed Border Patrol activities on federal lands, such as on a mobile surveillance system site alone, thus potentially expediting access.²⁰

In our October 2010 report, we recommended that to help expedite Border Patrol's access to federal lands, the agencies should, when and where appropriate, (a) enter into agreements that provide for Border Patrol to use its own resources to pay for or to conduct the required environmental and historic property assessments and (b) prepare programmatic National Environmental Policy Act documents for Border Patrol activities in areas where additional access may be needed. The agencies concurred with this recommendation.

Wilderness Act Restrictions Have Affected Access to Federal Lands

Patrol agents-in-charge for three stations reported that agents' access to some federal lands was limited because of restrictions in the Wilderness Act on building roads and installing infrastructure, such as surveillance towers, in wilderness areas. For these stations, the access restrictions lessen the effectiveness of agents' patrol and monitoring operations. However, land managers may grant permission for such activities if they meet the regulatory requirements for emergency and administrative use of motorized equipment and installations in wilderness areas.

²⁰As part of the contract for tactical infrastructure maintenance and repair—a fiscal year 2011 contract for the maintenance and repair of vehicle and pedestrian fences, among other things, along the southwestern border—Border Patrol is developing a list of what roads it needs for access to fencing. In developing this list, Border Patrol officials told us they will identify what roads have had environmental and historic property assessments. For those roads that have not been assessed, Border Patrol plans to prepare a programmatic environmental impact statement under the National Environmental Policy Act. Border Patrol headquarters officials told us this document will include many—but not all—roads in the borderlands region. According to Border Patrol headquarters officials, they met with all land managers of land units along the border in July 2010 to discuss with them what roads will have environmental and historic property assessments.

Land managers responsible for two wilderness areas are working with Border Patrol agents to provide additional access as allowed by the regulations for emergency and administrative use. For example, at the Cabeza Prieta National Wildlife Refuge, Wilderness Act restrictions have limited the extent to which Border Patrol agents can use vehicles for patrols and technology resources to detect undocumented aliens. The patrol agent-in-charge told us that the refuge has few roads and having an additional east-west road closer to the border would give Border Patrol more options in using its mobile surveillance system to monitor significant portions of the refuge that are susceptible to undocumented-alien traffic. Additionally, the patrol agent-in-charge told us that better access could benefit the natural resources of the refuge because it could lead to more arrests closer to the border—instead of throughout the refuge—and result in fewer Border Patrol off-road incursions. The refuge manager agreed that additional Border Patrol access may result in additional environmental protection, and he is working with Border Patrol to develop a strategy at the refuge that would allow Border Patrol to detect and apprehend undocumented aliens closer to the border. Further, the refuge manager in February 2010 gave permission for Border Patrol to install an *SBinet* tower on the refuge, which may also help protect the wilderness area.

On the other hand, a land manager responsible for the Organ Pipe wilderness area has denied some Border Patrol requests for additional access and determined that additional Border Patrol access would not necessarily improve protection of natural resources. The patrol agent-in-charge of patrolling Organ Pipe, told us that when Border Patrol proposed placing an *SBinet* tower within the monument to help enable agents to detect undocumented aliens in a 30-square-mile range, the land manager denied the request because the proposed site was in a designated wilderness area. Instead, Border Patrol installed the tower in an area within the monument that is owned by the state of Arizona. At this site, however, the tower has a smaller surveillance range and cannot cover about 3 miles where undocumented aliens are known to cross, according to the patrol agent-in-charge, thus lessening Border Patrol's ability to detect entries compared with the originally proposed site. In addition, the patrol agent-in-charge explained that because of the tower's placement, when undocumented aliens are detected, agents have less time to apprehend them before they reach mountain passes, where it is easier to avoid detection. According to the land manager, Border Patrol did not demonstrate to him that the proposed tower site was critical,

as compared with the alternative, and that agents' ability to detect undocumented aliens would be negatively affected.

Endangered Species Act Requirements Have Affected Patrols of Federal Lands

Patrol agents-in-charge at five Border Patrol stations reported that as a result of consultations required by section 7 of the Endangered Species Act, agents have had to adjust the timing or specific locales of their ground and air patrols to minimize the patrols' impact on endangered species and their critical habitats. Although some delays and restrictions have occurred, Border Patrol agents were generally able to adjust their patrols with little loss of effectiveness in their patrol operations. For example, for a Border Patrol station responsible for patrolling an area within the Coronado National Forest, the patrol agent-in-charge reported that a section 7 consultation placed restrictions on helicopter and vehicle access because of the presence of endangered species. Nevertheless, the patrol agent-in-charge told us the restrictions, which result in alternative flight paths, do not lessen the effectiveness of Border Patrol's air operations. Moreover, according to the Forest Service District Ranger, since the area's rugged terrain presents a constant threat to agents' safety, Border Patrol agents have been allowed to use helicopters as needed, regardless of endangered species' presence.²¹ In another instance, a patrol agent-in-charge told us that the Border Patrol wanted to improve a road within the area to provide better access, but because of the proposed project's adverse effects on an endangered plant, road improvement could not be completed near a low point where water crossed the road. Border Patrol worked with Forest Service officials to improve 3 miles of a Forest Service road up to the low point, but the crossing itself—about 8 feet wide—along with 1.2 miles of road east of it was not improved. According to the patrol agent-in-charge, agents still patrol the area but must drive vehicles slowly because of the road's condition east of the low point.

