

**TESTIMONY OF**

**MICHAEL J. FISHER**  
**CHIEF**  
**UNITED STATES BORDER PATROL**

**U.S. CUSTOMS AND BORDER PROTECTION**  
**DEPARTMENT OF HOMELAND SECURITY**

**BEFORE**

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**Subcommittee on Border and Maritime Security**

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## Introduction

Chairwoman Miller, Ranking Member Cuellar, and distinguished Members of the Committee, it is a privilege and an honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) efforts to secure our nation's borders. I am Michael J. Fisher, Chief of the United States Border Patrol (USBP).

As America's frontline border agency, CBP's priority mission is to protect the American public, while facilitating lawful travel and trade. To do this, CBP has deployed a multi-layered, risk-based approach to enhance the security of our borders while facilitating the flow of lawful people and goods entering the United States. This layered approach to security reduces our reliance on any single point or program that could be compromised. It also extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but one of many.

## Overview of Border Security Efforts

Over the past two years, the Department of Homeland Security (DHS) has dedicated historic levels of personnel, technology, and resources to the Southwest border. We have more than doubled the size of the Border Patrol since 2004; tripled the number of Border Liaison Officers working with their Mexican counterparts; doubled personnel assigned to Border Enforcement Security Task Forces; and began screening southbound rail and vehicle traffic for the illegal weapons and cash that are helping fuel the cartel violence in Mexico. CBP also received approval from the U.S. Department of Transportation's Federal Aviation Administration to increase the miles of airspace available for Unmanned Aircraft System (UAS) operations, enabling CBP to deploy UASs from the eastern tip of California extending east across the border into Texas – covering the entire Southwest border for the first time. Further, in January of this year, CBP's operational airspace along the Northern border expanded by nearly 900 miles, allowing CBP UAS operations from the Lake-of-the-Woods region in Minnesota, to the vicinity of Spokane, Washington.

In addition, we have now constructed 650 miles of fencing out of nearly 652 miles where Border Patrol field commanders determined it was operationally required along the Southwest border, including 299 miles of vehicle barriers and 351 miles of pedestrian fence. We have also improved our technological capabilities, including the installation of remote video surveillance cameras in the Detroit and Buffalo Sectors, among other technologies.

Further, the Southwest border security supplemental legislation (based on the Administration's recommendations) was signed into law in August 2010. It provided DHS additional capabilities to secure the Southwest border at and between our ports of entry and to reduce the illicit trafficking of people, drugs, currency, and weapons. Specifically, this bill provided funding for improved tactical communications systems along the Southwest border; two additional CBP unmanned aircraft systems; 1,000 new Border Patrol agents; 250 new CBP officers at ports of entry; and two new forward operating bases to improve coordination of border security activities.

In addition, President Obama recently authorized the extension of the use of 1,200 National Guard troops through December 31, 2011 at the Southwest border to contribute additional capabilities and capacity to assist law enforcement agencies, and as a bridge to longer-term enhancements while the Administration brings new assets online and pursues additional people, technology, and infrastructure dedicated to effective border management and security. These National Guard troops are providing Entry Identification Teams and criminal investigation analysts in support of these efforts. That support is allowing DHS to bridge the gap and hire the additional agents to support Southwest Border enforcement efforts, and the Departments of Defense and Homeland Security agreed to equally fund the National Guard deployment's cost. However, Congress did not approve DHS' reprogramming requests, and the Department of Defense has covered the full cost of this National Guard support.

### Whole-of-Government Approach

Our overarching border security efforts require a whole-of-government approach that emphasizes the importance of joint planning and intelligence sharing. In recent months, we have taken additional steps to bring greater unity to our enforcement efforts, to expand coordination with other agencies, and to improve response times. In February, we announced the Arizona Joint

Field Command – an organizational realignment that brings together Border Patrol, Air and Marine, and Field Operations under a unified command structure to integrate CBP’s border security, commercial enforcement and trade facilitation missions to more effectively meet the unique challenges faced in the Arizona area of operations.

