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Testimony by David A. Shirk
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Delivered to the House of Representatives Sub-Committee on Commerce, Justice, and Science, Chairman: Hon. Alan Mollohan

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On behalf of the Trans-Border Institute at the University of San Diego, I would like to thank Chairman Mollohan and other members of this subcommittee for the invitation to provide testimony on the recent surge of drug war violence in Mexico and the border region. Because of our geographic proximity to and economic integration with Mexico, its domestic security concerns are also of critical concern to the United States, and especially to U.S. border communities. Moreover, because the United States is the primary market for illicit drugs and the main source of weapons used by Mexican criminal organizations, we have a special responsibility to assist in developing an effective response to these concerns.

Our organization has been monitoring a wide array of rule of law challenges in Mexico and the border region through an on-going research initiative titled the *Justice in Mexico Project*, with special attention to drug war violence, justice sector reform, and other problems related to the rule of law in Mexico. Today, I will direct my remarks to providing an explanation of the security situation in Mexico and the border region, which has deteriorated significantly over the last five years. I will also offer comments about the specific concerns that these challenges present for U.S. border communities, which has been the subject of much recent discussion. Finally, I will offer my recommendations on the possible strategies and resource allocations that can best enable U.S. law enforcement to respond effectively to these security challenges.

Understanding drug war violence in Mexico and the border region

One of the most pressing public concerns in Mexico and the border region in recent years has been the proliferation of crime and violence. The situation has become so severe that some U.S. analysts consider Mexico (along with Pakistan) to be on the brink of collapsing into a failed state. I want to state clearly and definitively that —while the escalation of drug war violence presents a major challenge to the Mexican state— the prospect of a state collapse appears to be greatly exaggerated at this time. Unlike Pakistan (or Colombia), where insurgent groups control broad swaths of territory and compete for control of the state, the Mexican government sustains a monopoly on the means of coercion throughout the country. Moreover, despite real and justifiable concerns about elevated levels of crime and violence, the vast majority of Mexican citizens continue to go about their daily lives normally.

Still, there is no doubt that high-impact crime and violence —and the ineffectiveness and corruption of the state's public security apparatus— present severe challenges for Mexico. According to independent media accounts of Mexico's drug war violence, there have been over 13,000 cartel-related killings (an average of 3.2 per 100,000 persons) since 2005: with an estimated 1,500 in 2005; 2,200 in 2006; 2,300 in 2007; 6,000 in 2008, and 1,300 in the first three months of 2009. Our review data reported by the Mexico City-based newspaper Reforma suggests that the vast majority of these killings —roughly 60%— occurred in five Mexican states: Chihuahua (20.1%), Sinaloa (14.4%), Michoacán (10.6%), Baja California (9.6%), and Guerrero (7.6%). It is important to note that Mexican border states accounted for a disproportionate share — approximately 40%— of total cartel-related killings. This said, the rate and geographic distribution of drug war violence has varied considerably over the last three years, with sudden surges and declines in different states.

I cautiously refer to these as "cartel-related" killings because Mexican government officials

estimate that some 90% of these actually target members of organized crime; however, whether they represent genuine monopoly "cartels" is highly debatable. Most of the balance of victims in Mexico's cartel-related killings comprises law enforcement and government officials targeted by organized crime. Indeed, organized crime groups have killed hundreds of government personnel at the federal, state, and local level in recent years. Thus far in 2009, the Mexico City-based Reforma newspaper reports that 74 police officers have been killed, as well as at least 4 Mexican military personnel.

In addition to the sheer volume of bloodshed, recent violence has been particularly extreme and gruesome. Organized crime groups now routinely employ torture, display messages (or "*narco-mensajes*") on victims' bodies, and remove heads and other body parts in order to intimidate rival cartels, the government, and the public. In Tijuana, thirty minutes south of where I live, one trafficker reportedly dissolved over 300 bodies in lye, earning himself the nickname "the soup maker" (*el pozolero*). Also of great concern is the targeting of journalists, businessmen, and ordinary civilians by organized crime groups. For example, though notoriously difficult to quantify, Mexico's official rate of kidnappings has risen to roughly 600 per year, up from about half that amount in 2004 when the dramatic increase in violence began.

