

MOVING THE LINE OF SCRIMAGE: REEXAMINING THE DEFENSE-IN-DEPTH STRATEGY

HEARING
BEFORE THE
SUBCOMMITTEE ON
BORDER AND
MARITIME SECURITY
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION
SEPTEMBER 13, 2016
Serial No. 114-85

Printed for the use of the Committee on Homeland Security



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

U.S. GOVERNMENT PUBLISHING OFFICE

25-267 PDF

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing 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 HOMELAND SECURITY

MICHAEL T. MCCAUL, Texas, *Chairman*

LAMAR SMITH, Texas	BENNIE G. THOMPSON, Mississippi
PETER T. KING, New York	LORETTA SANCHEZ, California
MIKE ROGERS, Alabama	SHEILA JACKSON LEE, Texas
CANDICE S. MILLER, Michigan, <i>Vice Chair</i>	JAMES R. LANGEVIN, Rhode Island
JEFF DUNCAN, South Carolina	BRIAN HIGGINS, New York
TOM MARINO, Pennsylvania	CEDRIC L. RICHMOND, Louisiana
LOU BARLETTA, Pennsylvania	WILLIAM R. KEATING, Massachusetts
SCOTT PERRY, Pennsylvania	DONALD M. PAYNE, JR., New Jersey
CURT CLAWSON, Florida	FILEMON VELA, Texas
JOHN KATKO, New York	BONNIE WATSON COLEMAN, New Jersey
WILL HURD, Texas	KATHLEEN M. RICE, New York
EARL L. "BUDDY" CARTER, Georgia	NORMA J. TORRES, California
MARK WALKER, North Carolina	
BARRY LOUDERMILK, Georgia	
MARTHA MCSALLY, Arizona	
JOHN RATCLIFFE, Texas	
DANIEL M. DONOVAN, JR., New York	

BRENDAN P. SHIELDS, *Staff Director*
JOAN V. O'HARA, *General Counsel*
MICHAEL S. TWINCHEK, *Chief Clerk*
I. LANIER AVANT, *Minority Staff Director*

SUBCOMMITTEE ON BORDER AND MARITIME SECURITY

MARTHA MCSALLY, ARIZONA, *Chairman*

LAMAR SMITH, Texas	FILEMON VELA, Texas
MIKE ROGERS, Alabama	LORETTA SANCHEZ, California
CANDICE S. MILLER, Michigan	SHEILA JACKSON LEE, Texas
JEFF DUNCAN, South Carolina	BRIAN HIGGINS, New York
LOU BARLETTA, Pennsylvania	NORMA J. TORRES, California
WILL HURD, Texas	BENNIE G. THOMPSON, Mississippi (<i>ex officio</i>)
MICHAEL T. MCCAUL, Texas (<i>ex officio</i>)	

PAUL L. ANSTINE, *Subcommittee Staff Director*
KRIS CARLSON, *Subcommittee Clerk*
ALISON NORTHROP, *Minority Subcommittee Staff Director*

CONTENTS

	Page
STATEMENTS	
The Honorable Martha McSally, a Representative in Congress From the State of Arizona, and Chairman, Subcommittee on Border and Maritime Security:	
Oral Statement	1
Prepared Statement	3
The Honorable Filemon Vela, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Border and Maritime Security	4
The Honorable Bennie G. Thompson, a Representative in Congress From the State of Mississippi, and Ranking Member, Committee on Homeland Security:	
Prepared Statement	5
The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas:	
Prepared Statement	6
WITNESSES	
PANEL I	
Mr. Mark A. Morgan, Chief, U.S. Border Patrol, U.S. Department of Homeland Security:	
Oral Statement	8
Prepared Statement	10
PANEL II	
Mr. Gary P. Brasher, Private Citizen:	
Oral Statement	30
Prepared Statement	32
Ms. Peggy Davis, Private Citizen:	
Oral Statement	38
Prepared Statement	40
Dr. Elyse Golob, Executive Director, National Center for Border Security and Immigration, University of Arizona:	
Oral Statement	50
Prepared Statement	52
Mr. Christian Ramirez, Director, Southern Border Communities Coalition:	
Oral Statement	59
Joint Prepared Statement of Christian Ramirez, Director, Southern Border Communities Coalition; Jennifer Johnson, Border Policy Advisor, Southern Border Communities Coalition; Karin Johanson, Director, ACLU Washington Legislative Office; Christopher Rickerd, Policy Counsel, ACLU Washington Legislative Office; Vicki B. Gaubeca, Director, ACLU of New Mexico, Regional Center for Border Rights; and Brian Erickson, Border Policy Strategist, ACLU of New Mexico, Regional Center for Border Rights	61

IV

Page

FOR THE RECORD

The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas: Statement From PHP, Arizona	80
---------------------------------------------------------------------------------------------------------------------------------	----

MOVING THE LINE OF SCRIMMAGE: REEXAMINING THE DEFENSE-IN-DEPTH STRATEGY

Tuesday, September 13, 2016

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

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 311, Cannon House Office Building, Hon. Martha McSally [Chairman of the subcommittee] presiding.

Present: Representatives Duncan, Hurd, McSally, Vela, Jackson Lee, and Torres.

Ms. MCSALLY. The Committee on Homeland Security Subcommittee On Border and Maritime Security will come to order. The subcommittee is meeting today to examine the U.S. Border Patrol's defense-in-depth strategy and its effect on local communities.

I recognize myself now for an opening statement.

First, I would like to thank Chief Mark Morgan, who is testifying now before Congress for the first time as the new chief of Border Patrol. Like your predecessors, I am sure you will be spending frequent visits to our subcommittee as we discuss very important questions related to border security, things like what does a secure border look like, what are the right tools and strategies to achieve a secure border, and how do we measure success or failure?

Today, I want to focus on the second question, an aspect of the current Border Patrol strategy known as defense-in-depth, specifically the unintended consequences this strategy imposes on border communities and residents that live along the border, including many of my constituents.

In the early 1990's, the Border Patrol and U.S. Customs Service were outmatched in all aspects of illegal activity, both between and at the ports of entry. Yet despite having a smaller Border Patrol at the time, agents apprehended millions of people. Border Patrol's response to this activity in El Paso and San Diego led to Operations Hold the Line and Gatekeeper, that surged resources to the border in those major urban areas.

In the short term, it stemmed the tide of illicit activity. However, it had the unintended effect of pushing the illicit activity away from urban areas and into the remote rural areas of the border. By design, the shifting cartel activity in the more rugged terrain gave the Border Patrol the advantage of time to interdict people and target the contraband of smuggling.

Border Patrol leadership routinely has articulated the strategy's effectiveness by explaining that in urban areas they had mere sec-

onds to minutes to intercept the illegal activity; in suburban areas, minutes to hours; and in rural areas, they had anywhere from hours to days to interdict the illegal activity.

Ceding territory for time has had profound ramifications, however, for populated rural areas along the border, like my district in Arizona. On a routine basis, our fellow residents are exposed to this illicit activity that crosses the border, trespasses on their land, destroys their property, and puts their lives at risk. Small businesses and tourism suffer from the illegal activity that has pushed deep into the interior of the country by a strategy that I believe now needs to be reexamined.

To be clear, I am not asking agents to link arms across the border, 2,000 miles of south, shoulder-to-shoulder. What I am asking for is we focus our resources and manpower more at the line of scrimmage, not 5, 10, 100 miles inland. Our enforcement posture should be arranged with the intent of anticipating, deterring, and stopping most illicit activity before it enters our communities, using the overwhelming majority of agents and technology as close to the line as terrain access and agent safety will allow.

I have spent countless hours at the border with ranchers, border residents, and the Border Patrol. In many instances, I have observed miles-long stretches of the border with little to no agent activity actually patrolling the road near the fence. I have also witnessed whole sections of fence cut out, allowing untold number of vehicles to come across the border before being detected.

Presence on the border matters, serving as both a deterrent to illegal activity and as a rapid response to inevitable breaches. I am mindful that geography has an effect on where we apprehend individuals and interdict narcotics, but we cannot cede 10 to 100 miles or more of U.S. territory waiting for these nefarious actors to be caught at the time and place of our choosing. Instead, we have to take the fight to them at the earliest point of the incursion.

In Tucson, 48 percent of the total number of apprehensions took place more than 5 miles from the physical border. Compare that with Yuma or Rio Grande Valley in Texas where more than 84 percent of illicit crossings are apprehended in the first 5 miles. But let's be clear, for citizens who live along the border, 5 miles is like an eternity.

Interior checkpoints are part of the layered approach to border security that have created challenges for the men and women that I was sent here to represent. The Border Patrol uses a mix of permanent and tactical checkpoints along major routes in and out of the border. Consistent with its defense-in-depth strategy, checkpoints are designed to push the illicit traffic around the checkpoints into areas where the Border Patrol has a better chance of interdiction.

But what checkpoints have really done is to introduce inconvenience, hassle, and the threat as a way of life for law-abiding American citizens who live near these checkpoints. The Border Patrol has little to show for their use. Very few apprehensions take place at an interior checkpoint. To add insult to injury, the checkpoints are closed when it rains to prevent a traffic accident. All the cartels have to do is wait for the weather to change to bypass this layer of defense.

In 2014, the University of Arizona's National Center for Border Security and Immigration conducted an in-depth study concerning the effectiveness of checkpoints and the impact on local communities. The report makes a series of recommendations to develop measures of effectiveness and to closely track the impacts of checkpoints on communities. To date, I don't think the Border Patrol has followed or implemented the recommendations, but I look forward to talking about that today. We do have a University of Arizona representative on the second panel.

Defense-in-depth and the layered approach to border security sounds good in theory, but there are real-world negative impacts for the American citizens who live at or near the border. I look forward to hearing from the chief and the witnesses on the second panel to discuss looking at a better approach.

[The statement of Chairman McSally follows:]

STATEMENT OF CHAIRMAN MARTHA MCSALLY

SEPTEMBER 13, 2016

First, I would like to thank Chief Mark Morgan, who is testifying before Congress for the first time as the new chief of the Border Patrol.

Like your predecessors, I'm sure you will be a frequent visitor before this subcommittee as we discuss what arguably are the three most important border security questions: What does a secure border look like? What are the right tools and strategies to achieve a secure border? How do you measure success or failure?

Today, I want to focus on the second question—an aspect of the current Border Patrol strategy known as defense-in-depth. Specifically, the unintended consequences this strategy imposes on border communities and residents that live along the border, including many of my constituents.

In the early 1990s, the Border Patrol and U.S. Customs Service were outmatched in all aspects of illegal activity both between and at the ports of entry. Yet despite having a smaller Border Patrol at the time, agents apprehended millions of people.

Border Patrol's response to this activity in El Paso and San Diego led to Operations Hold the Line and Gatekeeper that surged resources to the border in those major urban areas. In the short term, it stemmed the tide of the illicit activity. However, it had the intended effect of pushing illicit activity away from urban areas and into the remote rural areas of the border.

By design, shifting cartel activity into more rugged terrain gave the Border Patrol the advantage of time to interdict people and target contraband smuggling. Border Patrol leadership routinely articulated the strategy's effectiveness by explaining that in urban areas, they had mere seconds to minutes to interdict illegal activity; whereas in suburban areas they had minutes to hours, and in rural areas, they had anywhere from hours to possibly days to interdict illegal activity.

Ceding territory for time has had profound ramifications for populated rural areas along the border, like my district in Arizona. On a routine basis, our fellow residents are exposed to illicit activity that crosses the border, trespasses on their land, destroys their property and puts their lives at risk. Small businesses and tourism suffer from the illegal activity that is pushed deep into the interior of the country by a strategy that I believe needs to be reexamined.

To be clear, I am not asking agents to link arms across all 2,000 miles of the border. What I am asking is that we focus our resources and manpower at the line of scrimmage, not 5, 10, or 100 miles inland. Our enforcement posture should be arranged with the intent of anticipating, deterring, and stopping most illicit activity before it enters our communities, using the overwhelming majority of agents and technology as close to the line as terrain, access, and agent safety will allow.

I have spent countless hours at the border with ranchers, border residents, and the Border Patrol. In many instances, I've observed miles-long stretches of the border with little to no agents actually patrolling the road near the fence.

I've also witnessed whole sections of fence cut out of the fence, allowing an untold number of vehicles to come across the border before being detected. Presence on the border matters—serving as both a deterrent to illegal activity and as a rapid response to inevitable breaches.

I am mindful that geography has an effect on where we apprehend individuals and interdict narcotics, but we cannot cede 10 to 100 miles of U.S. territory waiting for these nefarious actors to be caught at the time and place of our choosing. Instead we have to take the fight to them at the earliest point of incursion.

In Tucson, 48% of the total number of apprehensions took place more than 5 miles from the physical border. Compare that with Yuma, or Rio Grande Valley in Texas where more than 84% of illicit crossings are apprehended in the first 5 miles. For citizens who live along the border 5 miles is an eternity.

Interior checkpoints are part of the layered approach to border security that has created challenges for the men and women I was sent here to represent. The Border Patrol uses a mix of permanent and tactical checkpoint along major routes in and out of the border. Consistent with its defense-in-depth strategy, checkpoints are designed to push illicit traffic around the checkpoints into areas where the Border Patrol has a better chance of interdiction.

But what checkpoints have really done is to introduce inconvenience and hassle as a way of life for law-abiding American citizens who live near these checkpoints. The Border Patrol has little to show for their use. Very few apprehensions take place at an interior checkpoint, and to add insult to injury the checkpoints are closed when it rains—to prevent a traffic accident. All the cartels have to do is wait for the weather to change to bypass this layer of defense.

In 2014, the University of Arizona's National Center for Border Security and Immigration conducted an in-depth study concerning the effectiveness of checkpoints and their impact on local border communities. The report makes a series of recommendations to develop measures of effectiveness and to closely track the impacts checkpoints have on local communities.

To date, I do not believe that the Border Patrol has followed or implemented any of the recommendations.

Defense-in-Depth and the layered approach to border security sounds good in theory, but there are real-world negative impacts for the American citizens who live at and near the border. I look forward to hearing from the chief and the witnesses on the second panel to discuss a better approach.

Ms. MCSALLY. The Chair now recognizes the Ranking Member of the subcommittee, the gentleman from Texas, Mr. Vela, for any statement he may have.

Mr. VELA. Thank you, Congresswoman McSally.

I don't have a whole lot more to add. I want to welcome you, Chief Morgan, to this hearing today and congratulate you on your appointment. My perspective on your agency and these checkpoints comes from having crossed the Sarita and Falfurrias checkpoint virtually all of my life.

When I was a young lawyer, I traveled between Brownsville and Corpus Christi almost weekly, and I used to get really frustrated having to go through the checkpoint, because to me it didn't make sense that I, as an American citizen born in Brownsville, would have to be asked whether or not I was a citizen 2 hours north. However, my father was a Federal judge with jurisdiction over the Sarita checkpoint. When I would often voice my frustration, he would remind me of the volume of apprehensions that he would witness. So over time, I kind-of softened my reaction.

But your agency is very much a part of life across the entire U.S.-Mexico border, and definitely for those of us in south Texas. Over the course of the last year, I can tell you, I talk to your agents on an official basis sometimes, but more often on an unofficial basis, because they live all around us. They are part of our social fabric. I can tell you that you have some challenges ahead, because over the course of the last year, there is hardly an agent that I have run into, many who have been part of the agency for many, many years, who have expressed a level of dissatisfaction and just feeling a lot of low morale with many of the people that work for the agency.

So I look forward to working with you as we move forward with the rest of the committee to see what we can do about improving morale, you know, for the agents on the ground and doing what we can to make your agency as effective as possible.

But I yield the balance of my time.

Ms. MCSALLY. Thank you. The gentleman yields.

Other Members of the committee are reminded that opening statements may be submitted for the record.

[The statements of Ranking Member Thompson and Honorable Jackson Lee follow:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

SEPTEMBER 13, 2016

Having served as both Chairman and Ranking Member of the Committee on Homeland Security, I have had the opportunity to visit many communities along the Southern Border, hear from community members directly, and watch the men and women of the Border Patrol carrying out their duties on behalf of our Nation.

I have seen the triple fence near San Diego, ridden along the border with ranchers in Arizona, and observed Border Patrol Agents processing unaccompanied children in South Texas.

I know that each area of the border is different, the challenges facing each area are different, and therefore the appropriate way to address these challenges is often different as well.

After visiting southern Arizona at the request of Congresswoman Gabrielle Giffords and others and meeting with constituents there, I have first-hand knowledge of residents' concerns and a better appreciation for the challenges confronting Border Patrol in the region.

Our 2012 Government Accountability Office report helped quantify how Border Patrol utilizes its resources in each of its Southern Border sectors, including the Tucson Sector.

So while today's hearing title implies that Border Patrol has moved its personnel and resources away from the border entirely, that is simply not the case.

There is tactical infrastructure and technology in use and agents patrolling even in remote areas of the border, though not to the extent that residents in these areas would like.

I look forward to hearing from the new chief of the Border Patrol, Mark Morgan, about how he is deploying Border Patrol personnel and resources to meet these challenges.

As the first chief in the history of the Border Patrol to come from outside its ranks, Chief Morgan is uniquely positioned to guide the Patrol going forward.

Also, given his background as assistant commissioner for internal affairs at CBP, I hope to hear today how he plans to ensure the Border Patrol adheres to appropriate Use of Force protocols, addresses possible misconduct, and ensures the utmost professionalism among all Border Patrol Agents.

On the second panel, we have a group of border stakeholders to lend their expertise to the discussion today.

I am especially interested to hear their opinion about Border Patrol's interior checkpoints, including whether they contribute to border security and how they affect law-abiding Americans in and around border communities.

I know Border Patrol considers checkpoints an integral part of its defense-in-depth strategy. However, I also understand residents in the region are concerned about being stopped as they go to work or school, visit friends and family, and go about their daily lives.

I, too, am concerned about the potential for civil liberties violations and potential racial profiling at such checkpoints. There are many who would prefer to see these resources utilized at the border instead and understandably so.

If Border Patrol is going to operate checkpoints away from the border, it must have protocols in place to protect the rights of U.S. citizens and maintain metrics that prove their effectiveness.

STATEMENT OF HONORABLE SHEILA JACKSON LEE

Chairman MeSally and Ranking Member Vela thank you for this opportunity to hear testimony on the topic of "Moving the Line of Scrimmage: Re-examining the Defense-in-Depth Strategy."

As a senior Member of the Homeland Security Committee, I served as Ranking Member of the Border and Maritime Subcommittee during the last Congress and believe that the Northern and Southern Borders deserve our attention and concern regarding security.

I welcome today's witnesses:

- Peggy Davis, Private Citizen;
- Gary Brasher, Private Citizen;
- Dr. Elyse Golob, Executive Director, National Center for Border Security and Immigration, The University of Arizona; and
- Christian Ramirez, Director, of the Southern Border Communities Coalition (Democratic witness)

I will never forget September 11, 2001 when 2,977 men, women, and children were murdered by 19 hijackers who took commercial aircraft and used them as missiles.

I stood on the East Front steps of the Capitol on September 11, 2001, along with 150 members of the House of Representatives and sang "God Bless America."

This annual reminder of the cost of our freedom and way of life exacted by 19 terrorists in a single day, we are reminded of the importance of the work of the men and women of the Department of Homeland Security.

Today's hearing will allow us to examine the U.S. Border Patrol's "defense-in-depth" strategy and the effectiveness of interior checkpoints as a border security tool.

There are tensions between where resources should be placed to best protect the borders of the United States.

Some would have us construct a wall as a means of controlling the Southern Border, while completely ignoring our Nation's Northern Border, which is the longest border of two nations in the world.

There are some who want to deploy thousands of border agents to station them at intervals along the Southern Border 24 hours a day to monitor the territory that comprises our Nation's borders.

A more prudent approach would be to do comprehensive immigration reform, which would include a border security component.

As the Ranking Member and Chair of the Committee's Subcommittee on Border and Maritime Security the Jackson Lee and Candice Miller bill, H.R. 1417, the Border Results Act of 2013, was a bipartisan comprehensive border security bill that should have gone before the House for a vote as part of a comprehensive immigration reform measure.

The Border Security Results Act of 2013, which was adopted unanimously by all members of the House Homeland Security Committee and for which many Democratic Senators have expressed support, offers a realistic, practical, measured, and cost-effective approach to achieving the border security that all Americans desire.

The bill would have achieved this objective in the following ways:

- First, the legislation directs the Secretary of the Department of Homeland Security to develop, and report to Congress for approval, a National strategy to gain and maintain operational control of the Nation's borders.
- Second, it defines the standard that must be met to constitute operation control, which is the apprehension of 90% of illegal border crossers in high-traffic areas within 2 years and the entire Southwest Border in 5 years.

H.R. 1417 directed the use of advanced technology to achieve visibility of the entire border by incorporating existing taxpayer-owned Department of Defense technology being brought back from Iraq and Afghanistan.

This approach provided a level situational awareness of the border that physical surveillance would not have achieved and would have empowered the Border Patrol to target problem areas and deploy resources where they are most needed, when they are most needed, and to do so in a fiscally responsible way.

The bill ensured that the border security strategy would yield good results and not just good intentions, the legislation mandated the development of metrics to measure progress at and between the Nation's ports of entry, as well as in the maritime environment and requires these metrics to be developed in consultation with a panel of Governors from border States and a National Lab which will provide an additional layer of scrutiny and expertise.

Finally, in addition to requiring the Secretary of the Department of Homeland Security to report to Congress every step of the way, H.R. 1417 required GAO, the

independent investigative arm of Congress, to verify the viability of the Department's strategy, implementation plan, metrics, and results.

During the 10 terms I have been in Congress, serving on both the House Committees on Judiciary and Homeland Security, dozens of immigration reform proposals have been offered but no major changes have been enacted since 1996 when Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 as part of the Newt Gingrich-inspired Contract With America.

DHS as a consequence of not having comprehensive immigration reform has adapted and crafted the defense-in-depth strategy.

This defense-in-depth strategy generally refers to Border Patrol's three-tiered border enforcement strategy, which consists of "line watch" at the border, roving patrols near the border, and checkpoints located away from the border but within Border Patrol's 100-mile zone of authority.

The Department of Homeland Security's U.S. Customs and Border Protection (CBP) protects our Nation's borders and ports of entry from terrorist threats and prevents illegal entry of people and dangerous materials in the United States.

I appreciate the focus on Arizona, but we should be looking at the border in totality.

Border Patrol Agents at checkpoints have legal authority that agents do not have when patrolling areas away from the border.

In 1994, the Border Patrol developed its first formal National border control strategy, the National Strategic Plan, which was informed by efforts in El Paso and San Diego, known as Operation Hold the Line and Operation Gatekeeper, to place additional Border Patrol Agents and resources at the border itself.

Today, the Border Patrol continues to use prevention through deterrence as part of a three-tiered border enforcement strategy, consisting of "line watch," roving patrols, and checkpoints.

The majority of Border Patrol Agents are assigned to line watch operations at the border, where they maintain a high profile and are responsible for deterring, turning back, or apprehending anyone they encounter attempting to illegally cross the border.

The United States Supreme Court ruled that Border Patrol Agents may stop a vehicle at fixed checkpoints for brief questioning of its occupants even if there is no reason to believe that the particular vehicle contains illegal aliens.

Roving patrol operations consist of smaller contingents of Agents deployed behind the line watch to detect and apprehend those making it past the first layer of defense in areas away from the immediate border.

Traffic checkpoints are located on major U.S. highways and secondary roads, usually 25 to 100 miles from the border.

Border Patrol operates two types of checkpoints—permanent and tactical—that differ in terms of size, infrastructure, and location.

While both types of checkpoints are generally operated at fixed locations, permanent checkpoints are characterized by their brick-and-mortar structure, that may include off-highway covered lanes for vehicle inspection, and several buildings including those for administration, detention of persons suspected of smuggling or other illegal activity, and kennels for canines used in the inspection process.

The Supreme Court has held that Border Patrol Agents on roving patrol may stop a vehicle only if they have reasonable suspicion that the vehicle contains aliens who may be illegally in the United States.

In 2009, GAO released a report examining the effectiveness of such checkpoints, concluding that such operations have contributed to furthering the Border Patrol's mission to protect the border, and have also contributed to protection efforts of other Federal, State, and local law enforcement agencies.

Most recently, in 2014, the University of Arizona released a report reviewing the GAO's conclusions, at the request of the Border Patrol.

In addition to the question of efficient and effective application of resources and tactics, the issue of "reasonable suspicion that the vehicle contains aliens," does raise questions on how Border Patrol practices may impact the rights of American citizens.

We have seen actions taken by local law enforcement in a few border areas based on laws that attempt to enforce immigration laws using local resources.

The larger issue for some people who may reside on the Southern Border especially for those Americans of Mexican ancestry that have resided within the United States for generations is how are their civil liberties impacted by border security practices.

We must assure that our Customs and Border Patrol professionals have the resources to do their jobs well.

Part of making the border safer is the collaboration and cooperation of all of our citizens to reside on the border.

I look forward to the testimony of today's witnesses.

Thank you.

Ms. MCSALLY. We are pleased to be joined today by two panels of distinguished witnesses to discuss the important topic today. The sole witness of our first panel is Mr. Mark Morgan. Mr. Morgan is the chief of the United States Border Patrol, a position he assumed earlier this year. Before entering the U.S. Border Patrol, Mr. Morgan served in the Federal Bureau of Investigation, the Los Angeles Police Department, and the U.S. Marines. While at the FBI, Chief Morgan served as a special agent in charge of El Paso Division and as a deputy assistant director for the Inspection Division. Chief Morgan's full written statement will appear in the record.

The Chair now recognizes the chief for 5 minutes.

STATEMENT OF MARK A. MORGAN, CHIEF, U.S. BORDER PATROL, U.S. DEPARTMENT OF HOMELAND SECURITY

Chief MORGAN. Good morning. Chairman McSally, Ranking Member Vela, and distinguished Members of the subcommittee, thank you for holding this important hearing today. This is a proud moment for me. This is the first appearance at a Congressional hearing representing the dedicated and talented men and women of the United States Border Patrol.

During my first 2 months here as chief, I have had the privilege to meet thousands of agents, staff, and trainees along the Northern, Southern, Coastal Borders, United States Border Patrol Academy, and the headquarters here in Washington. I can't think of a better way for me to have started my tenure than to get out in the field to listen, learn, and observe. It has exceeded my expectations.

In all these interactions, two critical facts have been crystal clear to me: No. 1, I still have a heck of a lot to learn; and No. 2, the men and women of the United States Border Patrol have one of the toughest jobs in Federal law enforcement. The complex challenges we face in 21st Century law enforcement are more difficult than I have seen in my 30 years of my career. The threat environment is constantly evolving, and this demands that we do the same.

This was never more evident than my assignment as the FBI special agent in charge of the El Paso Division in Texas. The unique environment facing law enforcement and the intelligence community along the Southwest Border are unparalleled. It was there that I first learned about the vast and challenging Border Patrol mission and just how critical it is to our Nation's security. I was astonished at the magnitude of the Border Patrol mission, and I was equally impressed with the men and women serving honorably every day to carry out that complex, constantly-evolving and never-ending mission.

I can tell you from my personal experience, they are hard-working, dedicated to this mission and their country, and they have and continue to make personal sacrifices to protect the citizens of this great Nation. So I sit before you today honored and privileged to be part of the United States Border Patrol team.

You know, the numbers we often hear associated with the United States Border Patrol are the numbers of annual apprehensions of

those attempting to illegally enter the country every year. It is hundreds of thousands. I would like to take a few minutes to also share some other numbers that we don't often talk about.

I have learned that the United States Border Patrol Agents are among the most assaulted law enforcement personnel in the country. There have been 7,542 assaults against Agents since 2006, and 30 agents have died in the line of duty since 2003. The recent passing of Border Patrol Agent Manuel Alvarez serves as a vivid reminder of the dangerous, challenging, and unique environment Border Patrol Agents are asked to experience.

Another number which often gets little mention is how often Border Patrol Agents put themselves in harm's way to provide emergency medical care and assistance to those in need, to include those that are trying to illegally enter the United States. Every year, the United States Border Patrol is involved in the rescue of thousands of victims of human smuggling and individuals attempting to illegally cross the United States, more than 3,700 this fiscal year alone.

In July, the Laredo sector Border Patrol Agent risked his own life as he jumped into the Rio Grande to save 4 victims that were surely to drown. Also, this past July, Tucson sector Border Patrol Agents risked their own lives to rescue 15 individuals that were attempting to illegally enter the United States when they found themselves trapped in an open pit mine in Green Valley, Arizona. Just a few weeks ago, the Buffalo sector Border Patrol marine units made landfall on the Canadian shore in the middle of the night after observing a house was on fire. They made landfall and they alerted the resident's family and escorted them to safety as the home became engulfed in flames.

Today's hearing is to discuss Border Patrol Agents and the Border Patrol strategic use of checkpoints. I think that it does acknowledge that illegal and dangerous cross-border activity can occur away from the immediate border. The Border Patrol's posture includes a threat-based, intelligence-driven, multi-faceted approach, such as checkpoints and Forward Operating Bases that are strategically located on known routes from the border in an effort to maximize our resources and prevent a single point of failure.

For example, just a few weeks ago, a driver attempted to flee the Sarita checkpoint in the Rio Grande Valley when a Border Patrol Agent canine had alerted to his vehicle. The driver was apprehended and 7 people, illegal immigrants, were discovered locked in the vehicle trunk with no means of escape. Along with sophisticated technology, enhanced infrastructure, a dedicated and skilled law enforcement personnel and partnerships, the use of checkpoint operations are a current component of the Border Patrol's layered strategy to protect this country's National security and ensure the safety of the public we are here to serve.

