

Testimony of

Hon. Paul K. Charlton

March 1, 2006

INTRODUCTION

Chairman Kyl, Chairman Cornyn, Senators Kennedy and Feinstein, and Members of the Subcommittees on Immigration, Border Security and Citizenship, and Terrorism, Technology and Homeland Security: I am Paul Charlton, the United States Attorney for the District of Arizona. I am the current Chair of the Subcommittee on Border and Immigration Law Enforcement, a Subcommittee of the Attorney General's Advisory Committee, made up of United States Attorneys from around the country. Thank you for the opportunity to appear before you today as you examine the problem of border violence. I appreciate the Committee's decision to devote attention to this issue because this is a significant and growing problem. This problem presents a significant threat to our national security and to the safety and quality of life of communities along the border between the United States and Mexico. As the President said in Tucson, Arizona on November 28, 2005, "securing our border is essential to securing the homeland."

In my testimony, I want to focus on the increase in border-related violent crime that we have seen in Arizona, the increasing sophistication of the criminal networks that smuggle people and drugs across our border, and some of the programs that we have implemented in the United States Attorney's Office to address these problems.

BACKGROUND

As the Members of the Subcommittees probably know, almost fifty percent of all illegal aliens apprehended by the Border Patrol in the United States are caught in Arizona. In Fiscal Year 2005, approximately 577,000 illegal aliens were apprehended along Arizona's 370-mile border with Mexico. Our border with Mexico is an increasingly violent place. The Border Patrol recently reported that in Fiscal Year 2005, assaults on Border Patrol agents increased 108 percent over Fiscal Year 2004, from 118 assaults to 246 assaults. The Fiscal Year 2006 assault numbers are on track to exceed the number from 2005. In part, that is because our efforts to restrict illegal crossings are having an effect. I will generally confine my remarks to the issues of border violence in Arizona, with which I am most familiar.

Because criminals who traffic in drugs or human beings make their profits through illegal crossings, they are increasingly targeting Border Patrol agents in violent attacks as the Department of Homeland Security's border enforcement grows. "Rocking" incidents continue to rise along the Arizona border.

Violence against agents is not limited to rock throwing. Federal agents working at or near the border have been murdered. Those terrible acts highlight the threat of armed drug smugglers coming through the border ready, willing and able to confront law enforcement in order to pass their cargo to its intended destination. National Park Service Ranger Kris Eggle was murdered after he intercepted one of a group of carjackers who drove across the Arizona border while being chased by Mexican police in a stolen car. Border Patrol Agent Alexander Kirpnick was murdered when he confronted a group of individuals who were backpacking drugs into the United States. In June 2005, two Border Patrol Agents were ambushed as they were moving in to intercept a group of backpackers carrying drugs into the United States. Multiple shooters who had been guarding the backpackers opened fire with assault rifles and seriously wounded both agents, who were fortunate to survive. Just last month, a similar ambush occurred as agents were attempting to intercept a group of drug backpackers. Fortunately, the agents escaped injury in that incident. Similar ambush incidents have targeted the U.S. Custom and Border Protection's (CBP) Shadow Wolves unit on the Tohono O'Odham Indian Reservation.

When confronted, these smugglers will do anything necessary to escape. For instance, in one case the smuggler shot and wounded a Border Patrol agent after being pulled over. The ensuing chase and shootout resulted in the death of a juvenile smuggled alien who was being transported in the trunk of the defendant's vehicle. Our Office obtained a conviction against defendant Shane Bobby Chiago in that case and he was sentenced to 217 months of imprisonment. In another case the smugglers fled from local police, driving over 15 miles at speeds exceeding 100 miles per hour, running red lights and driving into oncoming traffic, until the smugglers crashed head-on into a car occupied by two newlyweds. The crash killed the newlyweds as well as three of the fifteen aliens who were being transported. In addition, a pregnant female alien lost her unborn child in the crash. Our Office obtained a conviction after trial against Jose Luis Zepeda-Cruz and Jimir Valle Martinez, both of whom are now awaiting sentencing. Just last month, a suspected smuggler noticed that he was under surveillance by undercover agents. He drove away, then turned around and rammed one agent's car just as the agent was trying to get out. He then escaped into Mexico.

