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**NAVAL
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MONTEREY, CALIFORNIA

THESIS

**TRAVELING THE TERROR HIGHWAY: INFILTRATION
OF TERROR OPERATIVES ACROSS THE U.S.-MEXICO
BORDER**

by

Nathan S. Whitfield

December 2011

Thesis Advisor:

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**TRAVELING THE TERROR HIGHWAY: INFILTRATION OF TERROR
OPERATIVES ACROSS THE U.S.-MEXICO BORDER**

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Submitted in partial fulfillment of the
requirements for the degree of

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from the

**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

Following the attacks of September 11, 2001, border security and immigration have received increased attention. Public and political scrutiny have elevated and changed the priority of border security and immigration enforcement; from migrant workers seeking employment to counter-terrorism. However, the question remains: if United States law enforcement and security agencies are unable to stop the smuggling of drugs and illegal migrants across the southwestern border between the U.S. and Mexico, is it possible to prevent terrorists from gaining unauthorized and unaccountable entry into the heartland of the U.S.? A corollary question is: given attempts to restructure the immigration enforcement policy and infrastructure to deter illegal entry of terrorists, will it still be possible and lucrative for terrorists to attempt to illegally cross the U.S.-Mexico border? This research seeks to explore existing conditions that may facilitate or increase the likelihood that terrorists would seek to infiltrate personnel across the U.S.-Mexico border.

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LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|--------|---|
| ASIC | Aliens from Special Interest Countries |
| SIC | Special Interest Countries |
| POE | Ports of Entry |
| USBP | United States Border Patrol |
| SIA | Special Interest Aliens |
| DEA | Drug Enforcement Agency |
| DoD | Department of Defense |
| INS | Immigration and Nationalization Service |
| DHS | Department of Homeland Security |
| ICE | Immigration and Customs Enforcement |
| CBP | Customs and Border Protection |
| IRCA | Immigration Reform and Control Act |
| IDENT | Automated Biometric Identification System |
| SBI | Secure Borders Initiative |
| ASI | Alien Smuggling Interdiction |
| RCLG | Regional Carrier Liaison Group |
| IAP | Immigration Advisory Program |
| SWI | Southwest Border Initiative |
| FY | Fiscal Year |
| GAO | Government Accounting Office |
| BEST | Border Enforcement Security Task Force |
| FBI | Federal Bureau of Investigation |
| DoI | Department of the Interior |
| USDA | United States Department of Agriculture |
| MOU | Memorandum of Understanding |
| IIRIRA | Illegal Immigration Reform and Immigrant Responsibility Act |
| OTM | Other Than Mexican |
| CIA | Central Intelligence Agency |

| | |
|----------|--|
| CRS | Congressional Research Service |
| IAFIS | Integrated Automated Fingerprint Identification System |
| NGI | Next Generation Identification System |
| IED | Improvised Explosive Device |
| DoS | Department of State |
| TBA | Tri-Border Area |
| JTTF | Joint Terrorism Task Force |
| SD LECC | San Diego Law Enforcement Coordination Center |
| TSA | Transportation Security Agency |
| SPLC | Southern Poverty Law Center |
| JTF-6 | Joint Task Force Six |
| NORTHCOM | Northern Command |
| SOF | Special Operations Force |

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I. INTRODUCTION

“The range of criminal activity on the Southwest Border is limited only by the demands of the illicit markets served.”

Cato (Council.), Center for Immigration Studies, 2008¹

Months of planning and preparation were about to be tested in a transcontinental move dependent upon loose connections, promises, and money. Hassan joined Ashraf, who supplied the first round of documents he would need on his journey, and reviewed the details of the operation. Rehearsing mnemonics for names of contacts, modes of transportation, and critical times helped Hassan focus, especially since he could not travel with a written itinerary and risk compromising his organization if captured. Hassan boarded a plane and set off on his journey from Lebanon to Cuba in eight days. Flying through Dubai, Hassan breathed a sigh of relief when the paperwork Ashraf provided made his flights to Moscow and Cuba smooth. Staying briefly in Cuba, Hassan boarded his last plane and set off for Ecuador. Hassan avoided flying into Venezuela, worried about its heavy focus from the international law enforcement community. Ecuador was specifically chosen because it has no requirement for visas and too many foreign travelers to cope with.

In Ecuador Hassan stayed with Iam, an Ecuadorian-Arab compatriot of Hassan’s organization. Iam coordinated travel arrangements while Hassan set about minimizing his Arab appearance: he cut his hair, wore local clothes Iam provided and practiced Spanish phrases with Ecuadorians working in Iam’s travel agency. After nine weeks in Ecuador, Hassan loaded onto a boat taking a large number of other northbound migrants. Unlike the other Arab passengers who still stood

¹ Cato (Council.), “The Weaponization of Immigration,” Center for Immigration Studies, March 10, 2008, 2, <http://www.cis.org/articles/2008/back108.pdf>

out despite changing their dress, Hassan smoothly melted into the crowd of South Americans. Arriving in Guatemala, Hassan linked up with Francesco, a Guatemalan-Arab who put Hassan up with a Muslim family living in the back of a small café. Hassan would sweep floors for another three weeks, continually working on his Spanish while Francesco coordinated his onward movement. On his twenty-third night in Guatemala, Francesco moved him to a large riverbank where Hassan was taken across on a makeshift raft. Hassan was quickly rushed to a waiting van and driven to a featureless house where he stopped before traveling by bus to just south of Mexico City. From that point he was transferred to a different car or truck every day until he reached a small village just south of Nogales.

Now began the most risky portion of Hassan's journey. In Nogales, he left the comfort of his Latin American Muslim smugglers and surrendered himself to the care of a Mexican smuggling outfit. Fortunately for Hassan, his organization had a prior arrangement with the Mexican smugglers. While Hassan was no stranger to the heat of the desert, hiking through scabble and rock over varying elevations was arduous, and he often wondered if the teenage "coyote" leading his twelve-man group across the desert knew where he was going. Hassan hoped the \$8,000 that had been paid for his passage had bought the services of a higher caliber smuggler. On the first night he was reassured when he saw how deftly the young coyote used a handheld GPS, satellite phone, night vision goggles and the meticulous care with which he concealed their tracks when they were not in the rocks.

Eventually, the human convoy came out on a road where the coyote and Hassan were loaded into a car. Hassan quickly found himself on I-19 heading north. Despite hunger, dehydration and exhaustion, he felt overwhelmingly happy and satisfied. He had safely crossed the border

into the U.S., but, more importantly, he had done so without any documentation or detection by law enforcement.

Hassan received a new set of documents in the car, which he was told were only temporary until he reached his next destination. Several vehicle changes later, Hassan arrived in Denver.

Hassan met his lifelong friend Nishan who, in a now familiar pattern, moved Hassan in with a local family. Nishan also provided Hassan with his new American passport, driver's license, and social security card. Most importantly, Nishan introduced Hassan to a select group of men from the community: some Hassan knew from Lebanon, others he knew by reputation. Hassan was able to provide them with updated guidance and new directions and strategies for recruitment and fund raising. Hassan's role was to conduct advanced recruitment and oversee the routing of financial resources; he was to have no public role.

The above vignette is a mix of fiction and reality, based on stories told by apprehended illegal aliens from Special Interest Countries (ASIC).² While many of these individuals are doubtless legitimate refugees fleeing persecution and failing states, nothing prevents others from embarking on circuitous routes like this to evade the eye of law enforcement.

A. PURPOSE AND SCOPE

The purpose of this thesis is to determine whether conditions exist that would facilitate transnational terrorist organizations' use of Mexico as a conduit to infiltrate personnel clandestinely into the United States. More specifically, this thesis will examine how the existence of these conditions not only makes it possible for terrorists to infiltrate and destabilize the U.S. homeland, but increases the likelihood that terrorists will exploit these conditions until the U.S. revises its current policies and procedures.

² U.S. Department of Homeland Security defines Special Interest Countries (SIC) as countries whose governments support state sponsored terrorism or who promote, produce, or protect terrorist organizations and their members.

The primary focus of this thesis is on factors that specifically contribute to the ease or difficulty in smuggling personnel across the U.S.'s southwestern border with Mexico. My working assumption is that a porous border can facilitate crossing by individuals who want to stay outside the purview of law enforcement. This thesis also assumes that only a small number of terrorists need to enter the U.S. to pose a credible threat to national security. Furthermore, the potential for surreptitious terrorist entry is not time sensitive. Terrorist networks and operations can be developed over an extended period of time, as evidenced by Mohammed Atta's plan to attack the World Trade Center, an operation which took over two and a half years to develop.³ The specific focus of this thesis is on the potential for human smuggling, not the trafficking of materiel. I explore factors that could increase the appeal for terrorists to exploit northern Mexico for illegal entry into the U.S., as opposed to utilizing legal methods for infiltrating personnel into the U.S.

B. BACKGROUND

Even before the Mexican-American War and the establishment of the Rio Grande as the U.S.-Mexican border with the Treaty of Guadalupe Hidalgo in 1848, there was a long history of personnel and materiel moving back and forth across the region. Most recently, strong U.S. economy and labor shortages served as the motivation for millions of Mexican and Central-South American immigrants to enter the U.S. in search of jobs and prosperity. Legislation, such as the 1986 Immigration Reform and Control Act, only served to further fuel illegal migration by granting amnesty to over 2.7 million unauthorized migrants to the U.S.⁴ The U.S. had a relatively relaxed policy on illegal immigration until the 1990s, when local and state social services began to feel the strain. Yet, nothing had quite the impact of the attacks of September 11, 2001. These attacks in the U.S. served as a wakeup call and drew attention to a myriad of shortcomings and vulnerabilities in immigration policies, leading many to question the integrity of the

³ Cato, *Weaponization of Immigration*, 2.

⁴ U.S. Library of Congress, Congressional Research Service, *Immigration: Policy Considerations Related to Guest Worker Programs* by Andorra Bruno, report no. RL32044 (Washington: Government Printing Office, 2006), 32.

U.S.'s borders. Following 9/11, heightened security measures and increased scrutiny at traditional ports of entry (POE) along the U.S. border forced many wishing to enter the U.S. illegally to rely on historic overland smuggling routes through the southwestern U.S.

Far more sinister than individuals seeking higher paying jobs or a better quality of life, terrorists seeking to conduct destabilizing attacks on U.S. soil could exploit these well-established human trafficking routes to gain undetected entry into the U.S. With so much attention focused on our endeavors to defeat terrorists in Iraq, Afghanistan, and other foreign countries, we forget that conducting a dramatic attack in the U.S. continues to be a top operational goal for transnational terrorist organizations.⁵

In many senses, immigration is the “indispensable asymmetric weapon,” making America not only a target for terrorism, but also an ideal staging ground for such attacks.⁶ Despite significant successes in border and immigration enforcement, only 10–30% of illegal immigrants are detained by the U.S. Border Patrol (USBP).⁷ With such a large number of personnel potentially slipping across the border undetected, there exists the distinct likelihood that terrorist operatives could be successfully smuggled into the U.S. across the U.S.-Mexico border.

Terrorist organizations possess three options for developing terror networks within a country. First, they can legally infiltrate operatives through visa or asylum programs, who then melt into the host country population. Second, terrorists can illegally infiltrate operatives. Illegal infiltration can be achieved by two methods: utilizing fraudulent documents or taking advantage of corrupt authorities to cross at traditional ports of entry. Alternatively, terrorists can illegally cross the border in between

⁵ *Current and Projected National Security Threats to the United States, Hearings before the Select Committee on Intelligence, United States Senate, 109th Cong. 39 (2005)* (Statement of James Loy, Deputy Secretary U.S. Department Of Homeland Security).

⁶ Cato, *Weaponization of Immigration*, 2.

⁷ House Committee on Homeland Security, Subcommittee on Investigations, *A Line in the Sand: Confronting the Terror Threat at the Southwest Border*, ed. Michael T. McCaul, chairman (Washington: Government Printing Office, 2006), 4. While illegal immigration numbers *seem* to be at their lowest level since the Nixon administration, this still means the 340,252 aliens apprehended in fiscal year 2011 represents a fraction of those thought to have entered the U.S. KSAZ Phoenix, “Far Less People Entering US Illegally from Mexico,” *Fox News Latino*, December 13, 2011, <http://latino.foxnews.com/latino/news/2011/12/13/far-less-people-entering-us-illegally-from-mexico/>

traditional ports of entry. The first method carries the inherent risk that fraudulent documents may be detected and the potential operative subsequently detained by law enforcement. For its part, illegal entry between ports of entry also carries risks, however, it has the advantage of keeping the operative anonymous and hidden from law enforcement. Finally, and in combination with the first two methods, a homegrown terrorist operative can be developed. Homegrown operatives are assimilated citizens who possess rights and often lack any distinguishing features or history that would identify them to law enforcement. All three options offer distinct advantages and disadvantages. While this thesis will present evidence of homegrown terror operatives, its main focus will be to investigate the potential for illegally infiltrating operatives between traditional ports of entry as a means to establish terror networks and activities within the U.S.

Several analysts discount the likelihood that terrorist organizations would take this course of action. However, while it is true that over 21 terror-related plots have been foiled since 9/11, five have succeeded to some degree.⁸ This demonstrates that while sensational 9/11-type attacks are not happening, planning and attempting to execute terror operations continues to take place on American soil. While some might dismiss the wannabes who are snared with relative ease by authorities, others point to these activities as evidence of trained U.S. terror operatives acting on orders of a hidden network commanded and controlled, or at least orchestrated, by terrorist leaders from abroad.⁹

C. RESEARCH QUESTION

This thesis poses two questions. First, under what conditions might terrorists be able to easily infiltrate the U.S.? To answer this question requires exploring conditions that might make it attractive for transnational terror organizations to attempt to infiltrate operatives into the U.S. across the U.S.-Mexico border. To answer this question also

⁸ *The Vigilance Project: An Analysis of 32 Terrorism Cases Against the Homeland* (New York: New York State Intelligence Center, 2010), 9.

⁹ Peter Bergen, Bruce Hoffman and Katherine Tiedemann, "Assessing the Jihadist Terrorist Threat to America and American Interests," *Studies in Conflict & Terrorism*, 34, no. 2 (2011): 71.

means exploring which mechanisms or environmental factors would make human smuggling across the U.S.-Mexico border preferable to using higher visibility legal methods for entry of personnel into the U.S.

Second, if transnational terror organizations were to find clandestine entry across the U.S.-Mexico border attractive, what steps could be taken to mitigate the conditions or factors that make this attractive? In other words, how can we better deter further infiltration across the U.S.-Mexico border?

D. LITERATURE REVIEW

There are two pervasive views regarding illegal smuggling of terror operatives into the U.S. across its shared border with Mexico. While those in each camp acknowledge that the potential exists, those in the first school of thought argue that heightened border security and revisions to immigration policy on the U.S. side following 9/11 are sufficient to deter terrorist infiltration. According to authors in this camp, a comprehensive increase in security makes illegal entry too difficult. The alternative point of view is that terrorists will adapt their methods to infiltrate operatives into the heartland of the U.S. regardless.

Among those who contend that transnational terror organizations will continue to actively seek to infiltrate the U.S., there is a split over methods. Terrorist organizations have two basic options: use of fraud to enter through a legal port of entry or illegal entry between ports of entry. Increased manpower and technological advances at traditional ports of entry have dramatically improved the ability of border enforcement agents to identify and prevent illegal entry. Furthermore, technological advances in screening systems, such as biometric identification technology, record immigrant information and store it on nationally accessible databases. Terrorist organizations seeking to infiltrate operatives and maintain a low profile for reasons of operational security are likely to want to avoid such recognition devices. This suggests that terror organizations seeking to keep their activities off the radar of law enforcement are likely to avoid the high risk of recognition and detention at ports of entry. This view is seems to be shared by senior

level U.S. stakeholders, such as Deputy Secretary of Homeland Security James Loy, who boldly stated before the Senate Select Committee on Intelligence in 2005:

Recent information from ongoing investigations, detentions, and emerging threat streams strongly suggests that al Qaeda has considered using the Southwest Border to infiltrate the United States. Several al Qaeda leaders believe operatives can pay their way in to the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons.¹⁰

Avoiding detection by law enforcement leaves terrorist organizations little choice but to try to infiltrate between ports of entry. The literature suggests three alternatives for surreptitious entry through illegal channels for terrorists. Terrorists could: mingle within the sea of existing illegal migrants, utilize criminal organizations and routes operated by criminal networks, or develop their own exclusive networks and routes.¹¹

According to the Mexican Secretary of Governance for the Interior, already in 2005 there were several international terrorist cells actively operating in Mexico, to include those belonging to or representing extremist Islamic groups. The *Centro de Investigacion y Seguridad Nacional* (Mexican National Center for Investigation and Security) for its part released a report noting the existence of radical support cells within Muslim communities in Mexican states, several of which lie along the shared border with the U.S. This report goes on to say that federal authorities believe these radical support cells are clearly involved in human trafficking.¹² Thomas Davidson of the Jamestown Foundation speculates that a *salafi* network exists in Mexico, running from the southernmost state of Chiapas all the way north to the U.S.-Mexico border. This network is positioned along key movement corridors and could thus provide any needed support.¹³

¹⁰ Cato, *Weaponization of Immigration*, 6.

¹¹ Susan Ginsburg, *Countering Terrorist Mobility: Shaping an Operational Strategy* (Washington: Migration Policy Institute, 2006), 74.

¹² Thomas Davidson, "Terrorism and Human Smuggling Rings in South and Central America," *Terrorism Monitor* 3, no. 22 (2005): 7, http://home.comcast.net/~christine_fair/pubs/jamestown.pdf

¹³ Davidson, "Terrorism and Human Smuggling Rings in South and Central America," 8.

The desire of terrorist organizations to avoid detection and remain secretive impacts their ability to have robust border crossing capabilities. The probability of exposure for a terrorist group establishing, testing, and operating smuggling operations is increasingly high. Terrorist organizations may develop a support structure for moving operatives up to the border itself, but they would then likely utilize the services of existing smuggling networks who have greater operational knowledge of the environment.

This leaves terrorist organizations two choices: mingle with migrants along historic illegal migration corridors, or employ criminal assistance and use routes established by criminal organizations. One unintended consequence of increased scrutiny and security at traditional ports of entry and increased border enforcement and interdiction along historic human-drug smuggling routes is that human-drug smuggling has become more sophisticated, organized, and difficult to track. This, in turn, might make illegal human smuggling by these new means even more attractive to terror organizations. Human trafficking is second only to drug trafficking in Mexico, in terms of the money it generates; it is a \$15–\$20 billion a year enterprise. In fact, narco-traffickers are now diversifying their activities and sources of income, finding smuggling to be a highly profitable venture. Meanwhile, as cartels drive out small time smugglers and employ gangs to charge “right of passage” fees for immigrants, all they have to do is simply modify existing routes and facilities already in place for smuggling drugs.¹⁴

The literature is divided over the extent to which terror organizations collaborate with criminal organizations inside Mexico: there are those who believe a symbiotic relationship already exists, and those who believe criminal organizations do not want any association with terrorists.

American analyst-author George Grayson and Mexican analyst Alejandro Schtulmann claim the terrorist-cartel connection is overblown and cartels will avoid colluding with terrorists in order to avoid antagonizing the U.S. In their view, cartels are

¹⁴ Arthur Brice, “Human trafficking second only to drugs in Mexico,” *CNN*, August 26, 2010, http://articles.cnn.com/2010-08-26/world/mexico.human.trafficking_1_human-trafficking-cartel-human-rights?_s=PM:WORLD

in the business of making money and maintaining influence. According to Grayson, cartels do not want U.S. boots on the ground, and would prefer to stick to only antagonizing and victimizing fellow Mexicans.¹⁵ The Department of Homeland Security's 2008–2013 threat assessment, *One Team, One Mission, Securing Our Homeland*, concludes, "Mexican drug and alien smuggling organizations have little incentive to risk their lucrative operations by facilitating terrorists across the border."¹⁶ The DHS also considered it unlikely that terrorist organizations would jeopardize the operational security of their operations through relationships with cartels. Those who adhere to this view also contend that given the increasing sophistication of cross-border human smuggling, it is unlikely that terrorist organizations could rely on illegal entry between ports of entry as a viable means to clandestinely enter the U.S. without cooperation from cartels.

Others, however, believe that criminal organizations in Mexico have already established working relationships to smuggle terror operatives into the U.S. Anthony Kimery writes in his 2010 "Southern Exposure" article that special schools have been established by Muslim businessmen in alliance with Mexican cartels to control human smuggling operations. These schools assist terrorists by teaching them to speak Spanish and learn about Hispanic culture. He attributes the decline in the apprehension of Special Interest Aliens (SIA)¹⁷ by the U.S. Border Patrol to these greater precautions to prevent capture.¹⁸ Michael Braun, retired Drug Enforcement Agency (DEA) assistant administrator and chief of operations, believes terror organizations like Hezbollah are already working with Mexican drug cartels, utilizing the same weapons smugglers, document traffickers, and transportation experts. In Braun's view, cartels are willing to work for the highest bidder, and when terror organizations have the funds, of course the

¹⁵ Sara Miller Llana, "Iran assassination plot: Terrorists join forces with Mexican drug cartels?," *The Christian Science Monitor*, October 11, 2011, <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/1011/Iran-assassination-plot-Terrorists-join-forces-with-Mexican-drug-cartels>

¹⁶ Anthony Kimery, "Unholy Trinity," *Homeland Security Today Magazine* 6, no. 8 (2009): 32.

¹⁷ Special Interest Aliens are defined by DHS as aliens from Special Interest Countries.

¹⁸ Anthony Kimery, "Southern Exposure," *Homeland Security Today Magazine* 7, no. 8 (2010): 32.

cartels would do business with them.¹⁹ As a study done for the Department of Defense (DoD) notes in the report Operation Cazando Anguilas (“Hunting Eels”), “profit now indeed trumps ideal[s] and is the singular motivation for participation in illicit activities.”²⁰

By working with terrorist organizations, cartels could not only gain new revenue, but also access to trade routes outside Central-South America. In addition, terrorist operatives could train cartel and gang members in the use of weapons, explosives, and tunneling. For their part, terror organizations would clearly benefit from being able to tap into narco-trafficking revenue streams and networks of corrupt shadowy officials, along with established and protected pipelines for smuggling humans across the border into the interior of the U.S.