Thank you for the opportunity to testify today. I look forward to your questions and having dialog concerning where, as an agency, we can get better at what we do.

[The prepared statement of Chief Morgan follows:]

PREPARED STATEMENT OF MARK A. MORGAN

SEPTEMBER 13, 2016

INTRODUCTION

Chairman McSally, Ranking Member Vela and distinguished Members of the subcommittee, it is a pleasure to appear before you today on behalf of the U.S. Border Patrol (USBP) to discuss our layered security strategy and the role of checkpoints in securing the U.S. border between our Nation's ports of entry (POEs).

As America's unified border agency, U.S. Customs and Border Protection (CBP) protects the United States against terrorist threats and prevents the illegal entry of people and dangerous materials into the United States, while facilitating lawful travel and trade. USBP works with our CBP, interagency, State, local, Tribal, territorial, and international partners to patrol the more than 6,000 miles of land border between the POEs that we share with Mexico and Canada and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico.

Since the 9/11 terrorist attacks, the U.S. Government facilitated an unprecedented deployment of personnel, technology, and infrastructure to secure our Nation's borders. The resource base built over the past 2 decades has enabled USBP to develop and implement a Strategic Plan¹ and enforcement posture tailored to meet the challenges of securing a 21st Century border against a variety of different threats and adversaries. Today, our Strategic Plan is based on risk: Identifying high-risk areas and flows and targeting our response to meet those threats. Through enhanced technology and situational awareness and the introduction and expansion of sophisticated and layered tactics, capabilities, and operations, USBP's strategy focuses on Information, Integration and Rapid Response applied in the most targeted, effective, and efficient manner to achieve multiple objectives, including:

- Prevent terrorists and terrorist weapons from entering the United States between the POEs through improved and focused intelligence-driven operations, as well as operational integration, planning, and execution with law enforcement partners;
- Disrupt and degrade Transnational Criminal Organizations by targeting enforcement efforts against the highest priority threats and expanding programs that reduce smuggling and crimes associated with smuggling; and
- Manage risk through the introduction and expansion of sophisticated tactics, techniques, and procedures. These include methods of detecting illegal entries such as using "change detection" techniques, increased mobile-response capabilities, and expanded use of specially-trained personnel with "force multiplying" skills and abilities.

Information gathered from reconnaissance, community engagement, sign-cutting, and mobile and fixed technology together provide situational awareness and intelligence and helps us to best understand and assess the threats we face along our borders. The use of technology in the border environment is an invaluable force multiplier to increase situational awareness, direct a response team to the best interdiction location, and warn the team of any additional danger otherwise unknown along the way. Information and intelligence will empower USBP leadership and front-line agents to get ahead of the threat, be predictive and proactive.

Integration denotes CBP corporate planning and execution of border security operations, while leveraging partnerships with other Federal, State, local, Tribal, and international organizations. Integration of effort with these organizations will ensure we bring all available capabilities and tools to bear in addressing threats.

Lastly, through Rapid Response, we will deploy capabilities efficiently and effectively to meet and mitigate the risks we confront. Put simply, rapid response means USBP and its partners can quickly and appropriately respond to changing threats.

A key element of the USBP's Nation-wide Strategic Plan for securing the border is the USBP's layered enforcement posture, which has been referred to as "defense-in-depth". This layered posture includes advanced detection technology, tactical infrastructure, traditional patrol activities, and other tactical enforcement operations. The Strategic Plan recognizes that the security of the border cannot be achieved by only enforcement activities located at the physical border, such as routine patrols deployed from 135 Border Patrol stations, and 6 substations on the Northern and Southern Borders. For that reason, some of USBP's enforcement operations take place away from the physical border, at interior checkpoints, and in ancillary areas. This approach makes full use of available enforcement opportunities to produce a

¹ 2012–2016 U.S. Border Patrol Strategic Plan. <https://www.cbp.gov/border-security/along-us-borders/strategic-plan>.

layered deployment of capabilities to improve our comprehensive understanding of the threat environment, to increase our ability to rapidly respond to threats, and to strengthen enforcement.

USBP's 15 Forward Operating Bases (FOBs) give USBP a tactical advantage by providing close support in areas that are remote or otherwise difficult to patrol; reducing the amount of time and fuel required to drive to and from the border area; and providing a sustained enforcement presence and deterrence posture in the border area. FOBs are a critical part of the USBP Strategic Plan in that they provide greater operational capability in areas where gaps exist in deployment density and infrastructure.

Immigration checkpoints are also a critical element of USBP's layered approach to combat illegal cross-border activity and are the primary focus of my testimony. Border Patrol checkpoints are strategically located on routes of egress from the border and thereby additionally deters an attempted illegal entry. The purpose of checkpoint operations is to apprehend recent entrants who are undocumented and smugglers who were not apprehended at the border and are attempting to travel to interior locations.

As part of the USBP's layered security strategy, checkpoints greatly enhance our ability to carry out the mission of securing the Nation's borders against terrorists and smugglers of weapons, contraband, and unauthorized entrants. Checkpoint operations are critical security measures that ensure that the border is not our only line of defense, but rather one of many.

CHECKPOINT OPERATIONS

Given the ratio of agents to miles of border, checkpoints establish funnel points to more effectively use resources for immigration enforcement purposes. All checkpoint sites are determined by Border Patrol managers in advance of establishment, and are positioned far enough from the border to avoid interfering with traffic in populated areas near the border; at sites where the surrounding terrain should restrict vehicle passage around the checkpoint; and located on a stretch of highway compatible with safe operation. Permanent USBP checkpoints are operated at the same location every time; however, tactical checkpoints are mobile.

All checkpoint locations and operations are implemented in accordance with established CBP checkpoint policy, to ensure consistent and appropriate physical setup, illumination, and signage for the safety of vehicle traffic and agents. Also, all checkpoints comply with all State departments of transportation requirements and Federal traffic control guidelines using the latest version of the U.S. Department of Transportation, Federal Highway Administration's Manual of Uniform Traffic Control Devices.

In the operation of checkpoints, USBP also ensures that appropriate equipment including, vehicles, barricades, cones, rumble strips, and other traffic control equipment is in place to safely and effectively funnel and stop traffic to perform both primary and secondary inspection operations. The safe operation of traffic checkpoints is of the utmost importance. The site selection and the physical arrangement of immigration checkpoints are designed to minimize the risk of an accident or an injury to any agent or member of the public. At times when traffic can be funneled into one lane and during the hours of darkness, the physical setup is changed to enhance the safety of Border Patrol Agents.

In addition to ensuring the safety of the traveling public and Border Patrol Agents, USBP establishes checkpoints in strategic locations to maximize enforcement resources as well as to minimize interference with the flow of legitimate personal and business traffic. USBP makes every effort to only operate checkpoints when traffic volume allows the operation to be conducted safely and efficiently.

Although the purpose of an immigration checkpoint is to identify undocumented persons who recently entered and human smugglers, agents often encounter violators of other Federal and State laws, such as the Federal Controlled Substances Act and the Controlled Substances Import and Export Act. During primary or secondary inspection at an immigration checkpoint, Border Patrol Agents briefly question the vehicle occupants' citizenship and immigration status. During the inspection, Border Patrol Agents may make plain view observations regarding the vehicle and its occupants and may request consent to search. When agents obtain consent, they may search the area consented to, without a warrant and without probable cause.

Generally, Border Patrol Agents employ two means to stop vehicles driven by smugglers using side roads to circumvent a checkpoint: Additional checkpoints and roving patrols. USBP may establish and coordinate tactical checkpoints on circumvention routes, so as to ensure the effectiveness of checkpoints on main thoroughfares. USBP may also conduct roving patrols, an acceptable and effective means

to stop vehicles driven by smugglers using side roads to circumvent an immigration checkpoint. Border Patrol Agents on roving patrol may stop a vehicle only if they have reasonable suspicion, based upon specific articulable facts and rational inferences from those facts, that the vehicle contains individuals who may have illegally entered the United States.

When Border Patrol Agents make a lawful custodial arrest of an occupant of a vehicle at an immigration checkpoint, they are authorized to make certain warrantless searches incident to the arrest, including the person arrested, personal effects in the arrestee's possession. Vehicles and personal articles that are impounded, detained for safekeeping or as evidence may be subject to an inventory search.

USBP also uses canine teams to detect undocumented individuals and illegal drugs by conducting a quick exterior canine sniff at an immigration checkpoint while the roadblock inspection is on-going. An alert by a Border Patrol canine constitutes probable cause to search. USBP canine teams are specially trained to detect the odors of controlled substances and concealed humans at checkpoints and other Border Patrol operations. As part of CBP's layered enforcement strategy, canine teams provide an unmatched level of security and detection capability.

When there is probable cause or consent, Border Patrol Agents may also use detection technology such as non-intrusive inspection (NII) systems and X-ray equipment to view the interior of a vehicle. However, if Agents have probable cause to believe that people are hidden inside a vehicle, agents will proceed with a physical search to minimize the risk of radiological exposure to humans.

The purpose of a Border Patrol checkpoint is to apprehend recent undocumented entrants and smugglers; however, as noted, in the performance of these operations, Border Patrol Agents may develop suspicion of a range of criminal activity. Agents may be exposed to dangerous materials. To ensure the rapid detection of radiological materials, CBP policy mandates that all personnel assigned to primary inspection at Border Patrol checkpoints be issued a personal radiation pager and must ensure it is activated while on duty. A radiation pager is a portable gamma-ray radiation detector for use by law enforcement officials in the interdiction and location of nuclear materials.

EFFECTIVENESS, PERFORMANCE, AND METRICS

While there is still work to be done, the Nation's long-term investment in border security between the POEs has produced significant and positive results. In fiscal year 2015, USBP apprehensions—an indicator of illegal migration—declined to 337,117 Nation-wide compared to 486,651 in fiscal year 2014. CBP also has a critical counter-narcotics role; in fiscal year 2015, CBP seized or disrupted the movement of more than 3.3 million pounds of narcotics and more than \$129 million in unreported currency at and in between the POEs. These positive trends lend themselves to our Nation's whole-of-Government approach to border security efforts, which emphasize the importance of joint planning and intelligence sharing.

The presence of USBP Agents along strategic routes reduces the ability of criminals and potential terrorists to easily travel away from the border. Given that fewer resources (law enforcement personnel, equipment, and technology) are required to operate a checkpoint, checkpoint operations are an efficient and effective security mechanism used to interdict criminal activity and restrict the ability of criminal organizations to exploit roadways and routes of egress away from the border. In fiscal year 2015, at checkpoints alone, USBP apprehended 8,503 individuals and seized over 75,000 pounds of drugs, while intercepting thousands of dangerous attempts at human and drug smuggling. Many of the drugs seizures at checkpoints are a reflection of the effectiveness of USBP's multi-layered strategy. The shipments seized at checkpoints are often referred to as "consolidation loads," meaning that they are not shipments being moved directly from the border into the interior, but rather they are a combination of several small cross-border shipments that had previously entered the United States, and are now being moved to major distribution points in the interior of the country.

For example, just a few weeks ago, agents from the Rio Grande Valley Sector working the Sarita Checkpoint, arrested a driver who had been attempting to smuggle immigrants in his vehicle. When a USBP canine alerted to his vehicle, the driver attempted to flee; however, after a brief pursuit, the driver was apprehended. Seven migrants were discovered in the trunk with no means of escape.² Also this past

² "Rio Grande Valley Agents Rescue Immigrants, Smuggler Flees Checkpoint." August 23, 2016. <https://www.cbp.gov/newsroom/local-media-release/2016-08-23-000000/rio-grandew-valley-agents-rescue-immigrants-smuggler>.

June, Border Patrol agents from the Laredo Sector assigned to the Interstate Highway 35 Checkpoint encountered a Kenworth tractor towing a cargo tank at the primary inspection lane.³ While the driver was being questioned, a service canine alerted to possible concealed humans or narcotics within the vehicle. After the driver was referred to secondary, the agents performed an X-ray scan of the trailer and discovered several anomalies within the cargo tank area. A total of 216 bundles, of what was later determined to be marijuana, were removed from the tank with a total weight of 5,734.3 pounds and a street value of \$4,578,440.00.

In August 2009, the Government Accountability Office (GAO) issued a report, *Border Patrol Checkpoints Contribute to Border Patrol's Mission but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, (GAO-09-824) and made recommendations to improve checkpoint governance. To effectively manage and account for checkpoint performance measures, USBP created a Checkpoint Program Management Office (CPMO). The duties of the CPMO include reviewing checkpoint activity reviewing staffing and checkpoint resources; working policy and legal issues with divisions and departments at Headquarters; coordinating external reviews; coordinating with facilities maintenance and engineering on facility updates; and conducting liaison with sectors on checkpoint issues. The CPMO also collects and maintains statistical information, including traffic counts and arrest statistics per location to demonstrate that a particular checkpoint is effective in interdicting undocumented individuals and to justify the intrusion on the traveling public.

Through strategic placement and operation, Border Patrol checkpoints are not only effective for enforcing immigration laws and detecting smuggled contraband, but they are also extremely beneficial in thwarting human smugglers. Smugglers often conceal immigrants in unsafe and even life-threatening conditions in an attempt to circumvent detection. The USBP works closely with our interagency, State, Tribal, territorial, and local partners to urge immigrants not to put their safety at risk by attempting to illegally enter the United States or circumventing a checkpoint.

THE BORDER SAFETY INITIATIVE

Border Patrol Agents work around the clock to detect, deter, and disrupt illicit cross-border activity in all types of terrain and environmental conditions in support of our law enforcement mission; however, an inherent and essential component of our security mission is the responsibility to protect the safety of the public. Every year, USBP is involved in the rescue of thousands of people—more than 3,200 this fiscal year alone—who are victims of human smuggling and other undocumented immigrants who find themselves in dangerous or distressing situations while attempting to cross into the United States from Mexico between the ports of entry. Historically, the summer months are the deadliest. Nearly 4,000 migrants have tragically lost their lives in the last 10 years from exposure to the unforgiving elements, suffering heat stroke, dehydration, hyperthermia, and drowning in canals, ditches, and the Rio Grande River.⁴

CBP's deployment of specialized personnel, area-specific technology, and public awareness campaigns are all key elements in the effort to prevent the unfortunate loss of life. USBP currently has more than 4,150 first responders, 730 Emergency Medical Technicians and 70 paramedics, all of whom are Border Patrol Agents who also have the capability to treat any individual with immediate medical needs in the field.

CBP recently released the first in a series of 60-second Spanish language video testimonials⁵ of Central American immigrants who voluntarily share their horrifying 1,600-mile journey north in the hands of human smugglers. The immigrant testimonials are a continuation of Spanish language messaging campaigns CBP has launched in recent years in Central America, Mexico, and in key Central American communities in the United States. Through these efforts, CBP hopes to prevent the loss of human lives and to raise awareness of the real dangers and hazards Mexican

³ "Significant Seizure Caught at Border Patrol Checkpoint." June 17, 2016. <https://www.cbp.gov/newsroom/local-media-release/2016-06-17-000000/significant-seizure-caught-border-patrol-checkpoint>.

⁴ Southwest Border Deaths, By Fiscal Year. <https://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2015.pdf>.

⁵ Migrant Testimonial Series (produced by the DHS Joint Task Force—West). <https://www.cbp.gov/newsroom/national-media-release/2016-05-31-000000/cbp-launches-series-spanish-language-central>.

and Central American immigrants and their families face in the hands of unscrupulous human smugglers.

In conjunction with the launching of the testimonials series, CBP announced the expansion of Border Safety Initiative (BSI) messaging outreach to key Central American communities in California, Texas, Florida, New York, and Washington, DC metropolitan areas regarding the dangers of attempting to illegally cross the Southwest Border. The BSI focuses on the deployment of life-saving technology, emergency response personnel, as well as binational information campaigns aimed at reducing the numbers of immigrant deaths. BSI also strives to rescue immigrants who fall prey to unscrupulous human smugglers who have no regard for their life and safety.

Partnerships and collaborative efforts such as the BSI enhance our Nation's overarching capability to address the threat of human and drug smuggling, increase front-line intelligence and enforcement operations, and enhance the safety and security of the public we serve.

CONCLUSION

The function of checkpoints is to conduct immigration enforcement operations in strategic locations on routes leading away from the border. However, checkpoint operations are also a critical enforcement tool for interdicting dangerous materials, narcotics, and human smugglers. Checkpoint operations, paired with FOBs, effective Border Patrol canine teams, and sophisticated technology continue to deter the activities of human smugglers and disrupt the flow of illicit contraband from entering our communities.

The border environment is dynamic and requires adaptation to respond to emerging threats and changing conditions. I appreciate the partnership and support USBP has received from this subcommittee, whose commitment to the security of the American people has enabled the continued deployment of resources and capabilities USBP needs to secure the border.

The continued focus on unity of effort, in conjunction with checkpoint and other strategic and layered enforcement operations, better enables USBP to enhance its ability to detect and respond to threats in our Nation's border regions. CBP will continue to strategically deploy resources, technology, and front-line personnel in order to keep our borders secure, and the communities along it, safe.

Chairman McSally and Ranking Member Vela, thank you for the opportunity to testify today. I look forward to your questions.

Ms. MCSALLY. Thanks, Chief Morgan.

I now recognize myself for 5 minutes for questions.

So as the relatively new chief of the Border Patrol and one that wasn't an agent first, you mentioned in your opening statement that you have taken time and toured the different sectors and just taking a fresh look as to the mission that they have, the challenges that they have.

So based on that and the topic of this hearing, which checkpoints is one element of it, but really, we are looking at the full defense-in-depth strategy, can you share, what did you learn about the defense-in-depth strategy, and do you agree that this should continue to be the approach that we take, especially in rural communities?

Chief MORGAN. Yes, ma'am. So I think I first learned that I am probably going to stop referring to it as defense-in-depth strategy. I think there has been a perception, that means we are actually ceding, intentionally ceding ground and territory. I don't think that is what I am seeing. I think what I am seeing—and after 2 months, you are right, I still have a lot to learn. I am still taking a hard look at this and I am asking a lot of questions. I think what I am observing is the strategy really is, as I said in my statement, is trying to come up with a comprehensive, multifaceted, layered strategy that prevents us from having a single point of failure. That really is my concern. Now, there are lots of different ways that maybe that can be achieved, and we need to take a look at that and continue to grow.

I think the Border Patrol is going in the right direction, being that threat-based, intelligence-driven, operationally-focused organization that is supported with infrastructure, technology, and personnel. But also that I think part of that strategy—we know that regardless of, as we continue to grow on that threat-based, intelligence-driven, operationally-focused approach, supported by infrastructure, technology, and people, things are still getting across. That is what I saw too and that is what I am learning. We are getting better. We are not where we need to be yet, but we are getting better. But things are getting across.

So as I am looking at that, what do we do to prevent the things that do get across and do get by us? How do we have a strategy that gives us a second look at that, gives us a second chance at that, to eliminate that single point of failure? I think that is what I am seeing with respect to the strategy.

Ms. MCSALLY. So thanks, Chief. You know, during your time and your discussion and your visits, I mean, were you able to see or do you agree that, again, if you see the vast majority in the Tucson sector, anyway, of apprehensions that are taking place north of 5 miles from the border, that the illicit activity does have some serious repercussions to border communities and residents?

Chief MORGAN. Yes, ma'am, I absolutely agree. I have been to Del Rio. I have been to RGV. I have sat with the ranchers. One night I had dinner with the local ranchers there. It was a great barbecue. They—I sat and I talked with them. The elements that you mentioned in your opening comments are exactly what they are saying as well. I think they are absolutely, unequivocally legitimate in everything that they say.

If I was a rancher and I hear that they talk about the things that they do, from what others may see as small, a gate left open, it is not small to a rancher. Cattle can get out. Right. That can have devastating impacts. They have seen people that have passed on their property. Their property is getting broken into. Things are being stolen.

Yes, ma'am. So it is absolutely a serious issue. I can say, my tour and being out in the field, especially along the Southwest Border, I have not met a Border Patrol Agent yet that doesn't understand that and take that equally as serious.

Ms. MCSALLY. Great. Thanks. As part of your assessment, do you think we have enough Agents to secure the border? My understanding is we are now below 20,000 Agents Nation-wide.

Then I guess the other question, again, related to the strategy is, of the agents that you have, are you taking a look at where they are assigned? We hear a lot from the Agents themselves about those that are being detailed away and not enough are mustering actually to be out patrolling on a daily basis. Those percentages, as we have done some, you know, just different visits and talking to people, seem to be a little bit lopsided as far as those that are out in the field versus those that are in other assignments. So are you taking a look at that, and what have you learned from the number of agents and where they are actually assigned?

Chief MORGAN. Yes, ma'am. So I think all elements you just said absolutely, unequivocally I am taking a look at that across the board. There are a couple of things.

So first, to answer your question: Do we have enough? My first immediate answer is, I don't know yet when it comes to the personnel, because I think we have to do, also what you said, is take a look at the resource allocation and where are they at. I think also it is a layered approach. I think to answer that question honestly, it is a little premature, I think, for me to be able to do that and to have that confidence before I give you those numbers. Because, again, part of that is increasing our ability to identify and understand the threat and have a situational awareness to be able to continue to grow, being intelligence-driven, and then focusing our operations toward that threat. It is also a combination of infrastructure and technology. Through the use of infrastructure and technology, it could impact the need for the number of Agents. So I am taking a look at that.

I think you hit the other element right on the head, is that, basically, are the Agents where they need to be? I don't know. I don't know. I am taking a look at that. I am asking those questions.

If you look at the history, as you mentioned as well, you know, Hold the Line, Gatekeeper, if you look at the history of the Border Patrol, you know, resources had to be shifted as the threat shifted. I think that is hard for an organization that is static in nature, meaning people have to move and buy homes and et cetera, but also being agile and mobile enough to be constant, having that constant ability to be able to go where the evolving threat is. We are taking a look at that. We have mobile response teams.

So, you know, some sectors may see some Agents leave. I don't know. You know, may see agents leave the Tucson sector, for example, but they may be going to RGV, which they are just getting hammered right now with the inflow and influx of folks crossing. So we have to take a look at that, I think, in a holistic approach. But absolutely, we are taking a hard look at that.

Ms. MCSALLY. OK, thanks. One more quick question on the checkpoints and then we will get another round, because I want to go deeper into it. So we have got these permanent checkpoints on most roads in Arizona and I know across the rest of the border. I mean, look, if you are a hardened cartel operative and you drive through a known Border Patrol checkpoint, you should get the Darwin award. OK? So, I mean, as I have talked to Agents and I have talked to your predecessor, you are picking up the low-level criminals who maybe don't know any better or don't have good intel themselves, think somehow they are going to be getting through, but not the serious cartels.

The understanding, the way it has been described, is you intend that the serious cartels, the transnational criminal organizations are going to go around the checkpoints, and that pushes them into our communities. We will hear from the second panel about some of the impacts of that. So we won't be able to have that sort of dialog so I want to make sure we get this discussion out in this first panel.

So—and then we talked to Agents who say they don't have enough manning to actually go out and patrol the walkaround. So this is impacting, if Agents are at the checkpoints, but they are not out there fanning out for those that are going around it, then you

are still not intercepting them, yet they are being a public safety threat to the communities that are around the checkpoints.

So can you just talk a little bit about that checkpoint strategy, the fact that they are fixed versus roaming, they close down when the rain comes? So, you know, the bad guys just line up during monsoon season. They know exactly when to go around them. Just like, you know, what your assessment is of how we can improve or take a fresh look at the use of these checkpoints.

Chief MORGAN. Yes, ma'am. First of all, I want to say absolutely we should take a look at this, 100 percent. I am and we are absolutely looking for every opportunity we can improve. I think that is how great organizations get better. I think the Border Patrol is a great organization, but I think the way we get better is to continue to challenge ourselves and to ask ourselves, is what we are doing working, is it effective, and can we get better? So absolutely, I will be asking those questions.

Now, more specific, I will have to do a little bit more work to be able to provide you a solid answer whether, you know, specific cartels are using the checkpoints. I can tell you from my experiences 20 years in the FBI as well as what I have seen thus far in the Border Patrol, is that serious drug cartels do use lower-level mules to do transportation. I think last year alone the checkpoints, I think it was around 75,000 tons of drug seized. This year, we are about on track to do that via the checkpoints. So they are getting serious amounts of drugs.

Now, the change of TTPs, sometimes the loads are smaller, but that doesn't mean necessarily it is not coming from a serious drug trafficking organization. They are just changing their TTPs.

The other part with respect to pushing around the community, I think I am seeing there is some truth to that. What I am seeing Border Patrol's part of the strategy is they do have roving patrols around those checkpoints for that and they base that on intelligence and the traffic flow. They also can set up intermediate or temporary checkpoints as well to try to stop the flow of people going around. So I think they do have a strategy to try and address that. Holistically, how effective is that? I still need to get some more data on that to be able to provide you a good answer.

Ms. MCSALLY. OK. I will come back during Round 2, but I will tell you that at some checkpoints in Arizona, they don't have the manning to do the roving patrols. So these are all hand-in-hand. Where is the Border Patrol manning going and, you know, do you have the manning to be able to address those issues? Then the impact again on the private property and the local communities when the bad guys are going around.

So I am going to go ahead and yield to my Ranking Member here, Mr. Vela, for his opening questions.

Mr. VELA. So are you making a distinction between the effectiveness of the checkpoints in terms of catching people versus catching loads of narcotics?

Chief MORGAN. I am not sure, sir, what you mean by making a difference.

Mr. VELA. Well, I guess what I am curious about is we see statistics when we cross these checkpoints in terms of, you know, pounds of cocaine, you know, that has been detected and, you know, so

much marijuana. I am just trying to get an assessment as to what your sense of how effective the checkpoints are with respect to apprehension of narcotics versus apprehension of people.

Chief MORGAN. I think at this point I am seeing the checkpoints that are an effective part right now of the strategy to prevent us from having a single point of failure. I am seeing that. I am not saying that there are not alternatives that we should look at or we could look at, again, as part of the strategy to prevent us from having a single point of failure. But currently, as the structure right now, the statistics are showing that they are effective at the immigration enforcement of which their primary purpose is. Last year, the checkpoints across Southwest Border I think was about 8,000. This year, I think we are on track for that same number as well. So on its face, they appear to be effective as that part of the strategy to prevent us from having a single point of failure.

Now, ancillary, in addition to that, yes, they have been, I would categorize it as very successful with respect to drug seizures. I think they have also been somewhat successful in catching people, criminals, that have outstanding warrants, State/Federal/local warrants for some pretty violent, heinous crimes, as well as those that have been convicted of violent crimes in the past. That is also happening at the checkpoints as well.

Mr. VELA. Yes. I didn't mean the question to be critical. I was just trying to get your assessment of the effectiveness of the checkpoints with respect to those different tasks that the agency has at the checkpoints.

Chief MORGAN. Yes, sir. So I think right now, I would say they appear to be effective, especially with the resources that are actually dedicated to the checkpoints. It is actually a very small amount of the Border Patrol resources that are dedicated to checkpoints overall. I would say that the statistics that are being produced by those checkpoints, I would say at this point, knowing what I know now, I would categorize them as being successful.

Mr. VELA. So back on the issue of morale, just to give you an idea of how entrenched the Border Patrol has been in south Texas and in my life there, your agency served as pallbearers at my father's funeral.

So when I talk to Agents—it happened last weekend at a golf tournament. I had, by coincidence, ran into two Agents that came up to me, and they had the same story, and it was, you know, how deeply things had changed from their perspective in the Border Patrol, and not for the good, right, not from a morale standpoint. What I have found—and this is not just a statement on the Border Patrol or Department of Homeland Security but with respect to Federal agencies in general and the disconnect between the offices up here in Washington, DC, and what is going on on the ground.

You know, I guess what I am—I know you just started and I know that these assessments that you have made are your initial assessments, but what can you tell us about where you are headed with respect to improving morale? For that matter, these conclusions that I have come to aren't based on statistics that I have read and these notebooks that we are handed or what staff has told me. These are real-life conversations that I have, you know, with the

people that work for you, right. So I am just kind of curious. Are you getting the same sense I am or is it different?

Chief MORGAN. Yes, sir. Well, first, I would absolutely love to maybe do an off-line and get more in depth of what you are actually hearing from the line agents, because I think, as the chief of Border Patrol, that is exactly what I need to hear, if I am going to take a look at issues and be able to really make the impact that I need.

I go out there and my stump speech, part of what I tell them is part of one of my key roles as the chief is to be their relentless advocate. I think part of being their relentless advocate is understanding what they are feeling each and every day. That is really one of the main reasons why on Day 3 I decided that I was going to go out to the field and I am going to visit every single sector, all 20 sectors, and I am not going to stop until I complete it. Since I have been out there, I have stood in front of musters of 300, and I have talked to two mechanics in the garage and I have listened to them.

So I am hearing issues about morale. Morale is not where it needs to be, but there are a lot of reasons for that and it is very complicated. I can say—so the FEVS survey, the Federal Employee Viewpoint Survey that went out is that it really kind of told us and identified that there are some morale issues and there are some challenges, but that is only one point of context.

So what the Border Patrol did is they actually commissioned an outside entity to come in and take a look at the basic information from the FEVS survey. They went out, they went out to 13 sectors, talked to over 900 personnel from the Border Patrol chief of the sector all the way down to the mechanic, and from that they came up with these basic 8 core areas. Then we brought back additional people to do a deeper dive to really get to the core root of the issues. Then the plan is—my plan is to really do some targeted teams on those issues to really try to address those issues to improve morale.