These types of incidents demonstrate that threats to officer safety are at an all-time high and require our utmost attention.

Violent drug traffickers have seen the lucrative opportunity that human smuggling offers and are employing their organizational and operational methods in this sphere. As a result, violence among smugglers has grown exponentially. For example, since 1999 we have seen a pattern emerge in which alien smugglers will hijack loads of aliens from other smugglers. The criminal motives for these hijackings vary, but generally involve efforts to extort additional money from the aliens' families or simply to reap the profit from the other smugglers' successful efforts in getting the aliens across the border and through our security network. We have seen numerous cases in Arizona in which loads of illegal aliens have been hijacked while being driven on our streets and highways. In one case, the hijackers kidnapped a load of illegal aliens at gunpoint near Marana, Arizona, and took them on Interstate 10 toward Phoenix. The driver of the hijacked load contacted his boss, who in turn contacted others, provided them with guns, and traveled down I-10 looking for the hijackers. When they saw the hijacked vehicles, they pulled alongside and opened fire, killing four people, including some of their own "clients." Another similar shootout between smugglers occurred at an auto parts store in Phoenix and resulted in three deaths. Our Office took that case to trial and obtained convictions against five defendants, all of whom received sentences of life plus 235 years of imprisonment. Another shooting occurred at a restaurant in Phoenix and resulted in one death, and yet another border-related shootout near the town of Red Rock, Arizona, resulted in two deaths.

Likewise, smugglers have turned to violence to extort payment from their own clients. In some instances, when a smuggled alien cannot pay the full amount, the smugglers use violence to convince the alien or family members to pay the smuggling fee. In other cases, the smugglers agree to a certain price for their services, but when the alien arrives at a drop house in the United States the fee is raised dramatically, often to a price that the alien cannot afford. Smugglers use threats and actual violence to compel payment. Often these threats are backed up by the presence of firearms, other weapons and physical abuse.

For instance, in one case, the defendants threatened smuggled aliens with an AK-47 and told them they would be killed and left in black bags in the desert if they did not pay. In another case, witnesses have testified that the smuggler cut and stabbed smuggled aliens with a knife and screwdriver, and even used the screwdriver to knock out the front teeth of a smuggled alien, all to force the victim to pay more money. Other cases have involved rapes and other forms of sexual abuse against the smuggled aliens, including children. This ruthless exploitation of human beings is despicable.

The smugglers themselves are not the only problem facing our agents. The Border Patrol has reported that approximately ten percent of the aliens they apprehend have criminal records in the United States or elsewhere. Many of the criminal aliens that Border Patrol agents apprehend have violent criminal histories and are not afraid to use violence to avoid apprehension. As a result, every field encounter must be treated as a potential hostile situation, and agents constantly must be alert to potential violence. These types of cases used to be a rarity in Arizona. Not anymore. Unfortunately they have become commonplace.

THE DISTRICT OF ARIZONA'S RESPONSE TO THE GROWING PROBLEM

In response to the growing problem of violence, our Office has worked closely with various components of the Department of Homeland Security (DHS), including U.S. Immigration and Customs Enforcement (ICE) and CBP, components from the Department of Justice, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and state and local law enforcement agencies and prosecutors' offices to develop prosecutorial programs and policies to ensure the most efficient handling of violent cases and to achieve the most appropriate sentences in the best forum.

In the District of Arizona, we have adopted a zero tolerance policy toward those who commit assaults on our federal law enforcement officers. Simply put, anyone who assaults a federal law enforcement officer will be prosecuted. Period. And when someone murders a federal agent, we will pursue that person relentlessly until we are able to bring the perpetrator to justice.