While what terrorists might or might not be able to do with cartels is subject to debate, a review of the current literature has failed to produce any substantive attention paid to the specific mechanisms transnational terror organizations could use to infiltrate operatives undetected into the U.S. Most authors focus on *why* terrorist organizations would or would not want to use illegal human smuggling networks to infiltrate operatives into the U.S. Much less attention is paid to the actual conditions that may or may not make entry into the U.S. across this border an attractive prospect.

Not only would a broader understanding of how the border can be penetrated provide greater insight into the ease with which terror operatives might cross it, but a deeper understanding should facilitate the evaluation of the likelihood that terrorists would actually use or prefer this method for infiltrating operatives into the U.S.

E. ROAD MAP

Despite claims that terrorists would be unlikely to use Mexico as a staging ground to get into the U.S., Mexico has been used to gain entry into the U.S. for adversarial

¹⁹ “Hezbollah uses Mexican drug routes into U.S.,” *The Washington Times*, March 27, 2009, <http://www.washingtontimes.com/news/2009/mar/27/hezbollah-uses-mexican-drug-routes-into-us/print/>

²⁰ Kimery, “Unholy Trinity,” 32.

purposes in the past. A quick survey demonstrates that state and non-state actors alike successfully smuggled human operatives across the U.S.-Mexico border: the Germans for the purposes of sabotage during World War I, the Japanese to engage in espionage in Tijuana prior to World War II, and American Indian raiding parties way back in the 19th century. Chapter II will examine these three instances when the border was exploited for subversive or disruptive purposes. Chapter III will review current border and immigration policy, and will examine characteristics and vulnerabilities that could appeal to terror organizations. Chapter IV will investigate documented human smuggling operations, and their implications for successful infiltration of the U.S. from across the U.S.-Mexico border. Chapter V will consider future scenarios and discuss methods to prevent infiltration by terror operatives. Finally, this thesis will suggest avenues for further research and investigation.

II. HISTORICAL PRECEDENCE

“There are such long stretches of unguarded territory that nothing much but laziness need drive a smuggler to take risks.”

Dr. Altendorf testifying to U.S. Senate²¹

Infiltration of the U.S.-Mexico border undetected into the U.S. has happened in the past. Long before the post-9/11 threat of non-state transnational actors crossing the southwestern border, various state and non-state actors have used it as a means to gain access to the U.S. for subversive purposes.

A. STATE SPONSORED SUBVERSION AND DESTABILIZATION

1. German Saboteurs

During the early years of World War I the German Empire did not want to incite the U.S. to enter the war in Europe or increase frictions between the U.S. and Germany. However, Germany needed to find a way to distract the U.S., weaken its influence in Europe, and reduce American material support to the British and other anti-German protagonists. The Germans' most overt method was to attack shipping vessels carrying materiel from the U.S. to Britain using submarine warfare. The less overt approach was to find a way to preoccupy American forces and slow exports. This approach would involve sabotaging American targets on U.S. soil and keeping the focus of U.S. efforts oriented internally. For a variety of reasons, the Germans could not dedicate the required assets to conduct direct attacks on U.S. ports or industrial facilities. Not only were German resources already needed in Europe, but this direct approach would undoubtedly incite a retaliatory response from the U.S.

Germany employed several strategies to subvert or disrupt the U.S. prior to and during WWI. Officially recognized German diplomats, such as the German Consul to

²¹ *Investigation of Mexican affairs, Hearing before Subcommittee of the Committee on Foreign Relations, United States Senate, 66th Cong. 467 (1919).*

San Francisco, Franz von Bopp, made several attempts to instigate what turned out to be rash, impatient, ill-planned, and clumsy attempts at sabotage. Fledgling attempts at clandestine warfare were in direct violation of American neutrality, and German diplomats engaging in them found themselves summarily arrested or expelled from the U.S. by 1916.²² This haphazard approach to subversion and sabotage brought German anti-American activities in the U.S. to the attention of U.S. federal agents like the U.S. Secret Service.

Unable to directly attack the U.S. and its industrial base, the Germans turned to a more indirect approach using Mexico as a platform for destabilizing the U.S. In an effort to use the Mexican Revolution to advantage, Germany backed ousted General Victoriano Huerta. Its aim was to destabilize Mexico in order to draw in the U.S. Facilitating several armed skirmishes along the border and allegedly supporting attacks by Pancho Villa on U.S. soil, Germany successfully caused enough of a disturbance for the U.S. to deploy troops under General John J. Pershing.²³ What Germany perceived to be small successes then emboldened Arthur Zimmerman to make his infamous offer to Mexico, as he tried to incite a declared war between the U.S. and Mexico.

As Foreign Secretary of the German Empire, Arthur Zimmerman sent directions to the German ambassador in Mexico City to propose an official alliance that would lead to Mexico declaring war against the U.S. With the U.S. preoccupied on its southern border, it would hopefully be unable to move supplies and troops to the conflict in Europe. In exchange for Mexico's alliance and assistance, Germany offered to help it regain territories lost to the U.S. in the form of Texas, Arizona, and California. Unfortunately for the Germans, the cable was intercepted and the telegram's contents quickly became known in the U.S. Originally discounted, the telegram was later

²² Richard Spence, "K.A. Jahnke and the German Sabotage Campaign in the United States and Mexico, 1914–1918," *Historian* 59, no. 1 (1996): 98, <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6563.1996.tb00986.x/pdf>.

²³ Mark Gilderhus, "The United States and Carranza," *The Americas* 29, no. 2 (1972): 220, <http://www.jstor.org/stable/979900>.

confirmed as authentic by Arthur Zimmerman himself. In the public eye and under pressure, Mexico denounced the Zimmerman Telegram and denied any allegiance to the German cause.²⁴

In contrast to failed efforts undertaken by high ranking officers and diplomats, German saboteurs operating in both Mexico and the U.S. were highly successful in carrying out operations and avoiding capture traversing the U.S.-Mexico border between 1914–1918. Several German agents operated within the U.S. Of particular note were Kurt Jahnke, Sidney Reilly, and Lothar Witzke. Jahnke operated along the southern border of the U.S. He had a knack for smuggling and used illicit trade to develop networks on both sides of the border. Jahnke largely operated out of the U.S. for much of 1914–1917 until President Wilson’s administration severed diplomatic relations with Germany upon the U.S.’s entry into the war.

As a member of German Naval Intelligence, Jahnke traveled throughout the western U.S., Mexico, and along the Pacific coast. Initially he smuggled goods and drugs from U.S. and Mexican ports to Asia, later shifting to ammunition and arms which Germany wanted funneled to Mexican authorities. Jahnke’s extensive network of personal connections allowed him to jump across the U.S.-Mexico border with ease and avoid detection or detention by law enforcement.²⁵

In 1914, now a special agent of the German Admiralty Staff’s Section for Intelligence and Sabotage, Jahnke began engaging in acts of sabotage along with Sidney Reilly. Jahnke and Reilly blew up powder and other munitions shipments awaiting transport from west coast ports. In 1915, they used Jahnke’s cross-border contacts to facilitate secret shipments of arms and munitions into Mexico to support Huerta’s fighters.²⁶

Jahnke and Reilly continued their activities throughout the western U.S. and Mexico until Jahnke was named chief for German intelligence for the western United

²⁴ Barbara Tuchman, *The Zimmerman Telegram* (New York: Macmillan, 1967), 199–200.

²⁵ Spence, “German Sabotage,” 92–93.

²⁶ Spence, “German Sabotage,” 96.

States in 1916. Berlin sent Jahnke further assistance in the form of Lothar Witzke, another German naval officer and accomplished saboteur. Jahnke and Witzke undertook a series of attacks, beginning with a botched attack on British supply ships near the San Francisco docks that resulted in the bombing of a parade that killed ten people and maimed dozens of others.²⁷ The most infamous attack this trio orchestrated was the July 1916 explosion at Black Tom Island, New Jersey.

German saboteurs set off explosions in the Black Tom Island munitions plant, resulting in an explosion that measured 5.5 on the Richter scale. This explosion not only caused over \$20 million in damage (the equivalent of \$402 million in 2011 dollars), but also damaged portions of Ellis Island, the Statue of Liberty, killed 7 people, and injured hundreds of others. Jahnke and his fellow saboteurs followed this up with further attacks, blowing up the Eddystone munitions plant in Philadelphia. In that attack the plant was destroyed and over 130 people were killed.²⁸ Rough estimates put the total number of attacks at 43 factories destroyed by explosions or fire, along with four dozen ships carrying Allied war supplies destroyed by explosions between 1915 and 1917, *before* the U.S. and Germany were at war.²⁹

In 1917, the U.S. formally entered WWI and severed diplomatic relations with Germany. In the summer of 1917 Mexico City became the base of the German Secret Service in Mexico, serving as the center of operations for espionage and sabotage directed at the U.S. Mexico City served as an ideal headquarters, allowing German agents to operate openly and freely. Although the Mexican government formally denied any involvement with German efforts, they were nevertheless conducted with the full cooperation of Mexican President Venustiano Carranza. Carranza allowed German operatives to move about freely and openly, while the Germans provided Carranza with weapons and munitions, money, and training for his forces. In fact, it was not uncommon for German officers to simultaneously serve as German captains and Mexican colonels.

²⁷ Spence, "German Sabotage," 100.

²⁸ Spence, "German Sabotage," 104.

²⁹ Michael Warner, "The Kaiser Sows Destruction: Protecting the Homeland the First Time Around," *Studies in Intelligence* 46, no. 1 (2002): 7, <https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol46no1/pdf/v46i1a02p.pdf>

This enabled the Germans to operate unhindered, originating and launching subversive strikes in the U.S. from Mexico and attacking U.S. interests in Mexico.³⁰

In Mexico City Kurt Jahnke served as the head of German Naval Intelligence for North America. Jahnke's goal was to establish Mexico as "a safe haven for German covert warfare against America."³¹ With approval to operate from high ranking Mexican officials, and a history of close relationships with local governors in northern Mexico, Jahnke had both informal and formal assistance to facilitate his movement back and forth across the border. Jahnke and Witzke, for instance, successfully exploded munitions in Richmond, California, destroyed a U.S. tanker outside San Francisco, and destroyed a steam schooner in San Pedro, CA.

While these attacks did not change the course of the war, they were still significant. Not only did they attract the attention of U.S. military and law enforcement entities, but they emboldened Berlin to think that German operatives operating out of Mexico could strike targets within the U.S. at will and without capture.

By 1918, Jahnke had risen to become the Chief Secret Agent for Mexico, Central America, the U.S., and Canada. Jahnke controlled a tight-knit group of 15–20 agents in Mexico, and an undetermined number elsewhere. Jahnke's agents were mostly German, but he also employed Russians, Spaniards and a black Canadian.³² Jahnke did not just focus on explosions and acts of terrorism. His strategy included fomenting unrest among minority groups of the military, workers organizations, and other dissident U.S. groups. U.S. authorities considered Jahnke the most dangerous man in Mexico with his ability to move undetected across the Rio Grande, and given the large and dangerous German intelligence network he controlled.

Despite all these seeming successes, German clandestine efforts in Mexico suffered a setback in early 1918. Traveling with seven other German agents to the U.S. on an assassination mission, Witzke was detained by U.S. customs officials after crossing

³⁰ *Investigation of Mexican affairs, Hearing before Subcommittee of the Committee on Foreign Relations, United States Senate, 66th Congress, 459, 462 (1919).*

³¹ Spence, "German Sabotage," 105.

³² Spence, "German Sabotage," 107.

the border at Nogales, AZ. Five of the German agents escaped detention, but Witzke was arrested and U.S. agents found a coded message and cipher table among his belongings. The message confirmed the presence of German secret service agents in Mexico. As it turns out, two of Witzke's travel companions were undercover double agents. The debrief of these two double agents revealed German plans to instigate racial and labor unrest, cause strikes in industrial war supply plants, and blow up mines, industrial plants, transportation systems, and communication facilities.³³

Even after Witzke's arrest, Jahnke continued his subversive activities, and upon orders from Berlin accelerated his campaign to strike strategic U.S. targets, to include the Panama Canal. Jahnke repeatedly traveled back and forth from Mexico to the U.S., meeting and plotting with contacts, coordinating for subversive attacks, and attempting to recruit Mexican-Americans to assist with German covert operations on both sides of the border. As momentum in Europe shifted against the Germans, however, Berlin's focus increasingly became survival. With the signing of the Armistice in November 1918, Jahnke and many of his fellow operatives ceased their subversive activities, sought refuge in Mexico, and eventually filtered back to Germany and the new Republican government.

2. Japanese Spies

If we fast forward to the next world war, what we find are Japanese, rather than Germans, making use of Mexico. Much as the Germans did prior to 1917, the Japanese set themselves up just across the border. The Japanese military sent in operatives from Tijuana to collect intelligence on U.S. civil and military activities. While it is difficult to determine whether Mexican authorities were complicit in these operations or were simply unaware of them, it is certain that Japan recognized that the U.S.-Mexico border was vulnerable to penetration, and was ideal for gaining illegal and undetected access to the U.S.

In 1934, a young U.S. Customs agent named Carl Eifler was assigned to Tijuana, Mexico to gather intelligence on illegal alcohol trafficking to and from the U.S. and

³³ David Bisant, "William Gleaves and the Capture of Lothar Witke," *National Security Agency Newsletter* 47, no. 7 (1999): 5, <http://www.fas.org/irp/nsa/1999-07.pdf>

Mexico. Eifler's focus was to identify where alcohol was entering the U.S., determine who was behind the illegal alcohol trafficking, and uncover how the illegal alcohol was being smuggled.

In April, as Eifler was seeking information on bootleggers, he casually observed three Japanese males enter the bar he was in. While it was not uncommon to see foreign crewmen out for a good time in Mexican ports, the mannerisms, dress, and haircuts of these Japanese men made them stand out. For one, none of them understood or spoke Spanish, all were dressed in clothing atypical for the area, and they all carried an air of stiffness not usually associated with sailors or merchant seamen. Instead, they quietly gambled and played games in the bar for over an hour, then walked out into the night. Sensing something unusual, Eifler trailed the men through a series of twisting dingy streets to a small grocery store.

Eifler spotted small groups of Japanese men in this same bar on other nights. This aroused his curiosity and he determined to find out what they were doing. He followed each group as they left the bar and, without exception, they all took the same winding path and disappeared into the same small windowless grocery store. Utilizing his network of informants, Eifler discovered these men were members of the Japanese military. This startling information caused Eifler to launch a month-long investigation.

The information Eifler compiled was startling: he identified a base camp established just twelve miles from the California border, with its own artesian well and a natural airdrome previously utilized by smugglers being used by a task force of over 400 Japanese Army and Imperial Navy Officers of varying ranks and from different branches of service. A check with Mexican immigration officials revealed no evidence or documentation of their presence in Mexico, indicating that the Japanese officers had entered the country illegally.³⁴ Because Japanese operatives were moving across the U.S.-Mexico border undocumented, they managed to conduct activities without raising

³⁴ Thomas Moon and Carl Eifler, *The Deadliest Colonel* (New York: Vantage, 1975), 8.

the suspicion of border or customs agents. Even more stunning were reports that these Japanese military personnel were regularly crossing the border to visit the Long Beach and San Pedro naval shipyards.³⁵

In addition to the Japanese military officers hiding out in Mexico just 12 miles from the U.S. border, Eifler also discovered a number of Japanese exchange professors in various positions in Mexican universities and at multiple levels of the Mexican government. While some of these individuals advocated stronger economic ties to Japan, others met with high level Mexican officials to discuss Japan's intent to go to war with the U.S., and the possibility of using land in northern Mexico and southern California from which to stage troops and supplies.³⁶ Given this information, Eifler felt certain that Japan was planning on war with the U.S. by initially attacking U.S. Navy targets in Southern California.

Despite the unwillingness of Eifler's superiors to act on his information, Eifler continued to take note of Japanese activity along the U.S.-Mexico border. Several months later, the Japanese government requested authorization to bring Japanese ships into Long Beach and San Pedro in order to store and trans-ship prawns from Mexican markets to Japan. This process was not at all uncommon at the time, so even with Eifler's very detailed report, the U.S. government granted permission for Japanese ships to enter the U.S. ports. Eifler continued to follow the Japanese, noting that all the "fishermen" conducted themselves with stereotypical military bearing.³⁷

Whether Eifler's report was lost, ignored, or simply not properly processed remains a mystery. Japan had not been antagonistic toward the U.S. up to this point, so the presence of Japanese military officers in Tijuana, Mexico may not have seemed overly troubling. In addition, the federal government lacked a mechanism or institution to collect and action intelligence from various federal, state, and local law enforcement entities.

³⁵ Moon and Eifler, *Deadliest Colonel*, 9.

³⁶ Moon and Eifler, *Deadliest Colonel*, 10.

³⁷ Tom Moon, *This Grim and Savage Game: OSS and the Beginning of U.S. Covert Operations in World War II* (Los Angeles: Burning Gate, 1991), 4.

Although Eifler's report did not raise much alarm or suspicion, it did circulate through the various understaffed intelligence services. After reading Eifler's report, a Navy Captain in Pearl Harbor noticed Japanese naval officers putting on civilian clothes and boarding U.S. naval vessels under the guise of selling merchandise in 1936.³⁸ At least President Roosevelt took seriously these Japanese attempts to gain access and collect information on U.S. naval activities. He informed Secretary of State Stinson he had knowledge of a 100 year plan developed by the Japanese in 1889 to defeat the U.S. and claim property in the Pacific.³⁹

Unexpectedly but fortunately, the Japanese threat disappeared almost as suddenly as it had appeared. By the end of 1934 the Japanese seemed to vanish, indicating that whatever potential alliance they sought through Mexico failed to materialize. However, even though the immediate threat of Japan crossing through Mexico dissipated, their probing shed light on the potential for trouble from south of the border.

3. Mexico as a Base of Operations

What these two examples reveal is the proven potential for adversaries of the U.S. to use the U.S.-Mexico border to gain undetected entry into the U.S. With large stretches of unguarded territory, the border has long lent itself to smuggling activities in both directions. In the case of Germany's clandestine subversion campaign, the porous border allowed operatives to move back and forth across the border and conduct attacks on targets within the U.S. In the case of Japan's clandestine espionage campaign, the porous border allowed operatives to move back and forth across the border to gather information regarding civil and military institutions and targets.

In both instances adversaries were able to establish a base of operations in Mexico to facilitate their cross-border operations. Although I have not found documented evidence of support bases on the U.S. side of the border, it is reasonable to assume a support network was in place to receive operatives. This is evidenced in the coded cipher

³⁸ Moon and Eifler, *Deadliest Colonel*, 11.

³⁹ Moon and Eifler, *Deadliest Colonel*, 11.

Lothar Witzke was captured with. The cipher relayed instructions for his reception and assistance from German Consular Authorities, implying a support structure hidden within German embassies and diplomatic offices in the U.S.

B. NON-STATE AND TRANSNATIONAL “INFILTRATION”

1. American Indians

Not only have state actors exploited vulnerabilities to infiltrate the U.S., but non-state actors have also found opportunity and advantage in openly crossing into the U.S. from Mexico for their own illicit gain. During the 19th century, the border between the U.S. and Mexico was not well defined or secured. Massive instability within Mexico caused by numerous changes of government along with the Mexican Revolution meant control and order were up for grabs in the northern territories. Indians, particularly the Apache and Comanche, exploited the relatively open and unenforced land border between the two countries (or three countries if we include the Republic of Texas). War parties and entire Indian bands moved south into Mexico and back into the U.S. at will, and while they did not seek to disrupt the government per se, their open disdain for law enforcement and government initiatives made them a significant threat.

Frequently, bands of Apache and Comanche Indians would sweep through the territories of northern Texas and Arizona, killing and plundering other Indian tribes and non-Indian settlers alike. Indian raiders were known to torment, torture, kill, and even kidnap men, women, and children. Often they were bent on destruction or vengeance for some depredation against them. However, pillaging for economic gain, plundering horses, and kidnapping settlers for sale as slaves were also common.

