

# **New Requirements for a New Challenge: The Military's Role in Border Security**

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## **INTRODUCTION**

Threats along America's borders have taken on a new and ominous character. In the past, United States customs and border officials were focused on relatively benign matters of enforcing laws surrounding trade and immigration, protecting agriculture and economic interests from pest and disease, and processing people, vehicles and cargo.<sup>1</sup> In the last three decades, however, these issues have been joined, and eclipsed, by growing apprehension surrounding matters of far greater concern than illegal immigrants in search of economic opportunities. The migration of gangs across the nation's borders and into our cities, organized criminal elements trafficking drugs and human beings into the United States, and the specter of terrorists and terrorist devices seeping through our borders to the north and south, all combine to contribute to a growing set of dangers to our people. Moreover, a compounded threat is emerging at the intersection of these concerns, wherein criminal and terrorist elements may unite toward the attainment of shared and separate goals. The combination of these elements elevates the potential disruption to our society beyond the responsibilities of law enforcement to matters of defense.

As the nature and severity of the threat increases, the character of our response to it must change. This country has a cherished tradition of separation between its police and its military. That tradition has generally delegated responsibility for keeping the citizenry safe from internal, domestic dangers to federal, state, and local law enforcement agencies. Likewise, safeguarding that citizenry from external aggression has, for the most part, been the obligation of the United States armed forces. But in a time where criminal and terrorist activities may merge at our borders, this distinction may not be maintainable. New cooperation is mandated between the military and the border patrol. In terms of that cooperation, the military must be prepared to assume a greater role.

## **AN OVER-TAXED BORDER**

No one seems to underestimate the urgency of the requirement. Nor have they since before 9/11.

The United States Commission on National Security/21<sup>st</sup> Century, commonly known as the Hart-Rudman Commission, recommended that the executive branch establish a "National Homeland Security Agency." Among other things, this agency would encompass the Customs Service, the Border Patrol, and the United States Coast Guard in a synergistic environment to patrol U.S. borders and police the flow of peoples and goods through hundreds of ports of entry.<sup>2</sup> Legislation creating the Department of Homeland Security (DHS) included border and transportation security as one of the original five under-secretariats. When Secretary Michael Chertoff came to Washington in February 2005, he entered the department with "six priorities;" the third of those was

to “strengthen border security and interior enforcement...”<sup>3</sup> The new secretary would make his concerns clear as he unveiled a new organizational structure that would remove bureaucratic layers between his office and customs and border protection as part of an effort to

...gain full control of our borders to prevent illegal immigration and security breaches. Flagrant violation of our borders undercuts respect for the rule of law and undermines our security. It also poses a particular burden to those in our border communities. We are developing a new approach to controlling the border, one that includes an integrated mix of additional staff, new technology and enhanced infrastructure investment.<sup>4</sup>

Institutionally, the requirement for a robust border security mechanism seemed clear.

Functionally, the requirement was even clearer. In the best of times, under the best of circumstances, the need for diligence at the border is compelling.

On a typical day, more than 1.1 million passengers and pedestrians, including 635,000 aliens, over 235,000 air passengers, over 333,000 privately owned vehicles, and over 79,000 shipments of goods are processed at the nation's borders.<sup>5</sup>

Every year U.S. Customs and Border Protection (CBP) processes nearly half a billion people, 130 million trucks and cars, and 20 million cargo containers through 325 ports of entry.<sup>6</sup>

Curiously enough, however, the immensity of the daily requirement is not the most compelling factor among concerns over the security of the border. What is described above is the routine, legitimate traffic that allows for the free flow of visitors and commerce, keeping open the doors of the “land of opportunity” and, coincidentally, sustaining much of the economy. The greater concern for security lies beyond these factors in an accompanying flow that does not seek legitimate opportunity, but criminal gain; that is not interested in sharing the American way of life, but in undermining it and the institutions and values which sustain it. A report developed in the House of Representatives' Committee on Homeland Security offers an interesting and potentially ominous contrast:

During 2005, Border Patrol apprehended approximately 1.2 million illegal aliens [along the Southwest border between the United States and Mexico]; of those, 165,000 were from countries other than Mexico. Of the non-Mexican aliens, approximately 650 were from special interest countries.<sup>7, 8</sup>

The threat along the northern border, while far less publicized, is nevertheless cause for concern; perhaps equal concern, perhaps greater. In 1988, U.S. Customs officials arrested three members of a Syrian terrorist group, linked to al Qaeda in the process of entering the U.S. with explosives.<sup>9</sup> Members of the terrorist cell that executed the 1993 attack on the World Trade Center entered the U.S. from Canada, and were planning to use Canada as a possible escape route. In December 1999, Ahmed Ressay was arrested crossing into the United States in possession of bomb making materials and plans for what became known as the Millennium bomb plot against Los Angeles International Airport.<sup>10</sup> Ressay would be characterized by the State Department as a textbook example of someone who “capitalized on liberal Canadian immigration and asylum policies to enjoy safe haven, raise funds, arrange logistical support, and plan terrorist attacks.”<sup>11</sup>

And the past, we have every reason to fear, may well be prelude, as pointed out by Dr. Todd Hataley of the Royal Military College of Canada:

In the post 9/11 period Canada has continued to raise security concerns in the United States. U.S. security officials believe that Canada is not only home to “sleeper cells” waiting for a chance to cross the border and attack the United States, but also that crossing from Canada has become a favorite route for illegal immigrants, drug smugglers, and potential terrorists.<sup>12</sup>

### **THE MILITARY IN (LIMITED) SUPPORT**

Juxtapose this history against a northern border that stretches nearly 5,000 miles and a southwestern counterpart that runs another 2,000, and the challenge weighing against CBP is irksome, to say the least. In October 2006 there were 11,000 agents assigned to watch and protect both sets of borders.<sup>13</sup> In May 2006, the Administration embarked upon a plan to raise those numbers to over 18,000 by the end of 2008,<sup>14</sup> increasing the total number to over 101% of the number that stood when the president took office in 2001.<sup>15</sup>

Whether or not that number will be sufficient is debatable. Whatever the case, plans for the *future* do not meet a requirement facing us *today*. The challenges that have inspired these increases will not be suspended until the increases can be brought about. As though acknowledging the same, the Administration launched Operation Jump Start in May 2006. The operation was officially terminated on July 15, 2008,<sup>16</sup> but at its height included over 6,000 National Guard from forty-eight states, brought to “strengthen border security and encourage deterrence.”<sup>17</sup> David V. Aguilar, chief of the Office of Border Patrol for CBP, testified as to the nature of the Guard’s mission before members of the House Homeland Security Committee:

National Guard units will assist DHS by executing missions such as logistical and administrative support, operating detection systems, providing mobile communications, augmenting DHS’s border-related intelligence analysis efforts, building and installing border security infrastructure, providing transportation and training.<sup>18</sup>

It is important to note, however, that while the presence of the Guard allowed CBP agents to return focus to law enforcement activities along the border, the troops did not join the agents in those activities, nor were they ever intended to do so. At the same hearing, Chief Aguilar was quick to remind the Congress of one clear distinction between the National Guard and the CBP mission.

However, law enforcement along the border between the ports of entry will remain the responsibility of Border Patrol agents. The National Guard will play no direct law enforcement role in the apprehension, custodial care or security of those who are detained.<sup>19</sup>

This pronounced distinction in the roles that the National Guard may assume in border operations may seem confusing. After all, the immediate requirement that saw the deployment of Guard seems to invite additional manpower on the border to assist in surveillance, intervention, apprehension, and arrest. In the face of the immensity of their task, CBP lauding the fact that 6,000 National Guard allowed the Border Patrol to

return 350 agents to “traditional frontline duties”<sup>20</sup> could easily lead to questions as to why more Guard could not be positioned on those “frontlines.”