Another example of our collaborative efforts along the Southwest border is the Alliance to Combat Transnational Threats (ACTT) in Arizona. The ACTT is enforcement collaboration, established in September 2009, which leverages the capabilities and resources of more than 60 federal, state, local, and tribal agencies in Arizona and the Government of Mexico to combat individuals and criminal organizations that pose a threat to communities on both sides of the border. Through ACTT, we work with our international, federal, state, local and tribal law enforcement partners to increase collaboration; to enhance intelligence and information sharing; and to develop coordinated operational plans that strategically leverage the unique missions, capabilities and jurisdictions of each participating agency. Since its inception, ACTT has resulted in the seizure of more than 2.2 million pounds of marijuana, 8,200 pounds of cocaine, and 2,700 pounds of methamphetamine; the seizure of more than \$18 million in undeclared U.S. currency and 343 weapons; over 16,000 aliens denied entry to the U.S. at Arizona ports of entry due to criminal background or other disqualifying factors; and approximately 342,000 apprehensions between ports of entry.

In partnership with DEA, and with support from the Department of Defense, DHS has achieved initial operational capability for the new Border Intelligence Fusion Section (BIFS) as part of the El Paso Intelligence Center. This new section will integrate and synthesize all available Southwest border intelligence from federal, state, local, and tribal partners to create a common intelligence picture to support border enforcement activities on the Southwest border. By disseminating real-time operational intelligence to our law enforcement partners in the region, BIFS will streamline and enhance coordinated federal, state, local and tribal operations along the border. Additionally, we are continuing to work with Mexico to develop a cross-border communications network that will improve our ability to coordinate law enforcement and public safety issues.

Along the Northern border, CBP has established the Operational Integration Center (OIC), located at Selfridge Air National Guard Base in Harrison Township, Michigan. The OIC is a demonstration project aimed at enhancing border security and situational awareness for CBP and its mission partners along a critical area of the Northern border by integrating personnel and technology. In terms of personnel, the OIC allows for a collaborative work area and communications capabilities for all components of CBP, the U.S. Coast Guard, other DHS entities, federal law enforcement agencies, state and local law enforcement, and appropriate Canadian agencies. The OIC brings together information feeds, including radar and camera feeds, blue force tracking, database query from databases not previously available to CBP, remote sensor inputs, Remote Video Surveillance Systems, and Mobile Surveillance Systems feeds, and video from various POE, tunnel and local traffic cameras. This personnel and technology integration may serve as a model for technology deployments on the Northern border.

CBP is engaged with several national initiatives which all contribute to the border security mission. Our officers and agents provide support to the Integrated Border Enforcement Teams (IBET) which operates as intelligence-driven enforcement teams comprised of U.S and Canadian federal, state/provincial and local law enforcement personnel. By incorporating integrated mobile response capability (air, land, marine), the IBETs provide participating law enforcement agencies with a force multiplier—maximizing border enforcement efforts. Our personnel additionally provide manpower to Border Enforcement Security Task Force (BEST) units, multi-agency teams which collaborate to identify, disrupt and dismantle criminal organizations which pose significant threats to border security.

In addition to these efforts, Operation Stonegarden (OPSG) grants are available and designed to support state, local, and tribal law enforcement agencies that are involved in border security. While the grants themselves are managed by the Federal Emergency Management Agency, the participating agencies are required to submit operations orders to the Border Patrol. The Border Patrol is responsible for ensuring that all operations funded by this grant have a direct nexus to border security.

CBP has also partnered with state and local law enforcement for certain outbound operations at POEs. Over the years, the personnel at the POEs along the Southwest border have developed good working relationships with state and local law enforcement agencies. State and local law enforcement officers are a tremendous asset to CBP. They act as force multipliers, bringing their knowledge of the community, and their understanding of local criminal elements. Joint outbound operations target proceeds, firearms, ammunition, stolen vehicles and fugitives.