Again, while these extreme forms of violence are not typically reflected in the day-to-day experiences of most Mexicans, they clearly represent a major challenge for the Mexican government. Even before the recent surge in violence, Mexico's criminal justice institutions demonstrated significant limitations, troubling dysfunctions, and persistent corruption. In recent years, the Mexican federal and state governments have worked hard to address these problems, introducing reforms that will bring major changes to the administration of justice, with new trial and sentencing procedures, and expanded due process protections. However, these represent intermediate and long-term solutions, which must be fostered through substantial and sustained

investments in the judicial sector in order to bring about an overall improvement in the rule of law in Mexico. In the meantime, the Mexican government has increasingly relied on the military —one of the country's most respected institutions— as a last resort in the struggle against trans-national organized crime networks. The military is a blunt instrument for domestic law enforcement, and its sustained involvement presents a real threat to human rights and democratic governance in Mexico.

Ultimately, despite these enormous and concerted efforts, what is most disturbing about recent drug war violence is that the Mexican government appears unable to stop it in the near term. Indeed, experts on Mexican drug trafficking —like Luis Astorga and Carlos Antonio Flores— note that the violence is the direct result of the Mexican government's greater commitment of resources to combating organized crime. In the past, when the Mexican political system was less pluralistic and more hierarchically centralized, organized crime networks were able to operate relatively undisturbed, thanks to the corruption of high-level government officials. Since 2000, the federal government has embarked on a deliberate strategy to try to break down the cartels into smaller, more manageable pieces that can be dealt with more effectively by state and local law enforcement.

In recent years, however, the disruption and fragmentation of organized crime networks —notably, the Tijuana-based Arellano Felix cartel, the Matamoros-based Gulf cartel, and the Culiacán-based Sinaloa cartel— has led to increased infighting and competition for control over previously-established drug territories and routes (or "plazas"). New contenders for control include the Beltran Leyva organization and a series of small-time organizations, such as the "La Familia" organization in Michoacán. These groups are arguably smaller, but —by virtue of their unpredictability, their lack of hierarchical structure, and the frenzied competitiveness that has resulted from their proliferation— they are also far less "manageable." They have also begun to

cultivate a substantial domestic market for drug consumption in Mexico, and have become more diversified in their involvement in a broad range of profit-oriented criminal activities (such as kidnapping, selling pirated goods, human smuggling, etc.).

Moreover, there is no end in sight. Violence has tended to surge and decline periodically and in different parts of the country, producing a steadily rising and widely dispersed toll. Hence, while drug-related violence has abated significantly in some parts of Mexico, it remains extreme in others. One thing is certain: the current rate of killings —more than 400 per month— puts Mexico on track to have another very bad year in 2009.

Addressing the Special Concerns of U.S. Southwest Border Communities

In recent months, there has been growing alarm about the possible impacts of Mexico's drug war violence on U.S. Southwest border communities in the states of California, Arizona, New Mexico, and Texas. I want to emphasize that —as is the case regarding drug violence in Mexico— some of these concerns are significantly overblown. Inaccurate media reporting and hyperbolic rhetoric have contributed to increasing support for the militarization of our border with Mexico through the deployment of National Guard troops. Meanwhile, well-intentioned efforts to address the problem of arms trafficking have produced proposals for increased inspections at southbound border ports of entry to Mexico. I am very concerned that such measures are likely to prove costly, potentially counter-productive in our relationship with Mexico, and ultimately ineffective in addressing the actual problems we face in Southwest border communities.

Recent concerns have focused largely on the reach and proliferation of violent transnational organized crime networks in the United States; southbound arms trafficking from the Southwest border region to Mexico; kidnappings and other diversified criminal activities in U.S. border

states; the impacts of Mexican drug-related violence on U.S. health care facilities; and the possible penetration of U.S. law enforcement agencies.

First, it is important to point out that the reach of transnational organized crime networks is not limited to the states and communities immediately adjacent to the border. Rather, these organized crime networks extend to the wholesale and retail level in cities and communities throughout the United States. It is through these networks that organized crime reaps its highest profit margins. Still, while literally hundreds of Mexican cartel operatives have been arrested in the United States, it is not clear that the cartels' retail operations are exclusively "Mexican" or to what extent U.S. subsidiaries form part of the distribution chain.