Those slightly schooled in laws and regulations surrounding the issue of military support to law enforcement agencies may still be confused. The hub of much of the discussion surrounding these issues is the Posse Comitatus Act, legislation enacted in the immediate aftermath of the Civil War, which largely prohibits the use of the active duty armed forces in executing the domestic laws of the United States.<sup>21</sup> Note, however, that the act only applies to *federal* forces. It does not apply to the National Guard, unless the Guard forces in question have been “federalized,” or mobilized under Title 10 of the United States Code to perform a federal mission. Title 10, for instance, is the authority under which National Guard units are serving overseas in support of the United States’ mission in Iraq. If the Guard forces are either in a “state active duty” status, or serving under the authority of Title 32 of the United States Code (a status that has the forces sustained by funds from the Department of Defense but retained under the command and control of the state governors and their adjutant generals), National Guard forces *may* serve in a direct law enforcement function.<sup>22</sup> Why, then, the distinction, and restriction, in border operations in the Southwest or any other operations of this sort? Perhaps even more to the point: Why restrict the military – active or reserve – from directly supporting the law enforcement function of the border security mission?

### **Soldiers – Not Policemen**

The motivation behind the restriction is, perhaps, uniquely American and embedded in our national mindset. Simply stated, the people of the United States do not want our soldiers to be policemen, or our policemen to be soldiers. The philosophical underpinnings of this aversion can be traced to the colonies of the pre-Revolutionary War, when the heretofore loyal subjects of Great Britain were repulsed by oppressive measures like the Quartering Acts that cast the British forces in the role of overseers and, even, oppressors.<sup>23</sup> These same attitudes emerged at the end of the Reconstruction following the Civil War, when the federal military stood as an occupying force over the former Confederate states. These historic examples – combined, perhaps, with persistent images of military oppression that accompanied much of our immigrant ancestry from overseas – may help us to understand our citizenry’s aversion to too much of a military presence for too long in our streets. Consider, for instance, what may be thought of as the subliminal response to the presence of the military in our nation’s airports following 9/11. Initially the sight of soldiers along the concourses of O’Hare and Kennedy International kindled an air of assurance and accompanying goodwill. But how long was it before some of us were asking “Why are these military people here, with those rifles and that equipment?” The truth is Americans live in a state of dichotomy regarding attitudes about the military. We appreciate their sacrifice. We acknowledge their dedication. We take pride in their prowess and the virtue of their leadership. But we are dedicated to the proposition that these soldiers will ever remain the servants of the people, and not our overseers.

Fortunately, few are more sensitive to the military’s role than the military’s leadership. The clear distinction between the roles and responsibilities of law enforcement and the military is ingrained in the mindset of its generals. Any number of reasons could be cited for this sensitivity, beginning with the fact that the country’s all-

volunteer force is very much a military “of the people” and therefore very much “for the people.” Moreover, the senior leadership currently directing our armed forces evolved from a generation of young officers born in the shadow of the Vietnam era.<sup>24</sup> The soldiers, sailors, airmen, and Marines of that era undeservedly bore the derisive brunt of a society turned sour on the war. In the same time period, reports of the Pentagon gathering intelligence against anti-war groups further broadened the divide between much of America and her military. Institutional assurances were put in place in the 1980s to prevent this type of surveillance from ever occurring again;<sup>25</sup> but having survived that era of distrust between the nation’s people and the nation’s military, the current uniformed leadership is keenly aware of how important the support of the citizenry is to its soldiers – and how fragile.

### **Nothing New in the Requirement?**

Even so, Chief Aguilar reminds us that border security operations involving the National Guard are not a requirement unique to the new century:

Let me first state that National Guard support and coordination with DHS and the Border Patrol is nothing new. While this new infusion will be on a larger scale, the Border patrol has a history of nearly two decades working with National Guard units to utilize their unique expertise, manpower, technology and assets in support of our mission and as a force multiplier.<sup>26</sup>

In fact, recent history witnessed the United States military’s involvement in border security operations not only by the National Guard, but by the active duty component as well. In response to a growing connection between border security and counter-narcotics programs in the 1980s, President Ronald Reagan signed a National Security Decision Directive that simultaneously described drug trafficking as a threat to national security and authorized military involvement in combating it.<sup>27</sup> In 1989, the military’s Joint Task Force 6 (JTF-6) was created to coordinate its expanding support for “the anti-drug efforts of border region police agencies, including the Border Patrol.”<sup>28</sup> Like the Guard, this task force would eventually play an important role in constructing physical barriers designed to slow or channel the flow of illegal immigrants. Unlike the Guard, JTF-6 also deployed aviation assets and ground troops along the border.<sup>29</sup>

Support for the military’s role along the border continued through the 1990s. In 1991, key legislation was passed that codified a consensus to allow the Department of Defense to support any agency of the federal government with counterdrug responsibilities. More noteworthy yet, the legislation opened the way for DoD support to state and local government law enforcement agencies in achieving the same ends.<sup>30</sup> In 1997, the United States House of Representatives passed a resolution calling for the deployment of 10,000 additional troops in support of counterdrug operations along the southwest border.<sup>31</sup>

Tragedy was to interrupt the final passage of that resolution. On the evening of May 20, 1997, eighteen-year-old Ezequiel Hernandez was herding goats when he was mistakenly shot by the leader of a Marine rifle team that was observing an area of the Rio Grande known for its illegal drug trafficking. The Marines were members of JTF-6 and had been acting in support of the Border Patrol, but had received no civilian law enforcement training or briefings on local conditions.<sup>32</sup>

The outcry against the tragic occurrence would eventually subside across most of the social landscape, but not from the perspective of the military. Returning to its

traditional degree of reticence, the Pentagon's leadership withdrew its armed forces from the border and levied new restrictions that would cast the military in a predominantly technical-support capacity. In the future, JTF-6 would be re-designated Joint Task Force-North and the personnel-intensive, boots-on-the-ground support provided by the unit in the 1990s would be replaced along the border with ground sensors, radar, airborne platforms, and thermal imagery. Deliberately postured in support of federal, state, and local law enforcement entities, the command's website notes that its technological focus has allowed for a reduction in manpower requirements.<sup>33</sup> But the first, and perhaps most significant, reduction came in terms of troops on the ground.

This would largely characterize the military's consistent role, for both the active and reserve components (including the National Guard) from the time of the tragedy in Texas until the calamity of September 11, 2001. In the aftermath of the attacks on the World Trade Center and the Pentagon, immediate steps were taken to reinforce the security of the nation's borders. Along entries from both north and south, the president commanded the deployment of roughly 1,600 National Guard troops for six months to support federal border officials.<sup>34</sup> New emphasis in maritime and aviation security along, within, and through the approaches to our borders became accompanying measures to land border security, and were formalized in interagency strategies.<sup>35</sup>

In the midst of these events, the United States Northern Command (NORTHCOM) was established on October 1, 2002 "to provide command and control of Department of Defense (DoD) homeland defense efforts and to coordinate defense support of civil authorities."<sup>36</sup> The new combatant command, primarily responsible for active service components' activities within the domestic confines of the United States, was charged in their mission statement to:

Deter, prevent, and defeat threats and aggression aimed at the United States, its territories and interests within its assigned area of responsibility; and as directed by the President or the Secretary of Defense, provide military assistance to civil authorities, including immediate crisis and subsequent consequence management operations.<sup>37</sup>

This mission statement instantly distinguished the new command from its counterparts overseas. The first part of the mission was reasonably clear, if ominous. "Deter, prevent and defeat" could be realistically expected as part and parcel of a military mission anywhere around the globe. The armed forces of the United States identify with this language and are fully prepared to do whatever is required to fulfill this mission. But the second half of the command's mission statement (euphemistically referred to across the military as the "right of the semicolon" requirement) was less intuitive, and arguably more complex than the first. The powerful segue – "as directed by the President or the Secretary of Defense" – is indicative of a very measured approach to this part of the mission. Placing the military in support of civil authorities will concurrently place them in activities normally conducted and controlled by those authorities. And the closer the military comes to controlling civil activities, the less comfortable it finds the mission.