Similarly, for the Border Patrol station responsible for patrolling the San Bernardino National Wildlife Refuge, the patrol agent-in-charge told us that vehicle access has been restricted in the refuge because vehicle use can threaten the habitat of certain threatened and endangered species.

²¹ Forest Service regulations authorize the Chief of the Forest Service to prescribe conditions under which motorized equipment, installations, and structures may be used in emergencies involving the health and safety of persons.

Since establishment of the refuge in 1982, locked gates have been in place on the refuge's administrative roads.²² But Border Patrol station officials told us that in the last several years, with the increase in the number of agents assigned to the station, they wanted to have vehicle access to the refuge. The terms for vehicle access had to be negotiated with the refuge manager and the refuge manager agreed to place Border Patrol locks on refuge gates and to allow second-level Border Patrol supervisors, on a case-by-case basis, to determine whether vehicle access to the refuge is critical.²³ If such a determination is made, a Border Patrol supervisor unlocks the gate and contacts refuge staff to inform them that access was granted through a specific gate. The patrol agent-in-charge told us that operational control has not been affected by these conditions for vehicle access.

Most Agents Reported That Land Management Laws Have Had No Effect on Operational Control

Despite the access delays and restrictions reported for 17 stations, most patrol agents-in-charge told us that the border security status of their jurisdictions has not been affected by land management laws. Instead, factors other than access delays or restrictions, such as the remoteness and ruggedness of the terrain or dense vegetation, have had the greatest effect on their abilities to achieve or maintain operational control. While four patrol agents-in-charge reported that delays and restrictions resulting from compliance with land management laws had negatively affected their ability to achieve or maintain operational control, they had either not requested resources to facilitate increased or timelier access or had their requests denied by senior Border Patrol officials, who said that other needs were greater priorities for the station or sector.

²²The 2006 memorandum of understanding states that Border Patrol may operate motor vehicles at any time on existing public and administrative roads or trails and in areas previously designated by the land management agency for off-road vehicle use, *provided that such use is consistent with presently authorized public or administrative use* (emphasis added).

²³Second-level Border Patrol supervisors are field operations supervisors. At least one such supervisor is on duty during each shift.

Most Stations' Border Security Status Has Been Unaffected by Land Management Laws

Patrol agents-in-charge at 22 of the 26 stations with jurisdiction for federal lands along the southwestern border told us that their ability to achieve or maintain operational control in their areas of responsibility has been unaffected by land management laws; in other words, no portions of these stations' jurisdictions have had their border security status, such as "controlled," "managed," or "monitored," downgraded as a result of land management laws. Instead, for these stations, the primary factor affecting operational control has been the remoteness and ruggedness of the terrain or the dense vegetation their agents patrol and monitor. Specifically, patrol agents-in-charge at 18 stations told us that stark terrain features—such as rocky mountains, deep canyons, and dense brush—have negatively affected their agents' abilities to detect and apprehend undocumented aliens. For example, a patrol agent-in-charge whose station is responsible for patrolling federal land in southern California told us that the terrain is so rugged that Border Patrol agents must patrol and pursue undocumented aliens on foot; even all-terrain vehicles specifically designed for off-road travel cannot traverse the rocky terrain. He added that because of significant variations in topography, such as deep canyons and mountain ridges, surveillance technology can also be ineffective in detecting undocumented aliens who hide there. Similarly, patrol agents-in-charge responsible for patrolling certain Fish and Wildlife Service land reported that dense vegetation limits agents' ability to patrol or monitor much of the land. One agent explained that Border Patrol's technology resources were developed for use in deserts, where few terrain features obstruct surveillance, whereas the vegetation in these areas is dense and junglelike.

The majority of patrol agents-in-charge also told us that the most important resources for achieving and maintaining operational control on federal lands along the southwestern border are (1) a sufficient number of agents; (2) additional technology resources, such as mobile surveillance systems; and (3) tactical infrastructure, such as vehicle and pedestrian fencing. For example, in the remote areas of one national wildlife refuge, a patrol agent-in-charge told us that even with greater access in the refuge, he would not increase the number of agents patrolling it to gain improvements in operational control. Instead, he said, deploying additional technology resources, such as a mobile surveillance system, would be more effective in achieving operational control of the area because such systems would assist in detecting undocumented

aliens while allowing agents to maintain their presence in and around a nearby urban area, where the vast majority of illegal entries occur. His view, and those of other patrol agents-in-charge whom we interviewed, is underscored by Border Patrol's operational assessments—twice yearly planning documents that stations and sectors use to identify impediments to achieving or maintaining operational control and to request resources needed to achieve or maintain operational control.²⁴ In these assessments, stations have generally requested additional personnel or technology resources for their operations on federal lands. Delays or restrictions in gaining access have generally not been identified in operational assessments as an impediment to achieving or maintaining operational control for the 26 stations along the southwestern border.