Those are specific things, but I think there is also some bigger things that we need to take a look at too. I think we have mentioned some of those as well. That is the second thing that I tell them as part of my job that I think will impact morale is, as the chief, to get them the resources, the training, the tools, and the technology to do their job effectively and safely. I think this goes to the heart of the hearing, as a matter of fact, is is our strategy right? Are the things that we are using correct? We need to take a look at that. We do. Everything.

Sitting as a new chief, I can tell you I am not accepting anything that I see as it is the right thing. I am not doing that. I am asking questions and I am asking for explanations. Why are we doing this? Is this the right thing? Are there alternatives to prevent us from having a single point of failure, or is checkpoints the only thing that we can do? I think that is important going forward.

Mr. VELA. Well, look, I look forward to working with you on that issue and many others. What I can tell you is that I am sure the surveys are real nice and everything, but between Mr. Hurd and Congressman McSally and, you know, Mr. Higgins, who represents the Northern Border, and those of us who interact with your agen-

cies every day, not to mention the people that we have working for us back in our offices—I mean, I was at my office back in the district 2 weeks ago and, you know, Agents were coming in.

So our offices have a significant degree of interaction with the people that work for your agency and, you know, use us as a tool, because I think that we can help bridge some of these gaps, given our interaction with your agency, you know, with your agents on the ground day-to-day. But thank you for being here.

Chief MORGAN. Yes, sir. I would absolutely like to take advantage of that. Absolutely.

Ms. MCSALLY. Great. Thank you.

The Chair now recognizes Mr. Duncan from South Carolina for 5 minutes.

Mr. DUNCAN. Thank you, Madam Chairman. Thanks for this hearing as well.

Chief, thanks for being here. Congratulations. I enjoyed working with your predecessor, Chief Fisher, when I was a little more engaged with the Subcommittee on Oversight and Management Efficiency.

I have been on this committee for 6 years and this topic never seems to go away. You have got quite a challenge ahead of you because of the bureaucracy that you work for. I am glad you are asking the questions and I hope we can make those changes as you seek answers, and I look forward to working with you.

I think you will find a willing Congress, at least a willing committee, to help you. It is not just the border States and their delegations that are interested. Immigration issues affect everyone, drug issues affect everyone, National security issues affect everyone, even in South Carolina.

So coming on the heels of 9/11 15 years later, a lot of reflection over what happened, mistakes made and all that, I have done a lot of radio interviews and I have told folks that I don't know that we are any safer today by combining all these agencies under DHS, and our border is still insecure.

I say that in that we still have illegals and contraband and drugs and illicit activity happening that is coming across our border. That is no fault of yours and that is no fault of your personnel. I applaud you and I support you and I want to keep working with you. But the facts are the facts, that we have illegals coming in this country. We have another element coming into this country illegally, walking across our border, and that is a DHS term of OTMs, other than Mexicans. These are personnel that aren't just the Hispanic origin folks that are coming to take the jobs in agriculture, horticulture, hospitality, you name it. These are people who we really don't know their intent because the apprehension rates of folks that have crossed our border are speculative. I say that in that Jeh Johnson has said, well, we take the number that we catch and then we kind of extrapolate that and figure out how many we are not catching. That is alarming when you really think about that.

So do you know the percentages of OTMs that are apprehended on the border? These are people from Africa, the Middle East, you know, Asia. What is that percentage, based on your knowledge?

Chief MORGAN. Yes, sir. I don't know that exact percentage of OTMs.

Mr. DUNCAN. OK. There's no problem. America just needs to know—

Chief MORGAN. Yes, sir.

Mr. DUNCAN [continuing]. That there are people crossing our border that aren't just from Latino, Latin descent, and Mexico or Guatemala or whatnot, coming to take jobs, coming to bring their unaccompanied children here or whatnot; that they are folks that have traveled great distances, oftentimes using false or fake passports and a lot of money, traveling through the tri-border region of South America, transiting up through Latin America and coming into this country. Some may have goals of providing for their family, I don't discount that. But I believe some may have nefarious goals, and on the heels of 9/11 I am going to be very, very cognizant of that.

So Congress in 2006 passed the Secure Fence Act. I wasn't here. I applauded it as a State legislator in South Carolina, but then Congress failed to appropriate the dollars to complete the job. I don't know how many miles have been completed now. I believe in more fencing. I believe it works because I believe there are areas—I know there are areas you can't fence. Nogales sector, the mountains are high. But what it does is it puts the bad element, I guess, into corridors that makes your personnel more effective. So I see it as a force multiplier.

But we all know that a taller fence just means a higher ladder or a higher fence means a taller ladder and elements are going to cross over that fence. That is where electronic surveillance, that is where other force multipliers actually come in. I appreciate that.

But if you go and look and you go to my Facebook page, Jeff Duncan, I put it up there last week, 2 weeks ago, there is a video in San Diego. *San Diego News*, which isn't the most conservative news source, but they were talking about the fact that people were coming into this country, they were apprehended by you guys and let go, because they are claiming asylum. It also says that this isn't a policy that is bottom-up, this is from the very top guy sitting down here on 1600 Pennsylvania Avenue saying, let them go.

I will tell you, in South Carolina, we are not very happy about that, about folks that have crossed our border, broken our laws, violated American sovereignty—we are a sovereign Nation—and they are let go. So—and I don't blame you for that. These are problems we have got to work on together. I am acknowledging that. I am offering help to work on it together as Congress.

We have been told in the 6 years I have been here by folks that work within DHS, that we have operational control of the border.

I can't get a good definition of what that operational control means, Madam Chairman, but I would ask the chief, in your opinion, what does operational control mean and have we achieved operational control of our Southern Border? The Northern Border is for another topic, another day. The Southern Border is where I am focused.

Chief MORGAN. Yes, sir. So I will start with the latter, operational control. Two months in, I am taking a look. I am not sure—again, I caveat that with 2 months in. I am not sure operational control is the right way to look at this. I am questioning that term, to be able to provide everyone that should with that definition.

I think I go back to the strategy of being threat-based, intelligence-driven, operationally-focused, supported by infrastructure, technology, and personnel. With that as the framework, I think the goal is, is that we are striving to have confidence levels through our situational awareness. So I am asking folks, what are your confidence levels from zone to zone within a station, within a sector, throughout an entire 6,000-plus land border miles and 2,000 coastal we are responsible for. I pulled a little bit of that from my FBI experience as we went through in the aftermath of 9/11, we are trying to figure out and ask ourselves the same question.

So I want to be able to get to a sector chief, to him or her, and say, what are your confidence levels with respect to the situational awareness that you have in your sector? Tell me about that. Talk to me about that. How did you get that? Talk to me about your threats. Talk to me about the intelligence process. Talk to me about your partnerships. Talk to me about the use of infrastructure, technology, and personnel that you used to get to that. We need to have a defined set of matrix and factors that we all go in that goes into a sector chief being able to determine their confidence level. Then, based on that, that is how we allocate those resources. I think that is the direction that we need to go, but I am asking those questions.

So, again, I would say I am not sure operational control. One of the reasons why I am not sure operational control is a right frame is because the TTPs change too quickly. Again, as you mentioned, ma'am, in your opening comments about Gatekeeper and Hold the Line, those are great examples of how we did all this, and the stuff shifted. So at one moment we could say we have operational control in the area and the next minute it will change. But if we have that process that I described, having situational awareness, I think that is going to position us better to be able to do what we need to do.

I would like to talk a little bit and respond to what you mentioned about people are coming here and they are being allowed to then come into the United States. I think that is also something that we need to talk about and take a look at. Because when we talk about resources, specifically manpower, what I see that we are being asked to do—and please don't get me wrong, we are going to do whatever we are going to be asked to do. The political decisions or the policies of the U.S. Government, that is not our role to get involved in. Whatever you decide, we are going to do.

What we are being asked to do right now, I think you could phrase it a little bit as a humanitarian mission. For example, some of what you referred to, sir, is the unaccompanied children that are coming across. I stood in the Rio Grande Valley on one of the cut roads where a smuggler had told some children, once they made landfall, to go on the cut road until you came in contact with a United States Border Patrol Agent. I was there and I watched that. I watched the little 6-year-old girl holding the hands of her 11-year-old brother, and they made the trek all the way from Honduras.

Now, personally, I wanted to take that little girl home with me, I did. That is something that will probably stick with me my entire life. But as the chief of the United States Border Patrol, which I think we have a National security interest in this country, we have

a law enforcement threat in this country, I think when I look at that 6-year-old, she is not a National security threat or a law enforcement threat, with respect to what I see my job as the chief of the Border Patrol. But I am taking a lot of resources, a lot of resources dedicated to what I would say is a humanitarian role, and I am taking them off the line.

So I think there needs to be discussion and I am asking questions, what are some alternatives we could do instead of taking Agents that have been trained that have a National security mission, should be on the front line, I am taking them off that front line a lot to process a 6-year-old and an 11-year-old as part of the humanitarian mission. So I think that is a challenge.

Mr. DUNCAN. Let me just finish up by saying I appreciate your position on the children. That pulls at our heartstrings and it is the right thing for America to do to try to figure out this. But the issue is exacerbated, Madam Chairman, by all the other things we have talked about.

When you think 49 percent of all illegals in this country didn't come across that Southern Border or Northern Border, they came with a permission slip. America gave them permission to come to this country. We trusted them, and they have violated that trust by overstaying that visa and remaining in this country. That is low-hanging fruit for enforcement. That is a different division, I get that.

But going back to the point, that exacerbates the problem of being able to deal with her. So visa overstays, border enforcement, dealing with the criminal element within this country, then dealing with the other illegals that happen to be in this country and what we do if they are gainfully employed and that sort of thing, and the children you are talking about, whether it is the unaccompanied children that are coming across or whether it is the children of people that have come here known as dreamers. But you have got to take it in priority, I think, because it all gets so convoluted as a total immigration reform package that we are not able to have an adult civil conversation about her, right.

So you mentioned structured technology and personnel. I am with you. But if they evade that fence, you pick them up with a ground sensor and a camera or a drone, you send the personnel to pick them up, and they are let go 2 hours later? We are wasting a heck of a lot of money with structured technology and personnel. OK? We have got to stop letting them go.

With that, Madam Chairman, great committee hearing, I would love to bring him back when he is not just here for 2 months, when he has got a little bit a sense of the agency, and have an in-depth conversation about—

Ms. MCSALLY. We will.

Mr. DUNCAN. This may be for the next Congress, but we ought to have an operational control hearing to delve more into what that looks like.

So thank you so much. I yield back.

Ms. MCSALLY. Absolutely. On that note, we had a hearing with your previous acting chief where we were trying to address the issues of situational awareness and operational control. Part of the challenges that we have had is how do we measure effectiveness,

and those numbers have shifted over the years, when we went from 2010 to measuring operational control to measuring number of apprehensions as some measure of whether you are being successful, which I have never understood. Let me just be clear. I mean, if number of apprehensions go up when you don't know what the denominator is, then is that a good thing or is that a bad thing? So we addressed this issue in a hearing a couple of months ago.

I know these are complicated issues, but I do want to follow up on the operational control discussion. From my perspective—again, it is formed and shaped by my experiences in the military—there are two major measurements that I would be looking for as a subcommittee chair here. The first is, you know, what percentage of the Southern Border do you have situational awareness of real time, not change detection after the fact but real time? So if something is coming up to the international boundary and is attempting to go over the border, we actually see it real time, whether that is with a person or with a camera or with an airborne asset, manned or unmanned, whatever it is. What percentage do we have situational awareness of?

Now, you may not be able to get to it right away, that is a second issue, but what do we actually, if it moves, we see it? Again, these are complicated issues, but coming from a simple fighter pilot point of view of what is your situational awareness?

Then the second question being, of those that you see, what can you intercept? That is operational control. So first is if it moves, you see it. Second is if you see it, you can get it. Right? So then you have a sense of the denominator, because you know, like, we saw it but we didn't get it, so it got away. So that is part of, you know, the success rate impact. When we pressed on this issue and some of the challenges we have with our constituents, quite frankly, in this National dialog is, because the measurements have been sort of shifting and number of apprehensions is meaningless to most people, they don't have a sense of like what level of confidence do we have. What percentage of the Southern Border, which we are focusing on, actually do we have situational awareness and operational control?

The answer we got out of the previous acting chief was a little bit over 50 percent. Fifty-six percent, I think, was the number of real-time situational awareness. If it moves, you see it, you know something's coming. Now, that needs to improve, obviously. We have got to get ourselves in parallel to a place that you can see it and then you can actually do something about it, right, to be able to intercept it with the right assets that you need, with the appropriate vehicles, whether that is foot patrol, horse patrol, vehicles, ATVs, helicopters, whatever it takes, you know, to be able to actually intercept that, ideally on the south side of our constituents' ranches, not on the north side or 100 miles inland.

I think that is some of the challenges that bring us to kind-of where we are here today. Obviously, if we were able to see what moves and intercept what moves as close to the border as possible, from my perspective, spending time with the Border Patrol Agents, spending time with the residents and ranchers, if we were able to do that, not only would you be able to do the mission closer to the border as possible, which will impact all the discussions we will

have in the second panel, but also it impacts the humanitarian element, quite frankly. You are not having to go deal with someone out in the desert 80 miles north who is on the verge of dehydration and death, right, because you are intercepting them right at the border. So all the things that are being referenced, and then less would be needing to be picked up at the checkpoints, in theory, right?

I mean, we have got a number of narcotics coming through the checkpoints, but if we were able to push the line of scrimmage to the border, then less would be actually making it around the border and into the communities and then going into the checkpoints. Does that make sense?

So, I mean, you know, the part of our discussion is what can we do and what resources do you need to have intelligence-driven operations, like you have talked about, threat-based, nimble, on your feet, as soon as we are effective they are going to shift their tactics? They are innovative, they are entrepreneurs, these cartels. So what can we do to make sure you have the resources, the policy, the manpower, which is a win-win for everybody? This is a win-win for the agency, the country, the agents, the ranchers, the residents, I mean, all the way around.

One of my frustrations often is that I feel like sometimes people are pit against each other in this discussion. Like, what the border residents and ranchers are looking for is not what the Agents or the agency is looking for. We are all in this together. I mean, we can find where our common interests are to protect our country and to keep our community safe, right, and give the tools to the Agents that they need that do that, and then that impacts the communities and the residents all the way around. I mean, this is the fundamental conversation that we have been having, you know, since I have been in Congress, in the time that I was running and now, you know, now that I have been in this position in the sub-committee chair.

So, you know, based on all that and wanting to get in this place, which I think we have a common interest, I am trying to get to this place where we keep the community safer, we see more, we catch more, we give the tools to the agents that they need and push that line of scrimmage closer to the border, the question is, what else do you need in order to do that? What else do you need from us to provide those resources? We are not just going to throw money at the problem. Right? Is it more integrated fixed towers? Is it more manned and unmanned assets? Is it tactical drones? Is it, you know, agent—like what is it that you need in order to push this to the border so that if we were to do that, you would see less and less coming through checkpoints, less and less incursions and public safety issues, because we are going to push that line of scrimmage south to the international boundary. What else do you need?

Chief MORGAN. So, ma'am, first of all, I agree with everything you just said. Specifically on the situational awareness, I completely agree. That kind-of goes exactly to what I was saying about the confidence levels. I also want to challenge the leaders that when they tell me what their situational awareness is, tell me about what your confidence is with respect to that. Let's have those

discussions. So I think you are spot on and I think we do have absolutely the same goal.

The goal is absolutely, let's try to interdict everything that we can right at the border.

Ms. MCSALLY. Right.

Chief MORGAN. Absolutely, that is the goal. It is a challenging and a complex thing, but it is also an exciting thing as well, because it is about strengthening our counternetwork ability. It is about reaching out to our partners—not just within the United States but our international partners, Canada, Mexico, et cetera. It is not about just being in a position to interdict them when they hit the border, it is about bringing the fight to them before they get to the border. It is about identifying those TCOs. It is about dismantling those TCOs through a threat-based, intelligence-driven process before they get to the TCO. It is about setting up solid infrastructure, a whole-of-Government approach, whether it is through corridor initiatives, whether it is through the joint task forces that are established, to make sure that we are working together, that we are gathering intelligence, we are sharing the intelligence, and we are doing joint operations based on that intelligence to utilize our limited resources.

So there is a whole apparatus about let's take the fight before they even get to the border. Then once they get to the border, as you laid it out, I agree, it is totally how you laid it out. You are right. Our goal would be is if we are that effective, we don't need additional stuff.

Now, I would say, from my position, I don't know what—I think it could be unrealistic to say that no matter how good we are, that we are going to catch everything at the border. So I would always say part of the strategy should always be something in place that prevents us from having a single point of failure. I am not saying checkpoints will always be that issue, but I think you understand what I mean. So, yes, so we have to continue to do that.

The last part, what do I need? I need to continue that threat-based, intelligence-driven, operationally-focused approach. I need to make sure that we have the resources to drive intelligence, to gather intelligence, to disseminate intelligence, to continue to drive those operations, to hopefully, as a counternetwork approach, take the fight before they get to the border. So definitely looking at our intelligence resources. 132 intelligence analysts. Do we need more? My gut says we do.

With the rest of the resources, I don't think there will ever be a chief that sat before you said we wouldn't need more resources. I am not going to be any different in that area. But I think I need some more time so that we do take care of the precious taxpayers' money to be able to really tell you what it is we need with respect to the infrastructure, the technology, and the manpower.

On the humanitarian side, absolutely. The border, please, don't—the Border Patrol Agents, when I walked up, they didn't even know I was there. They were treating these kids with dignity, respect, and compassion like they were their own.

Ms. MCSALLY. Right.

Chief MORGAN. We will do that, absolutely. But I am just saying that there may be an alternative. Like, for example, when I was

a police officer for Los Angeles Police Department, I would be working the streets of south central L.A. I would catch a felon, I would hand him off to a jailer to process. I would go back out on the street. So I don't know, can maybe we do something similar so that when we get one of the unaccompanied children, that we turn them over to somebody else that can do the processing? Then we get the agents back out on the line faster. That is something I am taking a look at. I would ask your support for that, because obviously, that will take some funding and some push to do that.

The technology, that is an element too. You mentioned like the integrated fixed towers. You know that well. That is going to be a great resource in some areas. It doesn't work in other areas. You go to the Buffalo sector with the hills. That technology is not going to work. So we need to constantly look at additional technology, and so I would probably be looking for support when we come up for additional technology.

Ms. MCSALLY. OK, great. Thanks.

I do want to go back to the agents and how the agents are used. We have heard from a couple of different sources that—in the Tucson sector we keep hearing the number about 25 percent of the agents are not assigned to patrolling the border. They are assigned to doing other things, you know, vehicle officers, you know, just other things that are not—it goes back to what you were just talking about. We train them to do a job and we ought to make sure that we keep the vast majority of them out there doing that job, right? Because that is what they are responsible for. That is what is going to build their morale, by the way, and their esprit de corps, is they are out there doing the job they were trained to do and not all these additional duties and details and other things that are really not their core responsibilities.

Is that 25 percent number across the board or do you have better clarity on how many or what percent of the Agents are actually not patrolling?

Chief MORGAN. So, ma'am, I have not seen or been provided the 25 percent number, so it is premature for me to weigh in on that. What I would say is it really depends on who you are talking to and their perspective. For example, as we talk about that threat-based, intelligence-driven process, I am pushing folks, leaders out in the field to put more people into task forces, right, to leverage that kind of whole of Government approach. We should be integrated into the JTTFs, into the BEST teams, into the DEA-led strike forces. We need to be in the JTF-West and East and et cetera. So we do need to push resources out there.

Another thing that could be seen is that sometimes a sector—and I believe Tucson sector was impacted by this—when another sector, like RGV, is getting slammed with an increase, we will mobilize the mobilization team and they will go to another sector to assist. So some people may have the perspective, they see that and they think they are being taken off the line when really they are just being reallocated to a line somewhere else that we have a higher priority threat going on that we have to do.

But, again, I am taking a look at that. I am asking the questions. The specialty units, you know, do we have the right allocation? How many people, you know, do we have off the line and what are

they specifically doing? Absolutely asking those questions. That is a fair question that should be asked.

Ms. MCSALLY. Chief, I know this is just a snapshot in time, but could you get back to us with, you know, of the Agents that you have, just, you know, with basic percentages of numbers, how many are generally out there on the line? How many are part of other taskings and other things? Just, you know, percentages.

I get that from being in the military, you know, you need people in the operations center and all that kind of stuff in order to push good information. But if we could get a good sense from you and an answer back of where we are on those percentage-wise, and then continue the conversation of where it needs to be adjusted to.

Chief MORGAN. Yes, ma'am. I actually want those numbers for myself as well.

Ms. MCSALLY. Great. Thanks.

One last question related to the—on the second panel, we will hear from Dr. Golob from the University of Arizona about the 2014 study they did with a series of recommendations to enhance, really, the data collection and determining the success of whether the checkpoints are working and whether they are manned correctly and what things can be done to improve that. Have any of those recommendations been implemented, and do you agree or disagree with those recommendations?

Chief MORGAN. Yes, ma'am. So I do know, in part—again, that is something I still need to do a little bit deeper dive, but it has improved dramatically. We are tracking the number of seizures. We are tracking the number of apprehensions. We are tracking the number of man-hours that is spent at checkpoints and et cetera. So there are numerous data points that are being collected so that we can try to get closer to coming up with a really solid way to measure the effectiveness of the checkpoints.

Ms. MCSALLY. OK. But those specific recommendations from the U of A study, I don't know if you are familiar with them off the top of your head. But can you follow up on whether those specific—I mean, they put a lot of effort, taxpayer money into studying, as a follow-up from the 2009 GAO study—I think it was 2009—about, hey, how can we improve our understanding of the effectiveness of the checkpoint?

So can you follow up with us on those specific recommendations, do you agree or disagree, and how many have been implemented or how many are in the process of being implemented?

Chief MORGAN. Yes, ma'am.

Ms. MCSALLY. Great. Thank you.

All right. The Chair now recognizes Mr. Duncan from South Carolina for a second round.

Mr. DUNCAN. Thank you.

I really don't have another question. I just wanted to tell the chief, I apologize that there is not more active participation today. You know, we have OGR with Hillary Clinton's emails, and there is just a lot going on on the Hill. I don't want you to leave here going, "Golly, there was only two Members of Congress, and I had to answer all the Chairman's questions," and all that and think there is not interest in this topic, because I can assure you that there is.

You know, Mr. Hurd came briefly. Barletta is very interested in visa overstays. Of course, all the way around, with the former chairwoman and others, even on the Democrat side, there is interest in this issue. I think, at some point in time, having another hearing, having you come back would be awesome.

But I just didn't want you to leave here going, "There is not any interest in Congress about what I am doing." There absolutely is. It is just the way things go on the Hill sometimes. Just know that folks from my State, the Palmetto State, South Carolina, are very interested in this. We don't have a border. We have an international border I guess you fly in, but—anyway.

Thank you very much. God bless. Godspeed. Thank you to you and your men, women that are serving this country in that capacity. I look forward to meeting with you again. I wouldn't mind setting up something, you know, privately to just get to know you a little better, because we want to work going forward.

Thanks, Chairman.

Ms. MCSALLY. OK. Thank you.

The gentleman yields back.

This wraps up this portion of our hearing.

Thanks, Chief, for your testimony. There are potentially some questions that are going to come out of the second panel that we need to follow up with you on. There may be other Members of the committee that have questions for you. So we would ask, when we submit those, if we could get those back in writing. Thanks for your testimony today. You are dismissed.

The clerk will prepare the witnesses for the second panel.

Thanks, Chief Morgan.

I would like to thank the witnesses of our second panel today. I will first introduce them, and then we will start with the testimony.

Mr. Gary Brasher, fifth-generation Arizonan, currently residing in Arizona's Santa Cruz Valley. Throughout his career, Mr. Brasher has established many local businesses, including a full-service brokerage company, a water and sewer company, a communications company, and a grocery store. Mr. Brasher is a past president of the Santa Cruz Valley Citizens Council, the Tubac Chamber of Commerce, and currently serves as the vice chair of the Green Valley Chamber of Commerce.

Good to see you.

Ms. Peggy Davis is a rancher and farmer from the Southern Border area of Arizona, where she has resided for over 40 years. She currently serves as a clerk for the Whitewater Draw Natural Resource Conservation District, which assists local farmers and ranchers with projects to keep them informed of the most current methods and technologies available to sustain their farms and ranches for future generations. In recent years, she has become active in bringing a greater awareness to issues in her community associated with border security and illegal immigration.

Dr. Elyse Golob is the executive director of the National Center for Border Security and Immigration, or BORDERS, headquartered at the University of Arizona. Funded by the Department of Homeland Security, BORDERS provides crosscutting technology and basic research to enhance the Nation's security. Dr. Golob's exper-

tise includes cross-border trade, economic development, and border management policy. She is currently conducting a joint research initiative with Frontex, the European Union border security agency based in Warsaw, where she recently organized a 2-day workshop for European border guards on artificial intelligence for screening and decision support at border crossings.

Mr. Christian Ramirez is the director of the Southern Border Communities Coalition and also serves as the human rights director of Alliance San Diego. Since 1994, Mr. Ramirez has been active on issues related to U.S. immigration policy and its impact on Southern Border communities. He has presented in international and National gatherings on the state of human rights on the U.S.-Mexico border. He is a Nationally-recognized spokesperson on immigration and border enforcement issues.

The witnesses' full written statements will appear in the record. The Chair now recognizes Mr. Brasher for 5 minutes to testify.

STATEMENT OF GARY P. BRASHER, PRIVATE CITIZEN

Mr. BRASHER. Thank you, Chairman McSally, Ranking Member Vela, and Members of the committee. My name is Gary Brasher. I won't go into a lot of detail on my background simply because the Congresswoman has already touched on that briefly. My written testimony, of course, will be in the record, so I have offered the opportunity for you to look at it in detail.

I have lived in the Santa Cruz Valley for 34 years now as a businessman. As the Chairman expressed, I have a variety of businesses down there. It gives me the opportunity to be in the community and to really listen to what people are saying, not just my own experiences but the experiences of others.

I can tell you that the defense-in-depth strategy has had—and, just a moment ago, we heard the chief say it is a multi-layered approach to the defense of our border. It has also had a variety of layers of impact on our communities both south and north of that checkpoint.

I can tell you that when the checkpoint is moved 25 miles north of the actual border or, as it was referred to earlier, the line of scrimmage is moved, it creates—instead of 261-mile border to defend—you can quickly see the math—it creates a 6,500-square-mile area that the chief and his officers have to now defend. That exponentially increases the manpower needed and the area that they have to defend, exponentially.

It has created, unfortunately for those of us south of the checkpoint, what we call kind of a no-man's-land, an area south of the fixed checkpoint but north of the actual border. Once individuals involved in bringing illegal immigrants or bringing illegal contraband into the United States, once they get across that actual border, they for the most part have a pretty free run within that 25-mile area. The unfortunate thing for those of us that live there is that that is where we live, that is where we work, that is where our children go to school. So that area that we call the no-man's-land is where we live every single day of our lives.

As was pointed out earlier, without question, the flanking of that checkpoint takes place in the Santa Cruz Valley, without question. There are a number of routes, and I put a map on my testimony

so that you can look at these routes formally. But there is a gas line down that runs north and south to the Santa Cruz Valley around the checkpoint. There is a power line that runs north and south around the checkpoint. There is the Santa Cruz River, which provides a great deal of canopy and cover for anybody involved in illegal activity to circumvent the checkpoint, to get around it.

Again, that is where our communities are, that is where our subdivisions are, that is where our businesses are, and people live in those areas. So this policy of actually putting people in direct contact with those who are involved in illegal activity is, frankly, mind-boggling to me.

We have to deal with it every day. I have had people show up at my home. I live in a subdivision just west of the checkpoint, a little bit west of the gas line. I have had individuals show up at my front door who are bleeding all over, who have been shot. They were apparently in some kind of an altercation with rival gangs, trying to steal the drugs they were bringing across.

I have talked to businessmen time after time about people who are just simply concerned about coming south of the checkpoint. In many cases—and I know this sounds—there might be some that are skeptical about this, but there are people who won't come down to our particular area because they think they need a passport to get, "back into the United States."

Or they are afraid to go through the checkpoint simply because they are not used to that level of, I will use the term "militarization." Someone from Wisconsin who comes down to the Tubac Golf Resort, as an example, to play golf or play in a golf tournament or have a luncheon or go to a convention, and they have to go back through the checkpoint, for the first time for most of them in their lives, they are exposed to drug-sniffing dogs, they are exposed to people with semiautomatic weapons strapped across their chests, they are exposed to maybe having to go to secondary and have their car looked at more carefully. So, when they are making a determination on where to go for an event, where to go for a conference, where to go even for a wedding, and they think about having to go back through that checkpoint, or their guests, many of them are just opting not to even come down. They are just going to stay north of the checkpoint at some point.

I fully recognize what the chief said earlier. They have a tough job. I want to reiterate that the vast majority of people in the Santa Cruz Valley fully support our Border Patrol, fully support the tough job that they have to do. They have a very difficult job and one that carries with it a lot of risk.

However, having said that, this multi-layered, multi-tiered checkpoint strategy has had tremendous negative impacts on those communities both north and south of the border. The staging that takes place once they get across the border, meaning staging up to decide how they are going to flank that particular facility, puts them in our communities on oftentimes a long-term basis, not minutes or hours but days. Then the activity of actually flanking the checkpoint puts them oftentimes in direct contact with those of us who do business or who live there—another risk.

I don't want to miss our friends to the north of the checkpoint, primarily in the communities of Green Valley and Sahuarita. They,

too, have an impact. When those involved in illegal activity flank the checkpoint, come around, then they reload in those communities. That is where they reengage with their rides going further north. That reconnecting puts people at risk.

