

Testimony of

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STATEMENT OF

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BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY and SUBCOMMITTEE ON
IMMIGRATION, BORDER SECURITY & CITIZENSHIP

THE SOUTHERN BORDER IN CRISIS: RESOURCES AND STRATEGIES TO IMPROVE NATIONAL SECURITY
TUESDAY, JUNE 7, 2005

CHAIRMAN KYL, CHAIRMAN CORNYN AND DISTINGUISHED COMMITTEE MEMBERS, it is my honor to have the opportunity to appear before you today to discuss the successes and challenges of border security and the implementation of the Expedited Removal program, as demonstrated by the operations and law enforcement initiatives of the Office of Border Patrol, a component of U.S. Customs and Border Protection (CBP). My name is David Aguilar, and I am the Chief of Border Patrol. I would like to begin by giving you a brief overview of our agency and mission.

CBP, as the guardian of the Nation's borders, safeguards the homeland--foremost, by protecting the American public against terrorists and the instruments of terrorism; while at the same time enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. Contributing to all this is the Border Patrol's time-honored duty of interdicting illegal aliens and drugs and those who attempt to smuggle them across our borders between the Ports of Entry. We are concerned that illegal human smuggling routes may be exploited by terrorists to conduct attacks against the U.S. homeland. Reducing illegal migration across our borders may help in disrupting possible attempts by terrorists to enter our country.

CBP Border Patrol's National Strategy has made a centralized chain of command a priority and has increased the effectiveness of our agents by using intelligence driven operations to deploy our resources. The Strategy recognizes that border awareness and cooperation with our law enforcement partners is critical. Partnerships with Immigration and Customs Enforcement (ICE), Department of the Interior, DEA, FBI, Department of Transportation, other interagency partners, state, local, and tribal law enforcement agencies and state Homeland Security offices play a vital role in having and disseminating information and tactical intelligence that assists in a quick and nimble response, which is essential to mission success.

Recognizing that we cannot control our borders by merely enforcing at the "line," our strategy incorporates a "defense in depth" component, to include transportation checks away from the physical border. Checkpoints are critical to our

patrol efforts, for they deny major routes of egress from the borders to smugglers intent on delivering people, drugs, and other contraband into the interior of the United States. Permanent checkpoints allow CBP Border Patrol to establish an important second layer of defense and help deter illegal entries through improved enforcement.

CBP Border Patrol will continue to assess, develop, and deploy the appropriate mix of technology, personnel, and information sources to gain, maintain, and expand coverage of the border in an effort to use our resources in the most efficient fashion. As an example, the use of technology including, the expansion of camera systems, biometrics, sensors, air assets, and improving communications systems can provide the force multiplier that CBP Border Patrol needs to be more effective.

Historically, major CBP Border Patrol initiatives, such as Operation Hold the Line, Operation Gatekeeper, and Operation Rio Grande in our El Paso, San Diego, and McAllen Sectors, respectively, have had great border enforcement impact on illegal migration patterns along the southwest border, proving that a measure of control is possible. Together, they have laid the foundation for newer strategies and enforcement objectives and an ambitious goal to gain control of our Nation's borders, particularly our border with Mexico.

These initiatives will significantly affect illegal migration as we seek to bring the proper balance of personnel, equipment, technology, and infrastructure into areas experiencing the greatest level of cross-border illegal activity along our Nation's borders between the Ports of Entry. An example of one of these initiatives is the Arizona Border Control Initiative, currently in Phase Two. In this effort, CBP as the operational lead for ABCI partners with other DHS agencies and other federal, state, local, and tribal law enforcement agencies, bringing together resources and fused intelligence into a geographical area that has been heavily impacted by illicit smuggling activity. Our current efforts include building on partnerships with the Government of Mexico to create a safer and more secure border through the Border Safety Initiative and special repatriation programs. In doing so, we continue to make a significant positive effect towards fighting terrorism, illegal migration, and crime in that border area.

Another example is the partnership between DHS and the Department of Justice to develop the IDENT/IAFIS integrated workstation, which captures a single set of fingerprints and submits them simultaneously to DHS' Automated Biometric Identification System (IDENT) and DOJ's Integrated Automated Fingerprint Identification System (IAFIS) for identity checks. These integrated systems were deployed to all Border Patrol stations in 2004, nearly three months ahead of the schedule set by former Secretary Tom Ridge. With immediate access to IAFIS, these sites have identified hundreds of egregious offenders, including murderers, rapists, kidnappers, and drug traffickers, which otherwise may have gone undetected. It has demonstrated significant steps towards improving national security and greatly enhancing our ability to secure our nation's borders.

The U.S. continues to experience a rising influx of other than Mexican nationals (OTMs) illegally entering the country. Apprehensions are running at a rate of 175% for FY05 over FY 04's record number of OTM apprehensions on the southwest border, and 131% over the record national FY 04 OTM apprehension figure of 75,371. The exponential growth in the apprehension of OTM illegal entrant aliens and, in most cases, their subsequent release is becoming a major source of clogging and friction for the removal process. Currently, Border Patrol places most of these apprehensions in INA 240 removal proceedings before an Immigration Judge. All OTMs subject to mandatory detention are detained pending completion of removal proceedings (Special Interest aliens that require additional investigation for terrorism and Aggravated Felons). OTMs not subject to mandatory detention are released on their own recognizance or a bond. To help streamline the removal process, DHS expanded the use of Expedited Removal proceedings (ER) for OTMs in the Tucson and Laredo sectors. ER proceedings when contrasted with traditional 240 proceedings, shorten the duration of time spent in detention facilities and the practical elimination of time spent getting ready for and appearing before immigration courts and judges.

Both the Laredo and Tucson Sectors are currently utilizing ER to streamline the removal process. The deterrence effect of the ER process on OTM illegal entry may clearly be seen when comparing these two sectors with sectors without this removal process. The reducing impact of ER on OTM apprehension rates, as compared with those of sectors experiencing the systematic Own Recognizance (OR) release of apprehended OTMs, is clear. This is especially dramatic with Brazilian OTMs. In both the Laredo and Tucson Sectors, this drop in rates of apprehension for OTMs may be seen by comparing apprehension rates for the period just previous to the implementation of ER with those for the period just after.

Operational outcomes in sectors using ER show a trend of attenuated rates of OTM apprehension. DHS has implemented the use of ER beyond the Tucson and Laredo Sectors, to sectors most affected by the Ninth Circuit ruling prohibiting reinstatement: Yuma, El Centro, and San Diego. The application of this process is limited by policy for these sectors, to only those aliens who have illegally reentered the United States while subject to a prior Order of Exclusion, Removal, or Deportation and meet all other criteria for ER.

Nationally, CBP Border Patrol is tasked with a very complex, sensitive, and difficult job, which historically has presented immense challenges. We face these challenges every day with vigilance, dedication to service, and integrity as we work to strengthen national security and protect America and its citizens. I would like to thank the Chairman, and the Subcommittee, for the opportunity to present this testimony today and for your support of CBP and DHS. I would be pleased to respond to any questions that you might have at this time.