Four Stations Reported That Their Security Status Had Been Affected by Land Management Laws

Of the 26 patrol agents-in-charge we interviewed, 4 reported that delays and restrictions in gaining access to federal lands had negatively affected their ability to achieve or maintain operational control. However, 2 of these stations have not requested any additional resources as part of Border Patrol's operational assessments and the other two that did request additional resources were denied these requests because of other higher agency priorities. For example, the patrol agent-in-charge responsible for land unit in southwestern New Mexico told us that operational control in a remote area of his jurisdiction is partly affected by the scarcity of roads. Having an additional road in this area would allow his agents to move surveillance equipment to an area that, at present, is rarely monitored. However, according to a supervisory agent for the sector, station officials did not request additional access through Border Patrol's operational assessments for this additional road, and land managers in this area told us they would be willing to work with Border Patrol to facilitate such access, if requested.

Similarly, the patrol agent-in-charge at a Border Patrol station responsible for patrolling another federal land unit in Arizona reported that his ability to achieve operational control is also affected by a shortage of east-west roads in the unit. He told us that some of his area could

²⁴This national process, known as the operational requirements-based budgeting process and occurring twice each year, was developed to help Border Patrol determine how and where to allocate additional agents, technology, and infrastructure.

potentially reach operational control status if there was an additional east-west road. In this case, the Border Patrol station did request an additional east-west road from the land management agency, but the land manager denied the request because the area is designated as wilderness, according to the patrol agent-in-charge.²⁵ As a result of this denial, the patrol agent-in-charge did not pursue a request for resources through the Border Patrol's operational assessment. The land manager told us that he would be willing to work with Border Patrol to facilitate additional access if it could be shown that such access would help increase deterrence and apprehensions closer to the border.

For the other two stations reporting that federal land management laws had negatively affected their ability to achieve or maintain operational control, Border Patrol sector or headquarters officials had denied the stations' requests for resources to facilitate increased or timelier access—typically for budgetary reasons. For example, one patrol agent-in-charge reported that 1.3 miles of border in her area of responsibility are not at operational control because, unlike most other border areas, it has no access road directly on the border. Further, she explained, the rough terrain has kept Border Patrol from building a road on the border. Instead, a road would need to be created in an area designated as wilderness. According to the patrol agent-in-charge, her station asked Border Patrol's sector office for an access road, and the request was submitted as part of the operational requirements-based budgeting program. As of July 2010, the request had not been approved because of budgetary constraints, according to the agent-in-charge. In addition, another patrol agent-in-charge told us, few roads lie close to the river that runs through his area of responsibility. As a result, his agents have to patrol and monitor nearly 1 mile north of the international border, much closer to urban areas. According to officials with Border Patrol's relevant sector office, they have been using the operational assessments for several years to request an all-weather road, but approval and funding have not been granted by Border Patrol's headquarters.

²⁵The 2006 memorandum of understanding directs the parties to cooperate with each other to identify methods, routes, and locations for Border Patrol operations that will minimize impacts to natural, cultural, and wilderness resources resulting from Border Patrol operations while facilitating needed Border Patrol access.

Federal Agencies Reported That Information Sharing and Communication Had Improved, but Additional Coordination Is Needed to Close Critical Gaps

Information sharing and communications among Border Patrol, Interior, and Forest Service have generally increased over the last several years, according to Border Patrol and federal land law enforcement officials in the Tucson sector, but critical gaps remained in implementing interagency agreements. As we stated earlier, DHS, Interior, and Agriculture had established the 2006 a memorandum of understanding in part to facilitate the exchange of threat information on federal lands;²⁶ and a 2008 memorandum of understanding among these agencies established a common secure radio encryption key for communicating information on daily operations.²⁷ The lack of early and continued consultation among agencies to implement these agreements has resulted in critical information-sharing gaps that compromise officer safety and a timely and effective coordinated law enforcement response to illegal activity on federal lands.

Specifically, Border Patrol officials in the Tucson sector did not consult with federal land management agencies before discontinuing dissemination of daily situation reports that federal land law enforcement officials relied on for a common awareness of the types and locations of illegal activities observed on federal borderlands. Implementation of the 2006 memorandum of understanding's requirement for DHS, Interior, and Agriculture to establish a framework for sharing threat information could help ensure that law enforcement officials operating on federal lands have access to threat information they consider necessary to efficiently and effectively complete their missions.