I know one hotelier in the Green Valley area, just as an example, who has lost tremendous amounts of business. Unfortunately, there is large wash directly behind his hotel that is one of these reconnection points. You can imagine, as people are sitting in their hotel room looking down, observing all of this activity going on, they have, again, just decided not to come to that particular facility.

The high-speed chases that oftentimes are the result of Border Patrol trying to do their job, trying to catch those involved in illegal activity, circumventing the checkpoint.

So, whether you are in the area south of the checkpoint, in the area where things are staged, whether you are in the area immediately surrounding the checkpoint, where those involved in illegal activity are flanking, or whether you are north of the checkpoint, where those that have gotten past the checkpoint then reconnect with their rides, it has created a tremendous number of consequences for those of us that live in that community.

I had said earlier, or I said in my written testimony——

Ms. MCSALLY. If you could wrap it up. We are over time.

Mr. BRASHER. Absolutely. I am sorry.

Ms. MCSALLY. It is OK.

Mr. BRASHER. With that said, I will just simply say that I appreciate the opportunity to be here today and to speak with you. The impacts, whether intended or not, are very real for those of us that live in the area.

Thank you.

[The prepared statement of Mr. Brasher follows:]

PREPARED STATEMENT OF GARY P. BRASHER

SEPTEMBER 13, 2016

INTRODUCTION

Chairman McSally, Ranking Member Vela, and Members of the committee, my name is Gary Brasher and I am the regional president and associate broker with Russ Lyon/Sotheby's International Realty in Tubac, Arizona. I am also the president and part owner of several other businesses serving Santa Cruz County including a water company, a grocery store, a communications company providing internet and cable services, and a recreational facility. In short, I am a private businessman who has lived and served in the community for over 34 years.

By way of background, I am a 5th generation native Arizonan married to my wife, Tracey, and together we have 4 children and 6 grandchildren, all of whom live in the Santa Cruz Valley. Prior to my real estate career, I worked for the Federal Bureau of Investigation in both the Denver and Phoenix field offices.

After leaving the Bureau, I moved to the Santa Cruz Valley in 1983 and began my business career. During my 34 years in the Valley I have served as president of the Tubac Chamber of Commerce, president of the Santa Cruz Valley Citizens Council, and am currently serving as vice-chair of the Green Valley Chamber of Commerce, a position I have held for the last 7 years. I was appointed by the Governor and am serving as co-chair of the Arizona Mexico Commission Real Estate Committee for 12 years, as well as serving on the Groundwater Users Advisory Board for Santa Cruz County for the last 6 years. I was also on Congresswoman Gifford's Checkpoint Study group that was established years ago to work with the Border Patrol (BP) on the very issues I am testifying on today.

I share this background only to highlight several things: My family's roots run deep in Arizona, the State I love. My history in the Santa Cruz Valley has been

in large part formed by community service, working with partners on both sides of the border to generate trade and good working relationships. Finally, I want to underscore that I'm certainly in favor of strong law enforcement.

Over the years my partners and I have invested significantly in building homes, developing lots, and serving a variety of community needs through our businesses. Having a safe, pro-business/tourism environment is critical to our communities in the Santa Cruz Valley. Towards that end, I'm grateful for the opportunity to share this testimony with this distinguished committee.

Having lived, worked, and been involved in the community for over 3 decades I have had the opportunity to observe the "defense-in-depth" strategy promoted by the Border Patrol leadership on a first-hand basis. I want to say at the outset that I recognize the BP has a very difficult job and one that includes many risk factors. In short, they have a tough job! I know I speak for our entire region when I say that we collectively appreciate what the BP does and, for the most part, the manner in which they do it.

That said however, there are a number of areas where I know the BP strategies have had significant negative impacts on the communities they serve. Perhaps these strategies simply have unintended consequences. However, unintended or not, the consequences of the defense-in-depth strategy to those of us who live and work in the region is significant.

DEFENSE-IN-DEPTH THE CHECKPOINT STRATEGY

The Arizona Tucson Sector has approximately 261 linear miles of border with Mexico which the BP has indicated cannot be secured. Their response to the purported impossibility of defending this 261-mile line is the "defense-in-depth" strategy. I have spoken to BP personnel on many occasions and this strategy has been communicated to me using the following "football" analogy.

The defense-in-depth checkpoint strategy is a three-tier defense strategy. Using their football analogy this strategy involves BP placing resources: (a) At the border (front defensive line), (b) near the border patrolling the area in mobile units (linebackers), and (c) at permanent or mobile checkpoints (defensive backs). BP leadership has indicated this approach gives them the best opportunity for success.

To respond to this analogy and from my personal experience as a defensive back for the 1976 Big Eight Champion Colorado Buffalo football team, the defense-in-depth strategy is like asking your defensive backs to stand in one location with their arms stretched out and hope the offense will run right into them. When I asked my former coach and former head coach for the Minnesota Vikings for his thoughts regarding this strategy, he said, "An NFL coach would not last a week in the league implementing an approach like this."

In the initial portions of this testimony, I will discuss the ramifications of the defense-in-depth strategy from my personal observations, as well as from listening to the experiences of others who live and work in the communities south of the checkpoint. In my final portion, I will address some of the current approaches which the BP is undertaking with positive results. If expanded, I believe these approaches and strategies will better secure our border by placing more resources at the border.

RAMIFICATIONS OF THE DEFENSE-IN-DEPTH STRATEGY STAGING, FLANKING, AND RE-LOADING

The defense-in-depth strategy is essentially a moving or relocation of the border to a checkpoint 25 miles north of the actual border with Mexico. This new "line of scrimmage" increases the area the Tucson Sector BP must defend from the 261 linear miles of actual border with Mexico to over 6,500 square miles. You can clearly see the challenge this creates by expanding or moving the "line of scrimmage." For every mile of movement north, it exponentially increases the affected area. (25 miles to the checkpoint \times 261 miles of border = 6,525 square miles of territory to secure).

When checkpoints are established such a great distance from the actual border, it creates a "no-man's land" between the real border and the checkpoint. In other words, those involved in illegal activities making it across the real border are now in the United States with relative freedom and time to "stage" their next move, which is taking the illegal contraband and/or drugs around the checkpoints. By flanking the checkpoints they are able to move their contraband to points further north. Unfortunately this "no-man's" land is where we live and work and our children go to school.

If you look at Exhibit A in your packet you will clearly see there are a number of paths around the Interstate-19 (I-19) checkpoint, along with many more that are not so obvious. The clear routes around the checkpoint are the railroad tracks, the Santa Cruz River, the power line and the El Paso Natural Gas line. These routes

all provide an opportunity for those involved in illegal activities to move north and stay off the major transportation corridor, I-19.

The less obvious routes used to circumvent the checkpoint are the numerous back roads, ranch roads, paths, and trails through the Coronado National Forest and surrounding Bureau of Land Management and private lands. The “flanking” activity takes place in the communities between the border and checkpoint—the “no-man’s land” that I referred to earlier.

Unfortunately the areas used to flank the checkpoint are also the very communities, developments, and subdivisions where our residents live and work. In these areas, because of the flanking activity, we have experienced too many instances of shootings, high-speed chases, and school lockdowns. Sadly, this is an intentional outcome of the checkpoint strategy.

Several years ago, Chief Gilbert, sector chief for the Tucson Sector, indicated at a public meeting that part of the strategy of the checkpoints was to “force” those involved in illegal activities into the surrounding areas where they would be easier to catch.

In fact, GAO (2005) confirmed the BP strategy of pushing illegal activity around the checkpoint.

“The Border Patrol uses interior traffic checkpoints as a third layer of defense and deterrence against potential terrorists and their weapons, contraband smugglers, and persons who have entered the country illegally.

“According to Border Patrol, permanent and tactical checkpoints are part of an integrated, multi-layered enforcement strategy intended to achieve two key law enforcement objectives:

1. to increase the likelihood of detection and apprehension of illegal entrants of all types and thereby to deter other potential illegal entrants from attempting to enter the country, who might otherwise believe that successfully crossing the border would mean that there were no further barriers to them and
2. to deter illegal entrants from transiting through permanent checkpoints on major roadways, through fear of detection and thereby to cause them to use less traveled secondary roads on which the Border Patrol is able to stop all or almost all vehicles making illegal entrants more visible and easier to detect and apprehend.” (pp. 15–16)

These “secondary roads” and other areas are where we live and work! This places civilians in the direct path of smugglers and the law enforcement agencies pursuing them!

I have to say, I have never experienced a law enforcement strategy which purposely puts people involved in illegal activity in direct contact with law-abiding citizens and actually calls such an action “a cogent strategy.”

I can testify first-hand to the consequences of the flanking activity by drug cartels using these secondary roads and trails to move their contraband.

- I have had individuals, who were shot by rival gangs as they moved drugs north through my neighborhood, show up at my front door seeking medical attention.
- I have found a dead body in this area—that of an individual who was shot in a deal that apparently went bad while trying to “stage up” before moving drugs around the checkpoint.
- When our daughters were growing up, I frequently experienced that knot you get in your stomach as a parent when your children are coming home late at night, alone in their vehicles. That’s because I learned that late night is when many of the cartels come alive and start their flanking activities. For me, it got to the point where I told our daughters that I would meet them, no matter the time, off the freeway interchange near our residence and have them follow me home to insure their safety.

Areas north of the checkpoint are also placed at risk because of the defense-in-depth checkpoint strategy. These are the areas where the “re-loading” takes place, the process by which the smugglers “re-connect” with their rides to continue their travel north of the checkpoint once they have successfully flanked it.

Being the vice-chair of the Green Valley Chamber for over 7 years has given me a new appreciation for and insight into the tremendous challenges faced by our neighbors north of the checkpoint. Businesses and homeowners in these northern areas have reported “high speed chases” in their neighborhoods when BP tries to interdict the flanking and re-loading activity.

I know of one hotel owner in Green Valley whose property borders a wash that has become a major pick-up point north of the checkpoint. He reports a loss of business because his clients state they don’t want to stay in an area so near to drug activity.

In another instance, a high speed chase resulted in the pursued vehicle steering off the road to avoid arrest and eventually driving right into the bedroom wall of a home. Had the vehicle crashed into this home a foot or so differently, it would have surely hit the residents who were in their bedroom asleep at the time.

These personal stories and experiences are told by others in the community and are also documented in several in-depth examinations of the effectiveness and impacts of the BP's defense-in-depth checkpoint strategy, a strategy that calls for moving or re-locating the border 25 or so miles from the actual border by using fixed checkpoints like the one on I-19.

Residents of the communities affected feel this strategy underestimates the intelligence of the enemy we are fighting. The assumption that these criminals will not circumvent fixed checkpoints and traverse through our neighborhoods, ranches, communities, and public lands is not based in reality.

GOVERNMENT STUDIES QUESTION CHECKPOINT EFFECTIVENESS

GAO continues to report concerns over Border Patrol's lack of sufficient data resulting in its inability to examine the effectiveness of its defense-in-depth checkpoint strategy (GAO, 2009; GAO, 2012).

In 2009, GAO reported that Border Patrol was proceeding with checkpoint construction without adequate information on the effectiveness of checkpoints and its adverse impacts on the public safety and quality of life for Southern Arizonans. GAO found that there were "information gaps and reporting issues" because of insufficient data. Thus, the agency was unable to compare the cost-effectiveness of checkpoints to other strategies. Further, it reported that Border Patrol had misrepresented its checkpoint performance.

Again in 2012, GAO reported that because of data limitations the Border Patrol was unable to compare the effectiveness of how resources are deployed among sectors. Each sector collects and reports the data differently thus precluding comparison. Policy makers and Border Patrol leadership are unable to effectively assess the effectiveness of tactics such as checkpoints and yet Border Patrol continues to call checkpoints critical to their defense-in-depth strategy.

In spite of concerns for the comparability of the data among strategies or sectors, GAO (2009) reported specific data for the I-19 checkpoint.

- "94% of all apprehensions of illegal immigrants in the vicinity of the I-19 checkpoint occurred in the areas surrounding the checkpoint, while only 6% took place at the checkpoint itself."

These statistics make it clear the checkpoint is driving criminal activities into the area surrounding the checkpoint.

IMPACTS ON REAL ESTATE VALUES AND BUSINESS

In September 2014, the Udall Center for Studies in Public Policy at the University of Arizona, working on behalf of the National Center for Border Security and Immigration, published its study on the impacts of the I-19 checkpoint on the surrounding communities. They found the I-19 checkpoint is having a significant impact on the property values of the community surrounding the I-19 facility.

Researchers reported: "After the checkpoint canopy was installed property values in Tubac/Rio Rico decreased approximately \$2,769 per 3-month period or \$11,076 per year" (p. 31) when compared to the values of properties north of the checkpoint over the same time period.

Given that the checkpoint was operational in 2008 and this report was completed in 2014, you can see the significant effect this annual reduction in Tubac/Rio Rico property values has had and frankly continues to have to this very day.

Tourism is a major economic driver in Arizona. The Arizona Office of Tourism reports that tourism spending generates \$3.6 billion in economic activity annually and employs over 30,000 individuals in southern Arizona alone.

Tubac, a rural community 20 miles from the border and only about 3 miles south of the I-19 checkpoint, has been a major tourist destination due to its abundant historical, cultural, artistic and recreational resources. However, we know of many visitors and potential residents who have cancelled vacations or real estate purchases due to concerns about the permanent checkpoint.

There are literally hundreds of personal stories about individuals who were thinking about coming to Tubac for everything from a simple dinner to a wedding or convention, yet decided to go elsewhere because they didn't want to experience the "militarized" checkpoint. For them, it's the daunting thought of returning home from Tubac only to be stopped 3 miles north on the major inter-State highway at a Department of Homeland Security checkpoint. The driver and others in the car are asked by a uniformed officer if they are U.S. citizens while drug-sniffing dogs smell

the exterior of the vehicle as it moves along. On the right, suspicious vehicles are dismantled and searched while the driver and occupants watch while they are detained nearby.

As the former president of the Tubac Chamber of Commerce I can attest to the number of phone calls the Chamber has received over the years asking everything from, "Is it safe in Tubac?" to, "Will I need to bring my passport to get back in the United States?"

Some of the concerns expressed by those wishing to visit the area are so subtle. Just recently I came to learn about a young woman who had recently had a small child. The young woman's mother invited her to have lunch with her at the Tubac Golf Resort, located about 2 miles south of the checkpoint.

The daughter joined her for lunch, but was worried sick about what was going to happen when she went back through the checkpoint. She didn't know if she should bring her child's birth certificate or if she was going to have to prove citizenship some other way? I understand stories such as this might be met with skepticism by some, but my point is that the impacts on our community in some cases are tangible and statistical and easy to see, while others are subtle and insidious and not nearly so obvious, but just as harmful to the overall economy of the area.

In addition to the clear negative impacts of the checkpoints on tourism, property values, business, and overall commerce in the area, the flanking and circumventing of the checkpoints also impact significantly on our farming and ranching communities as well as our public lands. The defense-in-depth strategy has caused considerable interruption for ranching and farming operations, including:

- Ranch fences are cut
- High-speed chases occur across private land as BP tries to apprehend individuals going around the checkpoints
- Livestock are buzzed by low-flying helicopters operated by the BP.

Furthermore, many of our National Forest and BLM areas are speckled with signs that read, "Drug smuggling activity in the area. Please use caution." Can you imagine the impact this sign would have on a group who may wish to come to the area to enjoy some of our most treasured natural, open spaces such as Madera Canyon or Patagonia State Park? Or, imagine a Boy or Girl Scout troop who wants to come to the area for an outing. What scout leader in their right mind would take a group of young people into an area posted with signs such as this?

I'd like to make a final personal observation on this matter. As just one voice in a crowd of voices on this topic and one who is proud of our country and all for which it stands, I believe one of the greatest threats we face as a Nation, if not THE greatest threat, is the accumulating debt the United States incurs each year and the interest being calculated on this debt. With our National debt clock nearing \$18 trillion and rising at an unprecedented pace, it seems we are way past the time to look carefully at every dollar spent and every resource expended in order to make sure we are getting the greatest gain for our dollars.

I can think of few greater goals than protecting our Nation's borders. However, I don't believe any agency is above having to sharpen their pencils and make sure we as a Nation are getting the greatest benefit for the money with which they are entrusted.

From reading the various GAO reports referenced in this testimony, it appears the BP has not been held to the same standard that any family or business in this country has to face every day. Do the number of personnel, vehicles, technology, and other resources being spent at the I-19 Checkpoint justify the results? With only 6% of all interdictions of those who enter the country for an illegal purpose being caught at the checkpoint, speaking as one citizen, I believe it is time to "redeploy" resources and compress our interdiction efforts as close to the border, if not at the border. In a word, I believe it is time to move the "line of scrimmage" back to our border with Mexico.

POTENTIALLY PROMISING BP STRATEGIES

I believe the foregoing begs the question, "What can be done to better secure our border while making the best use of our resources?"

It seems the BP has seen positive results by utilizing a variety of different enforcement tactics at the actual border. Though skeptics may question claims of success given BP's track-record on data collection, I and others in our communities believe these strategies hold significant promise and can be expanded throughout the Sector. Further to this point, these tactics have the potential for a much less negative impact on our communities than the current three-tier strategy.

Components of these tactics include, but are not limited to, utilizing:

1. Aerial drones for observation and communication with enforcement officers on the ground.
2. Vehicle barriers at the border to block likely paths utilized by smugglers with all-terrain vehicles crossing the border.
3. Roving and/or non-permanent checkpoints at pre-determined locations.
4. Forward Operating Bases (FOBs)—continuing the use of FOBs for those areas of the border that are particularly rough or possess difficult terrain.
5. Enhanced communications—enabling agencies (Sheriff's Office, ICE, BP, and police) to share intelligence AND communicate with one another in the field using the same radio frequency.
6. Enhanced infrared technology at the border including the use of virtual fencing.

In other words, I urge you to take the resources devoted to the “stationary,” third-tier checkpoint that accounts for only 6% of all apprehensions, and devote them toward building a stronger, more robust, more “mobile” second-tier in which 94% of all apprehensions occur. Eventually, with success and compression of efforts toward creating a defensible single-tier strategy, we can once again stand confident in our ability to secure our borders at the border.

SUMMARY

Members of the committee, thank you for the opportunity to briefly share with you today my thoughts, observations, and experiences regarding the defense-in-depth strategy. As I shared at the outset, I am a supporter of the BP. Having a law enforcement background, myself, and coming from a military family (my father retired as Major General) I understand the need for strategy and policy. However, as a private businessman I also understand the need to be open to new ideas, to remain fluid, and to remain aware of your competition or, in this case, our country's enemies, whether they are terrorists trying to enter the United States or those who continue to erode our culture and society with drugs.

We are united in our collective goals to provide a safe environment for ourselves, our families, our employees, and our fellow citizens. We can disagree on policy and approach, but at the end of the day we all want a safer and more secure border and a better America. It is from that perspective that I offer this testimony. Again, thank you for allowing me to appear here today.

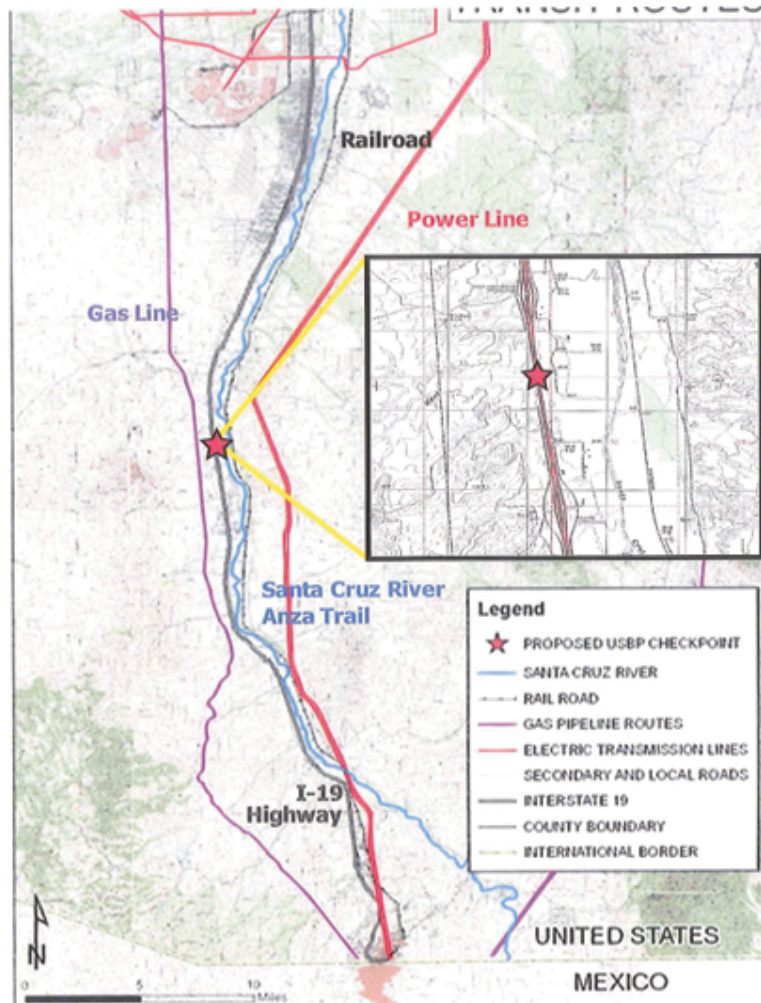
SOURCES

J. Jenkins, J. Proudfoot, J. Marquardson, J. Gans, E. Golob, and J. Nunamaker. (September, 2014). *Checking on checkpoints: An assessment of U.S. Border Patrol checkpoint operations, performance, and impacts*. National Center for Border Security and Immigration (BORDERS): University of Arizona.

U.S. Government Accountability Office (GAO), (July, 2005). *Border Patrol: Available data on interior checkpoints suggest differences in sector performance*. Report to Congressional Requestors, GAO-05-435.

U.S. Government Accountability Office (GAO), (August, 2009). *Border Patrol: Checkpoints to contribute toward Border Patrol's mission, but more consistent data collection and performance measurement could improve effectiveness*. Report to Congressional Requestors, GAO-09-824.

U.S. Government Accountability Office (GAO), (December, 2012). *Key elements of new strategic plan not yet in place to inform border security status and resource needs*. Report to Congressional Requestors, GAO-13-25.



Ms. MCSALLY. Great. Thanks, Mr. Brasher. We will get more in the discussion, but thanks for the testimony.

The Chair now recognizes Ms. Davis for 5 minutes.

STATEMENT OF PEGGY DAVIS, PRIVATE CITIZEN

Ms. DAVIS. Yes, Chairman McSally, Members of the committee, I thank you for the opportunity today.

Border checkpoints are not always staffed, and they are not always open. If the resources used to staff them were directly at the border, then they would interdict illegal activity before it actually reaches the interior.

Our ranch is 25 miles north, and our family has been in Cochise County since 1867. We have always had some illegals, but in 1986 we saw hordes of them and a change in their attitude. They began to be destructive. They cut fences, drained waterlines, killed animals, robbed homes, stole vehicles, trampled grass, and left tons of trash.

In the trash, we have found plastic, backpacks, blankets, diapers, hypodermic needles, medicines, human waste, and pregnancy tests. Trash from Mexico is hazardous to us and has killed cows because they eat blankets and plastic bags. By 1995, the trash was out of control, so the county hauled away 16 dumptruck loads just from a small area on our ranch. That is just one example.

Environmental damage is extensive on the border. Illegals came through by the millions. They trampled grazing land, destroyed foliage, drained millions of gallons of water used by wildlife. The damage has changed the landscape. Footpaths caused soil erosion when the rains came. Wildlife waters were destroyed because of human waste.

The Tucson sector chief at the time, David Aguilar, was the architect of the defense-in-depth strategy. In 2000, he actually came to our home and explained that Operation Hold the Line in El Paso focused on intercepting and preventing illegal entries at the border, and Operation Gatekeeper in San Diego proved to be very effective. This forced the illegal activity into the rural areas of Arizona. The plan was designed to secure the cities, where they have seconds or minutes to catch illegals, but instead of putting agents near the border in the rural areas, they would be deployed 25 miles or more north of the border to allow hours or days to catch them.

If the El Paso plan worked so well, then why doesn't the Border Patrol do the same thing in the rural areas, I ask. Residents along the border have begged for agents to be on the border for over 15 years. Even though the success of Hold the Line and Gatekeeper were due to stopping the flow of illegal traffic directly at the border, we have been told that it would not work or that it was too dangerous. If the border is too dangerous for agents, then why is it not too dangerous for residents?

Chief Aguilar made the following statement to the *Arizona Republic*: "The border is not a defined line but a corridor between the U.S. and Mexico." This corridor is at least 30 miles inside the interior. How can a Government official state that the border is not a boundary?

We hear repeatedly that agents are on the border, but when Border Patrol refers to agents on the border, they are actually referring to the 30-plus-mile corridor instead of the international boundary.

In 2010, our friend Robert Krentz was murdered on his own property 30 miles north of the border. Rob stopped to help an illegal pretending to be injured. As he stopped, the man shot him.

The checkpoint nearest to me is 15 miles north and is open only if weather permits. Another is rarely open. Being the checkpoints cannot be manned 24/7, those agents should be deployed very close to the border instead.

John Ladd's ranch is on the border with 10 miles of 13-foot metal wall fencing and \$42 million of government infrastructure. Drug

cartels frequently cut the fence and drive their loads 3 miles north to the nearest highway; then they drive back through the opening in the fence. Sometimes they even weld it back in place. In a 26-month time period, 54 trucks have accomplished this task and only 1 was caught.

The Brian Terry station was only 4 miles away. Brian Terry was also inside Aguilar's corridor when he was killed. Cartel scouts camp on mountains within Aguilar's corridor and report Border Patrol activities to the drug cartel.

The San Pedro River runs out of Mexico into the United States, and across the river is a 3-mile strand barbed wire fence. Occasionally, one agent is watching this quarter-mile area. For 3 to 4 months in the summer, floodgates are raised in the border fence to allow floodwater out of Mexico into the U.S. Border Patrol covers the holes in the fence with just three strands of barbed wire, and anyone can walk in.

Signs, such as this one, are not uncommon in the corridor. I am aghast that our border is so poorly protected that these signs are necessary.

Diversions fires in Aguilar's corridor have been set by drug runners. They have destroyed hundreds of thousands of acres of forest, grassland, wildlife, and homes. Also, land values have dropped to about half of their previous value.

In closing, checkpoints would not be necessary if the Agents were on the border. I have additional comments and examples in my written record. I thank you for your time.

I just want to say that I do respect the Border Patrol and the daunting task that they have on a daily basis. I just think that it is time to move on and change the strategy.

Thank you.

[The prepared statement of Ms. Davis follows:]

PREPARED STATEMENT OF PEGGY DAVIS

SEPTEMBER 13, 2016

Since 1924 the men and women of the U.S. Border Patrol have been asked to protect the United States border from all enemies, foreign and domestic. This is the first line of the Holding the Line in the 21st Century USBP handbook. While I realize it is a stretch to say that illegal traffic from south of the border are enemies, my argument remains that these people are no less than invaders. My statement is, and always will be that if you enter this country illegally, your very first act is an unlawful one. By breaking the first law of the land, how would we expect these people to respect any other law in America? Many of them don't.

The Border Patrol checkpoints, while they probably catch some illegal drugs are not always staffed and are not always open. If the resources used to staff the checkpoints were directly AT the international boundary it stands to reason that they would deter or interdict the drugs before they actually get into the interior.

Our family ranch is 12 miles southeast of Tombstone, Arizona and lies 25 miles north of the Mexican border. My husband's family has been in Cochise County, Arizona since 1867. For many years we lived peaceably with people from Mexico who traveled through from time to time. We had a mutual respect for each other and showed compassion when either of us needed help. However, after 1986 we began to see a significant change in the attitudes of the people illegally coming north. They began to be disrespectful of our property and sometimes confrontational. They cut fences, drained water tanks, killed animals, robbed our home, slept in our barn, stole a vehicle, trampled the grass for our cattle, and left literally tons of trash. In this trash we find plastic bottles, backpacks, plastic bags, blankets, clothing, diapers, feminine hygiene products, cell phone chargers, rotting food, hypodermic needles, medicines, human waste, and pregnancy tests. Abandoned cars and van seats

are regularly left in pastures or along the roads. There has been every gender and age that crossed through our property. Picking up this trash was a health hazard for us and ingesting it is not healthy for our livestock. More than once we have found dead cows because they tried to eat plastic bags or acrylic blankets. When cattle try to eat these things, they can't digest them so they die a long and miserable death.



In 1995 the trash left by illegal aliens in southern Arizona was out of control. At our ranch alone we have a draw that was a major path that they took on their way north. Because it was a low place that wasn't easily seen, illegal aliens used it as their trash dumpster. Cochise County sent some at-risk kids to pick up trash. They hauled away 16 dump truck loads in one session. Every other rancher has a similar story to tell. Keep in mind that our ranch is 25 miles north of the international boundary. The trash left behind is a health hazard for everyone, not just our cattle. My family has personally picked up countless truck loads, not knowing what kind of health hazards we might face.

Because of the volume of illegal traffic across our property from 1986 to the present, the environmental damage in the borderlands has been extensive. Illegal crossers came through southern Arizona by the millions. In their wake they trampled valuable grazing land, destroyed fragile foliage and cacti, drained tens of thousands of gallons of stock water used by wildlife, cut fences and left tons of trash. The damage left behind has changed the landscape in many places. Foot paths caused soil erosion when the rains came in the summer. Some of the water holes for wildlife were left unusable because of human waste.