### **A SHIFT IN FOCUS: COUNTERDRUG TO COUNTERTERROR**

The military's directives support its reticence. Civil support is characterized by the Department of Defense as granted in response to domestic emergencies and "for designated law enforcement and other activities."<sup>38</sup> However, the DoD directive

regulating military support to civilian law enforcement agencies specifically prohibits the use of the military for interdiction; search and seizure; arrest, apprehension, stop and frisk or similar activity; and the use of military personnel in the pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.<sup>39</sup>

As the new structure of NORTHCOM was designed to meet the threat, along with a new office in the Department of Defense to oversee it,<sup>40</sup> the support mission for the military along the border was also changing. JTF-6, as previously noted, was re-designated JTF-North. This change in designation would mirror a change in focus, away from counterdrug operations to counterterror operations. Persistent, legitimate concerns over drug trafficking were being overshadowed by revelations of looming threats to our north and south. In Canada, as early as 1998, the Special Senate Committee on Security and Intelligence labeled the country as

...a 'venue of opportunity' for terrorist groups: a place where they may raise funds, purchase arms, and conduct other activities to support their organizations and their terrorist activities elsewhere. Most of the international terrorist organizations have a presence in Canada. Our geographic location also makes Canada a favorite conduit for terrorists wishing to enter the United States, which remains the principal target for terrorist attacks worldwide.<sup>41</sup>

More recently, the same committee reported that "[a] relatively large number of terrorist groups [is] known to be operating in Canada, engaged in fundraising, procuring materials, spreading propaganda, recruiting followers and conducting other activities."<sup>42</sup>

To the south, there is growing concern over the opportunities being taken to transplant elements of international terrorist organizations among our closest neighbors. As early as May 2001, Adolfo Aguilar Zinser, former Mexican national security adviser and ambassador to the United Nations warned that "Spanish and Islamic terrorist groups are using Mexico as a refuge."<sup>43</sup> General James T. Hill, former commander of U.S. Southern Command, warned that the U.S. faces a growing risk, both from terrorist groups relocating to Latin America and "homegrown" groups originating therein. He warned specifically that Hezbollah and groups like it had established bases in Latin America, taking advantage of nearly ungovernable areas like the tri-border region between Brazil, Argentina, and Paraguay.<sup>44</sup> Add to these viable concerns over Venezuela's support to radical Islamic groups,<sup>45</sup> and the security concerns surrounding the well-being of our people at home continue to grow.

Unfortunately, as the military and the law enforcement agencies it supports along the border have moved on to this new concern, they can ill-afford to leave the old concerns behind. As though adding to the population of a snake pit, the arrival of terrorist concerns has done nothing to thin out the presence of drug traffickers among the cartels. Neither has it had an effect in reducing other organized-crime activities, like human trafficking, or diminishing a rise in criminal gang activity immigrating through Mexico into the United States. A majority report from the House of Representatives Committee on Homeland Security gave voice to these concerns, warning against "the triple threat of drug smuggling, illegal and unknown crossers, and rising violence" facing communities in the southwest.<sup>46</sup>

Criminals involved in this activity have taken on an air of arrogance that should further spur the nation's concerns. The aforementioned House study validates frequent reports that the cartels may be literally "outgunning" local law enforcement agencies on both sides of the border, possessing military-grade weapons, technologies and

intelligence, and their own “paramilitary enforcers.<sup>47</sup>” The enforcers usually restrict their activities to actions against rival factions, but not always. In 2005, just hours after being sworn in as Nuevo Laredo’s police chief, Alejandro Dominguez was killed. Dominguez came to office on the promise of cracking down on the cartels.<sup>48</sup>

This threat across the border should be enough to warrant alarm, but there are growing concerns that it cannot be contained there. Violence against U.S. law enforcement officials, from the Border Patrol to local law enforcement agencies, is rising at an alarming rate. From 2004 to 2005, attacks against Border Patrol agents on the Southwest border increased 108 percent. During fiscal year 2006 there were 746 violent incidents launched against these agents, including rock assaults, physical assaults, vehicle assaults, and firearm assaults. In March 2006, the House Judicial Committee’s Subcommittee on Immigration, Border Security, and Claims conducted a hearing addressing these issues, noting a growing concern over law enforcement agents literally being “outmanned and outgunned” by criminal elements.<sup>49</sup> In January 2008, a U.S. Border Patrol agent was run down and killed near the Imperial Sand Dunes in Southern California, by men suspected of drug and alien smuggling.<sup>50</sup> And in what is perhaps the most blatant disregard for our territorial integrity so far, various cartel elements have recently initiated open attacks across our borders – against rival cartel members, against former Mexican law enforcement officials who have fled to the United States, and even against state and federal law enforcement officials.<sup>51</sup>

General Barry R. McCaffrey, former director of the White House Office of National Drug Control Policy, commented on the disturbing partnership growing between crime and terrorism at the nation’s door.

These groups are drawn together because of their complementary capabilities. Terrorists can create chaotic circumstances that allow for illicit activities. Criminal organizations have pre-established networks to move and sell narcotics and launder money.<sup>52</sup>

To date, the manifestations of this partnership have not taken on a character that would call for a military response. However, a recent report from Arizona indicates that a future requirement for the same is not beyond reason. Officials at Fort Huachuca, the nation’s largest intelligence training center, changed security measures in May of last year after being warned that Islamist terrorists, with the paid assistance of Mexican drug cartels arranging their entry, were planning an attack against the post.<sup>53</sup> The plotters, up to sixty in number, were reported to be Afghan and Iraqi terrorists with high-powered weapons (including anti-tank missiles, Soviet-era surface-to-air missiles, and grenade launchers) smuggled into the United States through tunnels. The FBI would not elaborate on investigations surrounding the threat; neither would they comment on other reports suggesting the “plot” was a Gulf cartel “plant” to bring in the U.S. military against a rival cartel. But an FBI representative did acknowledge that the report “demonstrates the cross-pollination that frequently exists between criminal and terrorist groups.”<sup>54</sup>

The immediacy of genuine defense concerns, as opposed to law enforcement concerns along the border, is certainly open to question. Nevertheless, the evolving, intersecting threats of organized crime and terrorism, masked by the relentless challenge of illegal immigration across our borders, clearly present a dangerous and perplexing set of difficulties for federal, state, and local government officials. Law enforcement agencies

across all three levels of government have the lead in addressing the difficulties. The military has been, and continues to be, in support. But is the current role being played by the military – under the current circumstances, against the current threat – appropriate?

### **Temporary, but Recurring?**

As though hedging bets, all discussion of placing the military in support of border security operations in the United States is consistently couched in terms of temporary requirements. Such was the case in 2002; such was the case again in 2006. It is clear that the current Administration is making an honest effort in re-tooling Customs and Border Protection, in terms of both technology and “boots-on-the-ground” to meet the broader threat that has emerged since 9/11. The functions that have characterized DoD support along the border – communications and logistical support, lending and operating detection and sensor systems, augmenting border-related intelligence analysis efforts, training, and so forth – are being reflected in the strategic plans of the Department of Homeland Security in general and its Customs and Border Protection agency in particular. CBP’s strategic plan specifically lays out a strategic objective to “maximize border security...through an appropriate balance of personnel, equipment, technology, communications capability and tactical infrastructure.”<sup>55</sup> Moreover, the DHS is clearly intent on putting resources behind their rhetoric, as demonstrated by the fact that approximately half of its \$5.4 billion information technology budget for 2008 will go towards developing and modernizing these capabilities.<sup>56</sup> Ostensibly, the intent is to enable CBP to completely take control of that part of the mission the military has served to supplement to date.

The question is, can we reasonably expect them to do that?