In addition, DHS, Interior, and Agriculture officials did not coordinate to ensure that all federal law enforcement partners could monitor secure radio communications regarding daily operations on federal lands in the Tucson sector. Specifically, in 2009 Border Patrol changed the secure radio encryption key used by Border Patrol agents in the Tucson sector to communicate on daily operations without consulting with Interior or Agriculture. In order to remedy the communication challenges, Border Patrol headquarters issued guidance in April 2010 instructing

²⁶Department of Homeland Security, Department of the Interior, and U.S. Department of Agriculture, *Memorandum of Understanding Regarding Cooperative National Security and Counterterrorism Efforts on Federal lands along the United States' Border* (Washington, D.C.: March 2006).

²⁷Department of Homeland Security, Department of the Interior, and Department of Agriculture, *Memorandum of Understanding Regarding Secure Radio Communication* (Washington, D.C.: July 18, 2008).

that secure radio communications of information regarding daily operations should be switched from the new encryption key back to the common encryption key compatible with Interior and Agriculture. However, since the Border Patrol's April 2010 guidance applies only to the Tucson sector, secure radio compatibility problems could persist in other Border Patrol sectors.

In our November 2010 report, we recommended that DHS, Interior, and Agriculture take necessary action to ensure that personnel at all levels of each agency conduct early and continued consultations to implement provisions of the 2006 memorandum of understanding, including the coordination of threat information for federal lands that is timely and actionable, and the coordination of future plans for upgrades of compatible radio communications used for daily law enforcement operations on federal lands.²⁸ The agencies concurred with these recommendations.

In January 2011, Customs and Border Protection issued a memorandum to all Border Patrol division chiefs and chief patrol agents emphasizing the importance of Interior and Agriculture partnerships to address border security threats on federal lands. This action is a positive step toward implementing our recommendations and we encourage DHS, Interior, and Agriculture to take the additional steps necessary to monitor and uphold implementation of the existing interagency agreements in order to enhance border security on federal lands.

Chairman Chaffetz, Chairman Bishop, Ranking Member Tierney, Ranking Member Grijalva, and Members of the Subcommittees, this concludes my prepared statement. I would be pleased to answer any questions that you may have at this time.

²⁸GAO-11-177.

GAO Contacts and Acknowledgments

For further information about this testimony, please contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Richard Stana, Director; Elizabeth Erdmann, Assistant Director; Lucinda Ayers, Assistant Director; Nathan Anderson; and Richard P. Johnson also made key contributions to this statement.

(361289)

Mr. BISHOP. Thank you.

I appreciate all of you for giving your statements. They will be there for the record. And if I forget at the end, if Members have additional statements that are written, we may ask you to respond to those at the same time in a timely fashion.

Ms. Mittal, let me go through a couple of questions, then, if I could, before the rest of my colleagues. As I understood you as you were talking here, a very nice, very balanced report you gave us here, but you did find a correlation between environmental laws and delays of the Border Patrol's ability to get permission and permits from some land managers.

Ms. MITTAL. What we found is that the implementation of the environmental laws had resulted in delays and restrictions.

Mr. BISHOP. This is a question that—you never ask questions if I don't know what the answer is. But I asked it of one of the other panelists, and I wanted to give you the question as well.

In all of these issues that you went through, did you ever find a chance, when the request was made, that it was Border Patrol always asking the Interior or Ag for permission; it was never the other way around?

Ms. MITTAL. You asked that question earlier, and one of the things that we noticed is that Border Patrol has a lot of flexibility under these acts to actually undertake a number of these environmental assessments themselves, and they have not been doing that.

Mr. BISHOP. As long as they are allowed to do that. And I appreciate that very, very much. Thank you.

Let me ask a couple other questions for the other three witnesses: Mr. Wood, Mr. Chilton, and Mr. Taylor. In your opinion, from your experience on the ground—and, actually, I wish the other panel was here to listen to some of your testimony, as well—are environmental laws, such as the Endangered Species, Wilderness Acts, compatible with border security? Do you have examples of the problem that you have seen with those?

Any of you?

Mr. Chilton, go ahead. Why don't you just go down that row.

Mr. CHILTON. The answer is, no, national security should not be trumped by environmental laws or rules and regulations of the different departments like Interior, Forest Service, and Fish and Wildlife.

There is a refuge in Arizona called the San Pedro National Conservation Area. It starts at the international border where the San Pedro River enters the United States. There is a wall that comes each way and stops, and there is a 1,500-foot gap. The refuge is 2 miles wide, and the conservation area is 50 miles long. The Border Patrol has no access into that area except at the border, and that is limited access. It is a path for druggers, illegals, and perhaps terrorists to walk 50 miles into the United States.

And how does the Border Patrol try to patrol it? They patrol the perimeter. So if you have 50 miles one way and 50 miles the other way and 2 miles on the end, that is 102 more miles of fence that the Border Patrol has to patrol. And they are not allowed into it. The roads, since it has become a national conservation area, have deteriorated so you can't drive. And the refuge—or the conservation

district manager will not let the Border Patrol or anyone grade the roads and have access in there.

Mr. BISHOP. Thank you. I appreciate that.