Whatever the case, thus far, the struggles between Mexican cartels over routes into the United States have *not* "spilled over" in the form of the kind of degree of extreme violence that has become so prevalent in Mexico. In part, this is a testament to the effectiveness of U.S. law enforcement, and the importance of having a modern, highly professional criminal justice system. The overall efficacy and integrity of U.S. law enforcement makes it much more difficult for the cartels to operate as audaciously as they do in Mexico, where open gun battles and brazen daylight assassinations have been common.

Second, with the escalation of violence in Mexico, the Mexican federal government has seen significant increases in the number and array of arms seized, with dramatic growth in the proportion of high-powered weapons (including 9mm pistols, .38 caliber "super" pistols also known as cop killers, .45-caliber pistols, and AR-15 and AK-47-type assault rifles, grenades, and bazookas). Despite the large number of weapons confiscated in recent years, the sale and personal possession of firearms is tightly regulated in Mexico, where there were only about 4,300 legally registered firearms in 2007. The legal availability of firearms and the relatively weak regulation of gun sales in the United States —where only 5% of the roughly 54,000 registered gun dealers

inspected annually— makes our country the primary source of weapons for Mexican organized crime syndicates. Indeed, authorities estimate that 90% of weapons confiscated in Mexico came from the United States. For geographic reasons, the border provides an important conduit for weapons headed to Mexico. A 2007 ATF trace of weapons confiscated in Mexico found that 1,805 (73.5%) of 2,455 weapons came from three of the four U.S. border states: Arizona, California, and Texas. Since the Bureau of Alcohol, Tobacco, and Firearms (ATF) initiated "Operation Gunrunner" to help stop the southbound flow of guns, there are reportedly around100 U.S. firearms agents and 35 inspectors for the entire 2,000-mile border region. Funding for additional agents has been appropriated for 2009.

A third major concern about the possible cross-border implications of Mexican drug violence is the specter of kidnapping and other diversified criminal activities. Despite recent U.S. media reports suggesting high rates of kidnapping in U.S. border states, notably Arizona, it is not clear that these kidnappings are a reflection of recent drug violence in Mexico. Rather, kidnappings in Arizona appear to be largely the work of immigrant smuggling organizations attempting to extort additional money from their undocumented clients, either by demanding cash payments or debt bondage. Incidentally, the use of coercion in this manner constitutes a form of human trafficking that is prohibited by the Trafficking Victims Protection Act of 2000 [See 22 U.S.C. 7101, Section 103(2)(A)]. In short, while transnational organized crime networks are highly diversified, recent kidnapping concerns appear to be more closely related to migrant smuggling operations than to drug trafficking, per se.

A fourth concern that is frequently cited is the effect of Mexican drug violence on U.S. first responders and medical facilities. In 2008, in Ciudad Juárez, adjacent to the U.S. border city of El Paso, drug-related violence resulted in greater pressure on U.S. service providers, who attended to several victims of shootings that occurred on the other side of the border. Treating victims of drug

violence potentially places hospital personnel in harm's way, as suggested by the experience of Mexican hospitals where drug hit men have occasionally tracked their victims to medical facilities in order to kill them. I want to emphasize that, thus far, these problems have been principally concentrated in the segments of the U.S. Southwest border that are most proximate to the highest levels of violence in Mexico; that is, in the El Paso-Ciudad Juárez region.

Finally, another major concern is the reduced integrity of U.S. border security agencies. For example, since its formation in 2002, heightened recruitment efforts at the Department of Homeland Security brought in greater numbers of inexperienced agents, while tighter scrutiny at the border created greater incentives for organized crime groups to infiltrate the agency and/or corrupt U.S. border security agents. According to one investigative report by *The New York Times*, in 2004, the office of internal affairs for the U.S. Customs and Immigration Service compiled 2,771 complaints against the agency's employees, including more than 550 that involved criminal allegations and more than 100 that involved allegations of bribery. From October 2003 to April 2008, there were numerous cases of alleged corruption identified along the border: 125 in California, 45 in Arizona, 14 in New Mexico, and 157 in Texas. While incidences were not exclusively the result of penetration by Mexican organized crime, they underscore the potential vulnerability of U.S. law enforcement agencies to corruption. For our own interest and to reassure our partners in Mexico, we need to make a serious commitment to addressing these concerns.