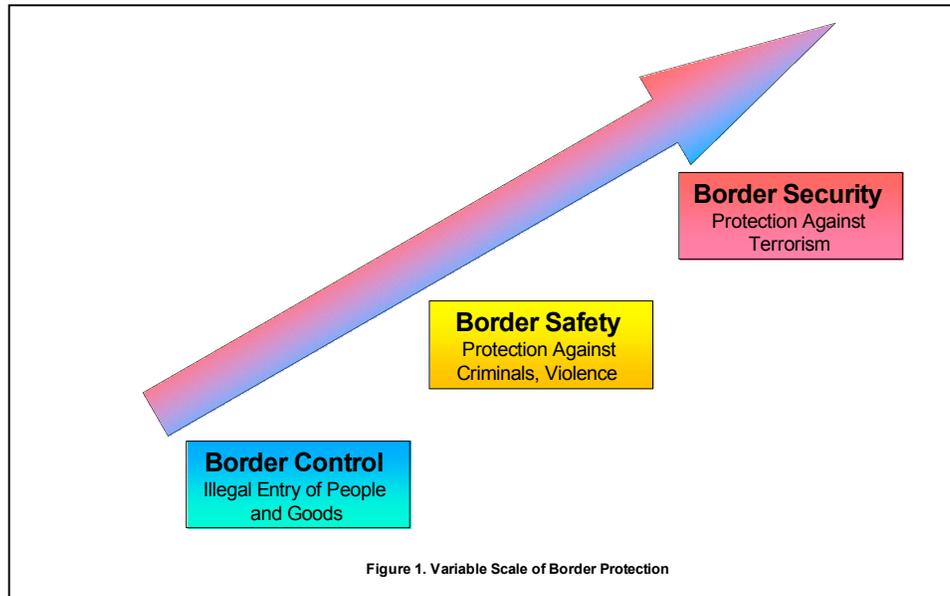
Is it reasonable, for instance, to expect the Department of Homeland Security to duplicate the sensor capabilities that have been introduced in their support during this “period of transition?” Is it feasible and/or advisable for them to reproduce the communication suites that have supported their operations along the southwest border since 2006? Is it fiscally responsible to match the engineer assets that the military has introduced in support of the mission over the last few decades...and the maintenance capability...and the training capacity? To be sure, DHS has the means and the aptitude to address all of these functions to a degree; but does it have *enough* to meet the requirement posed by the threat according to our current assessment? And if it does, or shall soon, is it fair to assume that DHS will be able to meet the full evolving requirement to meet an evolving threat?

Is it safe to make that assumption?

### **PLANNING FOR THE LONGER TERM AGAINST A VARIABLE THREAT**

I would contend that it is not. The Department of Homeland Security’s current direction towards strengthening border security will not, and can never, be the final solution. Trying to empower a single federal agency with the ability to solve foreseeable challenges in this area is neither feasible, nor advisable. Expecting our military forces to continue to “stand in the gap” in their present capacity is also ill-advised, whether referring to the federal component – our active duty forces – or the “states militia” whose strength resides principally in the National Guard. A closer approximation of a solution to the evolving dilemma will begin with the realization that the border

challenge must be addressed as a problem that varies with the introduction of a variable threat (See Figure 1).



Experience has taught us that the lower end of that threat is embodied in massive numbers of illegal aliens, albeit ones without malicious intent (indeed, a significant amount of the nation's concern in this regard is for the well-being of the aliens themselves).<sup>57</sup> It is reasonable to assign day-to-day cognizance over that end of the threat to Customs and Border Protection, as the clear “lead federal agency”.

As the threat moves further up the scale, however, we are introduced to an organized criminal element which has been seen trafficking both drugs and human beings. At this point, one might envision a requirement quite literally calling for greater force. That force could *begin* with a concentration and coordination of other law enforcement agencies (federal, state, and local). These would be keyed to their requirement by integrated information and intelligence from across the federal interagency. But they should also be served by mechanisms designed for intergovernmental intelligence and information exchange – up and down the chain between federal, state, and local authorities.

That exchange could also provide warnings and signals at the upper end of our threat spectrum, manifested in the aforementioned confluence of organized crime and international terrorism. In her study “U.S. Border Enforcement: From Horseback to High-Tech,” Deborah Waller Meyers suggests that the difference in responding to the variations of the threat at our borders may parallel the difference between border control (protection against the illegal entry of people and goods), border safety (protection against criminals, violence, smuggling, etc.), and border security (protection against terrorists).<sup>58</sup>

Responsibility for security at the border, therefore, becomes a shared concern. Federal, state, and local government must arrive at a common understanding of what is needed to provide an acceptable level of security at the borders, and then determine a

package to provide that security that is feasible, affordable, and acceptable to the American people. Addressing our variable scale, therefore, begins in the federal government with an interagency plan, led by the Department of Homeland Security. The impetus for border protection that began with consolidating the nation's frontline border enforcement agencies under Customs and Border Protection must be continued to harness the support of other agencies (including but not limited to DoD) that have vital roles in meeting the complexities of the task. This will certainly include agencies like the Federal Bureau of Investigation (FBI) and the Drug Enforcement Agency (DEA) whose traditional roles along both borders provide a background in both information and intelligence exchange and law enforcement. Multiple sectors of the intelligence community, led by DHS' own under secretariat for intelligence and analysis, can provide for the underpinnings of what the Department of Defense calls an "active, layered defense."<sup>59</sup> In turn, they will provide for the security of our borders, ideally well before the threat reaches it.

A stand-alone federal solution, however, will be one doomed to failure. Governor Janet Napolitano of Arizona begrudgingly acknowledged as much when she declared:

States are not responsible for operational control of international borders; however, due to the dire situation that exists along the United States-Mexico border in Arizona, the state has had to act to preserve the rights and best interests of its citizens.<sup>60</sup>

Concerns mirroring those of Governor Napolitano, in Texas, New Mexico, and California, led to the memorandum of understanding signed between those states and the Department of Defense that served as the foundation for Operation Jump Start. Comparable shared concerns between the states of New York, New Hampshire, Vermont, and the federal government led to similar agreements in the initiation and execution of Operation Winter Freeze in 2004.<sup>61</sup>

Beyond these operations, a host of evolving mechanisms are being built to strengthen cooperative efforts between the three levels of government that could be trained to address concerns for border security. The FBI's Joint Terrorism Task Force offices located across the country (notably including cells in Phoenix, San Diego, and El Paso) could certainly be utilized towards these ends, bringing together representatives not only from state and local law enforcement, but agencies like the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Central Intelligence Agency, the Bureau of Immigration and Customs Enforcement, the U.S. Coast Guard, and DoD. Likewise, state fusion centers, financially sponsored in their development through grants from the Department of Homeland Security, are already serving as principal conduits for information exchange.

The military's role in the solution set that will be required in this combined interagency and intergovernmental solution, while occasionally cumbersome for the services, is inescapable. The expected transition described by the Bush Administration as the impetus behind Operation Jump Start may begin to solve the immediate problem at the lower end of the variable scale, but it should not be relied upon to address the middle and upper dimensions of its concerns. Even assuming CBP receives a significant infusion of resources to provide for technological solutions, that infusion will not take place overnight. While Operation Jump Start was officially terminated, counterdrug operation support is still being provided by our armed forces, Innovative Readiness

Training (IRT) from the National Guard remains on the borders,<sup>62</sup> and sensor support operations from elements of both the active and reserve component remain underway.<sup>63</sup> The equipment and expertise currently being provided by the military will, for at least the time being, remain a requirement.

Moreover, technology can only serve to complement boots-on-the-border; it cannot replace them. Whether focused on interdicting the threat or – more ideally – deterring or preventing illegal transit, it is the physical presence of people that will actually accomplish the desired function. Again, DHS recognizes this reality and, along with the infusion of funds provided for technology along the border, is asking for an increase of \$442.4 million to hire, train, and equip 2,200 new Border Patrol agents.<sup>64</sup> But these planned increases will not translate into immediate reinforcement along the borders. And, when spread across more than 7,000 miles of border to our north and south, 2,200 new agents may still project a degree of protection that is exceedingly thin. Therefore – even if only addressing the steady-state, lower-end requirement suggested by our variable scale – sufficient numbers for accomplishing this mission may only be available if the military remains actively engaged.

Keeping the military engaged and, as necessary, bolstering that engagement, will present a series of questions. First, the nation's leadership must decide which component of the military is best suited to address the issue along our variable scale: the active duty forces, or the National Guard, or both? Next, it will have to address the relative capacity of those forces to take on these responsibilities. Finally, having addressed the feasibility of the requirement, the leadership will have to return to the question of whether such engagement is advisable and, most importantly, acceptable in the eyes of the American people.