Mr. Wood and Mr. Chilton, let me change that question slightly for you. You are former Border Patrol agents. Do you see anything fundamentally strange that the Border Patrol has unlimited access on private property but does not have unlimited access on public property to do their jobs?

Mr. Wood.

Mr. WOOD. Thank you for the question.

It has not gone unnoticed to us that the memorandum of understanding that we have discussed earlier, it is nine pages of single-spaced typing. It is complicated to read. But the point I am making here is, in contrast to that MOU, the Federal statute now in effect allows Border Patrol unrestricted entry within a distance of 25 miles from any external boundary and to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent illegal entry of aliens into the United States.

That statement is contained in only four sentences in paragraph (a)(3) of Section 287 of the Immigration and Nationality Act.

Mr. BISHOP. Thank you.

My time has expired here, although I just want—I read one of the footnotes that you put in there that I thought was interesting. In the 1990 Arizona Desert Act that created one of these wildlife refuges, it was specifically in there the language that any kind of wilderness designation or environmental designation would not be allowed to interfere with the concept of national security.

I found that a unique concept there. Maybe when we have some other time, I can come back and ask you to respond to that one.

Mr. Chaffetz.

Mr. CHAFFETZ. Thank you.

The Border Patrol agent that was here represented that he thought what was happening in the Tucson region was great success. How would you react to that, Mr. Chilton?

Mr. CHILTON. The Border Patrol still is not at the border. The Border Patrol is doing what they can, I respect what they are trying to do, but the border is not secure. They can't get down to the border. They try to patrol 5, 10, 15 miles inside the border and allow us to live in a no man's land.

There has been some diminishment in traffic across, but when I talk to the Border Patrol people in Nogales, they say the traffic is moving further west into the Indian nation and into the Organ Pipe area.

And we don't see the people moving across our ranch. At one time, there was 30,000 or 40,000 people coming through a year. We don't see those people anymore because there are scouts on top of the mountains who are guiding the cartels and the people smugglers through our ranch and other ranches. And the Border Patrol is known—they know where the Border Patrol is at all times. And the Border Patrol doesn't see them, and they move right through the country, clear on to Pinal County and to Phoenix.

Mr. CHAFFETZ. How dangerous is it there?

Mr. CHILTON. Well, when we are riding horseback, I pack two guns, a rifle and a pistol. And if I see people coming along with

an AK-47 and a whole bunch of people with backpacks with drugs in them, I go the other way—fast. If I have to, I will fall off my horse and go to shooting.

It is dangerous. It is dangerous, and we should not have to live under those conditions. The border should be controlled at the border.

Mr. CHAFFETZ. Mr. Taylor, can you talk to me a little bit about the morale that you are seeing there? And how do these agents deal with the differences between what they can do in the other areas and what they can do in wilderness-type designation areas?

Mr. TAYLOR. Well, we found out that in not only just the wilderness designations but the public land that adjoins the wilderness—and I am talking specifically about the Pajarita Wilderness—one of the first actions I had when I went there as a supervisor, at that time, you may or may not be aware, we had Federal troops supporting the Border Patrol. We had a combat alert team from the Marine Corps base working in conjunction with us. And a firefight ensued—this was back in 1989, I believe—between the Marines and the packers. And the land managers were not concerned about the fact that we had a firefight; they were concerned about the fire that ensued in the wilderness area. And so we had to quit going in there.

Mr. CHAFFETZ. And how big a space and area was that?

Mr. TAYLOR. That particular area—there is a protected area within the protected area, and that is where they were. And the reason the Marines were there is because that is where the smugglers chose to come through the border. And that internal, inside of the wilderness is relatively small; I think it is 150 acres.

Mr. CHAFFETZ. Ms. Mittal, a question for you. This definition between controlled and managed, did you feel like that there was a unified vision and understanding of those two definitions and what was truly controlled and what wasn't controlled?

Ms. MITTAL. We used the Border Patrol's definition of operational control. So that when we were talking to their agents, patrol agents in charge, we were using definitions that their agency had developed and that they should have been fully understanding of. So that is why we used the definition of operational control that was defined by the Border Patrol.

Mr. CHAFFETZ. Very good.

My time has expired. I yield back.

Mr. BISHOP. Mr. Kildee, do you have questions for these witnesses?

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

First of all, I want to thank all of the witnesses for your testimony.

I would like to ask Ms. Mittal, did the GAO find that any environmental laws need to be repealed or dramatically altered in order for the Border Patrol to effectively perform its mission?

Ms. MITTAL. During our audit, what we found is that it was the implementation of the environmental laws that was causing the delays and restrictions that the Border Patrol agents had identified.

Nobody recommended that there was a particular law or a particular provision of the law that needed to be changed. What we

noted was that the MOU that was implemented by the three agencies was not effective in implementing the environmental laws.

Mr. KILDEE. So Congress, then, in its position, should have, perhaps, more hearings on how we can better have the enforcement of these laws, then.