Following the annexation of the territory of Texas and the signing of the Treaty of Guadalupe Hidalgo, the U.S. government faced a significant problem with regard to demarcating the new international boundary and dealing with the approximately 160,000 Indians residing within the territories it had just annexed. Particularly difficult to deal with were the Apache and Comanche. Unlike other tribes who attempted to assimilate,

many Apaches and Comanches learned they could live off the spoils of the chase and plunder taken from the inhabitants of both annexed territories and northern Mexico.⁴⁰

While Washington was quarreling over the status of slavery, Indian policy in the Southwest often depended on the strength and conviction of local authorities. The central Mexican government likewise “forced” local authorities in northern Mexico to have to deal with the problem through their own means and resources, claiming the Indian problem did not constitute a threat by an external enemy. While Article XI of the Treaty of Guadalupe Hidalgo made it unlawful for anyone living in the U.S. to provide Indians with firearms or ammunition, lack of resources made enforcement of this nearly non-existent. Making things more difficult were austere environmental conditions, the lack of infrastructure on Indian lands, and the presence of both sympathizers and unscrupulous traders along the border. The lack of agreement among federal, state, and military authorities created all sorts of exploitable opportunities for the Indians.⁴¹

Indian raiding parties quickly adapted tactics to take advantage of disputes preventing U.S. authorities from crossing into Mexico, or Mexican authorities from pursuing Indian raiding parties into the U.S. Living, roaming, and trading throughout northern Mexico’s territories for years, members of the Lipan band of Apache, for instance, were highly sought for their expertise and knowledge in navigating the region. Comanche raiding parties utilized Lipan Apache guides for information about routes, terrain, remote sanctuaries, and watering holes. The Lipan were also instrumental in identifying settlements and ranches which were easy targets or rich with assets to plunder.⁴² Comanche raiding parties used this information to evade Mexican authorities who could not pursue them due to a lack of resources and knowledge about the terrain. Aware that authorities could not and would not pursue them into the rugged hills, Indian

⁴⁰ J. Fred Rippy, “The Indians of the Southwest in the Diplomacy of the United States and Mexico, 1848–1853,” *The Hispanic American Historical Review* 2, no. 3 (1919): 365–366, <http://www.jstor.org/stable/pdfplus/2505956.pdf?acceptTC=true>

⁴¹ J. Fred Rippy, “The Indians of the Southwest in the Diplomacy of the United States and Mexico, 1848–1853,” *The Hispanic American Historical Review* 2, no. 3 (1919): 365–366, <http://www.jstor.org/stable/pdfplus/2505956.pdf?acceptTC=true>

⁴² Brian DeLay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (New Haven: Yale University Press, 2008), 53–54.

raiders used key ungoverned areas as safe havens. These sanctuaries allowed Indians to recover, prepare, and organize for further attacks on Mexican and U.S. settlements.⁴³ Kiowa and Comanche raiding parties were also known to evade capture by fleeing to designated Indian reservations. Indian raiding parties regularly crossed below the Red River to commit atrocities inside northern Mexico and Texas, only to return to the safe haven of government-established reservations where they could not be touched.⁴⁴ In just one year, the Mexican territory of Nuevo Leon, adjacent to Texas, suffered 62 people killed, 30 wounded, 16 taken captive, and the theft of over a thousand animals. Lack of agreements to handle reciprocal crossing of the border in order to pursue Indian raiding parties further emboldened Indian raiders as far as Yuma, Arizona.⁴⁵

The lack of a coherent policy on either side of the border was clearly problematic. What compounded local difficulties was the demand for illicit Indian goods. U.S. and Mexican authorities registered complaint after complaint regarding unscrupulous and shady traders who not only turned the Indians against the authorities, but exchanged firearms and ammunition with them for plunder and captives. Over time, plundering became the Indians' chief means of survival.⁴⁶

With the end of the Civil War, finally, there were military resources available to put to use against the Indians. Unfortunately, the approach adopted by men like Colonel J.M. Chivington and General William Tecumseh Sherman were often brutal and openly invited conflict with the Indians. While most initiatives were designed to push Indians onto reservations or designated Indian territories in the west, some campaigns were designed to decimate and exterminate as many Indian men, women, and children as possible.⁴⁷ These attacks only invited retaliatory Indian war parties, fueled by the sacred need for revenge and vengeance. Further aggression by government troops only ratcheted up the violence, creating a self-reinforcing phenomenon and raising the frequency and

⁴³ DeLay, *Thousand Deserts*, 127–128.

⁴⁴ Ty Cashion, *A Texas Frontier: The Clear Fork Country and Fort Griffin, 1849–1887* (Norman: University of Oklahoma Press, 1996), 107.

⁴⁵ Rippy, “Indians of the Southwest,” 386, 366.

⁴⁶ Rippy, “Indians of the Southwest,” 368.

⁴⁷ DeLay, *Thousand Deserts*, 257.

intensity of violent attacks. Whereas isolated pitched battles successfully attrited warring Indian tribes, the inability of U.S. or Mexican authorities to pursue raiding war parties across the border prevented the raiders' eradication.

In 1882, an agreement was reached that finally reduced Indian access to their traditional sanctuaries and removed their ability to evade pursuit by law enforcement. U.S. and Mexican authorities now had the freedom to pursue raiding parties across the border. This, for instance, is how General George Crook defeated Geronimo and the Chiricahua Apaches in 1886. Following numerous failed attempts to make peace with Geronimo, General Crook pursued Geronimo and his band of dissident warriors through Texas. Hotly pursued by General Crook's forces, Geronimo and his warriors evaded Crook by fleeing into Mexico where they took refuge in their old safe haven in the Sierra Madres. However, this time Captain Crawford, one of Crook's men, continued to dog Geronimo, overtaking him at Teopa, Mexico. Here a combination of U.S. and Mexican forces forced Geronimo to flee north back across the Rio Grande. Back in the U.S., Geronimo was pursued through the mountains and eventually captured by General Nelson Miles in Skeleton Canyon, Arizona. Working in concert, U.S. and Mexican officials were finally successful in attriting depredating Indian bands or driving them to relocate upon designated reservations.⁴⁸

The ability of the Apache and Comanche Indians to freely traverse the U.S.-Mexico border is significant as an example of non-state actors exploiting vulnerabilities along the border to elude law enforcement for their own gain. Not only did raiding Indian parties sustain themselves off plunder, but they also fed a thriving market for illicit goods both north and south of the border. Stolen and smuggled livestock and human trafficking of captives made Indian raiders of the day quite wealthy. Their ability to utilize their knowledge of the terrain to avoid and evade law enforcement ensured their success. Today, non-state actors utilize this same knowledge to avoid and evade law enforcement. Drugs, guns, and illegal immigrants today are akin to the livestock and captive slaves of yesterday.

⁴⁸ The Apache War on the Mexican Border, excerpt from "Outlawry on the Mexican Border," James Pilcher, *Scribner's* 1, no. 1 (1891): <http://www.discoverseaz.com/History/ApacheWar.html>

C. CONCLUSION

Numerous enhancements have been made to border security since the events described in this chapter. However, the integrity of the border remains an issue that should be at the forefront of U.S. national security concerns. Given these examples, it is possible to imagine a scenario in which terrorist operatives might view the U.S.-Mexico border much as the Germans, Japanese, or even Apaches and Comanches once did: as a means by which to obtain entry into the U.S. undetected by law enforcement authorities.

III. PROBLEMS NOW

“If smugglers can bring in tons of marijuana and cocaine at one time and can smuggle 20 to 30 persons at one time, one can just imagine how easy it would be to bring in 2 to 3 terrorists”

Sigifredo Gonzalez, Sheriff, Zapata County, Texas⁴⁹

A. IMMIGRATION ORGANIZATION

1. Foundation

Although not formally defined until the La Paz Agreement of 1983, the border region or the approximately 2,000 miles of border, to include an approximately 63 mile-long strip on either side, has attracted increasing attention as a target for law enforcement. As attention and focus on the border region have grown, border enforcement efforts have evolved.

The history of informal and formal immigration and naturalization enforcement in the U.S. goes all the way back to the country’s fledgling days. However, it was not until 1890 that the federal government took ownership of immigration regulation and passed the Immigration Act of 1891. This established a Commissioner of Immigration in the Treasury Department. This office would change names and locations until it officially became the Immigration and Naturalization Service (INS) under the Department of Labor in 1933.⁵⁰ The INS moved to the Department of Justice in 1940, where it became the primary agency for enforcing laws relating to naturalization, along with preventing and deporting individuals who illegally entered or resided in the United States.⁵¹

⁴⁹ *A Line in the Sand: Confronting the Terror Threat at the Southwest Border*, House Committee on Homeland Security, Subcommittee on Investigations, Michael T. McCaul, Chairman, (2006), 30, http://www.house.gov/sites/members/tx10_mccaul/pdf/Investigaions-Border-Report.pdf

⁵⁰ Additionally, in 1924 the U.S. Border Patrol was created under the Labor Appropriation Act of 1924.

2. The U.S. Immigration and Naturalization Service

The INS would grow commensurate with numbers of people illegally entering the U.S. and in response to the adverse effects of illegal immigration on communities along the border and further inland. Unprepared for the magnitude of the tasks it would be called upon to perform, to both seal off a porous border and provide services for ever growing numbers of immigrants, the system bogged down. The INS proved inconsistent in its ability to manage enforcement while also attending to the huge backlog of adjudication requests. With enforcement from the INS lagging, the number of illegal immigrants moving into the U.S. mounted. Compounding these problems were increasing public and political pressure to get the INS to be more enforcement-minded. Unfortunately, while this was transpiring the budgets for the INS and the Border Patrol remained relatively flat. This meant, as the flow of illegal immigrants grew, the capabilities to stop them remained stagnant. Although the INS budget did more than double in 1997, most of the increase in spending went to enforcement initiatives and not to processing immigration backlogs. The INS was also significantly hampered by discrepancies between national policy and disastrously under-staffed and thinly operated district offices. By 1997, many called for sweeping overhauls of the INS, with some, such as the U.S. Commission on Immigration Reform, even suggesting abolishing the agency.⁵² As the *New York Times* put it in 1997, the INS's dual job of policeman and social worker left the INS exceptionally inept at its most essential tasks, emphasizing police work to the detriment of processing legal immigrants.⁵³

3. The U.S. Department of Homeland Security

Responding to the events of September 11, 2001, the U.S. government passed the Homeland Security Act of 2002, which restructured the agencies charged with protecting national security. The Homeland Security Act of 2002 created the Department of Homeland Security (DHS), and charged it with preventing terrorist attacks within the

⁵² *INS Reorganization* (Washington: American Immigration Lawyers Association, 2001), 1.

⁵³ "Salvaging the I.N.S.," *New York Times*, August 10, 2007, <http://www.nytimes.com/1997/08/10/opinion/salvaging-the-ins.html>.

U.S., reducing vulnerability to terrorism and minimizing the damage and assisting recovery efforts in the wake of terrorist attacks. The creation of the DHS not only signified a new focus on terrorism and protectionism, but merged 22 agencies into one department.

This reorganization of assets and capabilities caused the INS to be subsumed under the directorate of Border and Transportation Security, partitioning the functions of INS into four new agencies. The U.S. Citizenship and Immigration Services would handle administration of immigration services, such as permanent residence, naturalization, and asylum. The investigative and enforcement responsibilities would fall under U.S. Immigration and Customs Enforcement (ICE), aimed at enforcing immigration laws within the U.S. Finally, INS prevention functions along the borders were controlled by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard (not really a new agency). CBP integrated customs, immigration, and agricultural inspectors to provide a unified “one face at the border” effort. It is important to note that while CBP’s goal was to integrate enforcement efforts along the U.S. border, the Border Patrol remains a distinct unit with its own officers and mission under CBP.⁵⁴

CBP is tasked by the National Border Patrol Strategy to be the authoritative law enforcement agency protecting the nation’s borders and ensuring the U.S. is not penetrated by terrorists, unauthorized migrants, human smugglers, human traffickers, drug smugglers, or contraband. Under CBP and the reprioritization of capabilities, one of the Border Patrol’s primary missions, to establish and maintain operational control of the U.S. border between ports of entry, was expanded to include preventing terrorists and terrorism weapons from entering the U.S. This then also meant an increased focus on inhibiting smuggling networks from moving undocumented aliens and drugs across the border into the U.S.⁵⁵

⁵⁴ “U.S. Immigrations and Customs Enforcement (ICE): History,” *AllGov*, http://www.allgov.com/agency/U_S_Immigration_and_Customs_Enforcement_ICE.

⁵⁵ The Office of Border Patrol and the Office of Policy and Planning, *National Border Patrol Strategy: Office of Border Patrol* (Washington: U.S. Customs and Border Protection, 2004), 3.

B. POLICY

Illegal immigration has been a target of attention for both Mexican and American authorities and governments along the “border region” going all the way back to the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase of 1853. This formally made the territories of Texas, New Mexico, Arizona, and California part of the U.S. Mexican authorities attempted to prevent illegal American immigration into its northern regions, while American authorities attempted to restrict undocumented migration flows and shut down corridors for smuggling.⁵⁶

1. 1900s–1990s: From Guest Workers to Illegal Immigrants

Historically, cross-border movement between the southwestern U.S. and northern Mexico was largely unregulated and unproblematic. Most of the population in the southwestern states was of Mexican origin, often with families on both sides of the border. This situation lent itself to a high degree of social, cultural, and economic interdependence. Most cross-border traffic revolved around migrants moving back and forth to fill demands for cheap labor. Legal entry was a cumbersome process, whereas illegally crossing the border was relatively easy to accomplish.

World War I ushered in significant changes. Labor shortages during the war and expansion of agriculture throughout the southwest sparked a massive influx of migrant workers. Economic disparity in Mexico following the Mexican Revolution further motivated migrants to seek higher paying jobs in the U.S. in order to provide for their families in Mexico. World War I also saw an increase in restrictions on European immigration, which in turn turned the U.S.-Mexico border into a lucrative backdoor for illegal European immigrants.⁵⁷

Mexican immigrants alone accounted for roughly half a million immigrants who illegally entered the U.S. during the 1920s. But then, the Great Depression forced legions

⁵⁶ David Kyle and Rey Koslowski, *Global Human Smuggling: Comparing Perspectives* (Baltimore: John Hopkins University Press, 2001), 108.

⁵⁷ Kyle and Koslowski, *Global Human Smuggling*, 109.

of unemployed Americans into low wage jobs; illegal immigration from Mexico dried up. With World War II, demand returned, encouraging another wave of legal and illegal migrant workers to enter the U.S.

In the attempt to manage the labor recruitment process for agribusiness, a guest worker arrangement called the Bracero Program was instituted and run between 1942 and 1964.⁵⁸ The Bracero Program allowed experienced Mexican farm laborers to legally work at wages far below comparable American rates, but far above the peasant wages many were earning in Mexico. The Bracero Program turned out to be a boon for agribusiness in the southwest, but it also produced two unintended and significant side effects. It established the culturally accepted exploitation of migrant laborers and it firmly entrenched the symbiotic relationship between U.S. employers and migrants willing to serve as cheap labor.

In order to avoid exploitative contracts, which some contended bordered on legalized slavery, a large number of migrant workers chose to illegally cross the border and work under the auspices of the Bracero Program, but without a contractual obligation. Hotly contested and debated, the Bracero Program ended in 1964, and all but ensured the institutionalization of illegal cross-border human smuggling to fill U.S. labor shortages.⁵⁹ For example, annual apprehension of illegal immigrants by the INS jumped from 23,000 in 1960 to over 345,000 in 1970, even climbing higher than 1,000,000 apprehensions by 1978. While undocumented alien movement cannot be definitively measured through apprehension statistics, these do reflect a substantial increase in the flow. Or, as one writer summarized it, “the guest workers of one era became the illegal immigrants of the next.”⁶⁰

Despite the increase in illegal migrants, the INS remained limited in its capacity to enforce and control the border. Despite even higher numbers of apprehensions and

⁵⁸ Kyle and Koslowski, *Global Human Smuggling*, 109.

⁵⁹ “The Bracero Program,” <http://www.farmworkers.org/bracerop.html>

⁶⁰ Kitty Calavita, “The New Politics of Immigration: Balanced Budget Conservatism and Symbolism of Proposition 187,” *Social Problems* 43, no. 3(1996), 289, <http://www.jstor.org/stable/pdfplus/3096979.pdf?acceptTC=true>

deportations, migrants continued to try to illegally enter until they were successful. Efforts by Border Patrol and the INS were perceived as symbolic and failed to significantly deter illegal entry or reentry.

A series of programs and new agencies through the 1970s and 1980s sought to increase cooperation across the border. Even with increased arrests and prosecutions under these initiatives, undocumented migrants and the smuggling networks that moved them north remained generally undeterred. Not until the Immigration Reform and Control Act (IRCA) of 1986 did U.S. policy significantly address illegal immigration. IRCA imposed sanctions on employers of illegal immigrants, offered a general legalization for certain undocumented aliens already in the U.S., and authorized the expansion of the Border Patrol. While IRCA was intended to satisfy the need for cheap labor and inhibit the hiring of illegal workers, it had much the opposite effect. IRCA not only made illegal entry more attractive, since migrants now hoped to obtain a green card via the legalization program, but it also increased business for smugglers and those producing fraudulent documents.⁶¹

IRCA did lead to expansion of Border Patrol efforts and invigorated a new enforcement campaign. The number of deployable agents was nearly doubled, and they were now empowered with new technologies like ground sensors, cameras, and helicopters. The ability to apprehend and detain illegal immigrants rose, but failed to keep pace with the desire of migrants to get into the U.S. for green cards or for employment.

2. 90s Initiatives

Rising concerns over illegal immigration issues led the Border Patrol to experiment with a strategy of “prevention through deterrence.” Instead of waiting to detect and apprehend illegal aliens inside the U.S., this new strategy aimed to prevent illegal crossing at the actual border. This included the addition of thousands of agents along the border, improved infrastructure such as roads, lights, and ten-foot-tall steel

⁶¹ Kyle and Koslowski, *Global Human Smuggling*, 113.

fences, the use of remote surveillance cameras with night vision and thermal imaging, and the collection of illegal immigrant information in the Automated Biometric Identification System (IDENT) database.⁶²

In 1993, Operation Hold the Line, in El Paso, Texas, represented the first application of this experimental strategy. Border Patrol agents positioned themselves in close proximity and in clear view along the Rio Grande River. The operation was highly successful as a deterrent, indicated by a 76% drop in apprehensions along that stretch of border. The apparent success of this operation not only led to its replication along other sectors of the border, but ushered in a bona fide policy shift.⁶³

Following Operation Hold the Line in Texas, CBP chose San Diego for the next stage of implementation because its 66 mile portion of the border accounted for 40% of the Border Patrol's apprehensions. Launched in 1994, Operation Gatekeeper deployed border agents to high visibility fixed positions in a three tiered defense. Initial apprehensions rose but quickly fell, attributed to the deterrent effectiveness of the operation. Despite political debate over Operation Gatekeeper's validity, it successfully pushed the flood of undocumented aliens east into the barren and inhospitable middle ground in Arizona.⁶⁴ Authorities believed this would deter illegal immigrants from attempting to cross such difficult terrain. It did not. Proof comes from humanitarian and civil liberties groups who vilify the policy, attributing as many as 5,600 migrant deaths to the rugged mountains and deserts since Operation Gatekeeper's inception in October 1994.⁶⁵

⁶² Rob T. Guerette and Ronald V. Clarke, "Border Enforcement, Organized Crime, and Deaths of Smuggled Migrants on the United States – Mexico Border," *European Journal on Criminal Policy and Research* 11, no. 2 (2005), 163, from ProQuest.

⁶³ Guerette and Clarke, "Border Enforcement, Crime, and Deaths," 163.

⁶⁴ Department of Justice, *Operation Gatekeeper: Background to the Office of the Inspector General Investigation* (Washington: Department of Justice, 2007).

⁶⁵ Gene Cubbison, "Operation Gatekeeper, 15 years later," *NBC San Diego*, September 30, 2009, <http://www.nbcsandiego.com/news/politics/Operation-Gatekeeper-at-15--62939412.html>

Following Operations Hold the Line and Gatekeeper, CBP launched successive “deterrence” operations. Operation Safeguard was established in the Tucson sector of Arizona, where the Border Patrol increased numbers of agents, checkpoints, fences, and assets to gain control over high volume trafficking areas. In 1996, the Nogales area of Tucson was the busiest illegal immigrant corridor in Arizona; following Operation Safeguard, apprehensions decreased by 30%.⁶⁶

3. Post 9/11 Initiatives

In 2005, DHS launched the Secure Borders Initiative (SBI), a comprehensive national multiyear plan to secure America’s borders and significantly reduce illegal immigration. SBI called for an increase in agents to secure ports of entry and to patrol borders, upgrade technologies used to control the border, increase investment in infrastructure improvements along the border, enforce immigration laws inside the U.S., and expand detention and removal capabilities to eliminate “catch and release” practices.⁶⁷ Increased funding did lead to more detention spaces and additional officers, but the most significant result of SBI was the development of the SBInet.

Launched in 2005, SBInet was designed to be an integrated, comprehensive system managed by CBP to maximize state of the art systems and traditional security infrastructure in order to make up for shortages of personnel and infrastructure in remote areas. SBInet, or the “virtual fence,” utilized a combination of ground sensors, cell towers, remote cameras, and other complicated arrays of technology to detect, identify, and swiftly bring a threat to the attention of border officials. Through SBInet a massive amount of new technology was put in place along the southwest border. However, SBInet was also plagued by delays and weakness in detection and data transfer. Originally scheduled for operation in eight months, SBInet was “consistently over

⁶⁶ Immigration and Naturalization Service, *Backgrounder: Immigration Enforcement in Arizona – 1997–2000* (Washington: Department of Justice, 2000).