### **Active Duty Forces**

Recent tradition shows that if an active component organization is involved in domestic civil support operations, its role is specialized and its numbers are small. A good example is the United States Marine Corps Chemical-Biological Incident Response Force (CBIRF). The CBIRF's mission requires it to respond to credible threats of a chemical, biological, radiological, nuclear, or high explosive yield incident in order to assist local, state, or federal agencies.<sup>65</sup> The unit lists an impressive array of capabilities to include agent detection and identification, casualty search and rescue, personnel decontamination, medical care, and stabilization of contaminated personnel.<sup>66</sup> However, the unit is composed of only 350 personnel and its mission is focused, and contained, around CBRNE (Chemical, Biological, Radiological, Nuclear, or High Explosive Yield) incident response. The United States Northern Command's Joint Task Force for Civil Support (JTF-CS) was also designed as a very specialized force, dedicated to planning and integrating consequence management support from the Department of Defense to civil authorities following a CBRNE incident. However, the task force is essentially a command and control entity, without assigned forces or dedicated transportation. In the event of a CBRNE crisis, several thousand personnel could be attached to JTF-CS by order of the secretary of defense to handle manpower intensive requirements alongside the specialized requirements the unit is uniquely qualified to fulfill.<sup>67</sup>

Joint Task Force North, as already noted, is much more directed to matters associated with the concerns of this article. The mission statement of the organization reiterates its relevance here.

As directed, Joint Task Force North employs military capabilities to support law enforcement agencies and supports interagency synchronization within the United States Northern Command area of responsibility in order to deter and prevent transnational threats to the homeland.<sup>68</sup>

As is the case with much of the current National Guard mission along the southwest border, JTF-N has frequently assisted law enforcement efforts by means of detection and monitoring missions and by facilitating engineer support. This facilitation is brought about by the unit processing and prioritizing requests, and then sourcing those requests through appropriate active duty units.<sup>69</sup> In addition to these roles, however, the task force has played an important part in providing intelligence analysis and information sharing with federal, state, and local law enforcement agencies; other federal interagency partners; military units in support (from the active component, the service's reserves, and the National Guard); and (when authorized and appropriate) Canadian, Mexican, and other international partners by way of bi-national agreements.<sup>70</sup> Beyond this support, the task force has a history of conducting collaborative planning with federal, state, and local law enforcement agencies. This ability to plan for complex operations, incorporating bi-national, federal, state, and local stakeholders, highlights a core competency of the military and continues to prove more than beneficial in civil support missions inside and out of the United States.

Placed reasonably along the variable scale, the role of JTF-N could be seen in support of the Border Patrol in interdicting and arresting criminal elements, and intercepting and/or deterring the flow of terrorists over the nation's borders. While very deliberately not involved in arrest and apprehension themselves, the task force can support CBP as the primary law enforcement agency charged with that responsibility. Truthfully, if statutes and regulations were amended to allow JTF-N to join in those more direct functions, they are hardly configured to do so. Possessing approximately 150 soldiers, the unit's main contribution is in intelligence and information sharing, and in facilitating the introduction of other military forces to accomplish specified ends.

Perhaps curiously, JTF-N may be the only standing force from the military's active component dedicated to an aspect of land border security. Its ties to the mission are indirect, born out of a concern over the illicit flow of drugs across our borders; but the evolution of those counterdrug concerns to the newer concerns over counterterrorism will no doubt assure the task force's continued association with the CBP and its partner agencies.

In the meantime, there are other units whose missions could be applied to these endeavors, especially as concerns progress from border control, to border safety, to border security. The United States Northern Command itself may serve a vital liaison function between the militaries of the United States, Canada, and Mexico, ensuring transparency and encouraging cooperation through bilateral and multilateral Theater Security Cooperation Plans (TSCPs). NORTHCOM's Standing Joint Force Headquarters-North (SJFHQ-N) is poised as a deployable command and control element about which a Joint Task Force could be quickly configured in response to any number of homeland defense scenarios<sup>71</sup> – to include scenarios along our borders. Pre-

designated Quick Response Forces in both the United States Army and the United States Marine Corps could rapidly fall in as the key components of those JTFs, if deployed. But they are not, nor are they envisioned to be, dedicated forces for those missions.

### **The National Guard**

Then again, neither is the National Guard. Operation Jump Start, like the 2002 mission conducted in the wake of 9/11, was framed by the Administration as being an anomaly. Unless an unexpected turn of events lifts the threat from our borders, however, or a remarkable (some would suggest inadvisable) infusion of manpower takes place in the Border Patrol, it is likely to be a recurring anomaly. In spite of understandable reticence surrounding their use, no force recommends itself better to the mission than the Guard.

The thing that recommends the Guard most as the military resource of choice in support to civil authorities is its traditional relationship with those authorities. Recruiting offices across the country remind us of this relationship, an affinity born of both empathy and the proximity of the Guard to the people they serve. No one in the military is more attuned to the border enforcement, safety, and security challenges facing Yuma County, Arizona than the Arizona National Guard; no one in the armed forces is more aware of persistent concerns surrounding aliens of interest passing through the Swanton sector of New Hampshire, Vermont, and New York than their Guard. Likewise, no element of the United States military enjoys a closer working relationship with state and local government than those who dwell among them, exercise with them, and plan to respond to emergencies alongside them – in the National Guard.

Accordingly, logic continues to dictate that if greater forces are needed along the border, the Guard is the “go to” solution. The same thought process that calls for closer integration between federal, state, and local law enforcement extends easily to incorporating the local “state militia” in support of those integrated efforts. By further extension, as regional state cooperative efforts like the ones discussed here continue, cooperative, collaborative planning between the adjoining states’ National Guard will provide a synergy that could “close the seams” between states’ borders while simultaneously addressing the larger national border issue.

While the greatest urgency surrounding border security may exist in the states that constitute those borders, the cost for providing that security should not be theirs to bear alone. In fact, there are a number of precedents that have been set since 9/11 which allow for greater federal support to the states’ immediate concerns. Notable among these are measures designed to fund deployment and employment of the National Guard in missions which remain under state control. For instance, Title 32 of the United States Code has been invoked by the secretary of defense in providing funds for state missions that remain under the authority of that state’s governor as “necessary and appropriate” in supporting “homeland defense” activities.<sup>72</sup> Similarly, the potential exists for states’ governors to fund National Guard activities undertaken in state active duty status through Department of Homeland Security grant monies.<sup>73</sup> Additionally, federal funding available to the states via 32 U.S.C. §112 for “drug interdiction and counterdrug activities” could logically be extended to a state force whose mission is tied to the federal effort to interdict these illicit activities coincident with the general policing of the nation’s borders.<sup>74</sup>

Funding issues, however, become secondary when viewed against the greater concern of how the National Guard could afford the additional manpower demands implied in a recurring border security mission. A partial solution to this more immediate challenge to border states is to continue to augment their efforts with National Guard units from other states. Doing so would continue the pattern begun in 2002, revisited in Operation Winter Freeze, and most recently exhibited in Operation Jump Start. Officials are quick to point out that military readiness was not degraded by the Guard's participation in these endeavors.<sup>75</sup> Rather, the Guard's support has been portrayed as enhancing the engaged units' readiness in engineering, logistics, transportation, aviation, medical, and maintenance. Given continued federal funding, and accompanying cooperation among the states through the EMAC, this is a mechanism that could be applied to the problem for some time.

One should understand, however, that this is only a partial solution, and one that may not be sustainable. Indeed, rising demands, set against existing numbers in the Guard, may make sustainability the ultimate "deal breaker" in these discussions. The current strain being felt by the National Guard due to its employment at home and abroad is well documented. Expecting the Guard to accept an increased burden by way of operations along the border amounts to what has been called "a further strain on already overextended military resources."<sup>76</sup> What most people fail to realize is that the National Guard has taken on these unprecedented demands, escalating from deployments in Bosnia-Herzegovina and Kosovo in the late 1990s and on through Operations Iraqi Freedom and Enduring Freedom, with historically weakened manpower rolls. Following the fall of the Soviet Union, the Guard was charged with making force reductions that have never been recovered. In 1989, the end strength of the National Guard stood at 570,000 personnel. Buoyed by the confidence of a "peace dividend" yet to be realized, that force has now been reduced by 20 percent to numbers that today stand at approximately 456,000, of which 350,000 are Army Guard.<sup>77</sup> Balance this depletion against the comparative operational tempo of the National Guard in the last three decades, and the picture becomes bleaker still. In the 1980s, serving Guard accounted for approximately 1 million man-days of duty per year. In the 1990s, (with a shrinking force), that figure had grown to 12.5 million man-days. In 2003, statistics showed that these figures had ballooned to 63 million man-days per year.<sup>78</sup>

It is beyond the intent of this article to suggest how many personnel are required to effectively secure the borders of the United States. In 2005, the late Representative Charlie Norwood (R-GA) sponsored a study that suggested 36,000 National Guard and/or authorized "State Defense Forces" would be required to assist the Border Patrol in securing the southwest border of the United States.<sup>79</sup> At one point before the activation of Operation Jump Start, the Administration had planned to deploy 10-12,000 troops in support of the border patrol, as opposed to the 6,000 that were eventually sent.<sup>80</sup> Whatever the case, the numbers and the need that inspire them are more than appreciable. Combine concerns for the southwest border with the realization that our border with Canada is twice its size – and that there are only one-tenth the number of border patrol agents there as exist in the southwest to "protect" it – and the immensity of the requirement at hand becomes more appreciable still.