Ms. MITTAL. In our review of the four laws that were repeatedly cited by Border Patrol, what we found is that the environmental laws provide a lot of flexibility as well as a lot of options, and that the Border Patrol has not exercised all of the flexibilities and all of the options that are provided to it under these environmental laws.

So it is very easy to go back and blame the land management agencies when you have not yet taken the actions that the laws provide you as the action agency. So I think the reason we did not make any suggestions or recommendations about changing the environmental laws was because there are flexibilities and options available to Border Patrol that it has not yet exhausted in trying to comply with the environmental laws.

Mr. KILDEE. OK. Based on your interviews, then, how significant a problem are public land access issues to the Border Patrol sector chiefs that you interviewed? What is their feeling on—

Ms. MITTAL. There were 17 Border Patrol agents in charge, out of the 26 that we surveyed, that told us that they had experienced access delays. However, not in every case did that cause a problem in their ability to fulfill their function. For example, there were five that had to change their patrols as a result of endangered species. But all of those Border Patrol agents told us that that had not impacted their ability to apprehend and detect illegal aliens on Federal land.

So there was a mixed bag. In some places, the delays had caused an impact on their operations; in other places, it had not.

Mr. KILDEE. Thank you very much. I know Congress wants to and all of us at this table want to make sure we have the proper balance in writing our laws, and all your testimony today has been helpful.

And I thank you, Mr. Chairman.

Mr. BISHOP. Thank you.

I have some more questions. We will do another round here, if possible.

Mr. Taylor, can I ask you—we have talked a lot about whether Border Patrol can go in under the exigent or emergency circumstances. Can you just tell me what is the difference between patrolling and going in for exigent or emergency circumstances?

Mr. TAYLOR. Patrolling is something that is done routinely, daily. It involves two things: deterring people from crossing the border and detecting them once they have. Those are the two basic principles of patrolling the border.

If you do not have access to the border, you can't patrol it, so you have to back off. The further you have to back off, the more territory you are ceding to the enemy.

Mr. BISHOP. Well, so, then, can I followup on that? Can you explain the obstacles the Border Patrol faces if they are blocked from building new roads or maintaining existing roads? And, you know, is it just good enough to have a single road running through it?

Mr. TAYLOR. No.

Let me qualify my background. I have been a field agent in the Border Patrol 26 years. The last 14 were in Arizona, so I worked that area.

When you have a situation where you cannot get in there and pull somebody out that gets in trouble, you are best off not to send them in there. So what happens is, the area doesn't get patrolled at all.

Mr. BISHOP. I see. Thank you.

Mr. Wood, can you explain the Big Hatchet repeater MOU, what it is and why it is a concern?

Mr. WOOD. Yes, sir. Thank you.

The Big Hatchet is the name of a mountain peak located in southern New Mexico. It is the sole source for communication. Historically, there was a repeater up there; the land managers found out about it, and the Border Patrol was required to take it down. Since then, it has been put back up but with restrictions that make it very, very difficult to manage.

As an example, the Border Patrol will be required to take that down if that area is designated wilderness. The caveat to that is, they will not be able to take it down, except through certain months of the year, because of the lambing season for some endangered species there.

It is the highest peak in the area. It is going to be subject to damage by lightning and other natural effects. If that repeater goes down from lightning and it is during the period where Border Patrol cannot access it for those limitations, then that entire area is going to be without communication and the Border Patrol agents assigned in there are going to be in drastic danger.

I, as a former chief, would probably pull the agents out of there if that happens. It is just not worthwhile to take that kind of chances against one of our agents.

Mr. BISHOP. Thank you. Thank you.

Mr. Taylor, last December, Agent Terry was murdered on the national forest land. How should that tragedy influence this discussion?

Mr. TAYLOR. I mentioned earlier, Mr. Chairman, that those areas that border wilderness—and, in this particular case, the Pajarita Wilderness borders the Coronado National Forest on the south—the ingress into the United States of the bandits that were involved in that apparently came through the Pajarita up through the Coronado, stayed in the Tumacacori Highlands, and at the intersection of the Tumacacori Mountains and the Atascosa Mountains is where the gunfight happened, where the agent was killed.

And, apparently, the agent tried to follow the people that did the shooting back into Mexico, and they went through the Pajarita Wilderness, which the agents have no access to. As a matter of fact, there is not even a fence there in many places. It has been down on the ground so long that the vegetation has covered it.

Mr. BISHOP. Is this the map that we were talking about? Is this the area?

Mr. TAYLOR. Yeah. Yes, sir.

Mr. BISHOP. So can you explain what we are looking at with that map?

Mr. TAYLOR. OK. If you will look in the lower-right-hand corner, where that arrow is, that is where the Nogales Border Patrol station is. The next arrow to the left is coming up through the Pajarita more or less on the east side, and then the arrow on the left is the main corridor. They are coming from the west.

And what they are going through, where you see that box, is what I call the kill zone. This is where the bandits—now, there are two groups of bandits. There are people that are trying to protect their drugs and aliens, and the other side is trying to rip them off from those people. And both groups, apparently, are armed.