We worked closely with Mexican authorities to extradite and convict the murderers of Border Patrol Agent Alexander Kirpnick, and to extradite a fugitive who is now awaiting trial for the murder Drug Enforcement Agent Richard Fass. In the case of the murder of National Park Service Ranger Kris Eggle, we worked closely with our counterparts in Mexico to help Mexican victims come to the United States to testify against the individual who set into motion the chain of events that led to the murder and brought that person to justice as well.

Similarly, we have taken a strong stand against human smugglers and hostage takers. Provable cases are accepted for prosecution, and cases involving violence receive top priority. In the past two years, my Office has taken dozens of violent smugglers off the street and seen them receive lengthy prison sentences. In Fiscal Years 2004 and 2005 we brought a total of 32 smuggling-related hostage taking cases, most of which involved multiple defendants. Comparatively, we brought two such cases in Fiscal Year 2001 one in Fiscal Year 2002 and six in Fiscal Year 2003.

In the District of Arizona we are cooperating closely with our state and local counterparts to ensure the best possible result in a given case. For instance, in the cases involving rapes and murders that I mentioned earlier, we have coordinated our prosecutive efforts with local prosecutors to ensure that the smugglers are prosecuted for charges that best fit their crimes and in the forum with jurisdiction over those charges. In some cases it has been appropriate to file charges both federally and in state courts, and we have worked closely with our counterparts to achieve successful concurrent prosecutions, in turn maximizing the sentence exposure of the defendants in those cases.

The Department of Justice and the Department of Homeland Security also are cooperating with the government of Mexico to stem border-related violence. Under the leadership of Secretary Chertoff, law enforcement officials from the United States and Mexico are working together to increase communication and develop cooperative strategies all along the border. Our agencies are working with our Mexican counterparts to coordinate tactical law enforcement efforts and share intelligence in both directions. The Department of Justice is providing technical assistance to help strengthen Mexico's forensic evidence gathering and examination, prison security, victim/witness security, firearms tracing capabilities and, in coordination with the DHS port-of-entry security and cross-border currency controls. These efforts are in support of the United States and Mexico Attorney Generals' efforts to quell the narco-terrorism and related criminal activity stemming from the drug cartel feuds. Similarly, we are providing assistance to aid the Mexican government's response to internal violence among narcotic trafficking organizations that often leads to spillover violence inside the United States.

Likewise, the Department of Homeland Security is working with the Department of Justice on an integrated approach to dismantling the criminal groups that perpetrate cross-border criminal activity. The ongoing Arizona Border Control Initiative (ABCI) illustrates how interagency partnerships and integration have increased border enforcement capabilities in Arizona over the past two years. ABCI, a collaborative effort among components of DHS, DOJ and state and local law enforcement agencies, is an integrated enforcement effort focused on border violence and other crimes associated with human and narcotics trafficking in Arizona. Another collaborative effort to coordinate state, local, and tribal enforcement efforts with DHS and DOJ assets was Operation Stonegarden, which designated the Border Patrol as the lead agency to direct and focus state, local, and tribal law enforcement resources in support of enhanced border security efforts. In addition, CBP and ICE will partner in the Department's newly established Border Enforcement and Security Task Forces (BESTs), which build on the Department's experiences fighting violent cross-border crime in Laredo, Texas, during "Operation Black Jack." "Operation Black Jack" has been a focused effort to coordinate ICE, CBP, DEA, FBI, ATF, the U.S. Marshals Service, and other state and local law enforcement agencies, with significant support from the United States Attorney's Office and the District Attorney's Office. BESTs will focus on every element of the enforcement process, from interdiction to prosecution and removal, with the goal of

eliminating the top leadership and supporting infrastructure that sustains these cross-border organizations. They will leverage federal, state, tribal, local, and intelligence entities to focus resources on identifying and combating emerging or existing threats. The Department of Homeland Security's Secure Border Initiative (SBI) incorporates these border enforcement efforts with interior immigration enforcement to create a seamless strategy to reduce and deter illegal migration into the United States, and in turn reduce the level of violence at the border.

CONCLUSION

I thank Members of the Committee for the opportunity to address them today on this important issue, and I stand ready to answer any questions.