But up until this point we have only examined numbers, without coming to grips with how those numbers should be applied. It should be obvious that the 36,000-man augmentation envisioned in Congressman Norwood's study were not intended merely

for surveillance, intelligence analysis, or engineering functions. They were intended to be postured as the deterrent effect that can only be supplied by boots-on-the-ground, standing in the gap, able to interdict and, as necessary, arrest and apprehend the threat to our people. They were intended to augment law enforcement agents alongside of those agents, occasionally providing peripheral support to their mission, but equally prepared to provide direct support to policing requirements. Were the threats we are facing still limited to those unintentionally accompanying the “huddled masses yearning to breath free,” the necessity for this augmentation would be significantly different. But that is not the case and the nation is obliged to prepare for a greater menace.

We are faced in the center and upper levels of our variable scale with a requirement that fails to fit comfortably in the realm of either law enforcement or national defense. Given the adversaries encountered in what has been called the “seam of ambiguity” between the two, the best path is to prepare to meet the trials of both environments. With all deference to the Department of Homeland Security and especially to their Border Patrol agents, it is illogical to expect them to be prepared for an upper-end threat that may see them outgunned. Neither is it logical to expect the American public to duplicate the assets and capabilities contained in the military to perform a function it should be capable of fulfilling. The reticence the armed forces have demonstrated in taking on the more direct involvement envisioned here is understandable – but perhaps misguided. Beyond the question of technology and manpower, of capabilities and numbers, the military requires a new mindset in addressing the border security issue.

The spirit embedded in the Posse Comitatus Act, and the laws and regulations which reflect it, is focused on reiterating and retaining the role of the military of the United States as the servant of its people. But the preponderance of the concern along our borders does not have to do with the comings and goings of the American people. Our concern is over the illegal entry into our country of those who wish to do us harm. The nation's primary defensive focus, as always, remains outward against an external threat – but that focus must now begin on the nation's shorelines and along its territorial boundaries. The studied hesitancy of leadership in the Department of Defense should be viewed against how quickly border enforcement issues could become border safety issues and, finally, reactive issues of national defense. An organization that justifiably prides itself on a preemptive mentality should bear no umbrage against employing itself as an obstacle to the threats envisioned here.

There is no doubt that these measures will require a reexamination of statutes, policies, and directives. But 9/11 has forced many such reexaminations. Moreover, the redirection envisioned here need not automatically alter the traditional relationship between America and its military concerning matters of domestic law enforcement. It will, however, automatically and exponentially emphasize a message of deterrence along our borders and bolster the means of defending those borders should deterrence fail.

## CONCLUSION

Border security isn't what it used to be. Over the last three decades our concerns have steadily escalated from what was once as much a humanitarian issue as a security issue, to concerns over paramilitary violence, organized crime, and international terrorism. The requirements to meet these concerns have likewise increased, to the point that

anything less than an interagency and intergovernmental response will inevitably leave the nation's citizenry vulnerable to a new and expanding series of threats.

One would like to think that the new era of threats to the country's borders and its people is a temporary condition and that the nation could soon settle back to a less demanding posture of readiness. Unfortunately, reality does not accommodate those wishes. The "long war" our leadership forecasts for the nation and our allies cannot be expected to remain "over there." Mr. Craig Duehring, principal deputy assistant secretary of defense for reserve affairs, framed the current state of affairs succinctly and with candor:

The nature of the mission has changed because of the Global War on Terrorism. The potential danger to our country has increased dramatically. It's not just a story of people looking for a better way of life. It is, in fact, a great potential for increased damage to our country, threats to our citizens, to our way of life. That's something that needs to be addressed. We took the border mission for granted for too many years, and that's no longer going to be the case.<sup>81</sup>

The new threat portends a new challenge for the military, both active and reserve components, from the United States Northern Command through to the individual states' National Guard. It will compel the military to revisit its thinking, motivation, and ethos in addressing this particular "law enforcement" requirement. The National Guard is by far the best tool to apply to the problem, but to do so must itself be re-tooled – principally in terms of numbers, but likewise in its predilection to take on a mission that normally resides outside of its traditional "lane." This should not imply, however, that the Guard should be the only military component focused on the problem. As the issue of security along the nation's borders climbs to concerns over protection against terrorism, assets and components of the active duty force, under the direction of the NORTHCOM, must be folded into the process – first in terms of planning, and then, as necessary, in execution of those plans alongside their counterparts in the Guard. This coordination in planning and execution will be essential, as the National Guard will provide the foundation from which to launch a graduated response, if and when required.

Inevitably, a national strategy, emanating from the same impetus that launched Homeland Security Presidential Directives on maritime and aviation security<sup>82</sup> will be required for the land component of the nation's border protection. Reason and tradition dictate that the Department of Homeland Security take the lead on the development of this strategy, with the Department of Defense heavily in support. When DoD's supporting role is portrayed, it should be as a reflection of an operational concept drawn up in cooperation and coordination between NORTHCOM and the National Guard Bureau. This strategy will require our government to decide from the depth and breadth of its capabilities which entities are best postured, best equipped, and best trained to meet the trials that lay ahead. Once those means are selected, however, they must come with an accompanying commitment from our government to ensure that they are sustainable. That sustainability must be measured in terms of equipment, in terms of technology and, above all, in terms of manpower.

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<sup>1</sup> U.S. Customs and Border Protection, *Protecting America: U.S. Customs and Border Protection 2005-2010 Strategic Plan* (Washington, DC: 2005), 3.

<sup>2</sup> The United States Commission on National Security/21<sup>st</sup> Century, Phase III Report, "Roadmap for National Security: Imperative for Change, February 15, 2001, 32-33, <http://www.au.af.mil/au/awc/awcgate/nssg/phaseIIIfr.pdf>.

<sup>3</sup> Department of Homeland Security, "Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Department of Homeland Security," July 13, 2005, [http://www.dhs.gov/xnews/releases/press\\_release\\_0703.shtm](http://www.dhs.gov/xnews/releases/press_release_0703.shtm).

<sup>4</sup> Department of Homeland Security, "Secretary Michael Chertoff U.S. Department of Homeland Security Second Stage Review Remarks," July 13, 2005, [http://www.dhs.gov/xnews/speeches/speech\\_0255.shtm](http://www.dhs.gov/xnews/speeches/speech_0255.shtm).

<sup>5</sup> U.S. Customs and Border Protection, Office of Field Operations, *Securing America's Borders at Ports of Entry: Strategic Plan FY 2007-2011* (Washington, DC: 2006), 2.

<sup>6</sup> *Ibid.*, "Message from the Commissioner."

<sup>7</sup> United States House of Representatives Committee on Homeland Security, *A Line in the Sand: Confronting the Threat at the Southwest Border* (Washington, DC: 2006), 2.

<sup>8</sup> "Special interest countries" are those designated by the intelligence community as countries that could export individuals seeking to bring harm to our country in the way of terrorism.

<sup>9</sup> Christopher Sands, "Canada and the war on terrorism: The U.S. challenge on the North American front," *Canada Focus* 2, no.3 (October 2001), [http://www.csis.org/component/option.com\\_csis\\_pubs/task.view/id.902/](http://www.csis.org/component/option.com_csis_pubs/task.view/id.902/).