Once they get past the kill zone, you will look at the arrow in the upper-right-hand corner, that is where the Border Patrol checkpoint is. And the arrows to the left follow the highlands and take the aliens and these drug smugglers beyond the Border Patrol checkpoint.

And the purpose of the box in there is to show that almost all of that kill zone is located on public land. And it is in the Coronado National Forest, and pretty much in the northwest quadrant is where Agent Terry was killed. And in the northeast quadrant, in a 4-day period, within the last 10 days, we found three bodies. We don't have a ruling yet on what caused the deaths.

Also, in the upper-left-hand corner, in December 2009, is where Agent Russo was shot. And we believe it was the same group of bandits that shot both agents.

So, if I can expand that just slightly, if you will think about Nogales as a horseshoe, it is covered on the west by public land, it is covered on the east by public land, and it is all mountains. And the reason the alien smugglers use that is because when they have the high ground, they have the tactical advantage. They can see the Border Patrol coming, and the Border Patrol has to go to them. And the only way they can do that is on foot. Horses won't work in that area, because in some of those places, to traverse them, you have to go on your hands and knees, it is that steep.

I hope that answers your questions.

Mr. BISHOP. Thank you. In more detail than I have.

Mr. KILDEE, I am over here. I have a couple more questions. Did you have anything else further or are you—

Mr. KILDEE. No.

Mr. BISHOP. OK.

Mr. Chaffetz.

Then let me just ask two more questions of you all, and then we will give you—we will let you go, actually. Let me do the first one, for either Mr. Wood or Mr. Taylor.

In a letter of the Fish and Wildlife Service to DHS regarding the San Bernardino Wildlife Refuge, an endangered species concern, the Fish and Wildlife Service asked the Border Patrol to stop doing road-dragging operations to cut signs near the refuge.

Can you just explain to us what sign cutting is and why it is an important tool? And what are the implications if the Border Patrol cannot do this, or cannot use this tool?

Mr. WOOD. Yes, sir. As I alluded to earlier in my testimony, sign cutting is one of the most preferred and effective techniques that the Border Patrol has developed over the years.

Sign cutting effectively requires that a road be parallel to the border, if that is the area that you want to protect. They call it a drag road because they are frequently smoothed over by one method or another. So that evidence of illegal entry is easily identified by the agents that are working that area.

Now, one of the critical things of that is you have to have access. You can't effectively do sign cutting or drag roads away from the border. You have lost the funnel, then, where these entries occur. And they spread out over large, large distances.

So if we are not able to use that technique, we are losing a very, very valuable tool that we have developed over years. And I can tell the committee, the Border Patrol agents now and previously were some of the best sign cutters in the country. I always have to mention that. It is an old technique, but it has been very effective for our agency.

Mr. BISHOP. Thank you.

Mr. Chilton, I will give you the last chance to comment on a question I had.

In 2007, this subcommittee received a letter from one of your good friends, the Krentz family. And the Krentz family—the purpose of that letter was to oppose a new wilderness designation. In the letter, Mrs. Krentz stated, “The Border Patrol should not be excluded, nor should national security of the United States be sacrificed in order to create a wilderness area. We are in fear for our lives and that of our families and friends.”

I think you mentioned what happened to Rob Krentz within a year of that particular letter coming in. And I would ask you—this isn't a question. We know what happened down there. This is a sad situation, should never have been the place. And I realize that Mrs. Krentz was also hit by another accident. A very difficult situation.

Would you just extend our appreciation to that family and our concern? And I think one of the reasons why we are pushing forward with these concepts is because of the Krentz family and what they suffered down there. And if you would do that, I would be appreciative.

Mr. CHILTON. I will. And she helped me prepare my testimony. And she is really, really angry that wilderness areas are still being proposed. She is angry that her husband's killer has not been found. And she believes that national security demands securing the border at the border.

And I will be very happy to call her this afternoon and talk with her. Thank you, Mr. Bishop.

Mr. BISHOP. I appreciate all that.

Mr. Tierney, you get the chance to ask the last question.

Mr. TIERNEY. That is highly unlikely, but we will see how it goes. I see my friend, Mr. Chaffetz, over there. I seldom get the last word with him. Thank you.

Ms. Mittal, I just want to ask a couple questions. I had to step out for a while, and I apologize for that. But I want to reiterate a little bit what I understand your reports to be.

And, Mr. Stana, behind you, I thank you for your work.

From what I understand, there is no direct correlation between the environmental laws and the wilderness laws that can't be resolved by the departments working together and overcoming any

conflict between national security and the intended protection of those laws. Is that correct?

Ms. MITTAL. What we found is that the MOU was designed to take care of those conflicts and make sure that the agencies work well together. In some areas, the MOU is doing a really good job. In other areas, it is not as effective.

Mr. TIERNEY. OK. Now, did your study look at all into those areas that weren't effective as to what was the cause of that lack of total effectiveness?

