

STATEMENT OF THE
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

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

FEDERAL STRATEGIES TO END BORDER VIOLENCE

PRESENTED BY
T.J. BONNER
NATIONAL PRESIDENT

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The National Border Patrol Council thanks the Subcommittees for the opportunity to present the views and concerns of the 10,500 front-line Border Patrol employees that it represents regarding the very serious problem of rapidly escalating violence along the borders of the United States. Border violence is by no means a new problem. Over the past century, thousands of law enforcement officers have been victims of border violence, and hundreds of them have died in the line of duty, including nearly one hundred Border Patrol agents. The latest trends, however, are cause for alarm on both sides of the border:

- Violence perpetrated by the cartels battling for control of the highly-lucrative smuggling routes into the United States has increased dramatically, and is now spilling over into some American communities. During the past year alone, more than 200 people have been murdered in the town of Nuevo Laredo, Mexico, just south of the U.S. border town of Laredo, Texas. This situation caused the U.S. Department of State to issue a travel advisory last year warning tourists of the potential dangers associated with that region.
- The number of assaults against Border Patrol agents has more than doubled, increasing from 374 in Fiscal Year 2004 to 778 in Fiscal Year 2005. These assaults included physical altercations; throwing objects such as large rocks, bricks and Molotov cocktails; shooting bullets from firearms; and using vehicles to ram agents and/or their vehicles.
- Armed confrontations between Mexican soldiers and police with U.S. law enforcement officers have also increased dramatically. Four recent incidents where shots were fired at Border Patrol agents are described below:

March 14, 2000, shortly after 10:00 p.m., near Santa Teresa, New Mexico (about fifteen miles west of El Paso, Texas): Two Mexican Army High Mobility Multipurpose Wheeled Vehicles (HMMWVs or Humvees) carrying about sixteen armed soldiers drove across the international boundary and into the United States. The vehicles pursued a Border Patrol Ford Expedition outfitted with decals and emergency lights (which were activated for much of the

time that it was being pursued) over a mile into the United States. The lead vehicle, containing nine soldiers armed with seven automatic assault rifles, one submachine gun, and two .45 caliber pistols, was captured by the Border Patrol after it became stuck in sand. The second vehicle pursued a Border Patrol agent on horseback and fired a shot at him. The soldiers then disembarked from the vehicle, fired upon one more Border Patrol agent and chased another agent before fleeing to Mexico in their vehicle. After being held by the Border Patrol for several hours, the captured soldiers and their vehicle, weapons, and ammunition were returned to Mexico. The Mexican government later denied that its soldiers had fired any shots.

October 24, 2000, around 12:00 p.m., near Copper Canyon, about thirteen miles east of San Ysidro, California: Two U.S. Border Patrol agents observed a group of ten men dressed in military-style uniforms with tactical vests and carrying high-powered military rifles, at least two of which had bayonets affixed. Approximately eight shots were fired toward the location of the agents. The agents took cover in thick brush and identified themselves in Spanish as Border Patrol agents, but were nonetheless pursued by some of the soldiers, who entered the United States by crossing a well-maintained barbed-wire fence. The other Mexican soldiers set up two sniper positions, one in Mexico and another in the United States. The soldiers searched the area, pointing their weapons in the direction of the Border Patrol agents and ordering them in Spanish to come out of the brush. The agents did not comply, but instead identified themselves again and told the soldiers to return to Mexico. When more Border Patrol agents neared the scene, the soldiers retreated to Mexico and drove off in a minivan. The agents returned to the scene of the incident on their own time two days later by legally crossing into Mexico through the Tecate Port of Entry. They took photographs of relevant evidence, recovered two recently-fired .380 caliber brass cartridges,

and submitted all of this evidence to their supervisors. The government of Mexico subsequently confirmed that one of its military units had been operating in that area, but denied that any shots had been fired.

May 17, 2002, at approximately 8:30 p.m., near Papago Farms, about 90 miles southwest of Tucson, Arizona: A U.S. Border Patrol agent patrolling about five miles north of the international border spotted a military helicopter flying toward Mexico. Shortly afterwards, the agent encountered a Humvee with three heavily-armed soldiers in the back. As the agent was quickly departing the area to avoid an armed confrontation, his vehicle was struck by a bullet that entered a rear window on the passenger's side and exited through a window on the driver's side. About four-and-a-half hours earlier, a Tohono O'odham police ranger patrolling near that location reported being chased by a Humvee containing several armed men wearing military-style uniforms. The Mexican government denied that any of its military units were operating in that area.