<sup>10</sup> Deborah Waller Meyers, *U.S. Border Enforcement: From Horseback to High-Tech*, Migration Policy Institute Insight, no. 7 (November 2005).

<sup>11</sup> Fred Burton, "U.S. Border Security: Looking North," *STRATFOR.com*, <http://www.nixatron.com/StratT-bordernorth.htm>.

<sup>12</sup> T.S. Hataley, "Catastrophic Terrorism at the Border: The Case of the Canada-United States Border," *Homeland Security Affairs*, Supplement No. 1 (2007), 4, [www.hsaj.org](http://www.hsaj.org).

<sup>13</sup> Committee on Homeland Security, *A Line in the Sand*, 2.

<sup>14</sup> National Guard Bureau, *Operation Jump Start Fact Sheet* (Washington, DC:2006), [http://www.ngb.army.mil/features/southwestborder/files/OJS\\_Fact\\_Sheet29Sept.doc](http://www.ngb.army.mil/features/southwestborder/files/OJS_Fact_Sheet29Sept.doc).

<sup>15</sup> House Armed Services Committee, *National Guard and Border Security: Testimony of David V. Aguilar, Chief, Office of Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security*, 109<sup>th</sup> Cong., Sess. 2, May 24, 2006, 4.

<sup>16</sup> Authors interview with Mr. David Lively, National Guard Bureau, August 29, 2008.

<sup>17</sup> National Guard Bureau, *Operation Jump Start Fact Sheet*.

<sup>18</sup> *Testimony of David Aguilar*, 3.

<sup>19</sup> *Ibid.*

<sup>20</sup> U.S. Customs and Border Protection Fact Sheet, *Operation Jump Start*, <http://www.asisonline.org/newsroom/051506operationjumpstart.pdf>.

<sup>21</sup> The Act actually only prohibits the Army and, by extension, the Air Force that grew from it. It has been subsequently applied to the Navy and Marine Corps by policy and legislative supplement. There have been, nevertheless, both legislative and executive measures which have provided for rare exceptions in the military's direct support to law enforcement entities. For a complete discussion of the Act and its implications, see Charles Doyle, *The Posse Comitatus Act & Related Matters: the Use of Military to Execute Civilian Law*, Congressional Research Service Report 95-964.

<sup>22</sup> For an expanded explanation of Titles 10, 32, and State Active Duty statuses of the National Guard, see Timothy J. Lowenberg, *The Role of the National Guard in National Defense and Homeland Security*, Vol. 2006 (Washington, DC: National Guard Association of the United States, 2005), 2-3, <http://www.ngaus.org/ngaus/files/ccLibraryFiles/Filename/00000000457/primer%20ofin.pdf>.

<sup>23</sup> The first Quartering Act (May 1765) provided that Great Britain could house its soldiers "in inns, livery stables, ale houses, victualling houses, and the houses of sellers of wine and houses of persons selling rum, brandy, strong water, cider or metheglin," and if numbers required in "uninhabited houses, outhouses, barns, or other buildings." It further required any inhabitants (or in their absence, public officials) to provide food and alcohol for the soldiers "without paying any thing for the same." A second Quartering Act (June 1774) was designed to restore imperial control over the American colonies. This became part of what the colonists would refer to as the *Intolerable Acts*. See David Ackerman's "The Tea Crisis and its Consequences through 1775," in Jack P. Greene and J.R. Pole, eds., *The Blackwell Encyclopedia of the American Revolution* (Malden, Massachusetts: Blackwell, 1999).

<sup>24</sup> The current and immediate past Chairman of the Joint Chiefs of Staff served in Vietnam (or off the coast thereof). So, too, did the Vice Chairmen and the Chiefs of Naval Operations. The current Chief of Staff of the Army, Chief of Staff of the Air Force, and Commandant of the Marine Corps are not Vietnam veterans, but each of their predecessors was.

<sup>25</sup> See, for instance, DoDD 5143.01, Under Secretary of Defense for Intelligence; DoDD 5148.11, Assistant to the Secretary of Defense for Intelligence Oversight; and DoDD 5240.01, Department of Defense Intelligence Activities. The department's attitude is clearly displayed in the latter, leading its Policy section with the declaration: "All DoD intelligence and CI activities shall be carried out pursuant to the authorities and restrictions of the U.S. Constitution, applicable law, Reference (c) [Executive Order 12333, United States Intelligence Activities, and Executive Order 13355, Strengthened Management of the Intelligence Community], the policies and procedures authorized herein, and other relevant DoD policies authorized by Reference (b)[DoDD 5143.01, Under Secretary of Defense for Intelligence]. *Special emphasis shall be given to the protection of the constitutional rights and privacy of U.S. persons.*"(emphasis added)

<sup>26</sup> *Testimony of David Aguilar*, 2.

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- <sup>27</sup> Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border 1978-1992: Low Intensity Conflict Doctrine Comes Home* (Austin, TX: Center for Mexican American Studies, University of Texas at Austin, 1996), 25.
- <sup>28</sup> Meyers, *U.S. Border Enforcement: From Horseback to High-Tech*, 4.
- <sup>29</sup> Dunn, *The Militarization of the U.S.-Mexico Border 1978-1992*, 153-154.
- <sup>30</sup> *National Defense Authorization Act of 1991*, Public Law 101-510, Section 1004.
- <sup>31</sup> For further information surrounding these recommendations, see the Report of Chairman Lamar Smith to the Subcommittee on Immigration and Claims of the Committee on the Judiciary of the House of Representatives, titled *Oversight Investigation of the Death of Esequiel Hernandez, Jr.*, 105<sup>th</sup> Cong., Sess. 2, November 1998.
- <sup>32</sup> Robert Suro, "Report: U.S. 'Failures' Led to Border Death," *Washington Post*, November 13, 1998.
- <sup>33</sup> Joint Task Force North, <http://www.jtfn.northcom.mil>.
- <sup>34</sup> Stephen R. Viña, *Border Security and Military Support: Legal Authorizations and Restrictions*, RS22443 (Washington, DC: Library of Congress, 2006), 5.
- <sup>35</sup> The White House, *The National Strategy for Maritime Security* (Washington, DC: 2005) <http://www.whitehouse.gov/homeland/maritime-security.html>; and *The National Strategy for Aviation Security* (Washington, DC: 2007) <http://www.whitehouse.gov/homeland/aviation-security.html>.
- <sup>36</sup> United States Northern Command website, <http://www.northcom.mil>.
- <sup>37</sup> Scott Shepherd and Steve Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, RS21322 (Washington, DC: Library of Congress, 2005), 1.
- <sup>38</sup> *Strategy for Homeland Defense and Civil Support* (Washington, DC: U.S. Department of Defense, June 2005), 5, <http://www.fas.org/irp/agency/dod/homeland.pdf>.
- <sup>39</sup> U.S. Department of Defense, *DoD Cooperation with Civilian Law Enforcement Officials*, DoD Directive 5525.5 (1989).
- <sup>40</sup> The Office of the Assistant Secretary of Defense for Homeland Defense, established under the authority of the Bob Stump National Defense Authorization Act of 2003, signed by the President on December 2, 2002.
- <sup>41</sup> Canada's Special Senate Committee on Security and Intelligence, *The Report of the Special Committee on Security and Intelligence* (Ottawa:1999).
- <sup>42</sup> Canadian Security Intelligence Service, *Public Report 2004-2005*, (Ottawa:2006), 2. [http://www.csis-scrs.gc.ca/en//publications/annual\\_report/2004/report2004\\_e.pdf](http://www.csis-scrs.gc.ca/en//publications/annual_report/2004/report2004_e.pdf).
- <sup>43</sup> Ramón J. Miró and Glen E. Curtis, *Organized Crime and Terrorist Activity in Mexico, 1999-2002* (Washington, DC: Library of Congress, 2003), 43. [http://www.loc.gov/rr/frd/pdf-files/OrgCrime\\_Mexico.pdf](http://www.loc.gov/rr/frd/pdf-files/OrgCrime_Mexico.pdf).
- <sup>44</sup> Chris Kraul and Sebastian Rotella, "Hezbollah presence in Venezuela feared," *Los Angeles Times*, August 28, 2008.
- <sup>45</sup> Ibid.
- <sup>46</sup> Committee on Homeland Security, *A Line in the Sand*, 3.
- <sup>47</sup> Ibid., 4.
- <sup>48</sup> Ibid., 13.