Ms. MITTAL. What we heard repeatedly was that the land management agencies do not have the resources to always expedite Border Patrol's requests. But the Border Patrol does have flexibilities under the existing laws to undertake a number of the environmental assessments itself. It can conduct programmatic environmental impact statements for the region. It can establish categorical exclusions for its activities. And none of that has been done yet.

Mr. TIERNEY. OK. So we need to focus in on making sure that they use all of their resources properly in that area. We need to look at increasing the resources where they are lacking. And I suspect that we probably need to do some better training. Is that a fair thing to say, to make sure that that MOU is operative and implemented in the manner that it should be?

Ms. MITTAL. Yes. Training was something that was brought up by almost every patrol agent in charge and every Border Patrol agent that we talked to. They would like to see more regular, face-to-face, land-unit-based training provided by a land management agency so that they understand the environment that they are working in.

Mr. TIERNEY. OK. So better training, better use of what resources do exist, better resources where they are lacking. What else would you recommend to the attention of this Congress?

Ms. MITTAL. I believe that holding the agencies accountable, to make sure that they can demonstrate to you that they have exhausted all of the available flexibilities that they have available to their disposal and, yet, they are running into problems in doing their job.

And if Congress can hold them accountable—I did not hear any new information provided this morning by any of the agencies that testified that they have exhausted the authorities that Congress has provided them. So I think holding them accountable is essential.

Mr. TIERNEY. OK. So it looks to me as though the Congress did its job in terms of writing the laws. It may not be doing all that it should be doing in terms of oversight right now.

Ms. MITTAL. Yes.

Mr. TIERNEY. And, hence, here we are. So, thank you very much. I yield back the balance of my time.

Mr. BISHOP. If there are no other questions? Fine.

First of all, I want to thank this panel very much.

Ms. Mittal, first, I want to appreciate the hard work that you and the GAO put into the report. I think it is very enlightening, especially if you read the entire report. And, yeah, I even did read the footnotes that you put in there.

Ms. MITTAL. You did, sir. I was very impressed.

Mr. BISHOP. To our three guests: Mr. Chilton, I appreciate you being here, for giving us the perspective of someone who actually lives on the border and faces these situations on a daily basis.

Mr. Taylor, Mr. Wood, both of you, thank you for being here and representing what it was like to—representing the view of a Border Patrol agent who is no longer worried about his status as a Border Patrol agent. So thank you for your testimony very, very much. I appreciate it.

Let's see. If there is no further business, then, without objection, this hearing is adjourned.

Thank you again.

[Whereupon, at 1:35 p.m., the subcommittees were adjourned.]

[The prepared statement of Hon. Mike Quigley follows:]

Congressman Mike Quigley (IL-05)

Statement for the Record

April 15, 2011

Joint Hearing on The Border: Are Environmental Laws and Regulations Impeding Security and Harming the Environment?

Opening Statement

I thank Chairman Chaffetz for convening this important hearing, and the Natural Resources Subcommittee on National Parks, Forests and Public Lands for joining us here today.

Home to the highest number of threatened, endangered and sensitive species of any National Forest in the continental U.S., the Coronado National Forest is an important parcel of land in the debate on mutual exclusivity of environmental conservation versus national security.

The Coronado National Forest is home to 25 listed threatened or endangered species and 162 sensitive species.

Along with high numbers of environmentally sensitive and diverse organisms, the Forest is where a large majority of the tens of thousands of people, entering illegally each year on federal lands in the Border Patrol's Tucson Sector, are apprehended.

The story's the same for the 330,000-acre Organ Pipe Cactus National Monument southwest of Tucson.

As well as the 118,000-acre Buenos Aires National Wildlife Refuge.

Humans have done damage as they've attempted to cross the border, leaving trash behind, crashing and crunching their way through to the U.S.

It's the environmental damage that prompted the 2006 memorandum of understanding that still effectively guides us today and has proven, through multiple reports by GAO and others, to be strong tools in our efforts to secure our border.

These guidelines protect our lands—they also make us safer.

It isn't an either or.

If you don't believe me, you don't care much for our National Forests, our National Monuments or our National Wildlife Refuges that lie across the border, that's okay too.

But, the Government Accountability Office, charged with being the "*investigative arm of Congress*" has told us that, and I quote: "Overall security status ... is not affected by land-management laws. Instead, factors such as the remoteness and ruggedness of the terrain have the greatest effect on their (the CBP) ability to achieve operational control."

Folks, we can't change the terrain of our border, nor should we try – but we can enforce laws that seek to protect our nation's best interest.

But, be honest in your opposition here today.

The opposition is wrought of stuff other than a concern over access to patrol our border, and stripping laws that seek to maintain the integrity of our earth is patently unjust.

I will fight against any and all attempts to eliminate important statutes like the National Environmental Policy Act, the National Historic Preservation Act, the Wilderness Act, or the Endangered Species Act.

And I know that I have science on my side.

Thank you.