⁶⁷ “Fact Sheet: Secure Border Initiative,” *Department of Homeland Security*, November 2, 2005, http://www.dhs.gov/xnews/releases/press_release_0794.shtm

budget, behind schedule and simply not delivering the return on investment,” according to Homeland Security Secretary Janet Napolitano as recently as 2011.⁶⁸

In 2007, CBP opened the Office of Alien Smuggling Interdiction (ASI) to deter, detect, and disrupt illegal migration into the U.S., as well to increase criminal prosecution of smugglers and human traffickers.⁶⁹ ASI shares information regarding migrant smuggling and clandestine terrorist travel not only among CBP agencies, but also works in concert with other law enforcement agencies like the Human Smuggling Trafficking Center and the National Targeting Center. ASI actively pursues alien smuggling threats through subordinate units such as Passenger Analysis Units, Regional Carrier Liaison Groups (RCLG), the Immigration Advisory Program (IAP), and the Fraudulent Document Analysis Unit. Of note, the RCLGs are specially trained CBP officers who work out of airports and share information among carriers along with immigration authorities and other liaisons to coordinate the targeting and identification of inadmissible aliens. Use of advanced targeting techniques and shared intelligence allows RCLGs to identify passengers who are potential security threats prior to them boarding U.S.-bound flights from foreign ports of departure. Even with the ever increasing sophistication of those in the fraudulent document industry, increased scrutiny at POEs, such as airports, have dramatically increased deterrence for would-be terrorists from Special Interest Countries who are less likely now to use traditional ports of entry to gain clandestine access to the U.S.⁷⁰

In March 2009, Secretary Napolitano launched the Southwest Border Initiative (SWI), a series of initiatives designed to enhance border security and increase immigration enforcement. The SWI was an attempt to overcome existing failed

⁶⁸ Mary Rose Roberts, “Napolitano Pitches Southwest Border Initiative, Announces End to SBInet,” *Urgent Communications*, February 1, 2011, http://urgentcomm.com/networks_and_systems/news/napolitano-southwest-border-initiative-20110201/

⁶⁹ Jeffrey Sawyer, “CBP opens Office of Alien Smuggling Interdiction,” *U.S. Customs and Border Protection Today*, Apr/May 2007, http://www.cbp.gov/xp/CustomsToday/2007/apr_may/alien_smuggle.xml

⁷⁰ *Enhancing DHS’ Efforts to Disrupt Alien Smuggling Across Our Border, Hearings before Subcommittee on Border, Maritime and Global Counterterrorism of the Committee of Homeland Security, House of Representatives*, 111th Cong. 4–5 (2010) (Statement of Michael Fisher, Chief of Border Patrol, U.S. Customs and Border Protection).

programs (e.g., SBInet). Unlike the one size fits all approach of SBInet, Secretary Napolitano and DHS redirected resources previously intended for SBInet to address needs unique to individual sectors along the U.S.-Mexico border. Secretary Napolitano announced an additional \$600 million in supplemental funds as part of the SWI to increase technology, manpower, and infrastructure. These funds supported an increase of 1,000 new border patrol agents, 250 ICE agents, and 250 CBP officers at ports of entry; they also bought additional technologies like unmanned aerial vehicles, non-intrusive inspection equipment at ports of entry, thermal imaging systems, backscatter x-ray units and remote video surveillance systems.⁷¹

C. CATCHING

1. Who's Really in Control?

The Office of Border Patrol, under CBP, is the designated federal agency responsible for securing the nation's borders between ports of entry.⁷² Despite the magnitude of this task, in 2010 the Border Patrol reported it had 873 or 44% of the nearly 2,000 miles of shared border with Mexico under operational control.⁷³ The Border Patrol defines operational control as border miles where the Border Patrol has the ability to detect, respond, and interdict cross-border illegal activity.⁷⁴

The Border Patrol classifies security along the border according to five levels, reflecting a defense in depth strategy. "Operational control" covers the top two levels, and is distinguished as the ability to deter, detect, and apprehend illegal entries at the immediate border (controlled) or after entry up to 100 miles or more inland (managed). Below these two levels is the "monitored level." "Monitored" means that the Border

⁷¹ Roberts, "Napolitano Pitches Southwest Border Initiative."

⁷² Ports of entry are defined as officially designated facilities to provide controlled entry into and departure from the U.S.

⁷³ United States Government Accountability Office, *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border*, report no. 11-374T, Testimony before the Subcommittee on Border and Maritime Security, Committee on Homeland Security, House of Representatives, 5 (2011) (Statement of Richard M. Stana, Director Homeland Security and Justice Issues).

⁷⁴ GAO, *Preliminary Observations on Southwest Border*, 2.

Patrol has a high probability of detecting illegal cross-border activity, but the ability to respond can be hampered by inaccessibility of areas or unavailability of resources. The fourth level is “low level monitored,” defined by lack of resources or infrastructure which inhibit detection or interdiction of cross-border illegal activity. Finally, the lowest level is “remote or low activity,” meaning the absence of meaningful border control thanks to any or all of the above.⁷⁵

A closer look at the 873 miles of border under operational control reveals that only 15% was controlled, while the remaining 85% was classified as managed.⁷⁶

A careful distinction needs to be made when talking about operational control. The Border Patrol’s definition does not actually require agents to have the ability to detect and apprehend ‘all’ illegal entries into the U.S. In 2009, the Yuma sector, which reported operational control for all of its border miles, reported that of the illegal entries it knew about half were apprehended, 40% were turned back, and about 10% “got away.” While 10% in a sector under complete operational control is significant in its own right, two thirds of the remaining 1,120 border miles not under operational control were classified at the monitored level. This implies that for over 1,087 miles of the southwestern border, there was an even greater likelihood that much more than 10% “got away.” *Worse*, this still left over 373 miles of border at the low level monitored level.⁷⁷

2. Apprehension at the Border

Increased scrutiny by DHS officials at U.S. and foreign ports of entry and departure has undoubtedly deterred or significantly altered the plans of individuals with ties to terrorist organizations from traveling to the U.S. through traditional ports of entry.

Increased enforcement and a drop in numbers in the San Diego sector, for instance, has led the Border Patrol in the Organ Pipe National Forrest of Arizona to apprehend illegal immigrants all the way from Tijuana, Mexico. The fact that Mexican

⁷⁵ GAO, *Preliminary Observations on Southwest Border*, 8.

⁷⁶ GAO, *Preliminary Observations on Southwest Border*, 8.

⁷⁷ GAO, *Preliminary Observations on Southwest Border*, 10.

immigrants who literally live across the river from San Diego are willing to travel over 500 miles to the east reflects their relentless drive to cross, and the changing nature of smuggling. While security is better at San Diego, it has not stopped illegal immigration, but simply redirected the stream of illegal crossers to other less fortified areas, like Arizona. For example, from fiscal year 1994 (FY94) to FY03, apprehension numbers in the San Diego sector dropped from 450,152 in 1994 to 111,515 in FY03. Similarly, the overall numbers for Texas dropped from 340,611 in 1994 to 297,550 in FY03. Meanwhile, the overall numbers for Arizona more than doubled from 160,684 to 404,025 in FY03. While California, Arizona and Texas saw a significant surge in numbers peaking in FY00, all saw a decrease in numbers following beefed-up border security strategies following the 9/11 attacks. For example, overall apprehensions went from 979,101 in FY94 to 1,643,679 in FY00, and down to 893,422 in FY03.⁷⁸ Yet, as enforcement increased in San Diego after 1995, apprehensions and illegal cross-border activity steadily increased in Arizona. Again, Arizona remains the most active sector compared to others since 2000.⁷⁹

While smugglers have resorted to utilizing more austere sections of the border to conduct illegal cross-border activities, they are also utilizing technology to increase their chances of success. As CBP increases its use of technologies and systems, smugglers have also gone high-tech. Smugglers have begun issuing routes, directions, and even providing “cyber-coyote” services for illegal border crossers. Using cell phones in concert with numerous spotters, smugglers are able to monitor the border region’s strategic lookout points in order to steer migrants, as well as drug shipments, through the desert and away from the authorities.⁸⁰

Success in expanding border security and an increased border security presence have likely obstructed historic and traditional smuggling routes used to illegally enter the

⁷⁸ Guerette and Clarke, “Border Enforcement, Crime, and Deaths,” 161–162.

⁷⁹ U.S. Customs and Border Protection uses number of apprehensions by Border Patrol as a key indicator of progress against illegal immigration. However, apprehension statistics only reflect the percentage of illegal crossers who were actually *caught* by the Border Patrol.

⁸⁰ Marc Lacey, “Smugglers Guide Illegal Immigrants with Cues Via Cell Phone,” *New York Times*, May 9, 2011, <http://www.nytimes.com/2011/05/09/us/09coyotes.html>

U.S., in turn contributing to the increase in violence against law enforcement officers by smugglers.⁸¹ No longer content to simply throw rocks at law enforcement agents or flee back towards the Mexican border, smugglers are increasingly using firearms against officers. In just two years, two agents were shot and killed while in pursuit of illegal smugglers, one in San Diego in 2009⁸² and another in Arizona in 2010.⁸³ Competition among the smugglers may also be increasing. Reports indicate that some Mexican drug trafficking organizations have expanded operations and are now specializing in smuggling SIAs into the U.S. This new revenue source for cartels and Mexican smugglers is likely to only increase their willingness to use violence to secure high cost smuggling of special interest illegals.⁸⁴ Smuggling is not only lucrative for these organizations but their continued ability to smuggle proves crucial to establishing and reinforcing long-term mutually beneficial arrangements with other criminal and/or terror networks. A 2010 Center of Immigration Studies film investigation, for instance, provides evidence of armed guards escorting illegal immigrants and drug couriers along trails just outside Nogales, Arizona. If cartels and smuggling organizations are willing to provide armed escorts for drug shipments, why would they not do the same for high profile or high paying special interest illegal aliens?⁸⁵

⁸¹ GAO, *Border Security: DHS Progress and Challenges in Securing the U.S. Southwest and Northern Borders*, Testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, 16 (2011) (Statement of Richard M. Stana, Director Homeland Security and Justice Issues).

⁸² U.S. Border Patrol, "Border Patrol Agent Memorial: Robert W. Rosas, Jr.," *CBP.gov*, http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_officer_memorial/alpha_listing_agents/q_z/robert_rosas.xml

⁸³ U.S. Border Patrol, "Border Patrol Agent Memorial: Brian A. Terry," *CBP.gov*, http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_officer_memorial/alpha_listing_agents/q_z/brian_a_terry.xml

⁸⁴ GAO, *Alien Smuggling: DHS Could Better Address Alien Smuggling Along the Southwest Border by Leveraging Investigative Resources and Measuring Program Performance*, Testimony before Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, House of Representatives, 1 (2010) (Statement of Richard M. Stana, Director Homeland Security and Justice Issues).

⁸⁵ *Enhancing DHS' Efforts to Disrupt Alien Smuggling Across Our Borders*, Testimony before Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, House of Representatives, 111th Cong. 4 (2010) (Statement of Janice Kephart, Center for Immigration Studies).

3. Lack of Resources

Following the 9/11 terrorist attacks and the creation of the DHS, border security and the southwest border have received considerable attention. At the end of the day, this has translated into an explosive expansion of resources allocated for border security. The number of agents assigned to the Border Patrol alone has more than doubled since 2001, from just under 10,000 in 2001 to over 21,000 in 2011. DHS allocates approximately 30% from its budget for CBP and ICE, with \$11.9 billion appropriated to support border security requirements and initiatives.⁸⁶ DHS and CBP initiatives born of the Intelligence Reform and Terrorism Prevention Act of 2004 and The Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 have created numerous new entities and offices within CBP. These have introduced scores of new cutting edge technologies, from vehicle scanners and x-rays to remote sensors and cameras, including cameras mounted on unmanned aircraft flying along the border. Unfortunately, even with this increased arsenal, border enforcement officials still admit that the southwest border is vulnerable to human smuggling.

Interestingly, competition for resources among the agencies and offices of DHS and CBP has probably not affected operations to the same extent as has the expenditure of money on under productive and ill-performing programs. Initiatives such as SBInet and other IT intensive initiatives have cost time and money, and arguably distracted more than anything else.

At the same time, simply throwing money at the problem is no kind of answer either. To adequately train and develop border protection agents takes time and careful selection. The assessment, education, field training and assimilation of new officers into the force cannot be rushed if the desired result is quality agents. A 2011 Government Accountability Office (GAO) report noted that weaknesses in maintaining budgeted staffing levels came from attrition and lack of officer compliance with procedures. The report attributes this to complacency and a lack of focus, lack of supervisory presence,

⁸⁶ GAO, *DHS Progress and Challenges Southwest and Northern Borders*, 1.

and lack of training.⁸⁷ Rushing agents through training may produce more bodies for border security agencies, but this does not ensure quality officers who are diligent in their tasks or in reporting. Untrained or improperly screened applicants can also leave the force vulnerable to officer corruption.

Since 2011, at least 127 CBP employees have been arrested on corruption, bribery or civil-rights charges, and that number is on the rise. The increase in cases by 38% from FY04 to FY10 is attributable to the hiring boom that more than doubled the size of the Border Patrol and CBP.⁸⁸ An investigation into agent screening during that explosive growth revealed that only 1 in 10 agents hired underwent a polygraph test, and of those tested at least 60% were deemed unsuitable for patrolling the border.⁸⁹ The possibility that agents joined “with corruption already in mind” should be particularly alarming. In fact, this may be more than just a possibility. According to Charles Edwards, Inspector General for DHS, criminal organizations have increased efforts to generate “systematic corruption to further alien and drug smuggling, including smuggling of aliens from designated Special Interest Countries.”⁹⁰ Take customs officer Margarita Crispin; she was recruited by a powerful Mexican cartel, and sent through the agency as a mole. Crispin was paid \$5 million by the cartel to facilitate illegal smuggling in El Paso, Texas until her arrest in 2007.⁹¹ Despite reforms like the Anti-Border corruption Act of 2010, officer corruption continues to be a significant problem with six federal officers arrested for corruption in 2011 in Arizona alone. All too easily, terrorists could be hidden among the illegal immigrants allowed into the U.S. by corrupt border officials.

⁸⁷ GAO, *DHS Progress and Challenges Southwest and Northern Borders*, 5.

⁸⁸ Brady McCombs, “Border Corruption Cases Grow,” *Arizona Daily Star*, August 16, 2011, http://azstarnet.com/news/local/border/article_836254a0-34aa-5298-985e-9d421c4d3587.html

⁸⁹ Daniel Hernandez, “Cartel Corruption Reaches Into the Ranks of U.S Border Agents, Officials Say,” *Los Angeles Times*, June 13, 2011, <http://latimesblogs.latimes.com/laplaza/2011/06/border-customs-hearing-corruption-agents.html>

⁹⁰ *Border Corruption: Assessing Customs and Border Protection and the Department of Homeland Security Inspector General’s Office Collaboration in the Fight to Prevent Corruption, Hearing before Ad Hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs, Committee on Homeland Security and Governmental Affairs, U.S. Senate*, 1 (2011) (Statement of Charles K. Edwards, Acting Inspector General, Office of Inspector General, U.S. Department of Homeland Security).

⁹¹ Pierre Thomas, “Exclusive: FBI Says Corrupt Border Officials Accepting Bribes Expose U.S. to Terrorist Risk,” *ABC News*, September 24, 2009, <http://abcnews.go.com/Politics/corrupt-border-officials-accepting-bribes-illegal-immigrants-exposes/story?id=8654516>

While the Border Patrol attempts to develop more agents, the President and the DoD have twice in a five year span deployed National Guard troops to the border. Beginning in 2006, then-President Bush deployed 6,000 National Guard troops to augment CBP offices to assist with the detection of illegal immigrants and drug smugglers; their primary role was to assist with infrastructure development in the form of roads and fences. Again in 2010, President Obama deployed 1,200 National Guard troops to augment CBP officers in detecting illegal immigrants and smugglers. These temporary measures were intended to keep the border secure while 1,000 CBP agents were added to the force.⁹²

The deployment of National Guard troops has received scrutiny from multiple stakeholders. Arizona Senator John McCain has argued that 1,200 troops is not enough, calling for the deployment of more than an additional 5,000. Some criticize the government for increasingly militarizing the border and the border region. Others, like some in the DoD, argue that the continued extension of National Guard troops under President Obama's Operation Phalanx points to the lack of a comprehensive border strategy. If the deployment of troops is designed to bridge the gap while an additional 1,000 agents are added, one might wonder whether additional agents are the cure, especially since the Border Patrol has increased its ranks from 10,000 in 2004 to over 20,500 at the end of fiscal year 2010.⁹³ Analysts contend that more agents operating at the tactical level would not drive border policies. Instead, reform of policies and immigration laws must come from Congress.⁹⁴

4. Red Tape

Not only have unsynchronized and ineffective initiatives hampered border officials from gaining the upper hand on smuggling networks and illegal immigration,

⁹² Associated Press, "National Guard to Deploy to Southwest Border Aug. 1," *Fox News*, July 19, 2010, <http://www.foxnews.com/politics/2010/07/19/national-guard-deploy-southwest-border-aug/>

⁹³ GAO, *DHS Progress and Challenges Southwest and Northern Borders*, 9.

⁹⁴ Daniel Gonzalez and Dan Nowicki, "GAO Report Reveals a Rift Over National Guard's Role at Border," *The Arizona Republic*, September 18, 2011, <http://www.azcentral.com/arizonarepublic/news/articles/2011/09/18/20110918national-guard-border-role-disputed.html>

bureaucratic red tape and interagency frictions have likewise prevented border officials from applying consistent pressure on smuggling networks and prevented them from deterring illegal immigrants.

Initially, law enforcement officials attempted to keep problems away from their own jurisdictions. More recently, there has been a concerted effort to acknowledge that problems along the Mexican border are not isolated, but affect the region as a whole. New interagency and joint task forces have sprung up, and are leading the way in innovative techniques and uses of information to combat smuggling networks and defeat illegal border crossers. Task forces such as the Border Enforcement Security Task Force (BEST) represent a combined effort that includes federal, state, regional, and local offices. BEST teams operate at strategic locations along the border to increase the effectiveness of investigations and arrests. This all-for-one approach, also involving Mexican authorities, reduces loopholes smugglers would otherwise exploit, and maximizes the use of limited resources across the participating partner organizations. Unfortunately, not all task forces and areas are completely synchronized. Regional and localized political pressures, budgetary constraints, and risk aversion still contribute to breakdowns and inefficiency among offices.

A 2009 sampling of 20 local and tribal law enforcement agencies in border communities revealed inconsistencies in coordination. Of the agencies contacted, 15 reported positive information sharing directly with Border Patrol, ICE, or the FBI that enhanced their awareness and ability to interdict criminals and potential terrorists. However, five of the 20 reported they did not receive information from any federal agencies. Additionally, 13 of the 20 local and tribal agencies indicated they did not have clear guidance when it came to what federal agencies considered suspicious activities, how these should be reported, or who to report them to. While agencies may have the best intent to work together for a common goal, it is vital to establish clear guidelines to ensure maximization of information at all levels between all law enforcement entities.

This is especially true since local communities have the local knowledge the federal government needs, while the federal government has robust assets local communities cannot match.⁹⁵

Red tape can also impede relations between border enforcement agents and land owners. While the Border Patrol is primarily responsible for enforcing border security between official ports of entry, it does not own or control any territory. This presents a real challenge since human smugglers do not face similar restrictions or limitations (other than inherent risks with terrain and probability of capture). Nowhere is this more evident than on federal lands controlled by the Department of the Interior (DOI) and the Forest Service. Federal lands comprise almost 820 miles, or 43%, of the entire southwestern border.⁹⁶ While the U.S. Department of Agriculture (USDA), which controls the Forest Service, and DOI employ law enforcement officers, they often do not have the same access to resources that CBP agents have. In federal areas around Tucson (Arizona), for instance, Border Patrol estimates from FY09 indicate apprehensions did not keep pace with the estimated number of illegal entries. The Border Patrol estimated that close to three times more aliens illegally entered the U.S. through federal lands than the 91,000 who were apprehended.⁹⁷

In 2006, DHS, DOI, and the USDA signed a joint memorandum of understanding (MOU) and established the Public Lands Liaison Agent program to establish a coordinated and cooperative interagency effort. Since signing the joint agreement, successive MOUs and task forces have been established to deal with specific smuggling threats across federal land along the border.

While these MOUs and joint task forces have led to increased apprehensions, bureaucratic red tape has hindered operations in certain areas. For instance, to comply with the Wilderness Act of 1964, National Historic Preservation Act of 1966, National

⁹⁵ GAO, *DHS Progress and Challenges Southwest and Northern Borders*, 16.

⁹⁶ GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, Report to Congressional Requesters, 5 (2010).

⁹⁷ GAO, *Border Security: Actions Needed to Ensure Coordinated Federal Response on Federal Lands*, 13.

Environmental Policy Act of 1969, and the Endangered Species Act of 1973, the Border Patrol must obtain permission or a permit from the appropriate federal land management agency to conduct certain activities.⁹⁸ Over half (or 17 of 26) of the Border Patrol stations with jurisdiction for federal lands along the southwestern border have experienced delays and restrictions in patrolling and monitoring due to various land management stipulations. Most of these 17 stations report that, despite frustrating backlogs and delays, land management laws did not drastically change their sector's border security status. However, four stations did acknowledge that delays and restrictions reduced their ability to achieve or maintain operational control of their sectors, and lessened their ability to detect and apprehend illegal aliens.⁹⁹

Certain Border Patrol stations patrolling federal lands in Arizona report that it regularly takes several months to obtain permission from federal land managers to reposition or establish mobile surveillance systems. In one instance, a Border Patrol request was delayed by more than four months thanks to environmental and historic property assessments required by federal land management laws. During those four months, Border Patrol surveillance systems had limited ability to monitor an area to which illegal traffic had shifted before the request was approved.¹⁰⁰

In New Mexico, four stations reported delays of six months or more before they obtained permission to maintain or improve roads. In one instance it took nearly eight months to receive a permit to improve a road allowing trucks to reposition underground sensors. This meant that for eight months agents could not monitor the area with surveillance equipment and could not utilize vehicles to patrol the area which was known to be used by illegal aliens.¹⁰¹

⁹⁸ GAO, *Southwest Border: Border Patrol Operations on Federal Lands, Testimony before the Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, and the Subcommittee on National Security, Homeland Defense, and Foreign Operations, Committee on Oversight and Government Reform, House of Representatives*, 4–6 (2011) (Statement of Anu Mittal, Director Natural Resources and Environment).

⁹⁹ GAO, *Border Patrol Operations on Federal Lands*, 10.

¹⁰⁰ GAO, *Border Patrol Operations on Federal Lands*, 10.

¹⁰¹ GAO, *Border Patrol Operations on Federal Lands*, 11.

In one instance, an Arizona federal land manager refused a Border Patrol request because the proposed site was in a designated wilderness area. The Border Patrol asked to place an SBInet tower within the Organ Pipe wilderness area, which would enable agents to detect undocumented aliens within a 30 square mile range. Denied this preferred location, the Border Patrol established the tower on Arizona state owned land instead. Unfortunately, the new site had a smaller surveillance range, resulting in three miles the tower could not cover in an area known for undocumented alien traffic. Additionally, thanks to the tower's placement, agents now have less time in which to react and apprehend illegal border crossers before they reach mountain passes where it is easier for them to avoid detection.¹⁰²

Whereas federal land management laws may inhibit select stations from operating at their peak capacity, the primary factor that affects operational control on federal borderlands is remote and rugged terrain. Specifically, dense vegetation, rocky mountains, and deep canyons affect agents' ability to detect and apprehend undocumented aliens. Technologies designed to work in desert environments are frequently thwarted by undulating terrain and deep canyons. Terrain limits the ability to leverage vehicle and helicopter assets. Agents are often reduced to chasing groups of people on foot over rugged terrain and through dense vegetation, well after technologies have detected them.