Developing Effective U.S. Responses to Mexican Drug War Violence

Because of Mexico's strategic importance to the United States, it is necessary to develop effective responses to the recent escalation of drug war violence. Mexico has worked very closely with the United States in recent years to enhance bi-national cooperation in law enforcement and security matters, facilitating the investigation and arrest of major organized crime figures and

dramatically increasing the number of criminals extradited to the United States. These efforts deserve our ample appreciation, support, and collaboration.

Unfortunately, I see only three possible scenarios for a dramatic reduction in drug violence in Mexico and the border region. The first is a pact between the major cartels that would re-establish an agreed-upon structuring of the rights to the "plazas" for which they are now competing. Such an arrangement is made less likely by virtue of the fact that Mexico's cartels are now fragmented, and there is no monopolistic, hierarchical organization of the power structure. Even if it were possible, a cartel pact would be an unacceptable option, not only because it implies the continued flow of illicit drugs into the United States, but also because it would likely also perpetuate the power of the cartels and the corruption of Mexican government officials. Moreover, it is contrary to the best interests of the United States and Mexico.

The second scenario is for a major policy change in the regulation of psychotropic drugs as a public health problem, rather than a strictly law enforcement problem. Thus far, as articulated, the main objectives of the war on drugs —reducing the supply and consumption of illicit drugs— have proved unattainable, despite consistently increasing law enforcement and military resources over the last forty years. Hence, there is a need to begin looking seriously at alternative policy approaches that can help reduce the harms associated with drug consumption. The first and best solution is to reduce overall drug consumption in the United States. For example, since habitual drug users account for a highly disproportionate share of total cocaine consumption, discouraging cocaine use through education and treatment would likely yield enormous gains. Yet, it is clear that increased education and treatment will not entirely eliminate the U.S. market for drugs. As suggested by a recent report authored by three former-Latin American presidents, consideration needs to be given to finding the "least harmful" ways to regulate that market.

Moving in this direction, several U.S. state governments have begun to promote

decriminalization —significantly reduced drug offender penalties for minor possession— and medicinal use of marijuana as alternative approaches. In Mexico, in October 2008, the executive branch introduced a proposal to decriminalize drugs by eliminating jail time for minor drug possession; soon after, representatives of the opposition Party of the Democratic Revolution (PRD) introduced a measure that would fully legalize the cultivation, distribution, sale, and consumption of the drug.

Unfortunately, these moves toward the decriminalization or legalization of marijuana are unlikely to significantly decrease the power of organized crime. Decriminalization is likely to increase the U.S. market for illicit consumption, while focusing only on marijuana ignores those substances that bring Mexican organized crime groups their greatest profits: drugs perceived to be highly addictive and dangerous, such as cocaine, heroin, and methamphetamine. Full scale legalization of these substances would therefore bring enormous costs for society, placing a severe burden on the health care system and creating a variety of public safety problems (e.g., D.U.I. violations, interpersonal violence, etc.). However, as Mexico's security situation grows bleaker, there is a stronger rationale to begin asking whether the attendant costs of regulated drug consumption would be lower than those costs we are paying now.

The final possibility would be for the successful completion of the Mexican government's current strategy of a full scale assault on Mexican organized crime. As I noted earlier, the end goal is the atomization of the cartels to a point that they no longer present a national security threat — that is, no longer capable of profusely infiltrating and directly challenging the state— and/or the expulsion of drug trafficking operations from Mexico. On the one hand, this would imply a costly, hard-fought battle against the cartels over the next few years that will undoubtedly require tens of billions of dollars and result in continued violence, including the lost lives of many more police, soldiers, government officials, and thousands of others. Moreover, the end result would not be an

end to organized crime and violence in Mexico, but a diminution of these problems to a level that would remain problematic the country's judicial system. On the other hand, this approach could also simply result in a "balloon effect," as major drug trafficking operations move outside of Mexican territory and develop new routes in the Caribbean or elsewhere.

Still, barring a major change in current drug policy, a continuation of the Mexican government's current approach seems to be the most viable politically option in the immediate future. If Mexico is to succeed in its efforts to combat transnational organized crime, U.S. collaboration will be essential. Here our approach must be directed toward depriving organized crime groups of the weapons that enable them to inflict violence, and the cash that ultimately drives their operations. While better legislation is needed to contain the spread and use of high-powered weapons, more resources should be directed toward the regulation of gun sales, the prevention of illegal arms smuggling, the tracking and seizure of drug profits, and support for the long-term development of rule of law reforms in Mexico.