June 30, 2005, at approximately 12:30 p.m., east of Nogales, Arizona: Two U.S. Border Patrol agents encountered a group of ten to twelve men wearing black military-style uniforms about a mile north of the international border. Some of the men opened fire on the agents, and at least one of them utilized a hand-held radio to direct the gunfire of several hidden shooters. A total of more than fifty high-powered rifle rounds were fired at the agents, both of whom were seriously wounded. The gunmen retreated back to Mexico using military-style cover and concealment tactics. Nearly five hundred pounds of marijuana were recovered during a search of the area.

These four armed encounters are particularly troubling for several reasons. Even though it is clear that *bona fide* Mexican military units were involved in at least the first three incidents, the government of Mexico continues to deny any wrongdoing. Although it is possible that the latter

assault may have been perpetrated by henchmen of the drug cartels,¹ the Mexican government cannot avoid responsibility for the actions of these renegade groups by simply denying any official involvement. By allowing them to operate with impunity along its northern border, Mexico bears some of the responsibility for their actions. It is inconceivable that our government would turn a blind eye to groups of armed criminals furthering the illegal entry of contraband into one of its neighboring nations, especially if they were threatening and/or shooting at foreign law enforcement officers.

As the foregoing examples convincingly demonstrate, violence along our borders is increasing at an alarming rate despite the fact that substantial additional resources have been allocated to those areas. While this phenomenon may be puzzling at first glance, upon closer examination its causes become more evident.

In the early 1990's, the Federal Government began to significantly augment the resources dedicated to the enforcement of immigration laws along our borders. At the same time, however, the enforcement of immigration laws in the interior of the country was being de-emphasized. Most of the Border Patrol's resources were concentrated near large cities along the border in hopes that the smuggling traffic would be pushed to isolated areas where it was believed that the harsh climate and terrain would serve as a natural deterrent. Many agents were assigned to park their vehicles in highly-visible positions a few feet away from the international boundary. In addition to being ineffective at deterring illegal immigration, this needlessly exposed agents to increasing assaults. This strategy achieved the first part of its objective by pushing the smuggling traffic elsewhere, but utterly failed to reduce the flow of illegal immigration because its architects severely underestimated

¹ One such group, Los Zetas, works for the Gulf Cartel, and many of its members received training from the U.S. military and/or law enforcement agencies while they were employed by the government of Mexico as soldiers or law enforcement officers.

the level of desperation of impoverished people in developing countries. As long as the disparity between unskilled wages in developing nations and the United States remains high and worksite enforcement remains a low priority, millions of people will continue to cross our borders illegally every year in search of employment.

Long before the recent enhanced enforcement efforts commenced at the border, drug cartels also engaged in a limited amount of alien smuggling to facilitate their primary illicit operations. As the difficulty of being smuggled into the United States increased, the cost of being smuggled into the United States also began to rise, and small-time smugglers were squeezed out of the picture. The current cost of passage into the United States is about ten times greater than it was before the crackdown began. Gangs such as Mara Salvatrucha, commonly known as MS-13, have also entered the smuggling arena. All of these factors have resulted in violent struggles for control of these lucrative smuggling operations. Although much of this violence is directed at rival organizations, there is an inevitable spillover that touches innocent civilians and law enforcement officials on both sides of the border. Moreover, cartels are far more inclined to utilize violence as a means of achieving their goal of successfully smuggling contraband and people.

The culture of corruption that permeates every level of Mexico's military and law enforcement agencies also adds to the violence along the border, with crooked officials aiding and abetting the cartels. Law enforcement officers in Mexico are paid very low wages, and it is widely known and accepted that they augment their income by taking and extorting bribes. While the salary of Mexican soldiers is slightly higher, the temptation of large payoffs from the drug cartels is too much for many of them to resist, especially when there are few, if any, adverse consequences for doing so. Given this environment, the large number of corrupt Mexican police and soldiers should not surprise anyone. Although some politicians and high-level bureaucrats attempt to downplay the severity of this widespread problem, it negatively affects international law enforcement cooperation

at the field level, as America's front-line law enforcement officers are unable to trust their counterparts south of the border.

The combination of all of these factors has converged to create an environment that is extremely conducive to violence. In order to address this growing problem, effective countermeasures need to be taken. Reemphasizing the same failed strategies will only exacerbate the problem. As counter-intuitive as it might sound, the most meaningful step that can be taken to reduce border violence is effectively addressing the underlying cause of illegal immigration. The overwhelming majority of people who enter our country illegally do so for the primary purpose of finding employment that pays much more than jobs in their own countries.