Other problems cited by Border Patrol officers are insufficient resources, the distance of resources from border areas, and operational gaps between stations and sectors. Additional technology resources, such as mobile surveillance systems, would likely increase detection capabilities and augment fixed location surveillance technologies. Some stations may be as much as 100 miles away from the areas they are responsible for covering. The location of stations also affects boundaries, especially where some federal lands overlap Border Patrol sector boundaries. A GAO report found

¹⁰² GAO, *Border Patrol Operations on Federal Lands*, 14.

these boundaries and seams were sometimes under-patrolled, leading to lower levels of apprehension and higher levels of illegal cross-border activity.¹⁰³

5. Lack of Confidence in ICE Leadership/Policy

Another area of significant concern is the dissension and lack of unity among federal immigration officers. In June 2010, the National Immigration and Customs Enforcement Council, representing over 7,000 ICE officers and agents from the Enforcement and Removal Operations office within ICE, cast a unanimous vote of “No Confidence” in John Morton, Director of ICE, and Phyllis Coven, Assistant Director of ICE Office of Detention Policy and Planning. Their dissatisfaction stems from concerns that Director Morton and Assistant Director Coven are campaigning for amnesty-related immigration reforms instead of trying to secure additional resources and manpower to alleviate ICE’s current overwhelming burdens. One explanation for the vote of no confidence: “ICE has virtually no consistent national policies ... operations suffer, accountability is nonexistent, and ICE is unable to perform at its potential.”¹⁰⁴

This no confidence vote also highlights vulnerabilities in the system related to discrepancies between federal and local law enforcement. State and local law enforcement agencies and jails are overwhelmed, and without sufficient resources are unable to prosecute or detain illegal immigrants. Often, illegal immigrants and criminal aliens are released back into local communities before ICE can be summoned. Much as with “catch and release” policies of the past, these problems with the detention and prosecution of illegal immigrants results in many illegal and criminal aliens being released on their own recognizance. In this environment, potentially overworked and undertrained state and local law enforcement officers can all too easily underestimate the

¹⁰³ GAO, *Border Security: Actions Needed to Ensure Coordinated Federal Response on Federal Lands*, 15.

¹⁰⁴ National Homeland Security Council 118 – Immigration and Customs Enforcement, *Vote of No Confidence: In ICE Director John Morton and ICE ODPP Assistant Director Phyllis Coven* (Washington: American Federation of Government Employees (AFL-CIO), 2010).

potential threat from a terrorist operative posing as an illegal immigrant, especially should such individuals utilize sophisticated methods to conceal their true identities and countries of origin.

Recent passage of stricter immigration enforcement legislation in Arizona further draws attention to deficiencies between federal and local law enforcement authorities. In May 2010, Director Morton declared that ICE would not necessarily process illegal immigrants referred to it by Arizona law enforcement officials. Director Morton cited the President's and DHS's distaste for the controversial Arizona law which criminalizes all illegal aliens. Director Morton claimed illegal immigration should be handled through a comprehensive federal approach, and not a conglomeration of individual state laws. Despite the fact that state border apprehensions were up 6% in Arizona during the fall of 2010, Senator Jeff Sessions pointed out "they're [Morton and DHS] telegraphing to every ICE agency in America that they really don't intend on cooperating with Arizona." Without support from ICE and other federal DHS agencies, it is difficult to estimate how long states like Arizona can continue to detain and process the large number of illegal immigrants in their communities' systems.¹⁰⁵

D. DETENTION

1. Catch and Release

Other states, beyond Arizona, may also decide to take matters into their own hands soon. In 2004, the Bush administration was under considerable pressure to reform immigration policy that was not only weak but potentially compromising for national security. The primary source of friction surrounded what was referred to as "catch and release" immigration practices. The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 legislation generally mandated detention for illegal immigrants since most illegal aliens flee instead of appearing for scheduled immigration hearings. Undocumented aliens from Mexico were typically processed and returned to

¹⁰⁵ "Top Official Says Feds May Not Process Illegals Referred From Arizona," *Fox News*, May 21, 2010, <http://www.foxnews.com/politics/2010/05/21/official-says-feds-process-illegals-referred-arizona/>.

Mexico, often within hours of their apprehension. Undocumented aliens from countries other than Mexico (OTM) could not be returned to Mexico, despite the fact they arrived into the U.S. illegally through Mexico. Because OTM illegal aliens could not be returned to Mexico, they had to be detained until immigration proceedings could determine how to return them to their country of origin. Additionally, illegal OTM aliens could apply for asylum since many were from war-torn and unstable countries where they faced persecution or death upon return. With the large number of Mexican and OTM asylum cases, a backlog resulted in overcrowded detention facilities. To alleviate the strain on detention facilities, OTMs who posed no discernible threat to national security were released on their own recognizance with a notice to appear at a scheduled immigration court hearing several weeks to months later. While most OTM aliens consisted of Central and South American migrants, a significant percentage also included Aliens from Special Interest Countries (ASIC). However, in many cases, there were no files or records of misconduct or intent on hand for these OTMs from Special Interest Countries. Because they were not deemed a security threat, they were then released into the public through the immigration court system.

As many as 70% of the approximate 155,000 undocumented OTM aliens apprehended were released in 2005.¹⁰⁶ For certain areas the figures were even higher. McAllen, Texas released as many as 90% of the OTM illegal aliens apprehended in its sector in 2005. The 2005 CRS Report, *Apprehensions of "Other Than Mexican" Aliens*, found that only up to 30% of OTM illegal aliens who received notices to appear before an immigration judge for asylum hearings actually showed up.¹⁰⁷ This meant that in addition to the numbers of undocumented aliens who successfully entered the U.S. without being caught by law enforcement, an estimated additional 76,000 illegal aliens were roaming the interior of the U.S. in 2005 alone. Many of these individuals remain uncaught or beyond the purview of law enforcement until they commit an offense or are detained by local law enforcement in cases unrelated to immigration. This often takes

¹⁰⁶ Rachel Swarns, "Tight Immigration Policy Hits Roadblock of Reality," *The New York Times*, January 20, 2006, <http://www.nytimes.com/2006/01/20/national/20border.html?pagewanted=all>

¹⁰⁷ CRS, *Border Security: Apprehensions of "Other Than Mexican" Aliens*, report no. RL33097 (Washington: Government Printing Office, 2005), 16.

place well north of the border, placing an undue burden on communities beyond the border region. The security implication, of course, is that OTM illegal immigrants awaiting immigration hearings remain free to conduct activities so long as they do not attract law enforcement attention.

2. Reform

In 2005, Michael Chertoff, then Secretary of DHS, announced the end of “catch and release” immigration policies. Chertoff went on to declare he would remove, detain, and deport every illegal immigrant caught coming across the border. Secretary Chertoff’s immigration reform focused on increasing the detention capacity for OTM aliens under the Secure Border Initiative and on expanding the use of the expedited removal process. Under expedited removal, undocumented aliens are initially screened and designated for deportation without a hearing before an immigration judge. Not only did these reforms facilitate faster turnover and greater utilization of detention capacity, they were also intended to deter OTM aliens from attempting to cross the border illegally.¹⁰⁸

Secretary Chertoff and DHS considered these reforms a success in 2006, effectively declaring the end of “catch and release.” Detention of undocumented OTM aliens rose sharply from only 34% in 2005 to approximately 99%.¹⁰⁹ Under the expedited removal process, detainees were deported at an average of 19 days after capture in contrast to the previous average of 90 days.¹¹⁰

Other targeted initiatives, such as Operation Streamline, attempted to increase deterrence for would-be illegal border crossers. Under Operation Streamline, border security officials and law enforcement would prosecute all illegal border crossers on

¹⁰⁸Associated Press, “Chertoff: End ‘Catch and Release’ at Borders,” *Fox News*, October 18, 2005, <http://www.foxnews.com/story/0,2933,172570,00.html>

¹⁰⁹Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Washington: Migration Policy Institute, 2009), 14.

¹¹⁰“Fact Sheet: ICE Accomplishments in Fiscal Year 2006,” *Department of Homeland Security*, October 30, 2006, http://www.dhs.gov/xnews/releases/pr_1162228690102.shtm

federal criminal charges. This would make any illegal border crosser subject to prison time ranging from a few months for first time offenders up to 20 years for repeat offenders.

3. Unintended Consequences

In retrospect, what Secretary Chertoff failed to recognize is that while “catch and release” policies may have ended, increased apprehensions required more expedited trials and increased detention by state and local officials. Unfortunately, the money and resources directed towards ICE and the expansion of its detention centers did not always alleviate the burden placed on state and local detention capabilities. Too often state and local dockets have been overwhelmed by illegal immigration cases, and detention centers are full of all sorts of cases involving illegal immigrants, from misdemeanors to felonies. Understandably, state and local jurisdictions try to process and move illegal immigrants to federal ICE facilities as soon as possible.

Following an initial expansion of almost 10,000 bed spaces in 2006, ICE has continued to expand its detention capabilities to over 32,000 spread throughout 350 local jails, state prisons, and contract facilities.¹¹¹ As ICE fills its limited detention capacity, however, it must inevitably utilize overcrowded state and local detention centers to either house or release illegal aliens back into the community. ICE pays \$100 a day for bed space to state and local agencies. But this does not always compensate them for the additional burdens placed on interpreters, prison officials, and the state and local facilities. Much as with the “catch and release” practices of the early 2000s, what happens is overworked state and local law enforcement agencies inadvertently allow seemingly non-violent or non-threatening illegal aliens access into the interior of the U.S. with only a notice to return for trial.

¹¹¹ Spencer S. Hsu, “Agency Plans to Improve Oversight of Immigrant Detention,” *Washington Post*, August 7, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/08/06/AR2009080601543_pf.html

4. Shift in 287(g) Program

According to Section 287(g) of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, state and local law enforcement personnel can be deputized to conduct specific immigration enforcement function through ICE. ICE can thereby leverage local law enforcement capabilities to expand its efforts and broaden the scope and range of its enforcement activities. As of 2010, ICE had 71 agreements in 26 states, greatly expanding its capabilities.¹¹² For example, in 2007 the 287(g) program accounted for about 20% of all criminal alien arrests by ICE authorities. However, the success of this program has led to other problems, specifically with limited numbers of detention beds and removal officers. Increased efficiency in apprehending and detaining illegal aliens, combined with a bottleneck in judicial immigration hearings, has overwhelmed the resources of state and local detention facilities, again forcing them to release all but the most violent or threatening detainees.

In June 2009, for instance, ICE issued a directive to one of its most productive 287(g) partners to stop detaining large numbers of apprehended undocumented aliens and to release them into the community on their own recognizance. In an attempt not to exceed bed space detention capacity, ICE was hoping to avoid overcrowding or exceeding detention capacity with minor offenders. While ICE helped to ensure violent criminal illegal aliens were not released back onto the streets, undocumented aliens with no known criminal history were, by definition, considered non-threatening.¹¹³ This means that if terrorists were to game the system, an undocumented terrorist operative with no known history to local law enforcement could be released into the interior of the U.S. to make room for violent and criminal illegal aliens in jail.

To prevent overcrowding or exceeding capacity, ICE Director Morton released a new directive in 2011 to focus enforcement priorities. The memo specifically deals with the practice of prosecutorial discretion, or the authority granted to immigration

¹¹² C. Stewart Verdery, Jr., *Brick by Brick: A Half Decade of Immigration Enforcement and the Need for Comprehensive Immigration Reform* (Washington: Center for American Progress, 2010).

¹¹³ Jessica Vaughan, "ICE Adopts Catch and Release for 287(g)," *Center of Immigration Studies*, June 2009, [http://www.cis.org/Vaughan/CatchandRelease-287\(g\)](http://www.cis.org/Vaughan/CatchandRelease-287(g))

enforcement entities to selectively decide to what degree they want to enforce the law against a particular individual.¹¹⁴ As everyone's priorities shifted to removing violent criminal aliens from communities and to enforcing workplace compliance, this sidelined other immigration-related issues. What were concerns post-9/11 over undocumented aliens from Special Interest Countries appear today to be taking a back seat to public and political pressures to remove criminal aliens from local communities. Often referred to as the new "catch and release," this directive which was designed to ease the burden on prosecutorial and detention facilities now places communities at risk in a different way.

Under prosecutorial discretion, immigration enforcement officers can deem that aliens who hail from Special Interest Countries and are seeking asylum, and who have no previous record, should be released on their own recognizance for later immigration hearings. In this way, an unknown terrorist operative with no history of illicit activity may slip through the cracks. This is especially likely when untrained, over-worked, and unsuspecting state and local authorities are hard pressed to deal with already proven criminals.

While this erosion of comprehensive and uniform immigration enforcement policies does not ensure immediate catastrophic failure, it does create critical vulnerabilities and loopholes potential terrorists can pursue. As Janice Kephart from the Center for Immigration Studies writes:

The following terrorists applied for asylum, were released pending their hearings, and used their freedom to commit or attempt to commit terrorist acts.

- Mir Aimal Kansi murdered two CIA employees
- Ramzi Yousef masterminded the first World Trade Center attack
- Shahawar Matin Siraj was arrested for plotting to bomb a subway station

¹¹⁴ John Morton, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, U.S. Immigration and Customs Enforcement Memorandum, Policy Number 10075.1 (Washington: U.S. Department of Homeland Security, 2011).

- Sheik Umar Abd ar-Rahman plotted to bomb New York City landmarks
- Hesham Mohamed Hadayet shot and killed two people in Los Angeles¹¹⁵

E. TRUTH BEHIND LOWER NUMBERS

In sum, increased success at traditional ports of entry and sector by sector successes in areas like Yuma and San Diego have pushed human smugglers to more austere locations. While these locations lead to higher risk of death and a lower probability of success, they also represent a lower probability of detection and apprehension by law enforcement due to the lack of border security resources in these remote areas.

¹¹⁵ Janice Kephart, "Catch and Release Redux," Center for Immigration Studies, October 2009, <http://www.cis.org/Kephart/ICEDetentionReform>.

IV. CAUSE FOR CONCERN

“Either to recruit, provide more funding or serve as operatives or sleepers for some future activity.”

Joan Neuhaus Schaan, expert on Homeland Security and Terrorism and Fellow at Rice University Baker Institute¹¹⁶

A. THE THREAT

Increasing scrutiny by DHS agencies and ever increasing sophistication with border screening technology (such as CBP IDENT biometric system, Integrated Automated Fingerprint Identification System (IAFIS), and the FBI’s Next Generation Identification System (NGI)) is causing terrorists seeking to stay off law enforcement’s radar to veer away from traditional ports of entry. Though it may be no safer or easier, clandestinely entering the U.S. by sneaking across the border could be worth anonymity.

Several cases challenge the claim that terrorists do not seek to move operatives across the U.S.-Mexico border through clandestine trafficking networks. My review of these cases is not designed to concentrate on what is being smuggled, but to illustrate what established smuggling networks have the potential to do. These individuals and networks represent the threat, moving people from Special Interest Countries with known associations with terrorism, through Mexico into the U.S., and assimilating them into diaspora communities or populations which allow them to hide in plain sight. In some cases, individuals directly tied to terror organizations have been smuggled into the U.S., while in other cases individuals with suspected ties to terrorist organizations were simply smuggled over the border. In either instance, it is the demonstrated success and potential for future repeat performance that poses the most significant and credible threat.

Perhaps of even greater danger or concern is the potential roles terrorist operatives could play once they enter the U.S. clandestinely. While there is already attention paid to

¹¹⁶ Shern-Min Chow, “Homeland Security Alert: Terror suspect may be headed to Texas through Mexico,” *KHOU11 News Austin*, May 17, 2010, <http://www.kvue.com/news/Homeland-Security-Alert-Terror-suspect-may-be-headed-to-Texas-through-Mexico-94093684.html>

the idea that suicide bombers inspired by and working with an extreme or fundamentalist terror organization could come across the border and hit American targets, the prospect of *recruiters* crossing the border into the U.S. undetected is much more frightening. While a single suicide bomber could certainly wreak havoc on a grand scale in one attack, a recruiter can radicalize *scores* of potential suicide bombers. Of ever greater concern is that while this potential recruiter might himself be an illegal immigrant, forced to live off the grid and take measures to maintain a low to invisible profile, those he recruits would be U.S. citizens. Imagine radicalized citizens with no prior criminal record, free to operate in the open without drawing any attention from law enforcement. For instance, an illegal immigrant operating as a recruiter must traffic in prepaid phones, hand write correspondence, deal in cash, travel by privately owned vehicle, use fraudulent papers, develop and maintain cover, etc. In contrast, a radicalized U.S. citizen can have multiple cell phones, use e-mail and online applications, own credit cards, fly on a plane, rent/buy cars or other equipment, rent a home, pass through a road block unworried, etc.

A recent study by the New York State Intelligence Center points to the dangers potential radicalized U.S. citizens can pose. The study examined major terrorism cases in the U.S. since September 11, 2001. In a review of 32 cases resulting in federal terrorism charges and arrests, the Center identified 90 individuals and discovered some alarming trends. Of the 90 individuals arrested, 50 were U.S. citizens at the time of their arrest. Of those 50 U.S. citizens, 35 were born in the U.S.¹¹⁷ The study found that many members of the same group were born or lived in the same community, concluding that cells formed more easily when members lived and interacted among those like them. In just 11 cases taking place from 2009 to 2010, 10 of the 19 individuals arrested were natural born U.S. citizens.¹¹⁸ The study concluded that the threat from “homegrown” terrorism is very real and will continue to pose a challenge to law enforcement. Of note, over half (56%) of the individuals involved in the cases had no previous contact with law

¹¹⁷ *The Vigilance Project: An Analysis of 32 Terrorism Cases Against the Homeland* (New York: New York State Intelligence Center, 2010), 9.

¹¹⁸ *The Vigilance Project*, 10–11.

enforcement prior to their planning or participation in attempted terrorism attacks.¹¹⁹ Their absence from law enforcement databases makes identification and countering would-be terrorists incredibly difficult, especially during the planning and pre-operational phases of terrorist attacks.

While the motivation for smuggling humans into the U.S. may vary among groups, the demonstrated ability of groups to move significant numbers of humans across the U.S.-Mexico border undetected suggests a real vulnerability. Terrorists and terror organizations already have links into some communities. At the same time, however, one must not see terrorists in every ethnic group whose homeland has some form of insurgent, nationalist, or domestic terror movement. However, we also cannot be complacent; many of these domestic movements also serve as the springboard for the nexus between domestic terror-fundamentalist groups and transnational criminal organizations with overlapping ideologies or financial systems.

B. CASES

1. Al Shabaab

Somalis represent an interesting case, as they represent not only a diaspora with recognized refuge and asylum issues, but one with ties to a designated terrorist group. While many Somalis are law abiding residents hoping to escape the strife and upheaval in Somalia, other Somalis are deeply entwined in the network of Al Shabaab (sp).

In 2008, the U.S. officially designated Al Shabaab as a Foreign Terrorist Organization and Specially Designated Global Terrorist. Al Shabaab is a decentralized group, with members coming from disparate clans. Al Shabaab briefly took over most of southern Somalia in 2006, but since has been reduced to a violent insurgency in southern and central Somalia. Al Shabaab is responsible for many attacks within Somalia, and one suspected suicide bombing in Uganda during the 2010 World Cup. The primary focus of Al Shabaab remains to overthrow the Somali government and impose Sharia or

¹¹⁹ *The Vigilance Project*, 23.

Islamic law within Somalia. However, in 2010 Al Shabaab formally aligned itself with Al Qaeda, and declared its own intent to cause harm to the U.S.¹²⁰

Since 2007, more than 40 Americans have joined Al Shabaab's ranks and conducted violence on its behalf. Of these confirmed 40 radicalized American citizens, 15 have died fighting with Al Shabaab. This number represents the most Americans that have been killed while fighting with any other foreign terrorist group. Another particularly dark note, is that the first confirmed American suicide bomber was a Minnesota resident who radicalized and joined Al Shabaab before blowing himself up in an attack in northern Somalia.¹²¹ Raised in Minneapolis, Shirwa Ahmed, 27, left the Minneapolis area for Somalia with other Somali youth, and eventually drove a car loaded with explosives into a government compound in October 2008.¹²² Another first: Daniel Maldonado is the first U.S. born American citizen ever convicted of receiving military training from a terrorist organization. Leaving a wife and three children in Houston in 2005, Maldonado trained with Al Shabaab on firearms and Improvised Explosive Devices (IEDs) and bomb building. Maldonado was captured fleeing Somalia by Kenyan authorities in 2007, turned over to U.S. custody, and sentenced to 10 years in prison. Like Maldonado, two other U.S. citizens have been prosecuted for fighting the jihad in Somalia. Transcripts from Maldonado's interrogation provide a chilling warning for the future, "[Al] Shabaab is not only intent upon creating an army of extremists for a crusade against the West, but it also seeks to establish an extremist Islamic network of unrivaled strength."¹²³

In February 2010, Anthony Joseph Tracy of Virginia was arrested for his alleged participation in an international human trafficking ring designed to bring Somalis from Somalia across the Mexican border into the U.S. Tracy admitted to U.S. authorities that

¹²⁰ "Terrorist Groups: Al Shabaab," *The National Counterterrorism Center*, http://www.nctc.gov/site/groups/al_shabaab.html

¹²¹ *Al Shabaab: Recruitment and Radicalization within the Muslim American Community and the Threat to the Homeland, Majority Investigative Report, Committee on Homeland Security, U.S. House of Representatives*, 112th Cong. 1 (2011).

¹²² *Al Shabaab: Recruitment and Radicalization within the Muslim American Community*, 3.

¹²³ Allison A. McGevna, "Somalian Terror Organization Shabaab al Mujahideen Looks to 'Throw the West into Hell,'" *Fox News*, November 25, 2008, <http://www.foxnews.com/story/0,2933,457226,00.html>

he assisted approximately 272 individuals in moving from Somalia illegally into the U.S. Tracy, a U.S. citizen, converted to Islam in prison and began traveling overseas in 2008. In 2009 Tracy established Noor Services Limited, a travel business in Kenya which provided fraudulent travel visas for Somalis traveling to Cuba and eventually on to the U.S. Tracy claimed he procured fraudulent paperwork for up to ten people a week, charging fees ranging from \$100 up to \$1,000. Tracy told authorities that he was approached by Al Shabaab for assistance with human smuggling in Kenya. Tracy denied any overt cooperation with Al Shabaab, but admitted his clientele was a mix of good and bad Somalis.