In 2000 David Aguilar, then Tucson Sector Chief and who later served as the U.S. Chief of the Border Patrol from 2004–2010, had reached out to the ranchers in our area who had been experiencing daily illegal traffic and vandalism for several years. He brought with him two of his superiors from the San Diego Sector to our home. They explained that Operation Hold the Line in El Paso in 1993, which focused on intercepting and preventing illegal entries at the border, and Operation Gatekeeper in San Diego proved to be very effective in curtailing the flow into their areas. This forced the illegal activity by alien crossers into the rural areas of Arizona. Chief Aguilar was the architect of the Holding the Line Strategic Handbook which outlines the Defense-in-Depth Strategy. The Chief explained that the plan is designed to secure the cities, which are the most populated areas. In the cities they only have seconds or minutes to catch illegals before they disappear into society. This forces illegal traffic into the rural areas. However, instead of putting agents near the international boundary in the rural areas, they would be deployed 25 plus miles north of the border to allow hours or days to catch those who crossed the border illegally! I distinctly remember Chief Aguilar asking me what I thought about this plan. I replied that I thought it was the dumbest idea I had ever heard. I shared my thoughts with him about how nonsensical it was to allow aliens to get well inside of the actual border instead of catching them right at the boundary line like they had been doing in El Paso. I asked, if the El Paso plan worked so well, then why doesn't the Border Patrol do the same thing in the rural areas? I received no answer. Time has proven that aliens will go anywhere they need to go to avoid detection. This failed strategy has forced illegal aliens into the rural areas of Arizona where ranchers and other rural residents have become the first line of defense because the majority of the Border Patrol agents are north of where we live! Ranchers and residents along the border have begged for agents on the border for over 15 years. Even though the success of Hold the Line and Gatekeeper were largely due to stopping the flow of illegal traffic directly at the border, we have been told repeatedly for the last 15 years that "it would not work". Later in 2011, Border Patrol Council President T.J. Bonner admitted to several ranchers on a Congressional conference call that the council did not want Agents to patrol at the border because it was too dangerous. I submit to Congress that if the border is too dangerous for agents, then why is it not too dangerous for residents? We have become sacrificial lambs.



In 2010, Chief Aguilar made the following statement to the *Arizona Republic* newspaper: The border is not a defined line, but a corridor between the United States and Mexico. This “corridor” Chief Aguilar eludes to is 30 to 100 miles inside the interior of the United States. How can a Government official have the audacity to state that the border is not a boundary? We hear repeatedly that agents ARE on the border, when we know that isn’t a fact. When Border Patrol refers to agents on the border, they are actually referring to the 25–30 mile “corridor” instead of the actual international boundary. I maintain that Mexico definitely has a boundary and their immigration laws are tougher than ours.

In 2010, our good friend, Rob Krentz was murdered on his own property 30 miles north of the border. Rob was a humanitarian and stopped to render aid to an illegal that was pretending to be injured. As he stopped to try to help, the man shot him and his dog. Evidence showed that the man was an illegal drug runner who had robbed at least two nearby residents on his way south. At one place he stole a gun, which he used to shoot Rob. Further on, he stole food. The food wrappers were found at the murder location. The day of Rob’s murder there were no Border Patrol Agents nearby. It took the Sheriff’s department over 12 hours to find his body.

My personal opinion is that rural residents are expendable to those in power. We aren’t many votes and our land and livelihoods are not important to most of the population. Keeping the cities and highways patrolled allows for the majority of the population to feel safe, thus securing more votes.

Border Patrol checkpoints, while they may catch some illegal drugs are not very valuable as a deterrent tool. For example, the checkpoint which is nearest to me is about 15 miles north. At this checkpoint there are no less than 10 Border Patrol vehicles on any given day parked there. There are usually two or three agents stopping cars and sometimes there is also a drug dog. The checkpoint is open only if weather permits! If there are high winds or rain, the checkpoint is immediately closed. Drug traffickers only need to look at the weather report to determine if it is safe to avoid detection.

On Highway 191 30 miles north of Douglas there is a checkpoint which is rarely open, even when the weather is good. We travel through this a few times per week, and we estimate that it is open less than 25% of the time. We are told that they are understaffed. In order for checkpoints to do any good, they must remain open 24/7, and they shouldn’t close because of inclement weather. When we asked about why they close when it is rainy or windy, we were told it was because it was a danger to the Agents. I fail to see how. In short, perhaps if the checkpoints cannot be

manned 24/7, those Agents should be deployed at the border instead of having checkpoints.

That being said, there is NOT a checkpoint at all on Highway 80 traveling north of Douglas, Arizona through the San Bernardino Valley; a remote area of southern Arizona which is the main drug trafficking route out of Sonora, Mexico. This is also the area where the Krentz Ranch is located and where Rob was murdered. Residents in this area are vandalized and threatened on a regular basis. There are very few agents on the international boundary stopping illegal crossers from entering, so they have a free ride into the interior. After they drop their load, they rob and vandalize on their way back south. One homeowner near Portal had been robbed over 100 times. At this point their home had lost so much value that they couldn't sell it. They had to walk away and abandon it. In addition, drug traffickers on their way back south after they have dropped their load are told to rob as many residents as they can. With the majority of the agents north of them, they are free to do whatever they want on their way back across the border. We are told that they are threatened by the drug cartel that if they fail to steal as much money and firearms as they can, members of their families will be killed. This makes them very desperate, which was probably the case with the man who murdered Rob Krentz.

The large checkpoint station on Interstate 19 from Nogales to Tucson is a sore subject for those people living nearby. There is a lot of traffic out of Nogales. Drug runners know that they will be stopped there, and it forces them into the outlying areas. I know people who live there and sometimes they find cartel members sitting in their yard furniture waiting for a ride.

My son was robbed by drug traffickers who were on their way back south to cross back into Mexico. They took nearly everything he owned. They even pried up the boards on the floor of the house. After eating all of his food, they used his electric clippers, shaved their hair and left the hair in the entry way as a calling card. There were no agents nearby. The County Sheriff said that the hair that was left was sort of a message that they could come and go as they please, and to try to stop them would mean consequences.

My husband found a dead body on our ranch in July 2012. The Sheriff's Department determined that it was the body of a drug runner. The man had on brand new Nike shoes and new clothes. His wallet contained a Bally's Fitness card. The cause of death could not be determined, but his backpack was empty. It is possible that he was not traveling alone and his companion took the drugs and/or money and left him for dead. All of my rancher friends have found one or more dead bodies on their property. Allowing them to come into Arizona instead of stopping them at the international boundary has created a humanitarian crisis for them. If they knew they couldn't cross illegally, then they wouldn't put their lives at risk.

In January of 2001, my husband and I were out of the State, so our daughter came home from Tucson where she attended college at the University of Arizona, to check on our home and to feed our horses. It was snowing so she fed in a hurry and went back to our house. In a few minutes our dogs began to bark violently and she looked out the window to see what they were barking at. A man was standing in the front yard. He was wearing a nice leather bomber jacket and he yelled at her in English to open the door. Instead she cracked the window to ask him what he wanted. He replied that he and his friend, who he said was crippled, wanted a ride to town. She said that she couldn't give him a ride which made him angry. He said that his friend wanted to confront her when she was feeding the horses, but he wanted to wait to make sure she was alone first. This statement made her very nervous, so she said that she was not alone, but that her Dad was on another part of the ranch and was on his way home. At this point she told him that she could call the Border Patrol and he got even angrier. He began waving one arm and yelling at her, saying "a Mexican would help me". She picked up the phone to call for help and he left. She made three phone calls. The first one was to the Border Patrol who said they couldn't be there for about 45 minutes. Next she called the Sheriff's Department and she also called a friend who lived about 15 miles away. It was the friend who arrived first. The Sheriff's deputy arrived next, and the last to show up was the Border Patrol. After the Sheriff's deputy arrived, they concluded in their search of the outlying buildings on the ranch that a knife was missing from a butcher block. My daughter had noticed that the man wouldn't use but one arm while talking to her. The other hand he kept behind his back. We can only conclude that this man meant to do her harm when he got her alone. Obviously, both men got away. My daughter attended college with many people from the Middle East. Based on his statement that "a Mexican would help me," and his appearance and accent, she concluded that he was not Mexican but from a Middle Eastern country.

John Ladd's ranch is on the Mexican border. He has 10½ miles of border fence. On his ranch, the U.S. Government built a 13-foot metal wall with \$42 million of

infrastructure complete with cameras, lights, and sensors. Between April 2012 and August 2014, 54 times drug cartel members cut the fence with a saw or a torch, lay down the fencing, drove their drug load 3 miles north to highway 92 and drove back through the opening in the fence unmolested. If they had ample time, sometimes they would even weld it back in place. Only one was caught, and that was because the drug runner hit an embankment and deployed his air bag. It is important to note that the Brian Terry Border Patrol Station was only 4 miles away. If Agents were on the international boundary instead of 25 to 100 miles north these incidents would not have happened. Over the years, the Ladd Ranch estimates over half a million people have crossed his land. On their way through to a community near you, some of them cut his fences, killed livestock, left trash, and vandalized his home. Many ranchers feel as if they are prisoners in their own home.



Camera Name0 25.33In† 80°F

08-15-2016 09:19:02



Last year, fellow rancher Kelly Kimbro was driving from her ranch into Douglas, AZ along the border road. This is a very remote area. Suddenly she saw 13 men run out of the brush and into the road when they ran in front of her vehicle and forced her to stop. Needless to say, she was terrified. They jumped on the hood of her truck and into the back. She rolled her window down part way and spoke to them in Spanish. They answered her in English and explained they were from India, not Mexico, and they wanted her to call the Border Patrol so they could turn themselves in as refugees. Obviously there were no Agents on the border.

On one occasion, my husband was out riding a horse on our ranch when he came upon 7 aliens. He told them in Spanish to stop. One of them ran up to him and grabbed his bridle reins, intending to pull him off of his horse. Confrontations like this are common among border residents.

One time, a fellow rancher was driving his truck and horse trailer on his ranch road. When he stopped to open a gate, illegals jumped out of the brush, got in his pickup and drove off leaving him stranded with his truck, gun, phone, trailer, and horse stolen.

One morning my husband went to our barn to do the chores and 13 illegals were asleep in our barn. It wasn't uncommon to find one or two sleeping there.

Last December near Animas, New Mexico drug runners kidnapped a man who worked for a local company who provided well service for ranchers in the area. They tied him up, threw him in the back of their truck with their load of drugs and forced him to guide them to Willcox, Arizona to deliver their load. When they were close to Willcox, he was blindfolded and left over night. The next day he was found and rescued. Had there been Agents near the border, this wouldn't have happened.

Virtually every rancher I know who lives near the border has a horror story to tell similar to these. I don't know even one who has not been vandalized. I had to quit my job as a Mary Kay Sales Director because I needed to drive at night and the drug traffic made it unsafe to do so, and there is not adequate cell phone service where we live. I back my car in the garage so nobody can sneak in while I am closing the automatic door.

Drug scouts frequently set up camp on the mountains of southern Arizona. They have sophisticated equipment that I am told puts ours to shame. Within Aguilar's "corridor" most of the Border Patrol is north of the scouts, but the few Agents in this area are easily located by the scouts and they pass on the information to the drug mules who can easily avoid the small number of Agents within this area. They know when shift changes occur, and this is usually the time when the drug runners have a green light to travel north.

Another problem is that many of the Border Patrol stations are many miles north of the international boundary. Some are as much as 80 to 100 miles north. Tucson, Casa Grande, and Willcox are three examples. More Forward Operating Bases are needed. A brand new one was built east of Douglas in an area that desperately needs it, but it is not in use.

Those of us who live in proximity of the border see first-hand the failures of the Border Patrol. While we know the Agents would like to do their job, their hands are tied to bureaucratic and political decisions. Last year a few of us met with DHS Secretary Jeh Johnson. After recounting our examples he said that he knew we had problems. However, he also stated that he was appointed by the President and will support his policies. These policies do not help our cause; rather they increase the chance of further problems. Ranchers along the border have become the "bad guys." We are labeled vigilantes and racists, which is far from the truth. I had personally provided shelter, food, and water, given medicine and care to hundreds of illegal crossers over the past 40 years. All of my fellow ranchers have done the same. I have never personally known a case of abuse by a rancher to an alien in all of those years. The Mexican people are our neighbors, but the strategy of our Government and the reluctance to enforce the law has created an atmosphere of animosity at times.

I have read the entire Holding the Line Handbook, and I find it to be a fascinating work of fiction in places. For example, on Page 10 the Risk-Based Approach to apprehending illegal aliens is described as compared to NASA identifying the highest-risk areas near the International Space Station and how they can avoid space debris! These similarities are compared, even though space debris is hardly a living breathing human being. The comparison is not valid and insults my intelligence.

One of the most troubling aspects of not patrolling the international boundary and putting the majority of agents 50 miles or more from the border, is the probability of Transnational Criminal Organizations and terrorists entering our country. The example on John Ladd's ranch of the 54 drug traffickers breaking through the wall is evidence that other unsavory characters come and go as they please. On the San Pedro River, which runs out of Mexico and into the United States west of the Ladd Ranch, the 13-ft. wall ends and there is a 3-strand barbed wire fence going across the river. During flash flood season there is often no fence at all. I have been there dozens of times and rarely is an Agent watching this quarter-mile area which almost never has water running through it. Anyone can simply walk in. Also, during this same season the flood gates are raised from mid-June until the end of September to allow flood water to flow out of Mexico. The Border Patrol covers those holes in the fence with 3 strands of barbed wire which isn't even stretched tightly.





In parts of southern Arizona as far north as 100 miles there are signs which have been put up by the Government stating, "CAUTION. Smuggling activity is common in this area, due to proximity of the border. Be aware of your surroundings at all times." I should not have to be advised by my own Government to beware of foreign drug smugglers in my own country. If my country were enforcing the immigration laws on the books, this wouldn't be an issue.



Diversionary fires in Aguilar's "corridor" have been set by illegal aliens and drug runners. They have destroyed hundreds of thousands of acres of valuable forest, grassland, wildlife, homes, and other resources.

Many of the old-time family ranchers in the area have sold out to big companies with absent owners in order to get away from the vandalism problems and for their safety. Land values in our region have dropped to about half of their value in the 1980's simply because nobody wants to live in an area overrun by illegal aliens.

It is a terrible lie when the Government tells America that the border is secure. It seems to be a calculated plan to not enforce immigration laws. A lot of powerful people have something to gain by allowing illegal aliens to invade our country. Meanwhile, the American public is suffering and our National security and sovereignty as a Nation is in jeopardy.

For the checkpoints to be really affective, they should be open 24/7. If there is not enough staff to keep them open round-the-clock, then perhaps they should be patrolling the border itself.

Ms. MCSALLY. Thank you, Ms. Davis. I appreciate it.
The Chair now recognizes Dr. Golob for 5 minutes.

STATEMENT OF ELYSE GOLOB, EXECUTIVE DIRECTOR, NATIONAL CENTER FOR BORDER SECURITY AND IMMIGRATION, UNIVERSITY OF ARIZONA

Ms. GOLOB. Chairman McSally and Members of the subcommittee, thank you for inviting me here to address you today.

I am the executive director of the National Center for Border Security and Immigration, known as BORDERS, headquartered at the University of Arizona. From 2008 to 2016, we were designated a center of excellence by the DHS Science and Technology Directorate Office of University Programs. Since that time, we continue to receive funding from DHS, from DOD, IARPA, as well as other international agencies to conduct this work. We are a proud member of the new center of the excellence headquartered at the University of Houston.

In 2009, the GAO came out with a report assessing interior traffic checkpoints and recommended that Border Patrol implement improvements in four different areas: The first area is data quality and integrity; the second area is to examine the impacts these checkpoints have on local communities; third, to determine how effective these checkpoints actually are, what is their performance effectiveness; and, fourth, to develop a managerial tool for better managing the number of lanes, the hours, and the resources allocated to these checkpoints.

The University of Arizona was provided with \$500,000 to conduct this study. During the course of the study, we worked closely with Border Patrol, specifically the Office of Strategic Planning, Policy, and Analysis. We submitted bimonthly reports. We were assigned a point of contact in the agency, and we provided regular briefings to headquarters personnel. So we did not operate in a vacuum; we walked hand-in-hand with Border Patrol throughout this process.

To conduct this study, we paid site visits to 7 sectors—6 on the Southern Border and 1 on the Northern Border—to observe the checkpoint operations. At these checkpoints, we received briefings from the chief, we observed operations, and we interviewed agents there.

We also were provided with apprehension data from the e3 system, cleansed data without identifying factors, for a period of 2008 to 2011, as well as checkpoint activity reports.

For community impacts, we conducted interviews with local community members near the border, specifically law enforcement, resort owners, business owners, school officials, as well as citizens.

For the performance measures, we did an in-depth review of various strategies for measuring effectiveness. For the managerial tool, we developed a checkpoint simulation model.

To our findings.

Specifically in the area of data quality and integrity, the gold standard for data quality is accuracy, consistency, and comprehensiveness of the data. In analyzing droves of e3 apprehension data, we determined there were still a lot of errors and inconsistencies and data that was entered incorrectly. We were assured by Border Patrol that measures have been taken to improve data collection. We provided them with a list of recommendations, including agent refresher training courses, drop-down menus, automatic alerts, and other measures to prevent these data issues.

In the area of community impacts, we found that, interviewing community members, their concerns fell into three general areas. The first area was inconvenience factors—wait times at the checkpoints, missed meetings, and so forth. The second factor was circumvention impacts because of illegal activity, trying to circumvent the checkpoint. Neighboring communities voiced that they experienced public safety issues and high-speed chases through their neighborhoods. Finally, economic harm. We found that there was a wide-spread perception that there was harm to the local community based on loss of tourism and depressed housing prices because of a public perception that the border was a dangerous area.

In terms of recommendations for community impacts, we analyzed circumvention data around the I-19 corridor, which we used as our case study, and found that, indeed, communities south of the

checkpoint, such as Tubac, had more circumvention apprehensions than communities north of the border. So this is one area that we recommended that Border Patrol continued to monitor, the circumvention and neighboring activities.

As far as real estate prices, we looked at housing prices for communities south of the checkpoint, Rio Rico and Tubac, and north of the border in Green Valley and found that, while the data indicated there was some loss in the prices south of the checkpoint in Tubac, that they were not statistically significant enough to definitively say that the checkpoint caused the difference. This was complicated by the fact that our real estate data collection overlapped with the housing crisis and the general U.S. economic crisis 2008 to 2010, so further research is needed on the area.

I will conclude with talking about the effectiveness of checkpoints, since this is an issue that Chairman McSally raised.

Right now, checkpoints are measured by their apprehensions and their seizures. I can't stress strongly enough that this is an activity measure, it is not an effectiveness measure. If you don't know how much illicit activity is getting through, you don't know how effectively you are performing. You know, if 100 apprehensions are made a day and 101 people try to get through, you are doing pretty well. If 100 apprehensions are made a day but 1,000 people are trying to get through, then you are only 10 percent effective.

We provided specific recommendations to Border Patrol that the most practical, efficient, and non-biased way of measuring checkpoint effectiveness is by conducting red-teaming efforts, which refers to a team of agents from different Federal agencies who would, in effect, play-act the role of smugglers or illegal immigrants attempting to get through a checkpoint, carefully trained with a specific script. Then an evaluation could be made of how many members of the red team Border Patrol catches at the checkpoint.

This interdiction data can provide a proxy for what the base level, what the denominator of illegal activity is getting through and can be used by checkpoints to measure their effectiveness level.

Ms. MCSALLY. Great. If you wouldn't mind wrapping up, and then we can maybe get more into that in the Q&A.

Ms. GOLOB. Certainly.

Ms. MCSALLY. Thank you.

Ms. GOLOB. In terms of performance models, we developed a simulation model measuring current and predicted traffic flows and resource allocations at Border Patrol that they could use to determine the adequate levels.

I would be happy to answer questions during the next period.

[The prepared statement of Ms. Golob follows:]

PREPARED STATEMENT OF ELYSE GOLOB

SEPTEMBER 13, 2016

Chairman McSally, Ranking Member Vela, and Members of the subcommittee, thank you for giving me the opportunity to testify regarding Border Patrol's defense-in-depth strategy with a focus on interior checkpoints. My name is Elyse Golob and I am the executive director of the National Center for Border Security and Immigration (BORDERS) headquartered at the University of Arizona. As a DHS Center of Excellence from 2008–2015, BORDERS was funded by the Science and Technology Directorate, Office of University Programs. As a Center Emeritus, we continue to

conducted research on border security, trade and immigration with funding grants from DHS, NSF, DOD, IARPA, the Canadian Border Services Agency (CBSA) and Frontex, the European Union border management agency.

In 2011, the U.S. Border Patrol asked BORDERS to evaluate a U.S. Government Accountability Office (GAO) review of the agency's traffic checkpoints. Our findings and recommendations were published in the 2014 report, "Checking on Checkpoints: An Assessment of U.S. Border Patrol Checkpoint Operations, Performance and Impacts".¹

BACKGROUND

The U.S. Border Patrol operates traffic checkpoints on interior U.S. roads to interdict and deter unauthorized immigration, contraband smuggling, and terrorism. In 2009, the GAO evaluated checkpoint operations² and, as a result, recommended that the Border Patrol implement improvement in four areas:

1. *Data Integrity and Quality*.—Establish internal controls and management oversight to ensure the accuracy, consistency, and completeness of checkpoint performance data.
2. *Community Impacts*.—Examine the impact that checkpoints have on the quality of life in local communities.
3. *Performance Models and Measures*.—Evaluate the usefulness of a checkpoints by comparing rates of apprehension and seizures to undetected illegal activity passing through the checkpoint.
4. *Managerial Tool Development*.—Determine the optimal number of inspection lanes needed at checkpoints based on current and predicted traffic volumes, and assess required staffing needs.

In 2010, U.S. Border Patrol asked BORDERS to conduct an independent and objective assessment of checkpoint operations to respond to GAO's comments. We received funding of \$500,000 to undertake this study. Our research team consisted of 3 faculty members and 6 doctoral students.

During the course of the study, we were assigned a point of contact at Border Patrol, Office of Strategic Planning, Policy, and Analysis, submitted bi-monthly reports and met periodically with headquarters personnel for briefings, clarification, and feedback.

The final report was released in 2014.

METHODOLOGY

To conduct a comprehensive checkpoint assessment, we gathered and analyzed information from several sources:

Site visits.—We visited 17 checkpoints in 5 Border Patrol Sectors on the Southern and Northern Borders, including permanent and tactical stops.³ These included the San Diego, Tucson, El Paso, Rio Grande Sectors on the U.S.-Mexico border; and the Swanton Sector on the U.S.-Canada border.

At each site visit, the sector chief briefed us on the current threats and developments. We also examined the checkpoint's layout, infrastructure, and technology; observed on-going operations, including primary screening and secondary screening; and interviewed agents.

Apprehension data.—The Border Patrol provided us with cleansed apprehension data from its e3 data-collection system (2006–2011) and from the Checkpoint Activity Report (CAR) system (2007–2011).

Specifically, we received data for 26 variables (a subset of the data in the e3 system) related to apprehended individuals, including: (a) Location and time of arrest; (b) manner, time, and location of entry into the United States; and (c) citizenship of the individual arrested, whether the individual was smuggled in, and, if so, the cost to the individual to be smuggled in. We received several data sets from the

¹ Jenkins, J., J. Proudfoot, J. Marquadsen, J. Gans, E. Golob, J. Nunamaker, 2014. *Checking on Checkpoints: An Assessment of U.S. Border Patrol Checkpoint Operations, Performance, and Impacts*. http://borders.arizona.edu/cms/sites/default/files/checking-on-checkpoints_2014-09-09.pdf.

² See *Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, U.S. Government Accountability Office, GAO-09-824, August 2009, www.gao.gov/products/GAO-09-824.

³ Along the U.S.-Mexico border, we visited 5 checkpoints in the San Diego Sector (located at Temecula I-15, Rainbow, San Clemente I-5, Hwy 94, and I-8), 4 in the Tucson Sector (Arivaca Rd, I-19, SR 80, and SR 90), 4 in the El Paso Sector (I-10, White Sands Hwy 70—MM 198.5, Alamogordo Hwy 54, and US 180), and 2 in the Rio Grande Sector (Falfurrias and Kingsville). Along the U.S.-Canada border, we visited 2 checkpoints in the Swanton Sector (I-87 and the Massena Station tactical checkpoint).

CAR system containing checkpoint profiles, referrals, apprehension counts, seizure counts, and operation hours.

Community data.—We conducted interviews with community members and stakeholders in surrounding areas to identify the quality of life impacts of checkpoints. We analyzed circumvention rates and real estate sales data (2009–2012) in communities north and south of the checkpoint to determine its impact on local communities.

Performance Measures.—We undertook an in-depth review of potential methodologies to estimate illegal flow and provide a baseline for checkpoint effectiveness.

Managerial Tool Development.—Using commercially-available software, we developed a simulation model of a checkpoint to assess resources and staffing needs to meet current and future traffic demands.

FINDINGS AND RECOMMENDATIONS

1. Data Integrity and Quality

Data integrity and quality are measured by the accuracy, consistency, and completeness of the collected data. To evaluate the data collection protocols at checkpoints, we examined data from the e3 system and the Checkpoint Activity Report (CAR) module. The e3 is an internal system used by agents to process and record data about apprehended individuals, such as apprehension location, smuggling information, and the date and time of apprehension. The CAR report contains checkpoint operational and infrastructure data, including checkpoint profile reports, number of apprehensions and seizures, operational hours, and personnel. We also used the information gathered during the site visits to better understand data collection processes.

Findings.—We found that while data integrity and quality have substantially increased since the 2009 GAO assessment, there were aspects of data collection and management that still need improvement.

Specifically, we found that the e3 data had errors in the data fields for apprehension latitude and longitude, entry manner, smuggling method and cost, distance from port of entry (POE), and entry date and time. In the CAR data set, we found errors in the checkpoint profile records. (See Appendix A).

Recommendations.—To address these shortcomings, we recommend that the Border Patrol implement changes in agent training, correct past errors in data entry, and improve the current e3 system to include real-time alerts for questionable data, drop-down menus and automate data entry of certain fields.

Agent training.—We recommend that the Border Patrol provide refresher courses on how to enter data and why data quality is important.

Correct past errors.—We recommend that Border Patrol run automated scripts on these data to correct transposed apprehension latitude-longitude data and inconsistent labels for entry manner.

e3 system.—We suggest several improvements to the current interface:

a. Automatic alerts.—Available if the apprehension latitude-longitude entry is not within the agent's assigned sector, the smuggling cost is exorbitantly high, or the miles from POE is abnormally high.

b. Drop-down selection box.—Available for fields such as "entry manner."

c. Automated data collection.—Allowing agents to transfer the apprehension latitude and longitude from their GPS devices directly to the e3 system, and automatically calculating the distance from POE based on latitude and longitude data.

2. Community Impacts

While our aim was to identify and measure the impacts of checkpoints on nearby communities, it quickly became apparent that no one checkpoint could encapsulate all possible effects. Since the type and magnitude of impacts differ by the local factors such as size, population, economic base and terrain, we sought a case study that could provide a generalizable approach. We selected the checkpoint along U.S. Interstate 19 (I-19) between Tucson and Nogales, Arizona, as a case study (see Appendix B), as it captured several major factors including traffic volume, proximity of communities, economic diversity, and a mountainous topography.

Located on a 25-mile north-south artery, the I-19 checkpoint affects both commercial and personal traffic. It bisects several long established communities to its south and north. To the south, lie Tubac (4 miles), Rio Rico (10 miles) and Nogales (on the border) with a combined population of 41,000. To the north, are the communities of Amado, Green Valley, and Sahuarita with a total population of 55,000. The principal economic engines of the region are real estate, tourism, mining, farming, and

ranching. The corridor is located in a mountainous region, with mountains to the east and west.

For the study, we interviewed representatives from the Santa Cruz County Sheriff's Office, Tubac Golf Resort and Spa, Esplendor Resort, Fresh Produce Association of Americas, various Tubac business and community representatives; residents of Tubac, Green Valley, and Sahuarita; and local schools officials. We found consistency in the perspectives of this wide range of individuals with regard to the checkpoint.

These concerns can be grouped into three broad categories: (1) *Circumvention impacts* with attendant public safety and law-enforcement costs; (2) *inconvenience impacts* deriving from unpredictable wait times and risk of secondary screening for those who travel through the checkpoint; and (3) *economic harm impacts* deriving both from changing public perceptions about the dangers of the border region, including a decline in housing prices and tourism.

Findings

1. *Circumvention impacts.*—The presence of the checkpoint may cause those engaged in illegal activity to attempt to circumvent the checkpoint. This circumvention, often referred to as flanking, pushes drug and human smuggling into neighborhoods and creates public safety problems in communities both south and north of the checkpoint. Community members have experienced high-speed chases through neighborhoods, Blackhawk helicopters deployed near population centers, school lockdowns, and similar disruptions. Our statistical analysis of apprehension data before and after the I-19 checkpoint began operations (2009–2012) showed that while circumvention impacts are experienced by communities north and south of a checkpoint, they are disproportionately borne by communities that lie south of the checkpoint.

2. *Inconvenience impacts.*—Virtually all community members south of the checkpoints reported missed meetings or airline flights due to the unpredictable wait times. Others believed that Hispanic citizens were subject to racial profiling . . . In many instances, it was difficult to quantify these impacts. Further research is needed.

3. *Economic harm impacts.*—Residents expressed concern that the checkpoint's presence contributed to the perception that the border region is dangerous, which in turn negatively impacts tourism and hurts real-estate values. Regarding tourism, it was difficult to disentangle the effects of the general economic downturn, negative publicity from SB1070, and the impacts of the checkpoint itself.