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- <sup>49</sup> House Judiciary Committee Joint Hearing before the Subcommittee on Border Security, Immigration and Claims and the Subcommittee on Crime, Terrorism and Homeland Security, *Outgunned and Outmanned: Local Law Enforcement Confronts Violence Along the Southern Border*, 109<sup>th</sup> Cong., Sess. 2, March 2, 2006, [www.hsdl.org/homesec/docs/legis/nps03-052406-10.pdf&code=d2664b6364f601e7446d60362694349c](http://www.hsdl.org/homesec/docs/legis/nps03-052406-10.pdf&code=d2664b6364f601e7446d60362694349c).
- <sup>50</sup> Jerry Seper, "Mexico arrests suspect in U.S. agent's death," *Washington Times*, January 24, 2008.
- <sup>51</sup> "Mexico, U.S.: Threats of Cross-Border Cartel Killings," *Stratfor Today*, 26 August 2008. [www.stratfor.com/analysis/mexico\\_u\\_s\\_threats\\_cross\\_border\\_cartel\\_killings\\_o](http://www.stratfor.com/analysis/mexico_u_s_threats_cross_border_cartel_killings_o).
- <sup>52</sup> GEN Barry R. McCaffrey and MAJ J.A. Basso, "Narcotics, Terrorism and International Crime: The Convergence Phenomenon," in R.D. Howard and R.L. Sawyer, eds., *Terrorism and Counterterrorism: Understanding the New Security Environment* (Dubuque, IA: McGraw-Hill /Contemporary Learning Series: 2003), 323.
- <sup>53</sup> Sarah A. Carter, "Terrorist target Army base in Arizona," *Washington Times*, November 26, 2007. <http://www.washingtontimes.com/article/20071126/NATION/111260034/1002>.
- <sup>54</sup> Ibid.
- <sup>55</sup> U.S. Department of Homeland Security, *Protecting America: U.S. Customs and Border Protection, 2005-2010 Strategic Plan* (Washington, DC: 2005), 24.
- <sup>56</sup> Jill R. Aitoro, "Border security dominates DHS technology budget request," *Government Executive*, February 5, 2008, [http://www.govexec.com/story\\_page\\_pf.cfm?articleid+39224](http://www.govexec.com/story_page_pf.cfm?articleid+39224).
- <sup>57</sup> Fact sheets on Operation Jump Start from Custom and Border Protection and the National Guard both list numbers of "Alien rescues" among their significant accomplishments.
- <sup>58</sup> Meyers, *U.S. Border Enforcement: From Horseback to High-Tech*, 22.
- <sup>59</sup> U.S. Department of Defense, *Strategy for Homeland Defense and Civil Support*.
- <sup>60</sup> Office of the Governor of Arizona, News Release, "Governor, Legislators, Visit Border Communities to see effects of Operation Strong Border, Secure Arizona," November 2, 2005, <http://www.governor.state.az.us/press/2005/0511/NR~110205~Bordervisit.pdf>.
- <sup>61</sup> Operation Winter Freeze was a designated National Special Security Event (NSSE) conducted by the Department of Defense in support of Border Patrol operations in its Swanton sector, encompassing 295 miles of continuous border between Canada and New York, New Hampshire, and Vermont. The sector had become notorious as the area with the largest number of Special Interest Aliens intercepted in the entire country. Conducted from 30 October 2004 to 26 January 2005, the operation was initiated in partial response to the terrorist attacks in Barcelona prior to their national elections and current intelligence data that highlighted the timeline between the presidential election of 2004 and Inauguration Day 2005 as a period of vital concern. Both active duty and reserve component assets were utilized in support of the event, but by far the greater percentage of support came from the National Guard. Ninety-three percent of the Task Force was Guard, hailing from twenty-one different states.
- <sup>62</sup> These IRT initiatives include Joint/multi-Service horizontal and vertical engineering projects in support of U.S. Border Patrol southwest border infrastructure objectives. Units and individuals are sourced through U.S. NORTHCOM's Joint Task Force - North. Training evolutions are scheduled and coordinated by National Guard-led IRT Task Forces. See Office of the Assistant Secretary of Defense for Reserve Affairs website, <http://www.defenselink.mil/ra/html/irt.html>.
- <sup>63</sup> Author's interview with Mr. Lively, August 29, 2008.
- <sup>64</sup> Katherine McIntire Peters, "Homeland Security seeks to bolster management, border security," *Government Executive*, February 4, 2008, [http://www.govexec.com/story\\_page\\_pf.cfm?articleid=39217](http://www.govexec.com/story_page_pf.cfm?articleid=39217).

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<sup>65</sup> In addition, and unlike the National Guard's Weapons of Mass Destruction Civil Support Teams (WMD-CST), CBIRF can also deploy overseas in support of the Unified Commands.

<sup>66</sup> USMC Chemical Biological Incident Response Force, <http://www.mnfwest.usmc.mil/public/iimefpublic.nsf/UnitSites/cbirf>.

<sup>67</sup> U.S. Northern Command, Joint Task Force Civil Support, <http://www.jtfcs.northcom.mil>.

<sup>68</sup> U.S. Northern Command, Joint Task Force North, <http://www.jtfn.northcom.mil/subpages/mission.html>.

<sup>69</sup> Lieutenant Colonel William J. Barnett, (Operations Officer, Joint Task Force North), telephone interview with the author, February 8, 2008.

<sup>70</sup> Ibid.

<sup>71</sup> U.S. Northern Command, "Standing Joint Force Headquarters North," <http://www.northcom.mil/About/index.html>.

<sup>72</sup> 32 U.S.C. §905. Cited in Viña, *Border Security and Military Support*, 6.

<sup>73</sup> Timothy J. Lowenberg, *The Role of the National Guard in National Defense and Homeland Security*, 4

<sup>74</sup> Viña, *Border Security and Military Support*, 5-6

<sup>75</sup> House Armed Services Committee, *Testimony of LTG H. Steven Blum, Chief, National Guard Bureau: National Guard and Border Security*, 109<sup>th</sup> Cong., Sess. 2, May 24, 2006, 3

<sup>76</sup> Peter Baker, "Bush Set to Send Guards to Border," *Washington Post*, May 15, 2006.

<sup>77</sup> Roger Allen Brown, *Sizing the National Guard in the Post-Cold War Era*, (Santa Monica, CA: Rand Institute, 1995), [http://www.rand.org/pubs/research\\_briefs/RB7506/index1.html](http://www.rand.org/pubs/research_briefs/RB7506/index1.html) and Michael Waterhouse and JoAnne OBryant, *National Guard Personnel and Deployments: Fact Sheet*, RS22451 (Washington, DC: Library of Congress, 2007), 2.

<sup>78</sup> Christine E. Wormuth, et al., *The Future of the National Guard and Reserves: the Beyond Goldwater-Nichols Phase III Report*, (Washington, DC: The Center for Strategic and International Studies, 2006), 32.

<sup>79</sup> Frederick A. Peterson III and John E. Stone II, "Results and Implications of the Minuteman Project: A Field Report submitted to The Congressional Immigration Reform Caucus," (Washington, DC: Government Printing Office, 2005), 4.

<sup>80</sup> John E. Stone, "Operation Jump Start: Failure by Design," (Washington, DC: U.S. Freedom Foundation, 2007), <http://www.humanevents.com/article.php?print=yes&id=21993>.

<sup>81</sup> Craig Duehring, Principal Deputy Assistant Secretary of Defense for Reserve Affairs, quoted in Sgt Jim Greenhill's National Guard Bureau Press Release, "Operation Jump Start a success, officials say," December 11, 2006, [http://www.ngb.army.mil/news/archives/2006/12/121106-OJS\\_success.aspx](http://www.ngb.army.mil/news/archives/2006/12/121106-OJS_success.aspx).

<sup>82</sup> See HSPD-13, *Maritime Security Policy*, and HSPD-16, *Aviation Strategy*, both available at [http://www.dhs.gov/xabout/laws/editorial\\_0607.shtm](http://www.dhs.gov/xabout/laws/editorial_0607.shtm).