Although Tracy was unable to provide information about the 272 illegal Somali aliens who remain at large within the U.S., authorities successfully located at least five Somali men and women Tracy helped. Of particular note is that these five men and women were found spread throughout the country, living as far apart as New York, Tennessee, North Carolina, Washington, and Arizona. This dispersion of just five men and women illustrates the daunting task law enforcement has in finding and apprehending individuals who do not show up on their radar. With that in mind it is worth noting that these five individuals were discovered through the social networking site Facebook. Had these five individuals not made themselves available to the world wide web, they might had eluded apprehension indefinitely, as have their fellow 267 Somali brethren smuggled into the U.S. with Tracy's assistance.¹²⁴

Another prolific individual involved with smuggling Somalis is Ahmed Muhammed Dhakane. Dhakane was detained by ICE authorities entering the U.S. from Mexico in 2008, and was taken into custody by officials under suspicion for his role in a large scale human smuggling enterprise, despite his application for asylum. Originally serving as a "Hawaladar" (a director of money exchange for the illegal Hawala banking system), Dhakane supported Al Barakat's illegal financial activities from 1997–2002. Dhakane also worked for Al Ittihad Al Islami (AIAI), another money transfer entity associated with funding Al Shabaab through financial contributions from the Somali

¹²⁴ Mike Levine, "VA Man Accused of Illegally Aiding Somalis," *Fox News: Liveshots*, February 23, 2010, <http://liveshots.blogs.foxnews.com/2010/02/23/va-man-accused-of-illegally-aiding-somalis/>

diaspora. Both Al Barakat and AIAI are listed by U.S. authorities as Specially Designated Global Terrorists, and are suspected for financing and supporting terrorism.

Later, Dhakane established himself as a human smuggler in Brazil from 2006–2008. Dhakane was primarily responsible for obtaining fraudulent travel documents in order to move Somalis and other East Africans into the U.S. In addition to providing falsified papers, Dhakane taught clients how to make false asylum claims if they were captured. Dhakane was caught on tape boasting that he made as much as \$75,000 in one day smuggling Somalis, many of whom were members of AIAI and the Islamic Courts Union. Alarmingly, Dhakane openly admitted to knowingly smuggling violent jihadists into the U.S., knowing full well they would, when ordered to, commit violent acts within the U.S. It is unknown just how many hundreds of individuals Dhakane helped smuggle into the U.S., but it is especially disturbing that violent and radical extremists have entered the U.S. untraceable by law enforcement.¹²⁵

Dhakane did provide the name of five clients, three of whom are known to be at large within the U.S.: Adani, a supporter of the Islamic Courts Union, Ereg, an AIAI member, and Abarizak, a low level operative for the Islamic Courts Union.¹²⁶

While officials within the DHS and the Department of State (DoS) publically say that terrorists have neither physically crossed nor actively seek to cross the border into the U.S., a Homeland Security alert implies the opposite. In May 2010, DHS issued a security alert to Texas authorities to be on the lookout for Somali citizen Mohamed Ali. Ali is a suspected member of Al Shabaab, and was believed to be in Mexico preparing for the journey to illegally cross into the U.S. Ali was not apprehended by U.S. or Mexican authorities. The alert is still a reminder that terrorists do seek to use the U.S.-Mexico border to infiltrate the U.S.¹²⁷

¹²⁵ Guillermo Contreras, “Terrorists Might Be Among Us,” *San Antonio Express-News*, March 28, 2011, <http://www.mysanantonio.com/news/article/Terrorists-might-be-among-us-1309155.php>

¹²⁶ Contreras, “Terrorists Might Be Among Us.”

¹²⁷ Jana Winter, “Feds Issue Terror Watch for the Texas/Mexico Border,” *Fox News*, May 26, 2010, <http://www.foxnews.com/us/2010/05/26/terror-alert-mexican-border/>

As previously stated, Al Shabaab's primary aim is to unseat the government of Somalia. So, why be concerned over Al Shabaab's attempts to clandestinely bring terrorist operatives into the U.S. undetected by law enforcement? Because, while law enforcement measures have proven successful thus far in preventing another large scale catastrophic attack like September 11, 2001, the development of radical jihadi cells within the U.S. *is* on the rise. Somali American citizens are being radicalized. Al Shabaab recruitment efforts within the U.S. are prevalent on-line and among Somali diaspora communities. This in no way implies that all or any particular Somali diaspora community is a breeding ground for Al Shabaab or any dissident radical Islamic movement. Still, Al Shabaab directly targets many second and third generation youth within these communities. Many youth have trouble assimilating for a variety of reasons: low availability of jobs, Somali xenophobia, the growing gap between Islam and Christianity within the U.S., the U.S.'s policies toward Somalia and Ethiopia, prevalence of radical/fundamental propaganda on the Internet, etc. Factors such as these contribute to making Somali youth susceptible to the radical ideology of Al Shabaab and other terrorist organizations.

Once again, undocumented illegal aliens with ties to terrorism pose a major danger when it comes to their ability to operate as recruiters. Commonly referred to as "homegrown terrorists," as many as 40 radicalized Somali youth were contacted and cultivated by recruiters working in the U.S. to raise awareness and funds and find recruits for Al Shabaab. Some speculate that economic disparity creates an underclass among ethnic Somali youth, driving them to gangs, drugs, and leaving them susceptible to brainwashing. As parents attempt to steer their children into religious youth programs as a counter, they may be inadvertently pushing them right into the situation they are trying to avoid. Abdiweli Ali, an associate professor of economics at Niagra University and former adviser to the Somali Transitional Government, argues that young Somalis are being targeted for indoctrination and are highly susceptible to the influences of rogue imams who instruct youth on misleading and distorted philosophies.¹²⁸ Another

¹²⁸ Daveed Gartenstein-Ross, "Jihad Recruiting Effort May Explain Missing Somalis in Minneapolis Area," *Fox News*, December 4, 2008, <http://www.foxnews.com/story/0,2933,461865,00.html>

disturbing fact is that not all Somali youth radicalized and fighting for Al Shabaab have come from underprivileged situations. While some radicalized Somali youth from the Minneapolis area were alleged gang members, others were intelligent college students with positive employment prospects. Additionally, the 40 known radicalized Somali U.S. citizens may only reflect a portion of the actual number, given that Somali families may not report the disappearance of youth, especially if they suspect that connections with Al Shabaab or terrorist groups may bring unwanted pressure on their family or their community.

In 2009, the FBI in Minnesota conducted Operation Rhino, an investigation specifically designed to uncover the disappearance of Somali-American youth from Minneapolis fighting with Al Shabaab in Somalia. Operation Rhino resulted in charges against 14 men, with six pleas of guilty for recruiting Somali immigrants and Somali-American citizens to fight with Al Shabaab. Federal prosecutors charged the men with running an organized network designed to recruit Somali youth and finance their travels to Somalia to become fighters for Al Shabaab. The group is believed to have successfully recruited and financed at least 20 Somali youth fighting among Al Shabaab's ranks, five of whom have been killed while fighting in Somalia. Originally meeting and screening potential youth recruits in public mosques and restaurants, elders and peers later led them to secret meetings at private residences in the Minneapolis area. Here recruiters convinced American Somali youth to join the jihad in Somalia. Veteran Al Shabaab fighters like Cabdulaahi Ahmed Faarax encouraged young men to experience "true brotherhood" and recounted tales of being wounded, telling Somali youth that "to fight in the jihad will be fun."¹²⁹ Others such as Abdiweli Yassin Isse raised money to send young men to Somalia under the guise of studying the Quran in Middle Eastern countries. Ironically, both Faarax and Isse fled from the U.S. across the Mexican border near San Diego and are still at large outside the U.S.¹³⁰

¹²⁹ Josh Meyer, "U.S. Says 8 Lured Somali Terror Recruits," *Los Angeles Times*, November 24, 2009, <http://articles.latimes.com/2009/nov/24/nation/la-na-somali-terror24-2009nov24>

¹³⁰ Evan Perez, "Charges Link U.S. Recruits to Somalia," *Wall Street Journal*, November 24, 2009, <http://online.wsj.com/article/SB125901181331361185.html>

Actions within the Minneapolis area are of particular note because Minneapolis is home to the largest Somali community in the U.S. Somali refugees began arriving in the U.S. in the early 1990s, fleeing the ongoing civil war. Many began settling in eastern Minneapolis in an area many refer to as “Little Mogadishu.” But, radicalization and recruitment are also not limited to Somali youth. At least three African-Americans from the Minneapolis area have reportedly left the U.S. to join in the jihadi fight in Somalia. Of particular note is the radicalization and rise in notoriety within Al Shabaab of a Caucasian recruit. Omar Hammami was born in the sleepy suburban town of Daphne, Alabama, but now goes by the name Abu Mansour al-Amriki or “The American.” Hammami went from being a typical goofy American teenager to become a ranking commander fighting with Al Shabaab in Somalia. In addition to being a high ranking official, Hammami is an icon for Al Shabaab’s outreach initiatives and Al Qaeda online propaganda videos. Hammami has become one of the most outspoken voices of Al Shabaab, and remains in Somalia fighting and training new Al Shabaab recruits.¹³¹

With over 45,000 Somalis, Columbus, Ohio is home to the second largest Somali diaspora in the U.S.¹³² While the targeted recruitment of Somali youth in Minneapolis has been much more prolific, security analysts believe Al Shabaab has successfully recruited young men from Columbus to also fight in Somalia. The 2010 federal indictment charging 14 Minnesota men included the identification of an unindicted conspirator from Columbus, Ohio.¹³³ Another notable case involves Nuradin Abdi, a Somali national living in Columbus, Ohio, who was sentenced to ten years in prison for providing support to a terrorist organization.¹³⁴ Abdi’s indictment indicated he intended

¹³¹ Mike Levine, “Al Qaeda Linked American Terrorist Unveiled, as Charges Await Him in U.S.,” *Fox News*, September, 4, 2009, <http://www.foxnews.com/us/2009/09/04/al-qaeda-linked-american-terrorist-unveiled-charges-await/>

¹³² Meredith Heagney, “Somali Youth Event Focuses on Service, Leadership,” *The Columbus Dispatch*, November 28, 2008, http://www.dispatch.com/content/stories/faith_and_values/2008/11/28/noorsomali.ART_ART_11-28-08_C4_26C0CGU.html

¹³³ Jack Torry, “City Part of Terror Pipeline?” *The Columbus Dispatch*, August 6, 2010, <http://www.dispatch.com/content/stories/local/2010/08/06/city-part-of-terror-pipeline.html>

¹³⁴ “Ohio Man Sentenced to Ten Years Imprisonment for Conspiracy to Provide Material Support to Terrorists,” *Department of Justice*, November 27, 2007, http://www.justice.gov/opa/pr/2007/November/07_nsd_944.html

to provide Al Qaeda support in the form of recruits and currency. Additionally, Abdi was charged with falsifying travel documents to conceal his travel to Africa for “jihadi training,” training Abdi obtained “to ready himself to participate in violent Jihadi conflicts overseas and any activities his al Qaeda co-conspirators might ask him to perform here in the United States.”¹³⁵ Abdi and as many as nine others made up a small Al Shabaab-Al Qaeda support cell in the Columbus area. Co-conspirator Christopher Paul, an Ohio native and Muslim convert, was also arrested and indicted for his role in providing material support to a terrorist organization, training terrorists to conduct bombing attacks overseas, and conspiring to blow up a central Ohio shopping mall.¹³⁶ Iyman Faris, a Pakistani truck driver was also arrested and sentenced as a co-conspirator with Abdi and Paul. Faris was sentenced to 20 years in prison for providing material support to terrorists and his ties to Al Qaeda.¹³⁷ More recently, in September 2010, a high level Al Shabaab commander killed during fighting with Somali government troops in Mogadishu was discovered to be 35-year-old Dahir Gurey, a resident of Columbus, Ohio. Gurey left Columbus earlier in the year to fight with Al Shabaab in Somalia, joining a number of other Ohio youth believed to have traveled to Somalia to fight with Al Shabaab since 2008.¹³⁸

There is a push by terror organizations like Al Shabaab and Al Qaeda to develop a new cohort of American recruiters to radicalize other American citizens. Specifically, terror organizations are now customizing messages tailored to a peer audience of American youth. The goal is to bridge the cross-cultural gap, to entice impressionable Americans, and make radical ideology more accessible and appealing.¹³⁹ They even go

¹³⁵ United States of America vs. Nuradin M. Abdi,” Government’s Motion to Detain Defendant, 5–6, (S.D. Ohio 2004).

¹³⁶ Jodi Andes, “Terror Conspiracy Bigger, Insiders Say,” *The Columbus Dispatch*, August 5, 2007, http://www.dispatch.com/content/stories/local/2007/08/04/abdi_guys.ART_ART_08-04-07_A1_R47HATO.html

¹³⁷ “Ohio Man Sentenced to Ten Years for Conspiracy.”

¹³⁸ Dana Hughes, Kirit Radia and Jason Ryan, “American Jihadi killed in Somalia shootout,” *ABC News*, September 10, 2010, <http://abcnews.go.com/Blotter/american-jihadi-killed-somalia-shootout/story?id=11604972>

¹³⁹ Spencer Hsu, “Arrest of VA man spotlights Al Qaeda’s new American recruiters,” *Washington Post*, Aug 1, 2010, from Pro Quest.

so far as to court U.S. youth with rap songs and via other media which would normally be in stark contrast to the strict version of sharia law they profess to uphold and enforce. Hammami, or al-Amriki, himself has released a series of five rap songs that praise the virtues of waging jihad on America. These songs are delivered in English, and portray al-Amriki among other gun toting rebels using hip hop to speak lovingly of slaughtering crusaders; they also convey twisted history lessons sympathetic to jihadi holy warriors.¹⁴⁰

Many, such as Representative Peter King, chairman of the House Homeland Security Committee, speculate that attacks within the U.S. by Al Shabaab are highly likely. It might not take as much as people suppose for Al Shabaab to refocus and mobilize its U.S. network in the U.S. Also worth worrying about is what will happen when radicalized American youth return to the U.S. following terrorist training and combat in Somalia. Some argue that Al Shabaab is not capable of conducting a catastrophic 9/11 style attack. However, if Al Shabaab's anti-U.S. rhetoric switched from aspirational to operational, with an adequately resourced and distributed network, it could conduct a series of smaller coordinated attacks to have a catastrophic or crippling effect on the American people.

In response to questions regarding Al Shabaab from the Senate Armed Services committee in June 2011, Secretary of Defense Leon Panetta noted the "threat from Al Shabab [sic] to the U.S. and Western interests ... and to the U.S. homeland is significant and on the rise." Secretary Panetta also drew attention to the practice of Al Shabaab actively attempting to recruit from Somali diaspora communities within the U.S.¹⁴¹

While Al Shabaab may be primarily concerned with toppling the Somali government, its ties to Al Qaeda should also be a concern. Matt Olsen, Presidential nominee to head the National Counterterrorism Center, told a Senate committee that outside of Pakistan and Yemen, Al Qaeda's presence in Somalia is probably the next

¹⁴⁰ Matthew Cole, "American Jihadi Rapping for Recruits," *ABC News*, May 18, 2010, <http://abcnews.go.com/Blotter/american-jihadi-abu-mansoor-al-amriki-rapping-recruits/story?id=10669408>

¹⁴¹ "Advance Policy Questions for the Honorable Leon Panetta Nominee to be Secretary of Defense," *United States Armed Services Committee*, June 6, 2011, <http://armed-services.senate.gov/statemnt/2011/06%20June/Panetta%2006-09-11.pdf>

most significant threat. Olsen contends that Al Qaeda in Somalia is a noteworthy threat due to its outspoken willingness, apparent ability, and intent to strike targets outside Somalia.¹⁴²

2. Hizballah

Like Al Shabaab, Hizballah represents another recognized terrorist organization whose activity along the U.S.-Mexico border poses a significant threat to national security. Unlike the recent rise in Al Shabaab activity in the U.S., Hizballah has an extensive history of operating in the U.S. and Latin America. Hizballah formed in 1982 as a Lebanon-based radical Shia group, and was designated by the U.S. as a Foreign Terrorist Organization in 1997. Hizballah advocates for Shia empowerment within Lebanon, and supports the Palestine struggle against Israel. Hizballah is also suspected of involvement in numerous anti-U.S. terrorist attacks: the suicide truck bombing of U.S. Embassy in Beirut of 1983, the bombing of the U.S. Marine barracks in Beirut of 1983, the hijacking of TWA flight 847 in 1985, and the Kobar Towers attack in Saudi Arabia in 1996. Hizballah operates primarily out of Beirut and southern Lebanon, but has established cells in the Middle East, Europe, Africa, Asia, South America, and North America.¹⁴³

In 2005, Mahmoud Youssef Kourani was sentenced to 4½ years in prison under charges of providing materiel support to a terrorist group (Hizballah). A Lebanese-born citizen, Kourani paid \$3,000 to a corrupt official in the Mexican Embassy in Lebanon to obtain a fraudulent Mexican visa. With Mexican visa in hand, Kourani entered what was deemed the Lebanon-Tijuana pipeline. Kourani was eventually smuggled across the Mexican border and into California in 2001. Once inside the U.S., Kourani made his way north to Dearborn, Michigan where he worked as a carpenter. While it is unknown whether Kourani acted under orders from his brother, a ranking Hizballah leader, it is

¹⁴² Jeremy Pelofsky, "Al Shabaab recruited dozens of Americans: U.S. report," *Reuters*, July 27, 2011, <http://www.reuters.com/article/2011/07/27/us-usa-security-somalia-idUSTRE76Q58M20110727>

¹⁴³ "Terrorist Groups: Hizballah," *The National Counterterrorism Center*, <http://www.nctc.gov/site/groups/hizballah.html>

known that he helped raise donations and funnel money back to Hizballah terrorists. According to an FBI affidavit, Kourani raised over \$40,000 which was sent back to Lebanon to support Hizballah activities.¹⁴⁴

In December 2002, the arrest of Salim Boughader Mucharrafile not only proved a sensational story about human smuggling, but raised a disturbing red flag to security analysts in the U.S. Boughader was a Mexican citizen of Lebanese descent who operated the “Café La Libanesa” in Tijuana, Mexico. In addition to operating his modest café, Boughader was the mastermind of a Lebanese human smuggling operation. Over a three year period Boughader successfully smuggled over 200 Lebanese individuals into the U.S. across the Mexican border. Charging up to \$4,000 per person, Boughader considered all Lebanese his brothers and readily admitted he made no distinction between assisting normal Lebanese seeking economic opportunity and known members of Hizballah. Upon his arrest officials seized Boughader’s meticulously well-kept notebook, full of names and dates. While many of Boughader’s clients were alleged to have links to Hizballah, one of his clients was a known worker for Al Manar, a global satellite television network owned by Hizballah and added to the DoS Terror Exclusion List in 2004. Boughader used a variety of methods to get his clients across the border, often pairing them with migrants from different nationalities for safer passage. He would send people through border points of entry in the trunks of vehicles, as well as send them on four hour long arduous journeys across the desert into California.

Boughader pled guilty to charges of human trafficking in the U.S., openly relating the specifics regarding his part in the Lebanon-Tijuana pipeline. Boughader’s case is interesting not only for the apparent ease with which he moved Lebanese across the border, but he had been previously arrested and served time for human smuggling. Coincidentally, Boughader may have possibly assisted or smuggled Kourani into the U.S., although he does not recall. More importantly, Boughader was the first human smuggler with suspected links to terrorists convicted in the U.S.¹⁴⁵

¹⁴⁴ Associated Press, “Terror Linked Migrants Channeled into U.S.,” *Fox News*, July 3, 2005, <http://www.foxnews.com/story/0,2933,161473,00.html>

¹⁴⁵ *Ibid.*

While it is irresponsible to assume and difficult to determine whether any of the Lebanese Boughader assisted in sneaking across the border were actually terrorists or just Hizballah supporter/sympathizers, it is equally dangerous and naïve to assume away the possibility that terrorists might have reached U.S. soil through Boughader's operation or a similar as yet undetected human smuggling operation. Michael Braun, a retired assistant administrator and chief of operations at the U.S. Drug Enforcement Administration, told the *Washington Times* that Hizballah uses the same smugglers, document traffickers, and transportations experts as the criminal drug cartels. Braun claims Hizballah's associations in these realms allow it to "smuggle contraband into the U.S.; in fact, they already are." Braun went on to comment that while Hizballah views its U.S. operations as a crucial revenue source, systems and conduits have been established specifically to move personnel across the border beyond the purview of U.S. law enforcement.¹⁴⁶

In a Channel 10 News interview in San Diego, a former U.S. intelligence agent speculated that Hizballah has been establishing a base of operations in Mexico over the past 15 to 20 years. Concurring with Braun's assessment, Channel 10 suggested that Hizballah views the U.S. as a "cash cow." While attacks on U.S. soil do not seem preeminent on Hizballah's agenda, Hizballah continues to further engrain itself into North American Muslim communities. Hizballah is now blending into Shia Muslim communities in the U.S. and Mexico, to include Tijuana. This is even more troubling than Hizballah expanding into narcotics trafficking, since the continued assimilation into Shia Muslim communities could increase the potential for radicalizing peoples of these Muslim communities.¹⁴⁷

In July 2010, Mexican officials arrested Jamel Nasr in his home in Tijuana. Nasr is a known member of Hizballah, and was allegedly the ringleader of a Hizballah attempt to establish a cell in Mexico. Mexican authorities have yet to release all the details, but

¹⁴⁶ Ben Conery, "Hezbollah Uses Mexican Drug Routes into U.S.," *The Washington Times*, March 27, 2009, <http://www.washingtontimes.com/news/2009/mar/27/hezbollah-uses-mexican-drug-routes-into-us/>

¹⁴⁷ "Hezbollah considered to be more advanced than Al Qaeda," *10News San Diego*, May 4, 2011, <http://www.10news.com/news/27780427/detail.html>

appear to have unraveled Nasr's involvement in a network that can be traced back to the Middle East.¹⁴⁸ Nasr allegedly employed Mexican nationals with family ties in Lebanon to establish Hizballah support cells. Mexican police conducted surveillance on Nasr prior to his arrest, noting he traveled frequently to Lebanon where it is suspected he received instructions and guidance directly from Hizballah's leaders. Nasr also traveled to other Latin American countries and, in 2008, spent two months in Venezuela, a country known to support terrorist and anti-U.S. activities.¹⁴⁹ While the investigation into Nasr continues, his activities demonstrate genuine attempts by terrorist organizations to establish support bases in Mexico, near the U.S. border.