Additionally, a Processing, Exploitation, and Dissemination cell has been established at the Air and Marine facilities in Riverside, California, and Grand Forks, North Dakota, to provide essential information to law enforcement across the nation—increasing understanding of evolving threats and providing the foundation for law enforcement entities to exercise targeted enforcement in the areas of greatest risk. This intelligence-driven approach prioritizes emerging threats, vulnerabilities and risks, greatly enhancing our border security efforts.

Building on a legacy initiative, in 2005, CBP created a robust Information Sharing Environment known as “BigPipe”, which links equipped CBP aviation assets, via the internet and information sharing protocols, to federal, state, local and tribal law enforcement agencies in order to provide near-real time video and sensor data—enhancing the situational awareness of officers across the law enforcement community. Additionally, BigPipe is used extensively by numerous federal, state, local and tribal agencies during warrant presentations, controlled deliveries, search and rescue and surveillance operations.

### Consequence Delivery System

CBP conducts operations along the entirety of the nearly 2,000 miles of border between Mexico and the states of California, Arizona, New Mexico, and Texas. The ability of the Border Patrol, U.S. Immigration and Customs and Enforcement (ICE), our strategic partners, and the judicial system to impose consequences on those entering the United States illegally varies greatly between each state, judicial district, and Border Patrol sector.

To break the smuggling cycle and deter a subject from attempting further illegal entries or participating in a smuggling enterprise, CBP has developed, with the support of ICE, a new Consequence Delivery System (CDS) that guides management and agents through a process designed to uniquely evaluate each subject and identify the ideal consequences to deliver to impede and deter further illegal activity.

The CDS uses a combination of criminal and administrative consequences developed by the Border Patrol, and implemented with the assistance of ICE, targeting specific classifications of offenders, effectively breaking the smuggling cycle along the border of the United States. This allows the U.S. Border Patrol to match the individual and the consequence in the most effective and efficient way.

#### Overview of Repatriation and Criminal Prosecution Consequences

Standard criminal prosecutions are the traditional means for imposing consequences on aliens who have committed criminal acts. Aliens entering the United States without being lawfully admitted are subject to prosecution for illegal entry. If an alien has been previously ordered removed, they are amenable to a felony charge of reentry after removal. Criminal prosecutions are essential to border security operations; however the volume of border related illegal activity restricts the percentage of criminal cases that the Border Patrol is able to process within the criminal justice system. Due to limitations imposed by the labor, detention costs, and the expense of criminal prosecutions and administrative proceedings, repatriation is often the preferred consequence.

The following initiatives represent examples of the Consequence Delivery System that aids the overarching effort to improve the safety and security of the border:

- ***Operation Against Smugglers Initiative on Safety and Security (OASISS)*** is a bilateral, criminal prosecution agreement between the United States and Mexico. Since 2005, this program allows for Mexican citizens found smuggling aliens in the United States to be prosecuted by the Government of Mexico.

- ***Streamline*** is a criminal prosecutions program targeting individuals who illegally enter the United States through defined geographic locations. Consequences are imposed through consistent application of criminal sanctions to reduce illicit cross-border activity. Streamline is a multi-agency effort that relies heavily upon the collaborative efforts of CBP, the U.S. Magistrate, the Federal Judiciary, the U.S. Attorney's Office, the U.S. Marshals Service, ICE, and the Executive Office of Immigration Review.
- ***Efficient Immigration Court Hearings***: CBP is working with EOIR to increase the efficiency of immigration court hearings by placing aliens apprehended along the border in removal proceedings in courts close to the border, eliminating the need to acquire detention space to hold an alien while awaiting an appearance before an Immigration Judge. The judge's Order of Removal establishes that the subject cannot apply to legally re-enter the United States for a period of 10 years. Subjects re-arrested are amenable to be charged criminally with a felony, Illegal Re-entry after Deportation.
- ***Alien Transfer Exit Program (ATEP)*** repatriates aliens into regions far from their entry location to disrupt future coordination with smugglers after their arrest and removal. ATEP is designed to disrupt the smuggling cycle that often reunites removed aliens with their hired smugglers to attempt another illegal entry.
- ***Mexican Interior Repatriation Program (MIRP)*** is a joint CBP and ICE effort. The program removes Mexican nationals to the interior of Mexico on a voluntary basis, away from high-risk areas of the Sonora Desert, where temperatures spike and exposure-related deaths peak during summer months. The objective of the program is to save lives and disrupt the human smuggling cycle. At risk aliens are identified for participation by factors that include age, physical condition, and travel status.
- ***Expedited removal proceedings*** are initiated against aliens who are present without admission and encountered by an immigration officer within 100 air miles of the U.S border, and not physically present in the United States for the 14-day period immediately before their