Until the employment magnet is dramatically weakened or eliminated, millions of impoverished people will continue to attempt to enter the United States illegally every year. Their desperation will cause them to do whatever it takes, including paying whatever price is asked, to be smuggled across our borders. This is problematic for two reasons: First, it perpetuates an extremely profitable illicit trade that fosters violence by cartels and gangs. Second, the massive volume of this influx makes it nearly impossible for law enforcement agencies to focus on vital anti-terrorism efforts or effectively prevent other criminals from illegally entering the United States.

Although most politicians acknowledge this principle, very few of them have embraced legislation that incorporates it. In fact, despite the prevalent rhetoric about worksite enforcement, none of the pending legislative proposals in the United States Senate contain provisions that would effectively reduce the employment magnet. Even the allegedly tough immigration enforcement bill passed by the House of Representatives last year fails miserably in that regard. The common flaw in all of these approaches is the utilization of separate documents to establish employment eligibility and identity. In a recent report, the Government Accountability Office warned that this would lead

to widespread identity fraud and would seriously undermine worksite enforcement efforts.² In order to avoid this undesirable result, a single counterfeit-proof document that establishes both employment eligibility and identity must be adopted and required of all persons seeking employment in the United States. Such a system would enable employers to easily verify a job applicant's identity and eligibility to work in this country, while at the same time making it simple for the government to hold employers accountable if they ignore or circumvent the law. The only legislative proposal that achieves this goal is H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005.

Beyond the elimination of the employment magnet, there are a number of other steps that need to be taken to reduce violence at the border:

- The United States needs to recognize that it cannot rely upon its southern neighbor to stop the flow of illegal drugs across the southwest border, and must stop supplying financial aid to Mexico for that purpose. Currently, nearly \$60 million a year of our tax dollars are provided to Mexico to assist in drug interdiction efforts, and some of that money is undoubtedly being used to assist the cartels and threaten and attack U.S. law enforcement officers.
- Officials at the highest levels of our government must inform officials at the highest levels of the government of Mexico in clear and unambiguous terms that armed incursions across our border will no longer be tolerated.
- The border between the United States and Mexico must be clearly marked in order to eliminate confusion and prevent unintentional incursions.
- The ineffective and unsafe tactic of stationing Border Patrol agents at fixed positions in close proximity to the international boundary must be discontinued immediately.

² Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts (GAO-05-813 – August 2005)

- The Border Patrol and other border law enforcement agencies must also be provided with the tools, training, and support necessary to accomplish their vital missions. H.R. 4044, the Rapid Response Border Protection Act of 2005, would provide many of these desperately-needed measures.
- United States military units should be stationed at strategic locations near the southwest border in order to be able to quickly respond to and deal with future armed incursions by the Mexican military. The Border Patrol and other civilian law enforcement agencies do not have the proper equipment nor training to safely and effectively respond to such incursions.³

In conclusion, the growing problem of border violence is largely attributable to inaction and ineffective policies that have fostered a climate of lawlessness. Decisive and forceful actions need to be taken immediately in order to reverse this disturbing trend before another tragedy occurs.

³ This should not be construed as a call for the military to enforce our immigration laws, which would be problematic for two principal reasons. First, it requires a great deal of training to ensure that someone is prepared to effectively enforce our complex immigration laws. Border Patrol agents receive nineteen intensive weeks of basic academy training in a wide variety of topics, and an additional six months of on-the-job training. Attempting to shorten this training would likely result in numerous civil rights violations, including wrongfully arresting and incarcerating people who have a legal right to be in this country. Second, training soldiers to enforce civilian laws would needlessly endanger them during military combat situations, as the rules of engagement between the two settings differ dramatically. In civilian law enforcement situations, the use of force is permissible only in self-defense or the defense of an innocent third-party, and even then only as a last resort. It is well-established that people instinctively react in a crisis according to their training. At best, people who are trained as both soldiers and law enforcement officers would hesitate in a crisis situation, endangering themselves. At worst, they would respond inappropriately, potentially endangering innocent people. An unfortunate incident that occurred near Redford, Texas on May 20, 1997 illustrates this problem. A squad of four U.S. Marines was conducting counter-drug border surveillance when it was fired upon by an 18-year-old high school student who was tending his family's herd of goats. The Marines outflanked the youth and fired a single fatal shot at him. While this response would have been appropriate in a military combat situation, it was entirely inappropriate in a civilian law enforcement setting.