Hizballah has well established relations with numerous Lebanese diaspora communities throughout Latin America. The largest Lebanese population outside of Lebanon is in Latin America, with a conservative estimate of over 8.5 million Lebanese living there and in the Caribbean.¹⁵⁰ While Brazil is home to approximately 6 million Lebanese, other countries with significant Lebanese populations are Argentina, Colombia, Venezuela, Ecuador, Paraguay, Panama, and Mexico. Emigrating from Lebanon in the late 1800s, Lebanese established communities that are now deeply rooted and fully assimilated in their host countries. Their descendants have gone on to serve as presidents and prime ministers as well as successful businessmen. For example, Carlos Slim Helu, a self-made billionaire and son of a Lebanese immigrant, was the world's richest man in 2010 with a net worth of \$53.5 billion according to Forbes magazine.¹⁵¹

While Latin America's diaspora communities may be physically removed from Lebanon, they maintain connections through business, religious, and political affiliations,

¹⁴⁸ Ray Walser, "Hezbollah Terrorists on Our Southern Border," *Fox News*, July 19, 2010, <http://www.foxnews.com/opinion/2010/07/19/ray-walser-hezbollah-mexico-jamel-nasr-middle-east-mexico-tijuana/>.

¹⁴⁹ Jack Houry and Haaretz Service, "Mexico Thwarts Hezbollah Bid to Set Up South American Network," *Haaretz*, June 7, 2010, <http://www.haaretz.com/news/diplomacy-defense/mexico-thwarts-hezbollah-bid-to-set-up-south-american-network-1.300360>.

¹⁵⁰ American Embassy Beirut, *Engaging the Lebanese Diaspora*, cable no. 1041/01 (Beirut: U.S. Embassy, September 2009).

¹⁵¹ "The World's Billionaires: #1 Carlos Slim Helu & Family," *Forbes.com*, March 10, 2010, http://www.forbes.com/lists/2010/10/billionaires-2010_Carlos-Slim-Helu-family_WYDJ.html.

as well as through charitable contributions. Remittances from successful Lebanese communities provide over six billion dollars annually to the Lebanese economy.

Lebanese immigrants to Latin America are well known for their work ethic and business savvy. However, certain Lebanese diaspora communities are even better known for their involvement in criminal enterprises. Most notably, Hizballah's deep roots and activities among the diaspora communities throughout Brazil and Argentina have drawn the attention of numerous counter-terrorism analysts. The notorious Tri-Border Area (TBA) of South America, encompassing parts of Brazil, Argentina, and Paraguay, has been synonymous with lawlessness and a haven for criminal syndicates. Hizballah has taken full advantage of the TBA, where its fundraising capabilities have become legendary. From its secure safe haven in the TBA, Hizballah conducts business locally and abroad, sending out operatives and developing ties with other transnational criminal-terrorist networks. Hizballah creates these alliances and symbiotic relationships not just for purposes of illegal trade, but to disperse its operatives and establish new cells. Hizballah has successfully expanded its networks from the TBA and South America, integrating itself into existing illicit networks in Venezuela, Colombia, Guatemala, Panama, Costa Rica and Mexico.¹⁵² Israeli security forces, sharing information with the U.S. about the TBA terrorist infrastructure, have revealed that Hizballah is "deeply involved in the drug cartel ... engaging in the cartel's money-laundering in several U.S. states, including Florida."¹⁵³ As a 2004 CIA Counter Terrorism Center threat paper summarized, "many alien smuggling networks that facilitate the movement of non-Mexicans have established links to Muslim communities in Mexico."¹⁵⁴ Through these networks, Hizballah now has relations to facilitate the smuggling of operatives not only throughout Latin America, up into Mexico, but across the border into the heartland of the U.S.

¹⁵² Cyrus Miryekta, "Hezbollah in the Tri-Border Area of South America," *Small Wars Journal* (2010): 1.

¹⁵³ Daniel Sobelman, "Israel Takes Special Interest in Triple Border Area," *Jane's Intelligence Review*, November 21, 2001, from IHS Jane's database.

¹⁵⁴ Pablo Gato and Robert Windrem, "Hezbollah builds a Western Base," *MSNBC.com*, May 9, 2007, http://www.msnbc.msn.com/id/17874369/ns/world_news-americas/t/hezbollah-builds-western-base/.

Hizballah's strength is not limited to support through alliances and partnerships with other criminal enterprises. In his 2004 NPS thesis, *Terrorism, Diasporas, and Permissive Threat Environments*, Howard Meehan explains how Hizballah exploited the Lebanese diaspora to gather information on Israeli targets. Meehan notes that Hizballah utilized diaspora members sympathetic to its ideological perspective to obtain information to conduct attacks against Israeli targets within Argentina in both 1992 and 1994.¹⁵⁵ While it is difficult to accurately assess levels of communal support for a criminal-terrorist enterprise within a diaspora, it is important to note the proven *potential* for a criminal-terrorist organization to activate a diaspora for illicit or adversarial means.

Even though Hizballah may not plan to mount an attack in the U.S. right now, its ability to establish a solid network in South, Central, and North America means it has the capacity to move resources and assets undetected by law enforcement. This also implies it has the capacity to conduct attacks and subversive activities within the U.S., when and where it chooses.

3. Tamil Tigers

Other ethnic based smuggling networks have also been implicated in attempts to smuggle terror operatives into the U.S. across the Mexican border. Shortly after September 11, 2001, four operatives from the Sri Lanka Tamil Tiger group were caught attempting to sneak into the U.S. The Tamil Tigers, or The Liberation Tigers of Tamil Eelam, were the militant wing of the Sri Lankan independence movement, designated a Foreign Terror Organization by the U.S. in 1997. The four Tamil Tigers were caught along with 17 other Sri Lankans, all posing as Mexicans attempting to enter the U.S. near San Ysidro and Otay Mesa. ICE investigators speculated the four Tigers were trying to sneak into the U.S. from Mexico on their way to Canada, which is known to have a significant Tamil diaspora population.¹⁵⁶

¹⁵⁵ Howard V. Meehan, "Terrorism, Diasporas, and Permissive Threat Environments: As Study of Hizballah's Fundraising Operations in Paraguay and Ecuador" (master's thesis, NPS, 2004), 16, <http://www.fas.org/irp/world/para/hizb-fund.pdf>.

¹⁵⁶ AP, "Terror Linked Migrants Channeled into U.S."

4. Iraqis

In 2007, then-Director of National Intelligence Mike McConnell gave a very candid and controversial interview to the *El Paso Times* in Texas while discussing the Foreign Intelligence Surveillance Act. Director McConnell was remarkably frank about information that many might have considered classified, and he made some startling revelations. Director McConnell said that terrorists were in fact coming across the Southwest border. He alluded to a significant number of Iraqis having been smuggled across illegally that year. McConnell could not provide a specific number, but said the number tripled in a single year wholly due to the fact that terrorists have figured out how to enter the U.S. this way. McConnell also added that while some were caught, many got into the U.S. undetected.¹⁵⁷

In 2011, Federal officials in San Diego busted a drug trafficking ring involving members of the Iraqi immigrant community. Over 60 individuals were arrested in El Cajon, a small suburb of San Diego. Many of the suspects were Christian Iraqis, or Chaldeans, who fled Iraq due to persecution from Al Qaeda and other fundamentalist extremist groups. Police confirmed that among the 60 people arrested, some were suspected of belonging to the Chaldean Organized Crime Syndicate. The Chaldean Syndicate is an Iraqi criminal organization based in Detroit, Michigan, which is also home to the largest population of Chaldeans in the U.S. Coincidentally, El Cajon, scene of the recent arrest, has the second largest population of Chaldeans in the U.S. Officials raided an Iraqi Social Club, seizing over 3,500 pounds of drugs, more than 30 firearms, 4 IEDs, and over \$630,000 in cash.¹⁵⁸ Officials revealed that the Chaldean Syndicate has historical ties to the Sinaloa cartel, one of Mexico's most powerful drug cartels. Police believe the Chaldean Syndicate's ties with the Sinaloa Cartel provided it with access to drugs which were sold locally and transported to Detroit for distribution. Ties between the Chaldean Syndicate and the Sinaloa Cartel also provided access to Mexican migrant

¹⁵⁷ Chris Roberts, "Transcript: Debate on the Foreign Intelligence Surveillance Act," *El Paso Times*, August 22, 2007, http://www.elpasotimes.com/news/ci_6685679.

¹⁵⁸ Kristina Lee, "Cops: Iraqi Social Club Used by Drug Ring," *Fox 5 San Diego*, August 19, 2011, <http://www.fox5sandiego.com/news/kswb-operation-shadowbox,0,1690333.story>.

smugglers who assisted many Chaldeans in getting into the U.S. The 60 individuals arrested face a combination of state and federal charges, with some being illegal immigrants who may face deportation charges as well. Due to the ongoing investigation, officials could not comment on the number or status of the illegal immigrant Chaldeans arrested, but it is suspected that some may have passed through Tijuana or other border towns into California with the assistance of Mexican smugglers.¹⁵⁹ While the Chaldean Syndicate is primarily a criminal enterprise, it does represent the potential for non-Mexican groups to work with Mexican smugglers to sneak people across the Mexican border into the U.S. Not only could a terrorist group utilize a network in collaboration with Mexican smugglers, but terrorist operatives could then assimilate and hide in plain sight among a large ethnic diaspora within the U.S.

5. The Chinese

Chinese “snakeheads” have been transporting people across the border between the U.S. and Mexico illegally since the 1800s. The pipelines for getting Chinese opium onto the streets of California and the rest of the U.S. are well established and have evolved with the times. Much as the drug trade has had to adapt to new types of surveillance, human smuggling too has become more complicated and circuitous.

In Arizona alone, the U.S. Border Patrol reported the Tucson sector experienced a tenfold increase in the number of Chinese illegal immigrants caught trying to cross into the U.S. from Mexico. In FY09, 332 Chinese immigrants were detained, compared to 30 the year before. In the first quarter of FY10, 281 illegal Chinese immigrants were arrested. This sharp increase is indicative of the rise in smuggling in other states along the border between the U.S. and Mexico. In one two month period at the end of 2008, Robert Rutt, head of ICE Criminal Investigations in Houston, Texas, noted ICE agents in the Houston area intercepted over 63 illegal Chinese immigrants.¹⁶⁰ While the smuggling

¹⁵⁹ AP, “Feds Bust Iraqi-Mexican Drug Ring in Calif.,” *CBS News*, August 11, 2011, <http://www.cbsnews.com/stories/2011/08/18/national/main20094401.shtml>.

¹⁶⁰ James Pinkerton, “Smuggling of Chinese into Texas is on the rise,” *Houston Chronicle*, December 24, 2008, <http://www.chron.com/news/article/Smuggling-of-Chinese-into-Texas-is-on-the-rise-1766172.php>.

of Chinese by snakeheads has waxed and waned over the years, the recent rise in apprehensions could signal a change in the overall dynamics.

Simply put, trafficking in Asians and Chinese can be far more profitable than trafficking in Mexican immigrants. For example, according to David Jimarez, U.S. Border Patrol spokesman, Chinese immigrants can pay over \$40,000 to flee China and sneak into the U.S. While this sum represents the total amount to get from China through Asia and Latin America, a significant chunk of it goes to smugglers at the U.S.-Mexico border—certainly more than the typical \$1,500–\$3,000 price most illegal Mexican immigrants pay. Vincent Picard from ICE believes that, due to increased scrutiny and attention paid to traditional human smuggling practices, snakeheads have formed collaborative ties with Mexican smuggling operations. Picard and Jimarez both point out that the price Chinese immigrants bring far exceeds that of other nationalities, which makes human smuggling of Chinese citizens increasingly lucrative as more and more drugs are seized by authorities.¹⁶¹

Snakeheads typically prefer flying Chinese citizens into Latin American countries, then moving them over land up into northern Mexico, eventually handing them over to Mexican “coyotes” (human smugglers) for transfer across the border into the U.S. A popular route is from China to Thailand, where fraudulent papers can be obtained for flights into Latin America. Once in Latin America, many Chinese immigrants make their way to Belize. Here they link up with Chinese-Belizean smugglers who are part of the large Chinese diaspora population in Belize, comprising almost three percent of the county’s total population.¹⁶² From Belize, it’s easy to get to Mexico and then northward.

C. IF IT LOOKS MEXICAN AND SOUNDS MEXICAN....

Because Special Interest Aliens draw immediate attention from border officials, attempts are being made to reduce their signature and help them blend into the sea of

¹⁶¹ Stephen Ceasar, “In Arizona, a Stream of Illegal Immigrants From China,” *New York Times*, January 23, 2010, <http://www.nytimes.com/2010/01/23/us/23smuggle.html>.

¹⁶² Irene Jay Liu, “Smuggled Chinese Travel Circuitously to the U.S.,” *NPR*, November 20, 2007, <http://www.npr.org/templates/story/story.php?storyId=16422719>.

Latin American migrants attempting to illegally cross into the U.S. Mexican smugglers not only provide guides, water, and pick-up rides on the U.S. side, but some smugglers are now coaching Middle Eastern immigrants on how to look and sound like Latinos. In addition to helping Middle Eastern immigrants change their clothes and appearance, smugglers are also teaching immigrants phrases to help them pass as ordinary Hispanic immigrants. In 2005, then-Director of the FBI Robert Mueller testified to the House Appropriations Committee:

“There are individuals from countries with known Al Qaeda connections who are changing their Islamic surnames to Hispanic-sounding names and obtaining false Hispanic identities, learning to speak Spanish and pretending to be Hispanic.”¹⁶³

Anthony Kimery echoes this in his 2010 “Southern Exposure” article, writing that special schools are established by Muslim businessmen in alliance with Mexican cartel-controlled human smuggling operations. These schools assist the smuggling of terrorists by teaching them to speak Spanish and learn about Hispanic culture. He attributes the decline in the apprehension of Special Interest Aliens by the Border Patrol to greater precautions, such as the masking of identities to prevent capture.¹⁶⁴

Of even greater concern to law enforcement is the detection of villages in northern Mexico where Middle Easterners are moving into towns. Here Middle Easterners are changing their names to Hispanic names and learning to speak Spanish. Whether only temporary or intended for the long haul, this level of integration indicates a recognized effort by Middle Easterners to try to fit in among locals, some of whom may well be headed north of the border too.¹⁶⁵ Establishing smaller Middle Eastern populations in villages and towns in northern Mexico suggests the potential for a much more elaborate and substantial support base on the Mexican side of the border than anything seen before. Again, Thomas Davidson of the Jamestown Foundation speculates that a *salafi* network already exists in Mexico, running from the southernmost state of

¹⁶³ Kimery, “Southern Exposure,” 32.

¹⁶⁴ Kimery, “Southern Exposure,” 32.

¹⁶⁵ Winter, “Feds Issue Terror Watch for the Texas/Mexico Border.”

Chiapas all the way north to the U.S.-Mexico border. This network is positioned along key movement corridors and could easily provide support to potential terrorists moving north.¹⁶⁶

D. MONEY TALKS

If money becomes the primary motivator for smuggling networks and coyotes, then it would be safe to assume that terrorist operatives would have more than sufficient funds to entice a smuggler to sneak them into the U.S. By using money as the primary motivator, any terrorist could conceal his association with a terrorist network, posing as another asylum seeker hoping for better economic opportunity. Additionally, with more money comes greater sophistication. Paying sums in excess of \$10,000 would surely buy you more than a bottle of water and a few granola bars. Sophisticated networks with established lookouts, safe houses, routes, encrypted radios, prepaid/throw-away cell phones, night vision devices, tunnels, etc. means less chance of detection. For a terrorist organization that relies on secrecy to avoid law enforcement, less detection by authorities is always well worth the cost.

High-priced smugglers would also be better resourced to avoid U.S. law enforcement measures, making it harder to assess correlations between arrests, crossing rates and the number who actually cross into the U.S. illegally. As the Director of National Intelligence said in 2007, there are already terrorists successfully crossing the Southwest border.¹⁶⁷ If terrorists were to employ high price smugglers it will likely be even harder to assess how or when terrorist organizations are attempting to sneak their operatives across the border undocumented.

E. CONCLUSION

Somalis, Tamils, Lebanese, Iraqis and Chinese are just some of the diaspora groups that take advantage of vulnerabilities along our southern border. Their resourcefulness and unrelenting desire to infiltrate personnel undetected into the U.S. has

¹⁶⁶ Davidson, "Terrorism and Human Smuggling Rings in South and Central America," 7.

¹⁶⁷ Chris Roberts, "Debate on the Foreign Intelligence Surveillance Act."

been a source of frustration for border security and immigration enforcement officers alike. There are ethnic diasporas within the U.S. representing almost all of the countries listed as Special Interest Countries by DHS. The potential for a terror operative to hide in plain sight should keep more Americans awake at night than it seems to.

Unlike those who believe terrorist organizations are more likely to attack U.S. interests abroad, many, like Dennis Blair, previous Director of National Intelligence, think an attack within the U.S. by a terrorist organization is imminent. When asked by the Chairwoman of the Senate Intelligence Committee in 2010 to determine the probability of an attack within the U.S., Blair responded that the probability is certain. Top officials at the FBI and CIA concurred.¹⁶⁸

The truth is we do not know how many unreported individuals are here already. The cases reviewed in this chapter demonstrate the vulnerability of the border, and the potential for terrorists, recruiters, and others to get across. People associated with various terrorist organizations and anti-U.S. agendas have *already* gotten into the U.S., and we do not know where they are, or what they are doing.

¹⁶⁸ Mark Mazzetti, "Senators warned of terror attack on U.S. by July," *The New York Times*, February 3, 2010, <http://www.nytimes.com/2010/02/03/us/politics/03intel.html?pagewanted=print>.

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V. FUTURE SCENARIOS

A. HOLLYWOOD

While some discount the potential or temptation to terrorists to infiltrate the U.S. from Mexico, a scenario involving terror operatives sneaking across the border undetected is not too far-fetched. The threat of this has already caught the eye of Hollywood, with shows like *24* in the U.S. and *The Border* in Canada depicting terror masterminds crossing illegally and undetected to organize and execute attacks inside the U.S. There are even plans to release a full length feature film called “Act of Valor” in which U.S. Navy SEALs attempt to stop a Chechen jihadist from working with a smuggler to sneak suicide bombers across the Mexican border to attack U.S. targets.¹⁶⁹

B. CANADIAN BORDER

As concerning as is the potential for terrorists to cross the southwestern border, the northern border between the U.S. and Canada is also highly vulnerable. Mexico may continue to be attractive because of large semi-governed spaces, historic smuggling routes, protection from established human trafficking organizations, and the presence of support groups within ethnic diasporas. However, as DHS continues to increase security measures along the southwestern border, this could make the U.S.-Canadian border more appealing. Despite all the advantages associated with illegally crossing from Mexico, numbers recently released relating to the U.S.-Canada border are alarming. According to a December 2010 GAO report, of the 4,000 miles of border Canada and the U.S. share, only 32 miles are adequately secured by the U.S. Border Patrol. While the report indicates that border officials can detect illegal border crossings along 1,007 miles, less than 1% of the total northern border has acceptable levels of security.¹⁷⁰

¹⁶⁹ John Jurgensen, “Hollywood Tries a New Battle Plan,” *The Wall Street Journal*, August 26, 2011, <http://online.wsj.com/article/SB10001424053111904787404576528293606172306.html>.

¹⁷⁰ Aliyah Shahid, “Canadian Border Poses Bigger Terror Threat to U.S. Than Mexico border,” *New York Daily News*, February 2, 2011, http://articles.nydailynews.com/2011-02-02/news/27738771_1_northern-border-border-patrol-agents-mexico-border.

Canadian authorities counter these numbers with statistics showing that while 450,000 illegal aliens were arrested crossing into the U.S. from Mexico, only about 7,500 illegal aliens were detained crossing into the U.S. along the Canadian border.¹⁷¹ But these lower numbers can be deceiving for two reasons: first, these numbers only reflect the number of illegal crossers *caught* by law enforcement. And second, it only takes a small handful of terror operatives entering the U.S. to pose significant security risks.

Many, like Michael Cutler at the Center for Immigration Studies in Washington, emphasize that relatively liberal political asylum rules for immigrants entering Canada are increasingly attractive to terror operatives seeking a pathway into the U.S.¹⁷² The perception of lax asylum laws combined with a low numbers of border security agents across long stretches of austere terrain make the Canadian border another attractive jumping off point for undocumented illegal entry into the U.S.

Not only is the northern border nearly twice as long as the U.S.-Mexico border, it also includes large areas of heavily forested terrain and federally managed lands, along with the Great Lakes. In the fall of 2006, investigators from the GAO conducted a security assessment to identify border vulnerabilities. These investigators successfully crossed the northern border into the U.S. on three separate occasions without being caught by CBP. This led the GAO to testify at a Senate Finance Committee hearing that there were “substantial vulnerabilities in the northern border to terrorists or criminals entering the United States undetected.”¹⁷³

Equally concerning are the arrests by Canadian authorities of terrorists intent on crossing into the U.S. to do harm. Most famously, in December 1999, Canadian authorities arrested Ahmed Ressam when he attempted to smuggle explosives from

¹⁷¹ Colin Freeze, “U.S. Border Chief Says Terror Threat Greater From Canada Than Mexico,” *The Globe and Mail*, May 19, 2011, <http://www.theglobeandmail.com/news/national/us-border-chief-says-terror-threat-greater-from-canada-than-mexico/article2027713/>.