A regression analysis of real estate price data in communities south (Tubac-Rio Rico) and north (Green Valley) of the checkpoint, provided marginally statistically significant evidence of downward pressure on housing prices. However, since the available data was limited and it was difficult to isolate the checkpoint's impacts from those of the housing crisis and other economic conditions, these results must be seen as suggestive, rather than definitive.

Recommendations.—Our analysis identified a variety of quantitative measures of a checkpoint's impacts on surrounding communities, and we recommend that Border Patrol consider regularly examining them. These include:

Analysis of apprehension data relative to the roads or highways on which a given checkpoint is located, which provides a statistical measure of circumvention activity.

Analysis of real estate prices in adjacent communities to gauge the impact of the checkpoint on the housing market.

Analysis of local law enforcement referrals to Border Patrol, which provides an additional indication of circumvention activity around a checkpoint.

Analysis of enforcement activity around schools including data on school lockdowns, which provides a measure of circumvention activity specifically affecting children.

3. Performance Models and Measures

The GAO report recommended that Border Patrol develop a model that compares apprehensions and seizures to the total level of illegal activity passing through checkpoints undetected. Since this baseline is unknown and cannot be extrapolated from available data, we explored proxy measures of total flow that could measure checkpoint effectiveness.

Findings.—We found that most practical, accurate, and unbiased approach to get an realistic approximation of the checkpoint's effectiveness in deterring illegal activity is through "red teaming."

A red team is “a group of subject-matter experts of various appropriate disciplinary backgrounds who provide an independent peer review of plans and processes; acts as the adversary’s advocate; and knowledgeably role-play the adversary, using a controlled, realistic, interactive process during operations planning, training, and exercising”.⁴ Red teaming has been successfully deployed in other agencies, including the Federal Aviation Administration (FAA), the Department of Defense (DOD), and the National Nuclear Security Administration. It is currently used at Border Patrol checkpoints to measure the accuracy of radiation detectors.

In a checkpoint context, red teaming would be carried out by actors knowledgeably role-playing the adversary in an attempt to bypass checkpoint security carrying false documents, illegal drugs, radiation (i.e., proxy for nuclear weapons), or other illegal items. The rate at which red team actors are detected at checkpoints will allow the Border Patrol to calculate an interdiction rate for illegal activities.

Red-teaming would provide the Border Patrol with valuable information, including: (a) Accuracy rates of detecting illegal activities during red-teaming, (b) measurable indicators of how resource allocation influences this accuracy rate, (c) objective and quantitative baselines of a checkpoint’s detection accuracy rate to gauge improvement over time, and (d) focused areas of improvement for checkpoint operations.

Recommendations. We recommend that the Border Patrol:

- *Calculate an interdiction rate of illegal activity through red-teaming.*—Our report provided guidance to ensure valid and reliable red-teaming including red team composition, maintaining objectivity and confidentiality, generating a statement of evaluation objectives, determining the frequency of red-teaming attempts, selecting checkpoints for red-teaming and understanding safety issues.

4. Managerial Tool Development

The 2009 GAO report emphasized the need to consider traffic volume and needs assessment in allocating resources to checkpoints. To address this, we created a checkpoint simulation and visualization tool to help the Border Patrol make informed resource allocations, conduct workforce planning needs assessments, and determine the number of open inspection lanes (see Appendix C).

Findings.—The simulation tool that we built is a realistic computerized representation of an actual checkpoint that models common components, including pre-primary screening, primary screening, secondary screening, violation processing, traffic flows (actual or anticipated), screening times for different types of vehicles, number of inspection lanes, number of agents, secondary screening capacity, number of backscatter machines, and other checkpoint components.

Using the simulation model, the Border Patrol can assess the required resources and staffing to meet current and future traffic demands and predict how making resource changes to a checkpoint would influence important outcomes such as wait time, screening time, traffic flushing, queue length, resource utilization, screening capacity, and arrests.

Recommendations.—We recommend that the Border Patrol: Adopt a checkpoint simulation model to analyze current and expected traffic volumes to determine the number of inspection lanes at checkpoints; and determine workforce needs.

SUMMARY

Our report addressed the recommendations made in GAO’s 2009 report. Specifically, it addressed recommendations that can aid Border Patrol in: (1) Continuing to improve the consistency, accuracy, integrity, and completeness of data in the e3 and CAR module systems; (2) better assessing the impact of checkpoint on surrounding communities; (3) evaluating the performance of checkpoints on detecting illegal activity; and, (4) making more informed resource allocation decisions.

⁴ Homeland Security Exercise and Evaluation Program, 2007, 8–26.

ATTACHMENTS

Appendix A. Data Integrity and Quality

Event Type: ANC Event Number: MUR 2011 12 Occurred On: 12/16/2010 0816

Alien CONTROL Name: Alien First Name: Alien Middle Name: Rank #: Role: Role Comment:

Date of Birth: Age: Born Country: State: Description: City: New Full VR

Juvenile: Accompanied: Unaccompanied: Relation: Companion: Armed?: Assault?: Add Subject

Sex: Hair: Eyes: Complexion: Citizen of: Passport #: Issuing Country: A Number: Height: Weight: Occupation: LABORER

U.S. Address: Street - Line 1: Street - Line 2: City: State: Country: Latitude: Longitude: Phone No. (area) 999 - 9999 Ext. Com. Map

Scars, Marks, & Tattoos: Description: Entry Date: 12/16/2010 Time: 0816 POE: SYS Landmark: Miles from POE: Latitude: Longitude: Dir from POE: Claimed/Verified: Method: Cost: Entry At/Near (City): State: Entry Manner: (PWA(AFOOT)) Map

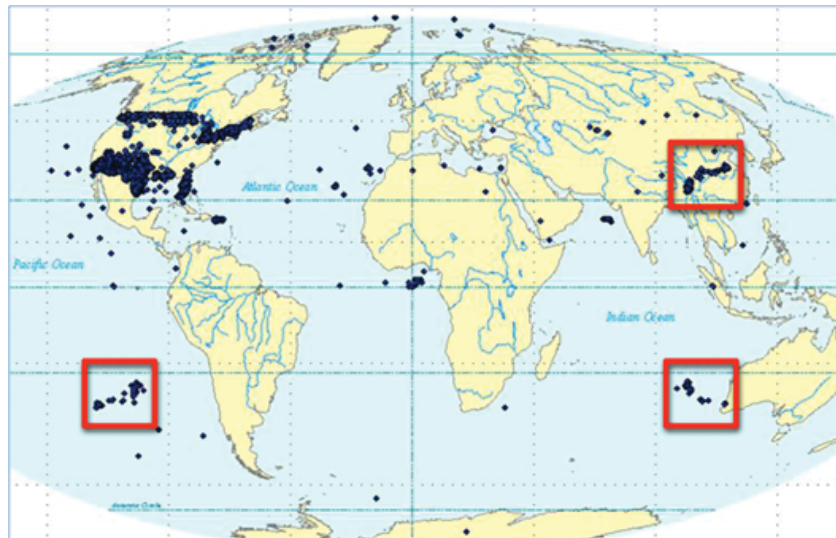
(e) ENTRY DATE AND TIME

(d) DISTANCE FROM POE

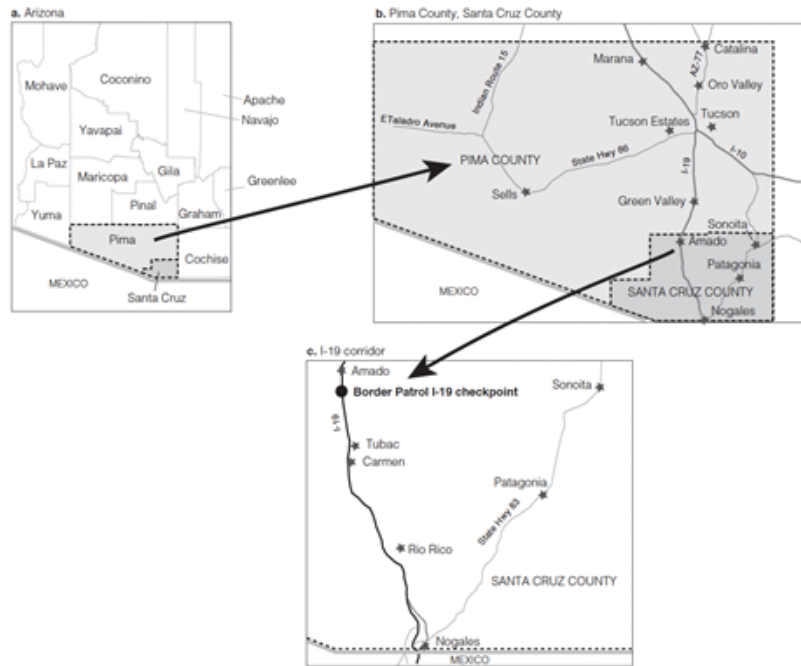
(c) SMUGGLING METHOD AND COST

(b) ENTRY MANNER

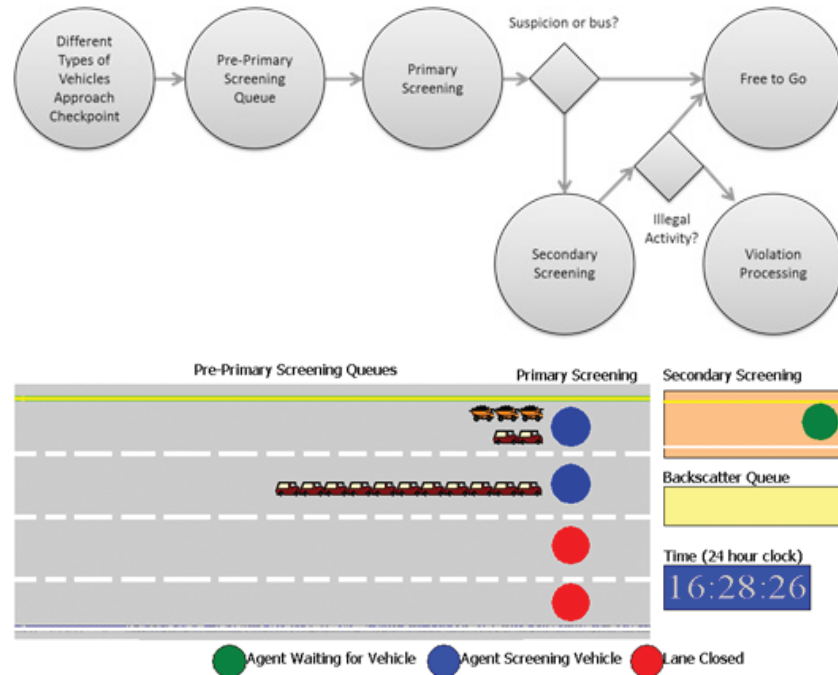
(a) LATITUDE AND LONGITUDE



Appendix B. Community Impacts



Appendix C. Managerial Tools Appendix



Ms. MCSALLY. Thank you, Dr. Golob.

The Chair now recognizes Mr. Ramírez for 5 minutes.

STATEMENT OF CHRISTIAN RAMÍREZ, DIRECTOR, SOUTHERN BORDER COMMUNITIES COALITION

Mr. RAMÍREZ. Thank you very much, Madam Chairman and Members of the subcommittee. Thank you for allowing me the opportunity to testify. I represent the Southern Border Communities Coalition, which brings together over 60 community organizations in the 4 Southern Border States.

I was born in the borderlands. They are my home. I know the subcommittee will agree that the Southern Border is one of our Nation's most beautiful, vibrant, and unique regions. It includes remarkable desert landscapes, the scenic Rio Grande River, distinctive mountains, and extraordinary valleys.

Several important binational metropolitan areas make up the borderlands, and hundreds of thousands of acres of sensitive habitat protect endangered species. Ancestral indigenous communities have called the borderlands home since before the physical structure divided their people. Ancient roots are now dissected by modern borders. Nearly 12 million people call our precious borderlands home.

The Southern Border is also an economic engine for North America. Fifty-six crossing points provide critical gateways to our third-largest goods trading partner, where nearly 300,000 vehicle cross-

ings occur daily. U.S. trade with Mexico totaled \$583 billion in 2015.

The border landscape also includes a heavy presence of Federal law enforcement, making the Southern Border one of the most militarized regions in the Western Hemisphere. In the year 2000, there were 8,600 Border Patrol Agents. By 2014, the number more than doubled to almost 21,000.

Border enforcement spending increased seven-fold from 1980 to 1995 and then more than tripled from 1995 to 2003. Appropriations for Border Patrol have grown steadily from \$1 billion in fiscal year 2000 to over \$13 billion in fiscal year 2016.

However, this dramatic increase of CBP personnel and equipment has not been accompanied by commensurate accountability, oversight, and transparency mechanisms, leading to palpable mistrust between Southern Border residents and the CBP, the largest law enforcement agency in our Nation.

Based on outdated rules created without significant public debate, DHS has interpreted section 287(a)(3) of the Immigration and Nationality Act to allow Border Patrol to operate interior checkpoints and engage in other enforcement up to 100 miles from land and maritime borders.

Virtually everyone that I know has been subjected to questioning at checkpoints. In some communities, residents must pass through Border Patrol checkpoints to reach work, school, medical appointments, places of worship. This has an enormous economic and civil rights impact on our communities. Even I feel compelled to carry proof of citizenship at all times in order to prevent unnecessary delays or worse.

Perhaps what is most hurtful is that my toddler son must also have a U.S. passport in order to clear the checkpoint. Whenever we drive east to visit his grandparents in Imperial County or if we decide to go north to go to Disneyland, my family must show our passports to prove U.S. citizenship. As you may know, U.S. citizens are not required to carry proof of citizenship. But we do so because Border Patrol Agents too often treat us as second-class citizens.

For border residents, the land of the free that most enjoy has been converted into the land of checkpoints. In no other part of this Nation are people required to prove who they are as they go about their daily lives.

As director of the Southern Border Communities Coalition, I see and experience first-hand the great impact CBP's excessive footprint has on residents along the border. In the small town of Arivaca, hundreds of community members have rallied against racial profiling of their neighbors at checkpoints that choke off their daily activities.

In southern New Mexico, my good friend Jorge grew up commuting through Government checkpoints from his hometown in Salem to Las Cruces to grocery shop, to see a movie, and, most recently, to obtain a master's degree from New Mexico State University. Jorge is always respectfully confirming his U.S. citizenship to Agents, but Agents have interrogated him about where he was born and detained him for dogs to sniff his vehicle because he refused to consent to a search.

In the RGV, residents have refused to evacuate their homes in water-related emergencies for fear that they will be apprehended by Border Patrol. My colleagues in Brooks County contend with hundreds of tragic migrant deaths each year because the Falfurrias checkpoint is placed 50 miles north of the actual border.

CBP fails to assess the impact of defense-in-depth on human and civil rights and on our quality of life for border residents. Our friends along the Northern Border have also endured enforcement practices that undermine the trust between border residents and CBP. From Washington State, to the streets of Detroit, to up-State New York, border residents experience excessive use of force, racial profiling, and unconstitutional searches and seizures.

No one is more concerned about the security of the homeland than border residents, but we are equally concerned about our quality of life. Congress should reduce the reach of CBP operations to a maximum of 25 miles from the land or maritime border and reduce the area where agents can enter private property without a warrant to 10 miles.

DHS and CBP must immediately ban racial profiling and implement comprehensive data collection and public reporting on Border Patrol's activities. We urge CBP to implement Commissioner Kerlikowske's transparency and accountability reforms, including body-worn cameras, with a strong policy framework and an effective, responsive complaint system.

Ultimately, border residents want what our fellow citizens already enjoy: The ability to move from point A to point B without excessive Government intrusion. I remain hopeful that one day my son will be able to visit his grandparents without the indignity of armed agents at a checkpoint interrogating him about whether he belongs in this Nation or not.

I thank you for your time.

[The prepared statement of Mr. Ramírez follows:]

JOINT PREPARED STATEMENT OF CHRISTIAN RAMÍREZ, DIRECTOR, SOUTHERN BORDER COMMUNITIES COALITION; JENNIFER JOHNSON, BORDER POLICY ADVISOR, SOUTHERN BORDER COMMUNITIES COALITION; KARIN JOHANSON, DIRECTOR, ACLU WASHINGTON LEGISLATIVE OFFICE; CHRISTOPHER RICKERD, POLICY COUNSEL, ACLU WASHINGTON LEGISLATIVE OFFICE; VICKI B. GAUBECA, DIRECTOR, ACLU OF NEW MEXICO, REGIONAL CENTER FOR BORDER RIGHTS; AND BRIAN ERICKSON, BORDER POLICY STRATEGIST, ACLU OF NEW MEXICO, REGIONAL CENTER FOR BORDER RIGHTS

SEPTEMBER 13, 2016

INTRODUCTION

Advocates and residents throughout the border region comprise the Southern Border Communities Coalition (SBCC). SBCC brings together more than 60 organizations from San Diego, California, to Brownsville, Texas, to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent loss of life in the region.

For nearly 100 years, the American Civil Liberties Union (ACLU), a member of SBCC, has been our Nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone. With more than a million members, activists, and supporters, the ACLU is a Nation-wide organization that fights tirelessly in all 50 States, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law. The ACLU of New Mexico's Regional Center for Border Rights (RCBR) stands with border communities to defend and protect America's Constitutional guarantees of

equality and justice for all families to live freely, safely, and with dignity. The RCBR works in conjunction with ACLU affiliates in California, Arizona, Texas, Michigan, Washington, New York, and Vermont.

SBCC and the ACLU submit this statement to provide the subcommittee with an appraisal based on border residents' perspectives to describe the civil liberties and quality of life effects of the Border Patrol's "Defense-in-Depth" strategy that relies on roving patrols and numerous checkpoints far from the actual borders. CBP's checkpoints and patrols are massively intrusive yet ineffective interior enforcement operations. We are deeply concerned about how the Border Patrol conducts enforcement in the "100-mile-zone," often infringing rights in such a vast area of the United States.

Severely compounding this overreach is a lack of Border Patrol policies and practices that match best policing standards on matters ranging from body-worn cameras to data collection (see Appendix, Implementing Law Enforcement Best Practices for our Nation's Biggest Police Force).

SBCC and the ACLU oppose CBP's currently exorbitant spending on border enforcement, expenditures which occur without the requisite transparency and oversight, or a proper holistic analysis of border communities' quality of life. Spending on enforcement, particularly at the Southwest Border, has increased dramatically this century without commensurate accountability measures, resulting in civilian deaths at the hands of CBP personnel, avoidable migrant deaths in the desert, and many other civil and human rights abuses at both our Nation's Southern and Northern Borders.

From fiscal year 2004 to fiscal year 2012, the budget for CBP increased by 94 percent to \$11.65 billion, a leap of \$5.65 billion; this following a 20 percent post-9/11 increase of \$1 billion.¹ By way of comparison, this jump in funding more than quadrupled the growth rate of NASA's budget and was almost 10 times that of the National Institutes of Health. For fiscal year 2017, the administration's budget request for CBP is about \$14 billion. U.S. taxpayers now spend more on immigration enforcement agencies (\$19 billion) than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service—combined. Border and immigration enforcement has cost more than \$250 billion in today's dollars since 1986. House Appropriations Committee Chairman Hal Rogers' warning about the irrationality of border spending must be heeded: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."²

SBCC and the ACLU urge the subcommittee to focus its efforts on ensuring that future border security is conducted humanely and in accordance with best police practices, leaving a greatly reduced footprint in border communities. Legislation and Congressional oversight should bring transparency and accountability—not war equipment or more boots on the ground—to CBP, our Nation's largest law enforcement agency.

I. CBP IS IMPROPERLY ACTING AS AN INTERIOR LAW-ENFORCEMENT AGENCY WITHIN THE UNNECESSARILY LARGE 100-MILE ZONE, YET THESE ACTIVITIES ARE INEFFECTIVE IN APPREHENDING UNAUTHORIZED IMMIGRANTS.

CBP's excessive enforcement footprint and mission creep have made it an interior police agency that conducts unaccountable roving patrols far from any border and maintains intrusive checkpoints that hurt local economies, unjustifiably profile Latinos and other people of color, and make few immigration arrests. CBP has become an interior law-enforcement agency through its vast claimed authority to patrol within 100 miles of all land and sea borders, an assertion of power based on outdated regulations issued in the 1950s that have not faithfully implemented the Immigration and Nationality Act's (INA) limitation to a "reasonable distance" from a border.³ Moreover, CBP's practice of using its warrantless authority under the INA to enter private property (excluding dwellings) within 25 miles of a border is at times exercised irresponsibly, causing property owners uncompensated fence damage and other hardship like livestock lost through unclosed gates.

CBP's zone of claimed authority therefore has no statutory basis and originated without scrutiny 60 years ago in now-outdated regulations. The area includes two-

¹ Michele Mittelstadt et al., "Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11," (Migration Policy Institute, Aug. 2011), 3, available at http://www.migrationpolicy.org/pubs/FS23_Post-9-11policy.pdf.

² Ted Robbins, "U.S. Grows an Industrial Complex Along The Border," NPR (Sept. 12, 2012), available at <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>.

³ For more on the 100-mile zone please see <https://www.aclu.org/constitution-100-mile-border-zone> and <https://www.aclu.org/aclu-factsheet-customs-and-border-protections-100-mile-zone>.

thirds of the U.S. population, entire States like Florida and Maine, as well as almost all of the country's top metropolitan areas. The CATO Institute and Reason Magazine/reason.com have led libertarian critiques of the 100- and 25-mile zones.⁴ This breadth of authority has converted CBP, particularly Border Patrol, into an interior force that widely roams border communities. Other law enforcement agencies, such as Immigration and Customs Enforcement (ICE) and the Drug Enforcement Agency have responsibility for interior immigration and drug enforcement; CBP's enforcement far from any actual border is both duplicative and ineffective.

The agency's own data have shown that a majority of criminal prosecutions emanating from checkpoint operations are of U.S. citizens for small quantities of drugs, including marijuana, even though checkpoints are not general crime-control operations but Constitutionally limited to brief immigration inquiries. Significantly, checkpoints also do not provide "bang for the buck" in terms of unauthorized immigrant apprehensions. Although CBP emphasizes that a negative cannot be proven with respect to deterrent effect, checkpoint numbers—which haven't been disclosed by the agency since 2013—show that very few migrants are apprehended given the resources committed to these operations. Two years ago CBP Commissioner Kerlikowske committed to "a review to collect data on the number of arrests and drug seizures at each checkpoint to gauge how effective they really are,"⁵ but no public data or analysis have been released. Nor has the agency acted on the Government Accountability Office's 2009 recommendation to implement "quality of life measures . . . to evaluate the impact that checkpoints have on local communities,"⁶ a recommendation echoed and elaborated by the University of Arizona in 2014.⁷

Consider the last available agency data about the Tucson and Yuma sectors:

- For fiscal year 2012 and fiscal year 2013, combined checkpoint apprehensions for Tucson and Yuma Sectors accounted for just 0.74 percent of those sectors' total apprehensions. In fiscal year 2013, Tucson Sector's 804 checkpoint apprehensions accounted for just 0.67 percent of the sector's total apprehensions.
- While CBP reported that its fiscal year 2012 Nation-wide checkpoint apprehensions accounted for 2 percent of total apprehensions, the data shows Tucson and Yuma Sectors' combined 882 checkpoint apprehensions represented only 0.7 percent of those sectors' total apprehensions during the same period.
- In calendar year 2013, 9 out of 23 Tucson Sector checkpoints reported zero arrests of "deportable subjects." Fifteen of those checkpoints reported fewer than 10 arrests of deportable subjects; only 6 reported more than 20 arrests, and only 2 reported more than 40—those 2 checkpoints accounted for 74 percent of the deportable subjects arrested at Tucson Sector checkpoints in 2013.
- The vast majority of those arrested at Yuma Sector checkpoints are U.S. citizens: In calendar year 2013, 1,535 "non-deportable subjects" were arrested as compared to only 197 deportable subjects, a nearly eight-fold differential. In 2011, non-deportable subject arrests exceeded deportable subject arrests by a factor of more than 11, 1,822 to 161. (These numbers are consistent with FOIA data obtained by the Center for Investigative Reporting which showed approximately 4 out of 5 drug-related arrests by Border Patrol involved U.S. citizens.)⁸
- Yuma Sector's Highway 95 checkpoint—the only checkpoint for which identifying information was not redacted—reported only 1 non-citizen apprehension in 3 years. The Highway 95 checkpoint is roughly 75 miles from the border and the subject of several abuse complaints.⁹

⁴See, e.g., Patrick G. Eddington, "Homeland Insecurity: Checkpoints, Warrantless Searches and Security Theater," *JustSecurity* (Feb. 2, 2015), <http://www.cato.org/publications/commentary/homeland-insecurity-checkpoints-warrantless-searches-security-theater>; Jacob Sullum, "The Border Patrol's Unconstitutional Drug Dagnet," *reason.com* (May 25, 2015) <http://reason.com/archives/2015/05/25/the-border-patrols-unconstitutional-drug>.

⁵Alan Gomez, "Border Commissioner, facing heat, promises changes," *USA Today* (Oct. 30, 2014), <http://www.usatoday.com/story/news/nation/2014/10/30/customs-and-border-commissioner-interview-body-cameras-use-of-force-checkpoints/18110249/>.

⁶<http://gao.gov/assets/300/294548.pdf> (p.78).

⁷Jeffrey Jenkins, Jeffrey G. Proudfoot, Jim Marquardson, Judith Gans, Elyse Golob, and Jay Nunamaker, *Checking on Checkpoints: An Assessment of U.S. Border Patrol Operations, Performance, and Impacts*. Tucson: National Center for Border Security and Immigration (BORDER), University of Arizona (2014), http://borders.arizona.edu/cms/sites/default/files/checking-on-checkpoints_2014-09-09.pdf.

⁸Andrew Becker, G.W. Schulz, and Tia Ghose, "Four of five Border Patrol drug busts involve US citizens, records show," Center for Investigative Reporting (Mar. 26, 2013), <http://cironline.org/reports/four-five-border-patrol-drug-busts-involve-us-citizens-records-show-4312>.

⁹ACLU of Arizona, *Record of Abuse: Lawlessness and Impunity in Border Patrol's Interior Enforcement Operations* (2015), 14, <http://www.acluaz.org/node/5415>.

CBP has not published data to reflect the significant financial cost of Border Patrol interior operations, so taxpayers do not know the price tag, for example, for Yuma Sector's 200–300 annual checkpoint apprehensions, nor does the agency attempt to quantify the checkpoints' "deterrent" effect. Still, the agency's data suggest that the limited enforcement gains of most interior checkpoints do not outweigh the many harms their operation inflicts upon border communities in the form of additional migrant deaths, wide-spread civil rights and civil liberties abuses, and negative impacts on local businesses and property values.

II. CBP'S INTERIOR ENFORCEMENT ACTIVITIES LEAD TO CONSTITUTIONAL ABUSES AND ECONOMIC HARM.

CBP's interior enforcement activities are suboptimal uses of agency resources meant to further border-security goals, yet do enormous damage to the quality of life of those who live and work in the border region. Border community members report harassment, racial profiling, excessive force, and other unlawful treatment by CBP agents at checkpoints and during patrol stops.

To get a sense of these experiences, take two examples of individuals very familiar to the subcommittee. In 2009, Representative Beto O'Rourke "then an El Paso city council member, says he was stopped and sent into secondary screening while driving to visit his sister in Carlsbad, New Mexico. 'I came through and was pulled over into secondary, which has never happened to me before. And then my 2-year-old son was put into a holding cell while they searched my truck. I didn't have anything worth searching for,' said O'Rourke. 'I remember how awful I felt being in that cell and how un-American that felt. I had not crossed an international border . . . yet was detained, questioned, and searched without probable cause. And that's a shitty feeling. And a lot of people experience that.'"¹⁰ Second, "Border Patrol Agents stopped Senator Patrick Leahy, Democrat of Vermont, 125 miles south of the border, in New York. When Mr. Leahy asked what authority the agent had to detain him, the agent pointed to his gun and said, 'That's all the authority I need.'"¹¹

CBP conducts operations, including checkpoints and roving patrols, far removed from the border. Encounters with non-border crossers, including U.S. citizens and permanent residents, result in regular CBP enforcement experiences during their day-to-day lives. People residing within 100 miles of a border are subject to both fixed and roving checkpoints, ostensibly to confirm immigration status but often leading to other law enforcement actions. In some communities, residents must pass through Border Patrol checkpoints to reach work, school, medical appointments, or other daily activities. The ACLU has filed dozens of complaints on behalf of border residents regarding checkpoint activities and roving patrols, along with publishing numerous reports that details abuses that result from this interior enforcement.¹²

Away from standing inspection points where all vehicles are stopped, Border Patrol must have "reasonable suspicion" of an immigration violation or crime to pull someone over and probable cause to search vehicles. To send a person to "secondary" at a checkpoint for a non-immigration inquiry also requires reasonable suspicion. However, Border Patrol Agents routinely ignore or misunderstand the limits of their legal authority.¹³ For example, "[i]n an interview, CBP and Border Patrol Officials seemed unsure about what legal requirements, like probable cause, governed agents searching cars for possible immigration and general criminal violations. One finally stated that probable cause was not necessary to conduct an immigration-related search. According to James Lyall, [at the time] an attorney at the ACLU of Arizona, that is false: Probable cause, consent, or a warrant is always necessary for a vehicle search not conducted at a port of entry. 'They have no idea what the rules are, in part because they can so easily ignore them,' he says."¹⁴

¹⁰Daniel Denvir, "Curbing the Unchecked Power of the U.S. Border Patrol," *The Atlantic CityLab* (Oct. 30, 2015), <http://www.citylab.com/crime/2015/10/curbing-the-unchecked-power-of-the-us-border-patrol/413392/>.