arrest. Aliens processed for expedited removal procedures are not detained pending a hearing before an immigration judge, but are immediately processed for a formal administrative removal order. If an alien expeditiously removed returns illegally, he may be considered for criminal prosecution (Illegal Re-entry after Removal).

- ***Reinstatement of Removal*** provides the ability to reinstate a previously executed removal order with respect to aliens who illegally reenter the United States. If an alien is found to have reentered the United States after removal, the prior order of removal is reinstated from its original date and is not subject to review. In most cases, it is not necessary to detain aliens processed for reinstatement pending a hearing before an immigration judge. Reinstatement does not preclude criminal prosecution in accordance with local procedures and guidelines. Much like expedited removal, reinstatement of a final order is an efficient means for immigration officers to remove aliens who fit within this category from the United States without referral to an immigration judge.
- ***Voluntary Return*** is used at the discretion of Border Patrol agents and their supervisors to allow an alien to depart voluntarily from the United States in lieu of being subject to removal proceedings. Eligible aliens may prefer to seek voluntary return rather than undergo formal removal proceedings. Voluntary return reduces processing time for agency personnel, while at the same time allowing the alien to avoid the potential penalties attached to formal removal proceedings.
- ***Warrant of Arrest / Notice to Appear*** is used when Border Patrol agents make an arrest and the alien is to be detained in DHS custody pending a hearing before an immigration judge. Generally speaking, whenever an alien is detained for formal immigration proceedings, the commitment of labor, and resources involved in the removal process are significantly higher.

We know from experience that targeted enforcement works. Collective understanding of where the greatest risks lie along our borders is critical to our flexibility in addressing these risks. As CBP applies targeted enforcement to areas of evolving threat, mobile response capability is critical to timely and effective resolution. This mobile response capability must actively engage

all CBP components and our partners in order to ensure proper synchronization and effectiveness.

### Impact of Immigration Enforcement Efforts

Over the past two years, the Administration has established clear priorities that govern how DHS uses its immigration enforcement resources. These priorities focus resources on enhancing border security and identifying and removing criminal aliens, those who pose a threat to public safety and national security, individuals recently apprehended at the border while illegal entering, repeat immigration law violators, and other individuals prioritized for removal. While additional work remains, DHS has made tremendous progress in its effort to focus resources on these enforcement priorities.

In light of law enforcement priorities and limited resources, ICE has implemented policies that call for the utilization of prosecutorial discretion, when appropriate, in order to enhance the allocation of resources devoted to the removal of priority aliens. As a result of these policies, ICE has been able to increase its support of Border Patrol operations along the Southwest border. The detention beds and immigration agents that are provided by ICE ERO enhance Border Patrol's ability to apply consequences through the CDS which have the greatest deterrent effect on individuals apprehended at the border after illegally crossing. ICE's focus on I-9 audits has eliminated many of the jobs that served as magnets, drawing people to illicitly cross the border. Equally important is the deterrent effect provided by ICE's prioritization of recent border entrants, criminal offenders and repeat immigration law violators.

The strategic reallocation of resources to the Southwest border and prioritization of recent border entrants, convicted criminals, and repeat immigration law violators has helped CBP continue to drive down illicit cross border traffic. There is no doubt that the historic results achieved by the Border Patrol along the southwest border are due, in part, to the assistance of ICE and the establishment of these policies.

## Conclusion

Chairwoman Miller, Ranking Member Cuellar, and distinguished Members of the Committee, thank you for this opportunity to testify about the work of U.S. Customs and Border Protection, and our efforts in securing our borders.

I look forward to answering your questions at this time.