¹¹Todd Miller, *War on the Border*, *NY Times*, Aug. 18, 2013, <http://nyti.ms/1DM0jSo>.

¹²See, e.g., Arizona complaints (2013, <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Roving%20Patrols%20Oct%209%202013.pdf>; 2014, <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Checkpoints%20%202014%2001%2015.pdf>; 2016, <http://www.acluaz.org/sites/default/files/documents/ACLU%20Complaint%20to%20CBP%20OPR%20June%2028%202016.pdf>); ACLU of Arizona report, *Record of Abuse*, *supra*; ACLU of New Mexico report, *Guilty Until Proven Innocent: Border Patrol Discrimination in Southern NM* (2015), <https://www.aclu-nm.org/guiltyuntilproveninnocent/2015/05/>.

¹³For ACLU of Arizona's Know your Rights with Border Patrol advisory please see: http://www.acluaz.org/sites/default/files/documents/ACLU%20Border%20Rights%20ENGLISH_-1.pdf.

¹⁴Denvir, "Curbing the Unchecked Power," *supra*.

Northern border residents have reported Border Patrol Agents conducting roving patrols near schools and churches and asking passengers for their documents on trains and buses that are traveling far from border crossings.¹⁵ Incidents, such as the brutal 2015 assault/Tasing of Jessica Cooke—a college criminology senior who had applied to work at CBP—at a checkpoint near Waddington, New York, have generated fear and distrust as well as millions of video views.¹⁶ The ACLU of Washington State brought and settled a class-action lawsuit to end the Border Patrol's practice of stopping vehicles and interrogating occupants without legal justification. One of the plaintiffs in the case was an African American corrections officer and part-time police officer pulled over for no expressed reason and interrogated about his immigration status while wearing his corrections uniform.¹⁷

In the Lower Rio Grande Valley of Texas, residents in mixed-status families say they are scared to evacuate their homes in weather-related emergencies for fear they will be apprehended by Border Patrol. These checkpoints inhibit U.S. citizen children from receiving critical medical care, as reported last year by the *New York Times*¹⁸ and echoed in Flint, Michigan's water crisis.¹⁹ Our colleagues in Brooks County, TX, contend with hundreds of tragic migrant deaths each year because the Falfurrias checkpoint is 57 miles from the actual border. Eduardo Canales, director of the South Texas Human Rights Center, reports that "there has been a total of 45 bodies and remains recovered this year alone. These numbers only reflect what has been found. I would estimate that at least twice that number have also perished and remain scattered all over the brush terrain of Brooks County. These deaths are a result of Falfurrias checkpoint."²⁰

III. CBP'S "VICINITY OF THE BORDER" EXEMPTION FROM THE DEPARTMENT OF JUSTICE'S GUIDANCE ON RACIAL AND OTHER PROFILING BY FEDERAL LAW ENFORCEMENT MUST END, AND CBP SHOULD COLLECT DATA TO EVALUATE WHETHER IT IS ENGAGING IN BIASED POLICING.

We are dismayed that CBP and the Transportation Security Administration (TSA) obtained "exemptions" from the Department of Justice's 2014 Guidance on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity,²¹ and have not yet issued follow-up guidance of their own despite urging a year ago by the Congressional Progressive, Hispanic, and Asian Pacific American Caucuses.²² Often as a result of racial or religious profiling, innocent people are daily being stopped, interrogated and searched by Border Patrol without legal justification. As Jorge Rodríguez, a doctoral candidate in New Mexico whose young life has been filled with hostile checkpoint experiences, asks, "Why is Border Patrol permitted to treat me, a U.S. citizen, differently due to the color of my skin?"²³

The Caucuses' letter emphasized that "[t]he 2014 DOJ Guidance stresses that profiling the public based on intrinsic characteristics is 'simply not good law enforcement.' It is also contrary to our Constitutional principles. In *Montero-Camargo*, the Ninth Circuit noted that '[s]tops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone . . . that those who are not white enjoy a lesser degree of constitutional protection[,] assumed to be potential criminals first and individuals

¹⁵ https://www.aclu.org/files/assets/senate_hearing_ending_racial_profiling_in_america_written_statement_romero.pdf (pp. 16–18).

¹⁶ Chris Rickerd, "Border Patrol Violence Must Stop," *Huffington Post* (June 5, 2015), http://www.huffingtonpost.com/chris-rickerd/border-patrol-violence-must-stop_b_7523786.html.

¹⁷ Complaint available at http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26-Complaint_0.pdf.

¹⁸ Manny Fernandez, "Checkpoints Isolate Many Immigrants in Texas' Rio Grande Valley," *New York Times* (Nov. 22, 2015) <http://www.nytimes.com/2015/11/23/us/checkpoints-isolate-many-immigrants-in-texas-rio-grande-valley.html>.

¹⁹ Tina Vasquez, "Flint's Undocumented Residents Go Without Care in Wake of Water Crisis," *Rewire* (Sept. 8, 2016), <https://rewire.news/article/2016/09/08/flints-undocumented-residents-go-care-water-crisis/>.

²⁰ Correspondence with Eduardo Canales (Sept. 12, 2016) (on file with authors).

²¹ See SBCC, "Federal Reforms Usher Open Season for Racial Profiling in Border Communities," (Dec. 8, 2014), available at <http://soboco.org/federal-reforms-ushers-open-season-for-racial-profiling-in-border-communities/>; Chris Rickerd, "A Dangerous Precedent: Why Allow Racial Profiling at or Near the Border?" (Dec. 8, 2014), available at <https://www.aclu.org/blog/immigrants-rights-racial-justice/dangerous-precedent-why-allow-racial-profiling-or-near-border>.

²² Letter of October 9, 2015, <http://southernborder.org/cpc-chc-capac-urge-dhs-to-end-discriminatory-profiling/>.

²³ Jorge Rodríguez, "Border Patrol Chief Must End Biased Policing to Restore Trust in Communities," (Sept. 12, 2016), <https://www.aclu.org/blog/washington-markup/border-patrol-chief-must-end-biased-policing-restore-trust-communities>.

second.’ Profiling degrades the dignity of individuals and groups singled out based on immutable traits.”²⁴

Both Northern and Southern Border communities are tired of CBP’s opacity; as the Caucuses’ letter makes clear, a profiling ban as well as data collection and publication are long overdue: “Border communities eagerly await these improvements, for example, a recent editorial in the Watertown (NY) *Daily Times* calls for proper CBP data collection and expresses surprise that protocols are not already in place: ‘Given the questions raised over the past few years about racial and ethnic profiling by law enforcement agencies across the country, it’s difficult to understand why documenting specific information about people who are stopped by border patrol personnel isn’t being done . . . Detailing who is being stopped, why they are being stopped and what resulted from the stop would go a long way toward ensuring CBP Agents are staying within the law.’ The *Arizona Republic* expressed concern that ‘[r]esidents of border communities south of Tucson have long complained about racial profiling and harassment at Border Patrol checkpoints. Their demands for information about the effectiveness of individual stops have been rebuffed.’”²⁵ Senator Kirsten Gillibrand has proposed a legislative response to this data-collection void after expressing dissatisfaction at CBP’s lack of record-keeping.²⁶

Indeed, Border Patrol does not collect data on stops and searches that do not result in arrest, even though the President’s Task Force on 21st Century Policing urges Federal law enforcement agencies to “collect, maintain, and analyze demographic data on all detentions,” and adds that “[t]o embrace a culture of transparency, law enforcement agencies should . . . regularly post on the Department’s website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.”²⁷ This data collection gap makes it difficult to detect and deter illegal or abusive treatment of the public at checkpoints and during patrol stops. CBP must also improve the effectiveness of Border Patrol service canines, which are not certified according to best law-enforcement standards and frequently issue false alerts.²⁸

IV. CASE STUDY: CHECKPOINTS IN AND AROUND ARIVACA, ARIZONA

The communities of Arivaca and Amado, Arizona, located about 30 miles from the border, live with a substantial Border Patrol presence in their midst—surveillance towers, drones, helicopters, and dozens of agents on roving patrols.²⁹ Perhaps the most prominent feature of local Border Patrol operations is the 4 vehicle checkpoints located within 40 miles of Arivaca and Amado, through which residents must pass to go about their daily business.

Those checkpoints have been the source of numerous civil rights complaints, and one of them, the Arivaca Road checkpoint, led to a monitoring campaign by local residents demanding its removal. That campaign generated extensive media attention,³⁰ resulted in litigation,³¹ and produced what appears to be the first and only

²⁴ *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (en banc).

²⁵ “Write it up: Bill requiring border patrol to document stops is long overdue.” *Watertown Daily Times* (June 6, 2015), <http://www.watertowndailytimes.com/opinion/write-it-up-bill-requiring-border-patrol-to-document-stops-is-long-overdue-20150606/>; “You aren’t above the law, Border Patrol.” *Arizona Republic* (June 10, 2015), <http://www.azcentral.com/story/opinion/editorial/2015/06/10/you-arent-above-the-law-border-patrol/71036582/>.

²⁶ David Sommerstein, “Gillibrand has ‘serious concerns’ about border patrol checkpoints.” *North County Public Radio* (June 4, 2015), <http://www.northcountypublicradio.org/news/story/28568/20150603/gillibrand-has-quot-serious-concerns-quot-about-border-patrol-checkpoints>.

²⁷ *President’s Task Force On 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing* 69 (2015), (Recommendation 2.6, Action Item 1.3.1, and Recommendation 7.1), available at http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

²⁸ ACLU Testimony for Senate Homeland Security and Governmental Affairs Committee Hearing on “Dogs of DHS: How Canine Programs Contribute to Homeland Security,” (Mar. 3, 2016), 6, https://www.aclu.org/sites/default/files/field_document/senate_hsgac_canine_hearing_aclu_statement-final.pdf.

²⁹ Michel Marizco, *Living Life Under Federal Watch On The Border*, Fronteras/NPR, Aug. 5, 2013, <http://bit.ly/1EHuBaF>; Miller, *War on the Border*, supra (quoting an Amado rancher, “If you conduct business here, you live here, you’re always being watched, you’re always being stopped, and you’re treated as if you’re a criminal.”)

³⁰ See, e.g., Fernanda Santos, *Border Patrol Scrutiny Stirs Anger in Small Town*, *NY TIMES*, June 27, 2014, <http://nyti.ms/1EY9oca>.

³¹ Bob Ortega, *Border Patrol Sued for Harassing at Arivaca Checkpoint*, *AZ REPUBLIC*, Nov. 26, 2014, <http://bit.ly/1Ec1k6n>.

objective data available on systemic racial disparities in Border Patrol checkpoint operations.³²

In July 2013, the Arivaca, Arizona-based organization People Helping People (PHP) sponsored a forum for local residents to discuss the Border Patrol presence in their community and its impact on their lives. The discussion centered on the Arivaca Road checkpoint, with many describing routine harassment and abuse by agents. The group later reported: “[A]ll participants agreed on one point: that something is fundamentally wrong when the Federal Government enters a community and implements a policy by which no one, including children on their way to school, can leave without being stopped and questioned by armed Federal agents—and under which all residents are suspects simply by virtue of where they live.”

PHP initiated a campaign to demand removal of the Arivaca Road checkpoint. The group began by documenting abuses of local residents.³³ A petition calling for removal, signed by nearly half of Arivaca’s residents and supported by Representative Raul Grijalva, was rejected by then-Tucson Sector Chief Padilla. Despite several statements by local Border Patrol officials that community concerns, including civil rights complaints, would be taken seriously, the agency has taken no public action in response to any such complaints. Those include a January 2014 ACLU complaint submitted to DHS oversight agencies on behalf of 15 Arizona residents, including several from Arivaca, which is still pending.³⁴

In February 2014, PHP initiated a checkpoint-monitoring campaign to collect data on checkpoint operations and deter further abuses. Border Patrol immediately responded to the monitoring campaign by creating a roughly 350-foot wide buffer zone around the checkpoint; agents repeatedly claimed that exclusive authority within the “enforcement zone” was conferred by a county permit—this was unconvincing to advocates, as Border Patrol policies explicitly exempt checkpoints from local permitting requirements. After twice more writing to Chief Padilla seeking to resolve the dispute, members of PHP filed a lawsuit in November 2014.³⁵

Prior to filing suit, PHP released the initial results of its monitoring campaign. Based on more than 100 hours of observation and 2,379 recorded vehicle stops, PHP’s report found that Latino motorists were referred for secondary inspection 20 times more frequently than White motorists, and asked for identification 26 times more frequently.³⁶ Meanwhile, monitors observed no arrests or seizures of contraband; Border Patrol officials subsequently admitted that arrests at the Arivaca Road checkpoint are extremely rare, and that its primary purpose is “deterrence.”³⁷

Two important lessons can be drawn from the experience of the Arivaca community. One is that CBP must expand its data collection to detect and deter abuse. To match best law-enforcement practices, such data must include critical information such as perceived race or ethnicity of those stopped, and the duration of and reasons for stops and searches. That information relates not just to the civil rights of border residents, but also has a direct bearing on the efficacy of operations (if agents are wasting time and resources violating the rights of innocent travelers, the agency’s mission is compromised). As the PHP report concludes, “The fact that a small volunteer organization can document evidence of discriminatory and unlawful conduct by agents shows that the Federal Government can and should do the same, while holding agents accountable to the rule of law. The government’s continued failure to do so implies that it condones these practices.” Secondly, CBP must be more transparent and responsive to community concerns, including allegations of civil rights abuses. Border Patrol’s response to the PHP campaign—ignoring community complaints and then creating a checkpoint buffer zone, arbitrarily restricting residents from observing the treatment of friends and neighbors in their own community—demonstrates that the agency has a long way to go toward its promises of increased accountability and transparency.

³² Paul Ingram, *Residents Claim Racial Profiling at Border Patrol Checkpoint*, *TUCSON SENTINEL*, Oct. 19, 2014, <http://bit.ly/1B52CeR>.

³³ Community members’ descriptions of their experiences at the checkpoint are posted to the group’s website, http://phparivaca.org/?page_id=210.

³⁴ *ACLU of Ariz., Complaint and Request for Investigation of Abuses at Border Patrol Interior Checkpoints in Southern Arizona, Including Unlawful Search and Seizure, Excessive Force, and Racial Profiling* (Jan. 15, 2014), <http://bit.ly/1k73lqO>.

³⁵ *Jacobson et al. v. DHS et al.*, Case 4:14-cv-02485 (filed D. Ariz., Nov. 20, 2014), <http://bit.ly/1NKI99a>.

³⁶ *Community Report: Campaign Documents Systemic Racial Discrimination at Arizona Border Patrol Checkpoint*, Oct. 1, 2014, <http://bit.ly/1NKChNh>.

³⁷ Jacobson Complaint, *supra*, at 15 ¶78.

CONCLUSION

CBP's interior enforcement operations run contrary to the reality of border communities, which are safe, diverse, and economically critical to this country. As Representative O'Rourke points out, "El Paso is the safest city when you look at violent crime. There's no reason to cordon off the U.S. side of the U.S.-Mexico border from the rest of the country."³⁸ Border communities are forced to endure regular aggression, hostility, and intimidation from a significant percentage of CBP Officers and Agents. Border residents, like any community, should not have to live with fear and mistrust of law enforcement.

Border communities are a vital component of the trillion-plus dollars in trade between the United States and its neighbors, and the damaging effects of militarization on them must be addressed by serious oversight and accountability reforms to CBP. While the Federal Government has the authority to control our Nation's borders and regulate immigration, CBP officials must do so in compliance with National and international legal norms and standards.

As employees of the Nation's largest law enforcement agency, CBP officials should be trained and held to the highest law enforcement standards. Systemic, robust, and permanent oversight and accountability mechanisms for CBP must be the starting point for any discussion on border security:

- A DHS-wide ban on racial, religious, and other offensive profiling that closes the "vicinity of the border" exemption to DOJ's profiling guidance for Federal law enforcement;
- Robust data collection and publication to ensure that CBP operations comport with anti-discrimination law and guidance;
- Equipping all CBP personnel with body-worn cameras, within a policy framework including robust privacy protections;³⁹
- Implementing enforceable CBP custody standards;⁴⁰
- Reforming DHS complaint systems to provide a transparent, uniform, efficient process for filing complaints;⁴¹ and
- Rolling back the antiquated 100-mile zone to properly define "reasonable distance" from the border as no more than 25 miles (10 miles for warrantless entry onto private lands).

Such improvements would create a legacy of CBP reform in order to improve the quality of life and restore trust for this and future generations of border residents. We urge the subcommittee to prioritize accountability at CBP that transforms border enforcement in a fiscally responsible manner, respects and listens to border residents before imposing policy, and upholds Constitutional rights and American values.

Ms. MCSALLY. Thank you, Mr. Ramírez.

The Chair will now recognize myself for 5 minutes for a first round of questions.

I appreciate the testimony of the second panel. I will just share that, you know, my perspective as the Chairman of this subcommittee is oftentimes in Washington, DC, people are looking for areas of disagreement and divisiveness so that people can take their corners and put their jerseys on and figure out, you know, where we can find the biggest controversy.

My intent in this leadership position and with this subcommittee hearing is to look for areas of agreement, look for areas where across the spectrum and from different perspectives we can find some understanding and common ground, which needs to be based

³⁸ Denvir, "Curbing the Unchecked Power," *supra*.

³⁹ See, e.g., National Immigration Forum, *Body Cameras and CBP: Promoting security, transparency and accountability at our nation's borders* (2015), <http://immigrationforum.org/wp-content/uploads/2015/11/Body-Cameras-and-CBP-Report-11062015.pdf>.

⁴⁰ Ed Pilkington, "Images from US Border Patrol facility reveal harsh conditions for immigrants," *The Guardian* (Aug. 18, 2016), <https://www.theguardian.com/us-news/2016/aug/18/us-border-patrol-facility-images-tucson-arizona>.

⁴¹ See Coalition Recommendations to DHS to Improve Complaint Processing (2014), https://www.aclu.org/files/assets/14_5_5_recommendations_to_dhs_to_improve_complaint_processing_final.pdf; see also American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse* (2014), available at <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>.

on facts and needs to be based on the experiences of the people that all of you are represented and the facts, Dr. Golob, of, you know, the studies you have done related to the impact of the current strategy on our communities.

So I appreciate all of your testimonies, both written and summarized in verbal, in order to present and highlight for the record the challenges that communities are having with the defense-in-depth strategy, which includes the checkpoints.

I believe that we can, between Border Patrol leadership, Border Patrol Agents, and those that are residents in the border region, we can find where those Venn diagrams overlap, as all Americans, to identify solutions that are going to have the objective of keeping our country safe, keeping our community safe, preserving our civil liberties, and making sure that our border communities are not being impacted negatively economically, environmentally, across the board, all the things that have been presented here today. These are things that are not in contradiction with each other.

I do appreciate that the perspectives of the second panel have shown where, again, we can, I think, come to places of agreement that there are negative impacts that need to be addressed. People across the political spectrum would agree that there are things that we need to do maybe better and differently in order to secure our border, keep our country safe, keep our communities safe, protect our civil liberties, and provide opportunity for individuals, small businesses, communities to be able to, you know, grow and prosper and meet their economic potential and not have negative impacts from the strategy that we currently have.

So I really appreciate the different perspectives from everybody on the panel today.

Follow-up questions: I know you all didn't get to some of the things that were in your written testimony. I will start with Mr. Brasher.

Again, we have had conversations on multiple occasions about the impact in southern Arizona of specifically the checkpoints and the defense-in-depth strategy. So you are now Chief Morgan; you are now responsible for the mission of keeping these very communities that you are advocating for safe. You know, I know you have had multiple conversations and studies about this issue, but we want to make sure we also come with solutions, right? So if you are in charge, what would you shift the strategy to be?

Because if we just today got rid of checkpoints but we didn't address the strategy, then, if you look at the numbers, I mean, that is not necessarily making us safer, right? That is not necessarily stopping the cartels. That is actually going to have, I think, a negative implication.

So if you are in charge, you know, what would you do differently, and how would that happen, in order to address the issues that you have been able to address today in your testimony?

Mr. BRASHER. You bet. Thank you, Chairman McSally. Again, I agree with your comment just a moment ago. I think we are looking for that overlap.

But to the point specifically that you asked, I think there is a variety of things, actually, that can be done, and I think some of

them are already being employed by the Border Patrol to one level or another already.

I think rebuilding the port of entry was a huge first step, by the way, so that there was more technology available at the border as trucks and others are coming across. So I think that was a big step.

But I also think that—and it was referred to earlier by Chief Morgan—I think that the use of aerial vehicles, whether they be drones or helicopters, but I think there is technology, certainly, that can be giving real-time information to our agents on the ground about what is happening right now. So I think that is another technology that can be used.

I think, in addition, the vehicle barriers that have been used with, I think, a great deal of success in areas that are likely for those involved in illegal activity to cross.

So I think the drones, I think the vehicle barriers. I also think that, for those areas that are very rough and somewhat inaccessible along the border, I understand that the Border Patrol has used what they call the FOBs, or the forward operating bases, where they have agents actually out there on horseback and, in some cases, with backpacks, patrolling and monitoring those areas.

I think something as simple, quite frankly, as sharing intelligence with local law enforcement, you know, the sheriffs and the police departments in Nogales, things of that nature. I know that there have been some hold-ups in the communication element so that these people of varying agencies can talk together on the radio in real time because they use different bandwidths and things. So I think that is an area that could be looked at.

I also think—I know, some time ago, a virtual fence was looked into, and I know that technology had some challenges to it. But I think now we are far enough down the road that hopefully some of those challenges have been overcome and the use of virtual technology would play a more significant role.

So I think there is no silver bullet, from my perspective, of one thing we can do, but I think using all those things in combination would help.

Ms. MCSALLY. Great.

Ms. Davis, same question. You are now in charge of the Border Patrol—again, you have shared some of it in your verbal and your written testimony—representing the ranchers and the border residents in our community in southern Arizona. What would you recommend we do?

Ms. DAVIS. I think that Chief Morgan is making a really good first step by doing exactly what he is doing right now, in that he is going to every single sector and finding out what their individual needs are. Because I have friends all along the border, from San Diego to Brownsville, Texas, and every sector is really different.

I spoke with Mr. Morgan this morning briefly, and I said, I understand that each sector—it is bad all across the border, but it is different bad, which is not a very grammatically correct statement, but it is different bad. They are all different. He has to find out what is unique about each one and figure out what works better in that particular sector. Really just reaching out, building a personal relationship with all those sector chiefs.

I think there is a disconnect, sector-to-sector, along the border. From 40 years of history with the border, I see that just in Arizona. There is not any cohesiveness, or it is not run the same way in each sector. So what happens, say, in Santa Cruz County or the Sonoita sector is not what happens in the Douglas sector and clear over in McAllen, Texas. There needs to be continuity along the border.

I don't know how he accomplishes that. I know I am him right now, but I don't know how I accomplish that, except to communicate, communicate, communicate and just really outline the problems of each specific sector and how they relate to each other. Because they all neighbor each other along the border. You have to become good neighbors with those people and decide what is acceptable in this sector and what is acceptable in this one and make them cohesive.

Ms. MCSALLY. So not a one-size-fits-all—

Ms. DAVIS. Right.

Ms. MCSALLY [continuing]. But also being adaptable and nimble, right?

Ms. DAVIS. Exactly.

Ms. MCSALLY. Because the bad guys are going to be nimble as well, right?

Ms. DAVIS. Right. They are going to move; they are going to do their thing. Like the little Dutch boy with his finger in the dike, wherever you stop it up, they are going to go around.

Ms. MCSALLY. Right.

Ms. DAVIS. Let me just say that I do agree with Mr. Ramírez that none of us like to be profiled. None of us do. I don't, you know, necessarily appreciate having a police force presence either. But I know we have to have some strong leadership and backup, and, you know, I could see that happening if there is more communication.

Ms. MCSALLY. Great. Thanks, Ms. Davis.

Dr. Golob, I don't know if you find yourself in a position to be able to answer that question, not just for the study on the checkpoints but all the research and the efforts that have happened at the university with the border center of excellence. Do you have any perspective, if you were in charge, how you would address things differently?

Ms. GOLOB. Certainly. If I was wearing the green hat, I think there are some low-lying issues that would be relatively easy for Border Patrol to implement. Specifically, the data integrity and quality issues are fairly straightforward. You know, any smart master's or doctoral student could implement them in a short amount of time.

I know, you know, getting the funds for technology change isn't as easy as it may sound and dealing with an agency's budget, but those are relatively quick, inexpensive changes that can be made. As well as the simulation model for checkpoints, for managing traffic and resource allocation, is a relatively easy thing to fix.

The harder-level issues to address are, first, the efficiency and effectiveness issues. It is difficult for an agency to undergo a test and evaluation of how well they are performing. We have all had job evaluations that had us in a high sense of nervousness, but I think

it is ultimately to Border Patrol and the Nation's benefit for an objective assessment of their performance effectiveness, be it by red-teaming, as we recommended, or some other measure. We, as the citizens, need no know how well checkpoints are doing before we can decide what to do about them.

Finally, community impacts. You know, that is a much messier issue to address because it encompasses so many factors, as the other panel members addressed. But, from my perspective, trying to see which data can be analyzed, you know, can be put in a quantitative form, such as housing prices, such as school lock-downs, such as incidences of profiling. By gathering that data, Border Patrol can present a more accurate and transparent picture to the border residents.

Ms. MCSALLY. Great. Thank you, Dr. Golob.

Mr. Ramírez.

Mr. RAMÍREZ. Thank you, Madam Chairman.

I would agree with Dr. Golob. You know, one of the things that we need to know is how effective are these checkpoints. Without that transparency, without that accountability, without that oversight, what it has created has been a mistrust between local residents and the CBP. I think that that should about our biggest concern.

You know, we enjoy wonderful relationships with local law enforcement, and we know that the best way to provide public safety is by ensuring that local residents could call their local police station and say, you know, I see something that is suspect here—

Ms. MCSALLY. Right.

Mr. RAMÍREZ [continuing]. Can you come check it out?

I will tell you, when it comes to Border Patrol, that is not the case. We have serious problems with corruption. We have a perception in the public that this agency operates with impunity, that it lacks transparency.

But I think that the Commissioner has taken important steps in the last couple of years. We have been engaged in a very robust conversation with the Commissioner, Southern Border and Northern Border communities. I think that Chief Morgan, in his previous capacity at CBP, when he was heading internal affairs, you know, in an interim capacity, created the conditions for more transparency.

Without those transparency, accountability, and oversight mechanisms that are urgently needed in CBP, it is very difficult to have communities say, you know what, I am going to call Border Patrol if I see something going on, because of the experiences that I described. We all have been mistreated. You know, what makes me a suspect is the color of my skin. Unless we reverse that and force DHS to follow the same guidelines the Department of Justice has done in terms of banning racial profiling, it will be very difficult to regain that trust.

However, I do want to reiterate that the Commissioner has taken wonderful steps in the direction of added accountability and oversight. But we need to make sure that we implement those reforms as soon as possible so that we could narrow the gap between communities and CBP.

Ms. MCSALLY. Great. Thank you.

The Chair now recognizes my colleague from Texas, Ms. Sheila Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Let me thank the Chairman very much.

Let me specifically say to our witnesses, I appreciate very much your testimony. I was delayed because I was in a meeting on criminal justice reform, but I wanted to make sure that I had an opportunity to at least hear some of the very important testimony.

I want to say to Ms. Davis and Mr. Brasher, that is the reason that we have what we call the People's House, for you to petition your Government. I have heard you. I am from Texas. I have spent a lot of time on the border, walking the border, traveling to the border, traveling over the border to Mexico, looking at the resources. I have been on the Homeland Security Committee where, in the few days after 9/11, I came on this committee in its formulation, when we formulated the Homeland Security Committee. If there was anything embedded in my heart, it was to protect the American people.

So I want to just add some comments. When I co-chaired this committee, or was the Ranking Member, with Candice Miller from Michigan, the Northern Border, we wrote 1417, the Border Results Act of 2013. It was a bipartisan, comprehensive border security bill. Now, it insisted on 90-percent operational control—and I would always be eager to raise that number, but that was its initial writing—of the illegal border crosses. That is certainly far from where we are today. We are not at that.

I think what was good about it is that it directed the Secretary of the Department to develop and report to Congress for approval a National strategy to gain and maintain operational control of the Nation's border. That is what I am hearing you say, and I am going to just ask a brief question about that.

Because to live your lives, to have operational control would be great, that you could know what was going on, contain those who are illegally crossing. But it also gave the direction for advanced technology and from existing taxpayer-owned Department of Defense technology being brought back from Iraq and Afghanistan. We have a lot of overlap and a lot of opportunities to use some of the talents and work that was already done.

What I think what was important about this for Mr. Ramírez as well, it required our oversight agency—that is the General Accounting Office; that is the numbers guys—to do an independent investigative team or arm of Congress to verify the viability of the Department's strategy—were they meeting their goals, the implementation plan, the metrics, and results. That is what I hear all of you saying: Let's get something that works.

So I just want to ask a brief question to Mr. Brasher, and then I have some questions for Mr. Ramírez. I want to thank Dr. Golob, because we need academics dealing with this issue.

Mr. Brasher, you want something that works at the border. Is that my understanding?

Mr. BRASHER. Yes, Congresswoman.

Ms. JACKSON LEE. So there is discussion about moving the line of scrimmage, and, certainly, I think we need to listen to you.

So my point would be, in making that determination, is the data—do you want us to listen to you but also to do that pilot or

to implement, going forward on enhanced border security, but getting the data and making sure we are getting it right? Would that be helpful do you?

Mr. BRASHER. Yes, Congresswoman. Absolutely. I am not suggesting we go out, excuse the term, willy-nilly and just start changing things. I think to get the data, as Ms. Golob indicated, and then sitting down and having a cogent discussion about where that overlap is and what solutions exists.

Ms. JACKSON LEE. Ms. Davis, listening to you articulate—I want to immediately give you solutions, but the data, is that important to you so that we get the results that you need to have to continue your business and your life?

Ms. DAVIS. Well, data is important, of course. I think it always is, you know. It is an important thing to know. When you see it change over the years, you know that something is either being helped or hindered. But I think, as we live day-to-day, those of us who live in the borderlands, we just—we feel it——

Ms. JACKSON LEE. Right.

Ms. DAVIS [continuing]. More than anything.

I think it is important to note that it is not just about my safety or my family's safety. I feel like this is my country, and National security is at risk.

I think that you would have a more humanitarian approach if you stopped the traffic at the border. I don't think you would have the deaths. I mean, every rancher I know has found dead bodies——

Ms. JACKSON LEE. I know.

Ms. DAVIS [continuing]. On their property.

Ms. JACKSON LEE. I have been there.

Ms. DAVIS. It is disheartening when you find that. You feel for these people. I don't want people to think that we are not humanitarian, because I have taken care of a lot of illegals that have come through over the years with medicine and help and water and food and all of the above.

But, while figures are important, I can see it and I can feel it on a daily basis whether it is working or not.

Ms. JACKSON LEE. Well, that was the underlying premise of the legislation that we drafted a year or 2 ago, which is actually action. It was at that time called the Border Results Act of 2013. So we want to do that as well.

Let me go on to Dr. Golob. Then, if the Chairman yields, I would like to be able to ask Mr. Ramírez a question.

Dr. Golob, the former Commissioner—and as I understand Commissioner Morgan's testimony, that he has just been here for a while, that he has to get his hands around the issue. He wants to determine whether the resources are being used in the right place. The previous Commissioner, Kerlikowske, committed to reviewing checkpoint data to assess their efficiency as a border security tool and to justify the use of resources.

As we listen to Ms. Davis and Mr. Brasher, they have said results. In your academic analysis, would that be a good methodology for the Government to do to make sure these resources tell us what scrimmage line we should be at?

Dr. Golob.

Ms. GOLOB. Yes, with the caveat that we need to understand what data is being provided to us and what it is actually measuring. You know, as we discussed before, apprehension data in itself is only giving you a snapshot in time of what is happening.

We have to understand how much activity is going through and what percentage of that unknown level of activity the apprehension data is capturing, and only till we know that and develop a proxy data for measuring the unknown quantity of illegal activity can we know how effective apprehension data is. Otherwise, the apprehension data and other similar snapshots can be interpreted or manipulated over time.

Ms. JACKSON LEE. Knowledge is actually power. I indicated how long I have been on this committee, and it was at a time when our Border Patrol Agents were at a very small number. We collectively, in a bipartisan manner, enhanced those numbers. But also, I was out on the border with Border Patrol Agents at night, and we gave simple things like night goggles, laptops, which a decade or so ago they did not have.

So I am very cognizant of that, as I am cognizant I think, Doctor, that your work can also enhance Mr. Ramirez's concern, when we talk about making sure if we get the right information that we don't violate the civil liberties of individuals and certainly Americans. I thank you for that. Thank you for that instruction.

I just want to move to Mr. Ramirez, if I can, and acknowledge the point of what you spoke, Mr. Ramirez. That is, of course, people who reside along the Southern Border, especially those Americans of Mexican ancestry or Hispanic descent that have resided in the United States for eons and certainly, as you well know, Texas, Arizona, New Mexico. Certainly, there are iconic families and we have worked together with the Mexican-American community for decades, centuries, on-going. It is important that those generational linkages bestows upon them and all citizens their civil liberties. I am concerned about the great work that you are doing.

If I might just pose for a moment the question that I hope, one or two, that you can answer. The GAO has previously reported that a component of the strategy for checkpoints is to cause illegal entrants to use less-traveled secondary roads on which they are more visible. Moreover, GAO has reported that Border Patrol officials stated that other priorities sometimes precluded positioning more than a minimum number of Agents and resources when checkpoint circumvention occurs.

Has the Border Patrol taken steps, in your working with them over the years, to minimize the danger to migrants who may seek to circumvent the checkpoints? Has it tried to minimize the impact on surrounding neighborhoods, ranches, and communities? What more must be done?

Mr. RAMÍREZ. Thank you very much, Congresswoman, for your comments and your question. As I mentioned earlier, the last 2 years, Commissioner Kerlikowske and his team have been diligent about meeting with Southern Border and Northern Border communities. However, there is a huge mistrust between CBP and border communities, particularly people of color living on the Southern Border and increasingly so along the Northern Border with Canada.

There are some commitments that the commissioner has made in terms of deploying, for instance, body-worn cameras, to ensure that CBP, the largest law enforcement agency in the Nation, complies with 21st Century policing best practices. That was a commitment that was made several years ago, and we have not yet seen the implementation of body-worn cameras. We have urged the Department of Homeland Security to follow the example of the Department of Justice in issuing guidance on racial profiling, and DHS still has not—is behind.

So without having those basic policies in place, it is very difficult for CBP to continue to do its important mission without gaining the trust of families, as you mentioned, Congresswoman, who have been there even before the border was there. It is about time that the largest law enforcement agency in this Nation leads by example in the important conversation that we are having in this Nation about policing reform.

Without those basic components, Congresswoman, I would say that it will be very difficult for CBP to gain the trust, not only of residents, but of our local and State elected officials. So in order for us to reevaluate the checkpoints, we need to make sure that local elected officials at school districts, at Tribal governments are also part of the conversation to look at what is the impact of checkpoints in our daily lives.

We haven't had that conversation ever. The time to have that conversation is now. That is why I appreciate very much this subcommittee having an opportunity for us finally to have an important conversation about the impact that checkpoints have on our daily lives.

Ms. JACKSON LEE. Let me quickly wrap up and just make this point and ask two questions. First of all, I think the Chairman knows I am a strong supporter of comprehensive immigration reform that is a holistic view of access to citizenship, but also the strong handling of the border. I am not a person who runs away from that issue and I don't think you run away from it.

I just noticed that the Border Patrol had a strategic plan, and probably under the previous commissioner, now going on Border Community Liaison Program, ranch liaison, and town hall meetings, which I hope that Ms. Davis and Mr. Brasher have been involved and I hope you have been involved. If not, this is something we want to encourage, because this is how they hear about the concerns on the ground.

So I want to just pose these questions, because I don't hear any adverse viewpoint from you about the responsibilities of the Federal Government securing the border. But you are looking at the way to do it and the way to respect all of the citizens that travel.

So would you share with me some of your civil liberties challenges and concerns with the stopping that is going on? Might I qualify this by saying, having worked with them, having spoken to them in large numbers, able, hardworking public servants Border Patrol Agents are. I know that. Many of them have to leave their family. They are posted somewhere else from where their family is. So let me publicly thank them for their service.

What we are trying to do here is to make a matrix that will work. So if you would share that, and share as well the comment

that you made about racial profiling, maybe you have an anecdotal assessment, so that we can look at how we use our Border Patrol checkpoints to make them effective for the law enforcement duties, but also comport with the very basic value of this Nation is the equality of all persons. If you could talk about the civil liberties that you see and the issue of racial profiling.

Mr. RAMÍREZ. Thank you very much, Congresswoman. Perhaps the biggest travesty in the border region and one that, regardless of where we stand on the issue of immigration reform, is the moral obligation we have as a Nation to stop the deaths of our brothers and sisters traveling across the border.

Operation Gatekeeper and Operation Hold the Line were mentioned earlier with Chief Morgan. Those two policies are directly responsible for the deaths of thousands of folks. More than 20 years later, the time has come for us to reevaluate that moral weight that we have on our Nation's shoulders. So addressing that issue is important.

We have worked with the commissioner to do things like deploy rescue beacons so that when folks are in distress, they can press a button, a signal will be sent, and we can then deploy the search-and-rescue elite team of the Border Patrol to prevent that death. That is perhaps the No. 1 civil rights atrocity that we are facing at the border, and all of us, I believe, have seen the ill effects that that has on our communities.

When it comes to the issues of racial profiling, Congresswoman, I mentioned earlier, you know, I can't leave my hometown of San Diego without going through a checkpoint. If I want to visit my in-laws in the neighboring county to the east, I have to go through a checkpoint. I have to carry my U.S. passport with me and my child has to also carry his U.S. passport with him to visit his grandparents. If we want to go to Disneyland, it is the same thing, to the north.

The time to end the shameful practice of racial profiling has come. The entity that must lead by example is the largest law enforcement agency in this Nation, which is Customs and Border Protection.

The Department of Justice has issued guidance in that regard. The White House has issued guidelines for 21st Century policing. That is the No. 1 civil rights violation that we are facing as U.S. citizens in our own country. I have to show proof of citizenship when I want to take my child to visit his grandparents in the United States. We have never left the Nation.

So that is perhaps the most dramatic impact that this lack of accountability and lack of transparency, heavy-handed enforcement has on our daily lives.

I will conclude, Congresswoman, with saying that the issues of use of force in our region have been addressed adequately, first by Mr. Morgan in his previous capacity as head of internal affairs at CBP and hopefully now in his current tenure, but we still have unresolved issues of use of force in our community. We are talking about U.S. citizens. We are talking about children. We are talking about Mexican nationals standing on the Mexican side of the border who have been killed by CBP Agents and Officers. Those cases remain unresolved.

In order for us to protect the homeland, we must ensure that we protect the basic values that we hold dear to our Nation, and those are the values of life, liberty, and the pursuit of happiness.

I will tell you, Congresswoman, we will be happy the day that I am able to take my kid to see his grandparents and I don't have to be pulled over to question a 2-year-old's nationality. That is a shameful practice in this country and it must come to an end.

Ms. JACKSON LEE. I want to thank the witnesses. I want to thank the Chairman. She has been enormously kind. This is a passion of mine, and I am excited that I got to hear the real important people that were here on this panel.

I just want to conclude by saying that, Madam Chairman, we had developed from 2012 to 2016 this outreach program, Border Community Liaison Program. I didn't get a chance to ask ranch liaison and town hall meetings. Maybe we will have another hearing where we bring additional representatives out of New Mexico, Texas, and to hear how those meetings are working.

Then I do think Mr. Ramírez—and I have heard no contrary testimony—is very much worth listening to, developing the racial profiling matrix to try and deal with those citizens traveling about. I think he specifically, since he is from San Diego, talking about, as he said, going up north, but going up north in his State of California and having not crossed any border and then having to be subjected to that.

So from Ms. Davis wanting results and making sure that checkpoints—there is action in checkpoints and that there is an effective checkpoint, I think what we have got here is a meeting of the minds that we have got to be reasonable. You were here, but I would encourage to look again at H.R. 1417 and however it could be updated, coalesced with our colleagues on both sides of the aisle. We drew bipartisan support. There were some bumps in the road about the 90 percent versus 100. I don't know if anyone can reach that number. But certainly, in keeping with Mr. Ramírez's admonition, we could look at this question again and find the reasonable common ground.

I don't know whether, Madam Chair, I could encourage you with a smile to join me on comprehensive immigration reform, which is certainly still there. I think if we had that legislation, we wouldn't have a number that keeps going up and down, we are not sure, 11 million individuals who are seeking status here.

But I think our work here is about border security, and I think these have been very instructive testimonies. To each and every one of you, I am so grateful that you came this morning. Thank you. I am going to get to work on the great suggestions that you have made.

I yield back, Madam Chair.

Ms. MCSALLY. OK, great. Thank you. OK. I have a lot of other questions, but I first want to comment that, you know, we don't have the voice of the agents at the table today, and I think it is important. I have heard you all say, but it is important to reiterate that we have men and women out there that are putting on the uniform every single day to serve their country in a different way to keep our country and our community safe. Many of them are veterans and it is a continuation of their service.

We recently lost Manuel Alvarez in the Tucson sector because of the dangers of the type of job that they do. We recently had a shooting incident at a port of entry, although that wasn't Border Patrol, it was CBP, but still, this is a dangerous job. We have men and women in our community that are saying, here am I, send me, I want to help keep our community and our country safe. As Chief Morgan mentioned, 7,542 assaults on agents happening.

When I was in the military, when we would see challenges of any issues related to, you know, mission execution, we would always ask, as leaders, have we given them the guidance, resources, and training that they need in order to do the job and do it well?

So we, I think, should be asking ourselves from this committee to the Border Patrol leadership in Washington, DC, guidance, resources, and training for them to be able to do the job. None of them get out of bed in the morning and say, let's not secure the border. Right? These men and women are doing what they are told to do with the training and the resources that they have been given. We are here to look at the bigger picture of what needs to change as far as the guidance, you know, the resources, the training, the policies equipping them.

I mean, when I was out with them on a no-notice ride-along out there, didn't let anybody know we were going to be out there, a few months ago, they talked about how many of them are out by themselves patrolling at night without any night vision goggles. This doesn't make any sense.

So I know, Mr. Ramírez, you talked about the increase of the resources that we are using toward border security, but we need to make sure—and this is part of our discussion today—those resources are used well, it is the right amount of resources, the right amount of manpower to execute the correct strategy, to make sure that we are being effective, you know, implementing the right technologies. Again, we are taking care of the men and women to make sure that they are compensated, you know, for their service and all the elements that go with that. We are not investing in strategies that don't work, which gets to the discussion today of effectiveness. How do we know we are being effective with our resources unless we are measuring it well, and we can have a thoughtful discussion on how to adjust the strategy in order to get to the objectives that, again, we can all agree on. Keep the country safe, keep the community safe, protect civil liberties, you know, don't impact the daily lives and, you know, the economic situation and the security situation for our communities. I mean, those are things we can all agree upon.

Ms. JACKSON LEE. Madam Chair.

Ms. MCSALLY. Yes.

Ms. JACKSON LEE. I apologize. May I just put into the record "Moving the Line of Scrimmage," ask unanimous consent.

Ms. MCSALLY. Without objection. Absolutely.

Ms. JACKSON LEE. Thank you.

[The information follows:]

STATEMENT FROM PHP, ARIZONA

SEPTEMBER 13, 2016

“MOVING THE LINE OF SCRIMMAGE”

This statement is regarding the Border and Maritime Security Subcommittee Hearing on the U.S. Border Patrol’s Defense-In-Depth Strategy.

People Helping People in the Border Zone is a community organization in Arivaca, Arizona which supports local residents dealing with the negative impacts of the Defense-in-Depth strategy.

Despite the 20 years of increasing militarization in and near our community (located 11 miles from the U.S./Mexico border), we know from first-hand experience that large numbers of migrants and refugees are still not deterred from crossing the border. The Defense-in-Depth strategy pushes migrants into grueling and often deadly treks into the United States through rural regions, and places local border communities under an undue level of military-style policing. The Defense-in-Depth strategy has put thousands of Border Patrol Agents in our communities, leading to the routine violation of our Constitutional and civil rights as they patrol far into the U.S. interior. In our small border community, we also witness the human tragedy caused by border militarization policies first-hand. All of us have encountered and continue to encounter lost, sick, and injured immigrants at our doors, and we live weighed down by the knowledge that many more uncounted persons have died, and are still dying, in the hills around our homes.

The Defense-in-Depth strategy of interior checkpoints is something with which we, as border residents, must grapple every day. Our community is surrounded by interior Border Patrol checkpoints. The checkpoint we most frequently encounter is located 25 miles north of the border. In order to leave our community to go to work, to take our children to school, to visit friends, or to run errands outside of our small town, we must pass through a checkpoint. At these road blockades, armed Federal agents routinely question residents about their citizenship status, but also are known to engage in prolonged and excessive questioning, warrantless searches, harassment, and, at times, outright abuse. Our community has documented how racial profiling of local residents at that interior checkpoint is systematic. Through long experience, we have come to understand that interior checkpoints are not just for immigration enforcement—something they seem to do very little of. Instead, they place our small rural community under perpetual surveillance and directly contribute to the overall loss of Constitutional rights that we experience under the Defense-In-Depth strategy.

The Border Patrol has refused to keep and/or make public (even to Government oversight agencies) the kind of data that would demonstrate the effectiveness or ineffectiveness of interior checkpoints as an immigration enforcement measure. Nonetheless, these southern Arizona checkpoints, which were originally billed as “temporary and tactical,” have been in place for over 9 years, operating 24/7.

Given the absence of any evidentiary justification for the continued use of interior checkpoints, the lack of oversight of agents working at them, and the frequency with which our community members have endured harassment and abuse at the checkpoints, we in Arivaca have been forced to take upon ourselves the task of checkpoint monitoring in order to collect data and deter abuse. The Defense-In-Depth strategy places an undue burden on small border towns to hold Border Patrol Agents to basic accountability standards. Without local initiatives such as citizen monitoring of checkpoints, the agency operates in remote rural communities with virtual impunity.

While peaceably observing over 2,300 vehicle stops in 2014 at the Arivaca Road checkpoint near Amado, Arizona, monitors never once witnessed the apprehension of an undocumented person. Neither did they ever observe Border Patrol Agents interdicting drugs or contraband from any vehicle on Arivaca Road.

These findings made clear to many in our community that the placement of interior checkpoints so far from the border does not significantly increase apprehensions of those crossing into the United States, but only serves to increase the length and difficulty of their journeys as they seek to circumvent the interior checkpoint system.

During our monitoring efforts we also discovered that racial profiling is acute at these interior checkpoints. We found that Latino drivers are 26 times more likely to be prompted to show ID than white motorists. While comprising a small minority of motorists—some 11 percent of traffic through the checkpoint—Latinos are 20 times more likely to be pulled into secondary inspection by Border Patrol Agents. This shocking evidence of racial profiling is undeniable.

Defense-In-Depth border strategy needlessly targets borderlands residents through general policing operations which reach far beyond the jurisdiction of a Federal immigration enforcement agency. Because these policies are on-going in our rural community, we continue to monitor local Border Patrol checkpoints to deter abuse and collect data.

In addition to leading to migrant deaths and racial profiling, we have seen the Defense-In-Depth strategy deteriorate the quality of life in Arivaca. The presence of checkpoints on all major roads in and out of our town makes the area appearing policed and dangerous to the public. As a consequence, we have seen property values plummet and local businesses close their doors.

We have watched our children become accustomed to encountering armed Agents as they travel to school each day. Under Defense-In-Depth policing, Border Patrol helicopters now swarm low over our properties and drones watch us from high in the skies. Thousands of motion sensors have been buried in the lands around our homes and surveillance towers are perched nearby. Our Constitutional rights now take a back seat to vague claims of "National security" necessity. A supposedly temporary infringement of citizen rights has become permanent. All told, life in our rural community has been radically altered by Government policies which treat our communities as war zones.

To many of us who have experienced first-hand 20 years of borderland militarization, it is clear that strategies such as "Defense-In-Depth," "Prevention Through Deterrence," and "Consequence Delivery System" have only increased the suffering of desperate people and exacerbated the difficulties faced by border communities. Military-style Federal law enforcement, either at the border or "In-Depth," is a deeply ineffectual and harmful response to the forces that continue to propel undocumented immigration and the illicit movement of drugs and contraband. Decades of close experience with these policies have convinced us that militarizing the interior borderlands must no longer be used as a substitute for the economic and social policy reforms needed to address the root causes of border problems.

Ms. MCSALLY. So, again, I just want to, you know, remind ourselves that, even with the conversation that we have had, our intent needs to be to find where we can better equip these men and women that are out there serving with the guidance, the resources, and the training that they need, with, you know, the context of the information that we are presenting today. I know there have been many conversations at the local level, at the liaison meetings, the sector level. We have a new chief of the Border Patrol. So this is our opportunity again to take a fresh look with new leadership to find that common ground where we are good stewards of taxpayers' resources, we are providing the resources to the men and women who are serving, who are doing a very dangerous job. Right? We are having the right strategy that they are going to go out and execute on a daily basis in order to keep us safe. So I feel it is important to provide that context as we are, you know, moving forward in our discussion here.

I will also say that we have got two bills, two of my bills, that passed unanimously in the House related to some of the things we are talking about. One of them is the Border Security Technology Accountability Act, which simply says let's make sure if there is an investment in technology, that it has procurement guidelines and oversight and accountability to make sure it is not wasting taxpayers' resources. We have seen a lot of wasted resources in the past. Passed unanimously in the House, being held up in the Senate.

We have another one that is addressing the full new threat assessment of the Southern Border, the situational awareness, operational control, just a full fresh threat assessment so that we can have, again, a common understanding of what we are dealing with as we are addressing, OK, now that we understand what we are

dealing with, what is the best way to adjust our strategy to address the threat? So I look forward to those bills passing through the Senate so we can move forward on these important issues.

So I want to follow up with a second round with everybody of—again, we don't have Chief Morgan at the table with you. So last round, I asked you to be Chief Morgan. Now, you know, we have the opportunity to follow up with him, with questions from us to him, about the issues related to this current strategy.

So what questions would you have to Chief Morgan that you would like us to ask him related to your testimony and related to addressing this defense-in-depth and interior checkpoints focus that we have today? Starting with Mr. Brasher.

Mr. BRASHER. Thank you, Congresswoman. You know, I think in terms of a question, maybe I would say it is a question and an invitation. I recognize—as we said earlier, I know he has got a tough job. He has got a whole border. I am focused more on Arizona's border right now.

Ms. MCSALLY. Right.

Mr. BRASHER. But I think he is on the right track by getting out in the communities. Frankly, with all respect to he and his leadership team, I think it would be wonderful if he would come and sit down with people such as ourselves in these actual communities and just start a dialog.

The questions I might come up with right now may be similar or totally different to the questions that other people, you know, in our communities would bring up. So I know that is easier said than done. I know that oftentimes when people in leadership travel, it is just not easy. You travel with public relations people, et cetera. I applaud—

Ms. MCSALLY. A bit of a bubble sometimes.

Mr. BRASHER. Yes. I applaud you going out with an agent one-on-one and just watching what they experience. But I think it is those kinds of experiences, though, that will bring a lot of what we are sharing in our testimonies, you know, full circle.

I would encourage him to abandon his uniform for a moment and drive through the checkpoints and just observe and just watch how the interaction takes place, what happens with the dogs, what happens when someone goes over to secondary and oftentimes is subjected to what might be referred to as the indignity of standing by while your car is torn apart or you are questioned more in-depth, of coming down and sitting in a coffee shop with real businesspeople who are sharing the stories and the anecdotes.

So I know that is a long-winded answer, perhaps, to a simple question, but I think there will be more questions that would come from something like that, and I think they would be very valuable for him as he forms his strategic plan moving forward.

Ms. MCSALLY. Great. Thanks.

Ms. Davis.

Ms. DAVIS. Well, I have a million questions for him. He will have to take a deep breath. I actually invited him myself this morning to come down to the Southern Border in Arizona and see that it is very different than Texas.

I think I would ask him, one thing would be, how do you plan to make that whole border a cohesive thing? How do you make it

the U.S. border, not the Tucson sector of the border? I am just going to reiterate more cohesiveness there. I just think that is really important. I have already forgotten my second idea.

Ms. MCSALLY. That is OK. I mean, we have invited him and we will continue to. We know he is just getting his feet on the ground, you know, to Arizona. Look, our subcommittee has oversight of the entire border, right? So he needs to get out to Texas and New Mexico and California and talk to not just the dog-and-pony show that often comes with leadership visiting the field but actually talking to residents, talking to businesses, talking to people, you know, those that are seeing the impacts and the agents, to get the unfiltered—

Ms. DAVIS. Well, one of the things that concerns me and I know concerns Mr. Ramírez is it is not unique to Hispanics. Sometimes when you go through the Border Patrol check, you feel like you are being interrogated. You know, I have had to open my trunk for no reason, you know. I think one of the things he has to do is make sure that those agents react and relate to the people coming through like they are really human people that—you know, assume that we have a right to be there.

Ms. MCSALLY. Right.

Ms. DAVIS. I think it is an interaction between the public and the Border Patrol, and you don't want to think of them as the enemy; you want to think of them as your friend. So I think that is one comment I would have to him.

Ms. MCSALLY. So some of that is, I think, relationship-building in the community, and then making sure there is continuity of training for practices of what is probable cause and how they can do the searches and things, is what I have heard.

Look, I agree. This is America, not the Gaza Strip. Right? So to have law-abiding American citizens have to be subjected to this often to just go about their daily business, this is ideally not where we want to be. Again, we have got to balance that with where we are right now and, you know, start moving toward, I think, a strategy that addresses all the issues that have been here today in a way that is thoughtful and not reckless and creating more vulnerabilities. But I think we can all agree that the more we can, you know, move the line of scrimmage and not have the impacts that have been talked about today, I think the better off we are going to be across the border. So thank you.

Dr. Golob.

Ms. GOLOB. Yes, Chairman McSally. I would follow up on the question that you asked Chief Morgan.

Ms. MCSALLY. Yes.

Ms. GOLOB. What have you done with the recommendations that were made in the University of Arizona study? Because I do not have a good answer on that. The research team at the university put in a tremendous amount—

Ms. MCSALLY. Amount of effort.

Ms. GOLOB [continuing]. Of brainpower and time and hours and thoughtfulness and dialog with Border Patrol to make sure that we understood their issues. We did not want to impose our framework on them. We wanted to use their framework to inform our research.

Ms. MCSALLY. Right.

Ms. GOLOB. We provided very specific recommendations.

I would greatly appreciate a sit-down with Chief Morgan to, frankly, discuss, you know, did these recommendations work for you?

Ms. MCSALLY. Right.

Ms. GOLOB. If not, why not? You know, is there another way we could approach their problem? Is there other restraints that you have, as Border Patrol chief, that prevents you from implementing some of the recommendations? If so, what other measures can we take?

I firmly believe in action-oriented research and data-driven research, and would greatly appreciate the opportunity to help push these recommendations or other recommendations to be useful to Border Patrol and in protecting our Nation.

Ms. MCSALLY. I agree, Dr. Golob. This goes back to being a good steward of the limited resources that we have. If the taxpayer has invested in the brain power and the efforts of all of you at the University of Arizona, what are we doing with it to make sure that it is useful, you know? A partnership of follow-up of, you know, what else we could be doing moving forward, I think, is extremely important with all the expertise that your team has provided. So when we do invite the chief there, we will make sure that it includes a visit or meeting to your team for sure.

I think about it—again, I am always framed by my experiences in the military. If you are out there doing the job as a Border Patrol Agent, you know, you are spending 2 hours doing your job and you are spending 8 hours processing information. I mean, data is important, but you got to make it usable for the Agent so they are not spending 8 hours inputting data in a non-user-friendly way or they are fat-fingering it into two or three different systems, based on how many reports they have to do. That goes back to the morale issue of there is nothing worse than an inefficient use of our resources of agents that we are asking them to provide more data, but we are not giving them the systems. The process is that they provide data once and it is usable, let the back end figure out how to make it usable so that we can assess it well, as opposed to putting it on the front end and making the agents have to do more and more cumbersome, bureaucratic processes so that we have better data. So that has to be tuned in as we are, you know, moving forward addressing improving the data for sure to make it usable.

Mr. Ramírez.

Mr. RAMÍREZ. Thank you, Chairman. I think my fellow panelists touched on something that is fundamental, which is to have ongoing conversations with folks who live there, who experience the situation on a daily basis, and who actually have solutions. We are not part of the problem here; we are part of the solution. The problem has been, when the bureaucracy fails to understand and pick up the recommendations that for several years we have been putting on the table before CBP and the Department of Homeland Security.

But I will point on one important issue, Chairman, which is the issue of retention, you know, of Border Patrol Agents. As I said, I grew up on the Southern Border. A lot of my classmates from high

school and college are Border Patrol Agents. They understand what the border is about. They understand the binational character of our communities and that we go back and forth. But a lot of those—a lot of my good friends don't stay as Border Patrol Agents because of the morale issues.

If we don't have folks being recruited from the communities that these agents were sworn to protect, it is very difficult to understand really the historic legacy that borderlands have had. There is the issue of recruitment, particularly recruitment of women. We have to look into why are we not recruiting enough women for Border Patrol. I believe only 5 percent of the force are only women.

If we look at how do we train our agents better, how do we recruit agents from communities, how do we recruit women, I think that then we will develop a much better relationship with folks. I will guarantee you that, you know, if somebody staffing a checkpoint, a Border Patrol you know, say, hey, I know who you are, you know, you are my neighbor, you are my friend, we go to the same church, our kids, you know, are on the same, you know, baseball league, it will be a different relationship.

I think it is about toning down the way that Border Patrol carries itself in our communities and ensuring that we have a much better relationship. That has to begin at the top, because the folks on the ground want to do that. Unfortunately, the good folks who want to work for Border Patrol aren't being retained by the agency.

Ms. MCSALLY. Great. Thank you.

All right. Well, this was a robust discussion. I really appreciate the time and the effort of all the panelists to come out today to testify before the subcommittee. We will continue to be addressing and highlighting the issues and the challenges related to defense-in-depth, as Chief Morgan gets his feet on the ground, to follow up with him and to work together to find ways that we can make sure that we are securing our border well, to keep our country and communities safe, while taking into account all the impacts that have been shared today by those that are representing parts of the communities that are being impacted by this current strategy. So I really appreciate all of your perspectives and the time and effort you took to testify today.

Let's see. A little bureaucracy here. The Members of the committee may have some additional questions for the witnesses, so we would ask that you please respond in writing when we send those to you. Pursuant to committee rule VII(e), the hearing record will be held open for 10 days.

Without objection, the committee now stands adjourned.

[Whereupon, at 12:31 p.m., the subcommittee was adjourned.]