¹⁷² Scott Shane, “Canadian Border Proves Difficult to Secure,” *New York Times*, June 5, 2006, <http://www.nytimes.com/2006/06/05/world/americas/05border.html>.

¹⁷³ Kevin Bohn, “Security on U.S.-Canada Border Fails Security Test,” *CNN*, September 27, 2007, http://articles.cnn.com/2007-09-27/us.border.security_1_border-patrol-northern-border-radioactive-material?s=PM:U.S.

Canada into Washington State as part of the Millennium terrorist plot.¹⁷⁴ More recently, the testimony from the 2006 arrest of the Toronto 18 indicated the group had plans to cross the border to carry out attacks inside the U.S.¹⁷⁵ While these incidents do not indicate coordinated efforts for undetected infiltration, they do represent terrorists' attempts to use the northern border as an alternative method for entry into the U.S.

C. STRATEGIES

Stopping and deterring terrorist organizations from infiltrating operatives into the U.S. across the Mexican border is no simple task. Lawmakers, law enforcement and the public all have opinions about which strategy is best to pursue. While maintaining border integrity along the U.S.-Mexico border is problematic, attempts to stem the possible flow of illegal aliens with ties to terrorism must be done with care not to strangle tourist, commercial, or leisure cross-border traffic essential to border communities and both national economies.

Many options exist. However, I will only examine three here: increased patrolling of the border, increased use of observation and technology along the border, and prevention measures to shut down and deter would be smuggling networks.

1. Patrolling the Border

Increasing patrols and monitoring along the 1,901 mile southwestern border could undoubtedly impact illegal human smuggling. Too often border officials find tracks, makeshift rafts, and a trail of trash strewn by smugglers. An increased presence by border officials could effectively restrict the available passageways for smugglers, and reduce their ability to operate between the seams of border patrol detection systems. However, an increase in patrolling the border means increased costs in resources and manpower. This, in turn, would likely mean a redirection of material and human resources from traditional ports of entry.

¹⁷⁴ Shane, "Canadian Border Proves Difficult to Secure."

¹⁷⁵ Jack Cloherty and Pierre Thomas, "Congress: Border with Canada the Weak Link in Terror Security," *ABC News*, February 1, 2011, <http://abcnews.go.com/U.S./northern-border-weak-link-terror-security/story?id=12812214>.

Constraints on human resources in the summer of 2010 led the DoD to authorize the deployment of 1,200 National Guard troops along the Mexican border in Arizona, Texas, California, and New Mexico.¹⁷⁶ While these troops provide support to the Border Patrol and local law enforcement the need for them points to the deficit in manpower among border and immigration authorities. Additionally, this highlights that even with one thousand additional bodies, illegal smuggling across the border continues to be a problem.

2. Observation Technology

Advances in observation technology are increasingly attractive as the increased demand for border control officers puts a strain on both the budget and on the force itself. In addition to the competition for restricted resources, the sheer magnitude of combating both human and narcotics smugglers pushes U.S. and Mexican border officials to the limits of their capabilities. However, advances in technology have allowed border control agencies to augment shortages in manpower and still maintain a watchful eye on the border. Observation technologies such as ground sensors, day and night vision cameras, thermal imaging, and satellite tracking have helped border control agents better integrate and coordinate their activities and focus attention on high traffic areas. Advances in surveillance and reconnaissance technologies for austere desert environments developed in Afghanistan and Iraq are also being adopted and adapted.

The integration of technology with human agents greatly increases the area that border control agencies can monitor. However, observation technologies are only able to see violations, not stop them. Maximizing the utility of these observation platforms still requires the work of agents on the ground. Under-budgeted and under-staffed departments contending with the everyday physical challenges of traversing austere terrain can reduce border control agencies' abilities to act upon information gained in a time sensitive manner. Further frustrating the use of observation technologies is the increasing sophistication of smugglers. Defeating smugglers solely through observation technology is much akin to building a better mousetrap. Smugglers are constantly

¹⁷⁶ AP, "National Guard Troops Extend Stay at Mexico border."

engaged in counter-intelligence activities, often specifically designed to undermine and ultimately defeat U.S. border control detection technologies.

3. Prevention

Prevention efforts in the first place are largely based on deterring people from attempting to illegally enter the U.S. Prevention does not only include thwarting illegal smuggling attempts, but includes prevention of activities that occur both before and after individuals cross the actual border. Networks can range in their sophistication from offering transportation up to, across, and northward away from the border, to fraudulent document procurement, to safe houses and the placement of illegal immigrants in diaspora or ethnic communities. As immigration and border security officials unravel these networks they can prevent and deny smugglers the necessary resources and support to successfully traffic humans across the border. By removing support mechanisms on the U.S. side, smugglers can be deterred from attempting to smuggle humans across with no viable means to avoid detection and guarantee passage for potential customers as they try to cross.

Prevention efforts based on defeating human smuggling networks are time and resource intensive. Unraveling networks often begins with random illegal immigrants caught by border patrol agents, and ends with a combination of law enforcement agencies attempting to uncovering illegal activities often woven into the fabric of legitimate life in U.S. communities. For example, the Border Patrol may catch a random illegal alien who gives them the location, name, or time of a pick-up contact on the U.S. side. The Border Patrol must now dedicate assets to finding and catching this contact, often on the basis of sketchy information. If they successfully catch the contact on the U.S. side, officials must then determine the next link in the chain. Oftentimes this leads them to rented “safe houses” in average middle class neighborhoods. Here illegal immigrants are temporarily housed in rented homes until they can be moved north. Jurisdictional issues, authorities, warrants, etc then take time to acquire, often requiring a significant investment of time and personnel.

4. A Combined Strategy

Perhaps the optimal strategy is to combine patrolling, standoff observation, and prevention. However, just as a long, tall and unmanned fence will not deter illegal human smugglers, increased patrolling of the border, observation technologies and prevention alone cannot stop or deter illegal human smuggling across the U.S.-Mexico border. Integration of border patrolling with observation technologies can interrupt border crossing attempts and optimize the employment of human resources. Observation technologies can allow officials to initially identify a smuggling operation. That detection can assist with putting preventive measure in place. Increased prevention efforts can decrease the available support for human smugglers, causing them to revert to traditional ports of entry, where it is already much easier to prevent illegal smuggling.

D. COLLABORATIVE EFFORTS

To defeat possible terror infiltration along the Southwestern border requires collaboration, to include increased communication and intelligence sharing among law enforcement institutions. This should include those agencies south of the border that have not been subverted by the drug cartels. It will not be enough to just realign strategies within individual agencies. There needs to be a synchronized over-arching plan.

1. Joint Task Forces

The FBI Joint Terrorism Task Force (JTTF) represents the most recognizable national effort to prevent domestic terrorist activities. The FBI JTTF has offices in 106 cities nationwide, and is comprised of over 4,400 members from over 50 federal agencies and 600 state and local agencies.¹⁷⁷ It is these regional and local fusion efforts which really demonstrate the benefits of synchronized collection, analysis, and sharing of threat-related information. By leveraging national resources and databases, combined with gathering local knowledge and insight, local fusion centers prevent, protect, and rapidly

¹⁷⁷ “Protecting America from Terrorist Attack: Our Joint Terrorism Task Forces,” *FBI.gov*, http://www.fbi.gov/about-us/investigate/terrorism/terrorism_jtfs.

respond to terror and crime-related activities. Local level interaction with public and private sector partners can also facilitate crucial links between seemingly unconnected regional activities.

Offices such as the San Diego Law Enforcement Coordination Center (SD LECC) exemplify such efforts to combine resources for maximizing results. The SD LECC is comprised of representatives from the San Diego Sheriff's Department, FBI, California Department of Justice, California Highway Patrol, Federal DHS, Governor's Office of Homeland Security, California Emergency Management Agency, InfraGuard,¹⁷⁸ and the Transportation Security Administration (TSA). In August 2011, federal and local officials broke up the Chaldean drug smuggling ring operating outside San Diego, CA. As previously mentioned, officials were tipped off to illegal drug related activities at a local Iraqi nightclub by locals. The ability to fuse local intelligence with national level tracking databases allowed authorities to obtain evidence to take down the network which crossed multiple state and international jurisdictions. Information from the arrests, like the fact that several of the Chaldeans were helped by Mexican migrant smugglers to reach the U.S., will help local and national authorities' efforts to further unravel the network.¹⁷⁹

BESTs are another example of a joint task force. As previously mentioned, BESTs are built around the specific and unique needs of the regions they operate in. Nationwide, between October 2008 and June 2010, BESTs initiated over 390 human smuggling investigations resulting in over 580 criminal arrests and over 360 convictions.¹⁸⁰ In August 2009, Secretary Napolitano announced the formation of the

¹⁷⁸ InfraGard is a partnership between the [Federal Bureau of Investigation](#) and the private sector. InfraGard is an association of businesses, academic institutions, state and local law enforcement agencies, and other participants dedicated to sharing information and intelligence to prevent hostile acts against the United States. See <http://www.infragard.net/>.

¹⁷⁹ AP, "Feds bust Iraqi-Mexican drug ring in Calif."

¹⁸⁰ *Enhancing DHS' Efforts to Disrupt Alien Smuggling Across Our Borders, Testimony before Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, House of Representatives*, 111th Cong. 14 (2010) (Statement of James A. Dinkins, Executive Assistant Director, Homeland Security Investigations, U.S. ICE).

first Mexico based BEST, representing continued efforts to maximize effectiveness through bilateral, multi-agency collaboration.¹⁸¹

2. Operation In Plain Sight

Perhaps the best example of bilateral multi-agency collaboration is the successful execution of Operation In Plain Sight in 2010. Operation In Plain Sight was a comprehensive year-long investigation into the illegal transportation of illegal aliens smuggled across the border into the Phoenix and Tucson areas. The operation focused on human smuggling organizations using legitimate shuttle transportation companies as a front. Smuggled aliens were brought across the border, then smuggled to various legitimate shuttle companies or safe houses in Tucson. After receiving wired money through MoneyGram or Western Union, the smugglers transported the illegal aliens to various locations in Phoenix or to final destinations nationwide. The investigation primarily focused on areas in Arizona, but given the breadth of the organization arrest warrants were served as far away as Tennessee. Smuggled aliens identified in the operations were primarily from Mexico and Central America, but several came from more distant locations like China. By dismantling some of Arizona's most prolific and profitable human smuggling operations, Operation In Plain Sight was dubbed "the most comprehensive human smuggling investigation in ICE history."¹⁸²

The operation resulted from the collaborative efforts of more than 800 agents and officers from nine federal, state, and local law enforcement agencies, to include the ICE Office of Investigations, ICE Detention and Removal, Border Patrol, CBP Field Operations, FBI, DEA, ATF, U.S. Marshals Service, Arizona Department of Public Safety, Phoenix and Tucson's Police Departments, and the Pima County Sheriff's Office. Additionally, the operation included unprecedented cooperation with agents from

¹⁸¹ *Drug Trafficking Violence in Mexico: Implications for the United States, Hearing before the Caucus on International Narcotics Control, United States Senate*, 8 (2010)(Statement of Janice Ayala, Assistant Director, Office of Investigations, U.S. ICE).

¹⁸² "Commercial Transportation Companies Implicated in Sweeping ICE Investigation Targeting Arizona Human Smuggling Networks, 47 in *Criminal Custody as Agents Execute Federal Search and Arrest Warrants Statewide*," *U.S. Immigrations and Customs Enforcement*, April 15, 2010, <http://www.ice.gov/news/releases/1004/100415phoenix.htm>.

Mexico's Secretaria Seguridad Publica (SSP). The combined task force was able to conduct near-simultaneous raids in the southern Arizona cities of Phoenix, Tucson, Nogales, and Rio Rico as well as make arrests in Sonora and Nogales in northern Mexico. In total, the operation resulted in 61 criminal arrests, more than 500 additional administrative arrests, and the seizure of seven weapons and approximately 94 vehicles, as well as \$80,000 in U.S. currency.¹⁸³ The case indictments included criminal forfeiture of over \$10 million in assets derived from the criminal conspiracy.¹⁸⁴

3. Community Self-Policing

While immigration and border control officials succeed in unraveling smuggling networks, they still face significant obstacles. Two of the most noteworthy are: first, limited language capabilities, specifically in languages spoken in diaspora communities; second, the lack of programs or compensation to incentivize communities to conduct more self-policing and report issues to law enforcement, and specifically to immigration enforcement officials.

E. UNINTENDED CONSEQUENCES

Programs and initiatives intended to decrease the burden placed upon local and state authorities by identifying and deporting convicted felons and repeat offenders of immigration fraud are creating a rift between diaspora communities and law enforcement. Activists who oppose these programs insist that the communities initiatives are supposed to assist are increasingly likely to suffer hardships and succumb to the very threats the initiatives were designed to remove.

1. Secure Communities

One such program is the Secure Communities initiative, launched in 2008 to identify and remove dangerous threats from communities. Secure Communities enhanced the criminal alien enforcement process through early identification of criminal

¹⁸³ *Enhancing DHS' Efforts to Disrupt Alien Smuggling Across Our Borders*, 14.

¹⁸⁴ "Commercial Transportation Companies Implicated in Sweeping ICE Investigation."

aliens, facilitating their expedited removal from the U.S. Participating local jurisdictions would then share fingerprints of individuals booked into jails with the FBI and DHS, checking against criminal record and immigration databases. Secure Communities prioritizes removal actions, focusing on individuals who pose the most significant threat to public safety (e.g. those who have committed homicide, rape, robbery, kidnapping, major drug offenses and repeated violation of immigration laws). Removing these convicted felons would alleviate burdens on local and state detention and prison systems. It would also prevent their potential reintegration back into the local communities they had often victimized prior to their conviction. Touted as an initial success in 2009, the program expanded from 14 participating jurisdictions to more than 1,595 in 44 states in 2011. Since the activation of Secure Communities in 2008, the program has removed over 142,000 aliens and over 37,600 convicted criminal aliens.¹⁸⁵ This year alone, through June 30, 2011, more than 86,000 immigrants convicted of crimes were removed from the U.S. as a result of the Secure Communities initiative.¹⁸⁶

While DHS Secretary Napolitano and President Obama use these historic results to demonstrate commitment and tough enforcement of immigration laws, they often fail to acknowledge the growing undercurrent of dissent and resentment in the “secure communities.” The program has come under considerable criticism, mostly thanks to the large percentage of those caught up in the Secure Communities system who are low level offenders. Opponents condemn the program for disproportionately snagging minor offenders, domestic abuse victims, victims of assaults and other crimes, and individuals arrested but not convicted of an offense in addition to reporters or witnesses of crimes. For communities comprised of illegal immigrants, reporting a crime carries an inherent risk of being jailed and deported. Even legal citizens in diaspora communities may fear harassment for themselves and their communities. Pressure from law enforcement,

¹⁸⁵ U.S. Immigration and Customs Enforcement, *Secure Communities: IDENT/IAFIS Interoperability, Monthly Statistics through September 30, 2011* (Washington: U.S. Department of Homeland Security, 2011), 1.

¹⁸⁶ “Secure Communities,” *U.S. Immigrations and Customs Enforcement*, http://www.ice.gov/secure_communities/.

profiling and prejudice from the surrounding community, and the threat of reprisals on friends and family members increase the aversion to reporting a crime.

2. Community Alienation

A 2009 Southern Poverty Law Center (SPLC) survey of low income Latino communities revealed that only 46% of respondents said they have confidence in the police, in some regions the figure is as low as 27%. The SPLC report asserts that immigrants often make a rational choice in deciding not to report crimes, especially where it is not uncommon for crime victims to become targets of investigations that lead to their deportation. The fears and risks associated with reporting criminal activity to local law enforcement “results in fear and distrust in the immigrant community and a general lack of cooperation with law enforcement.”¹⁸⁷ In addition to the many Latino advocacy groups speaking out against the program, numerous local police chiefs are also renouncing and opting out of it.¹⁸⁸

Local jurisdictions with 287(g) agreements only increase fear and anxiety among undocumented aliens and legal citizens, and make them more reluctant to inform law enforcement if they are victimized. In Nashville, Tennessee alone, the SPLC survey reports that 73% of Latinos surveyed indicated they were more reluctant to cooperate with police because of the known 287(g) agreement with federal immigration authorities.¹⁸⁹

While the SPLC survey deals exclusively with Latino communities, the distrust and reluctance to cooperate with law enforcement reverberates through other diaspora communities. Despite high levels of assimilation for some in these communities, many still maintain a high degree of insularity. In many diaspora communities there is a collective fear of prejudice, racial profiling, and xenophobia on the part of surrounding

¹⁸⁷ *Under Siege: Life for Low-Income Latinos in the South, Reporting Crime* (Montgomery: Southern Poverty Law Center, 2009), 26.

¹⁸⁸ Paloma Esquivel, “Immigrant Advocates Urge Ending Secure Communities Program,” *Los Angeles Times*, August 18, 2011, <http://articles.latimes.com/2011/aug/18/local/la-me-0817-secure-communities-20110817>

¹⁸⁹ *Under Siege*, 27.

communities and law enforcement entities. This is especially true in diaspora communities which are much smaller and less well established than Latino communities. Communities whose cultural, ideological, and religious views place high degrees of importance on community and family may experience significant friction with the concept of turning over members of the community to outside law enforcement.

Perhaps the most commonsense approach is to establish citizen advisory boards and liaison groups with diaspora communities. This could not only help local law enforcement develop positive relations with diaspora community leaders, but would help build a foundation for community policing. Community leaders who would otherwise fear reprisals would feel empowered to serve as a buffer between wary members of the population and law enforcement. With open dialogue and communication through advisory boards and liaison groups, law enforcement could address security issues in diaspora communities which might not have been brought to their attention previously. Fuller disclosure of crimes specifically committed and suspected to have been committed by both legal and illegal members of diaspora communities could likewise help reduce ambiguity. By informing the general population of the frequency, severity, and impact of crimes, law enforcement officials could explain the need for security protocols. By making the case for self-policing by the community, ideally law enforcement could get members of the community to help them identify potential recruiters or terrorist operatives long before the operational phase of an attack.

3. Language

Contributing to the rift between law enforcement and diaspora communities is the lack of foreign language capabilities among border security and immigration enforcement officers. Even before the 9/11 attacks and the increased sensitivity to legal and illegal aliens within the U.S., then-Assistant Director of the FBI Investigative Services Division David Alba recognized the critical need for foreign language capabilities. Alba not only advised there be an increase in Spanish-speaking capabilities for agents working on the border, but also advocated an increase in agents proficient in Arabic, Chinese, Japanese,

Korean, Farsi, and Vietnamese.¹⁹⁰ Not only does the lack of foreign languages reduce the ability of law enforcement to communicate with their targets, it places them at risk. However, DHS currently has no mechanism for assessing its foreign language needs, and does not address foreign language needs in its Human Capital Strategic Plan. Because DHS does not identify shortfalls in its foreign language programs, it is unable to effectively manage the programs and activities of its component agencies. CBP has conducted two assessments since 2004, but those assessments primarily focus on Spanish language capabilities. Specifically, CBP's foreign language capability assessment for its Office of Field Operations was limited to CBP officers along the southwest border, in Miami and in Puerto Rico.¹⁹¹ ICE, however, has not conducted an assessment of its foreign language capabilities, and relies on agents' knowledge of foreign languages they are exposed to in the daily execution of their duties. In fact, ICE only reinstated Spanish language requirements four years after it chose to eliminate formal language training requirements for new ICE agents in 2003.¹⁹² Despite the fact that ICE agents frequently encounter non-English-speaking individuals, they often rely on foreign language interpreter services (to include for Spanish).¹⁹³ This becomes especially problematic for agents who consistently interact with individuals whose language needs fall outside the limited Spanish training officers receive. For example, in 2009 the ICE Office of Detention and Removal Operations experienced a critical need for Mandarin Chinese language speakers due to a surge in encounters with Chinese speakers near the Mexican border.¹⁹⁴ Nor are Border Patrol agents offered training in languages spoken by natives of Special Interest Countries. They do, however, have access to an over-the-phone, 24-hour translation service in over 150 languages. This is problematic not only for time

¹⁹⁰ Democratic Staff of the Homeland Security Committee, *Decision Eliminating Spanish and Other Language Training for ICE Investigators Was a Mistake* (Washington: U.S. House of Representatives, 2005), 3.

¹⁹¹ GAO, *Department of Homeland Security: DHS Needs to Comprehensively Assess Its Foreign Language Needs and Capabilities and Identify Shortfalls*, Report to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate, 12 (2010).

¹⁹² *Decision Eliminating Spanish and Other Language Training*, 2.

¹⁹³ GAO, *DHS Needs to Comprehensively Assess Its Foreign Language Needs*, 13.

¹⁹⁴ GAO, *DHS Needs to Comprehensively Assess Its Foreign Language Needs*, 13.

delays in reaching interpreters, but it muddles the ability of agents to conduct timely on-the-spot discussions and resolve issues encountered in the field.¹⁹⁵

The inability to establish ties that make inroads into insular diaspora communities is one problem, but limited language capabilities also hamper developing potential informants. For example, it is difficult to near impossible to assess and recruit a potential informant when the entire discussion has to occur through an unknown third party interpreter over the phone. Not only is this interaction frustrated by language barriers and delays, it degrades the ability to establish trust and security between agent and informant.¹⁹⁶

The inability to communicate through a common language negatively affects the ability to develop criminal cases and increases the risk of loss or delay in intelligence as well as the likelihood of constitutional violations due to miscommunications. Open discourse with community leaders is crucial for law enforcement to maintain visibility and react to events within diaspora communities. Language capabilities alone will not ensure cooperation from diaspora communities, but something more has to be done to establish trust between law enforcement and the population in these communities.

F. ADDRESSING THE PROBLEM

1. Recruiting within Diasporas

Enhancing language capabilities through training may help, but the easiest way to tackle this problem is to recruit directly from the diaspora communities themselves. Having members of a diaspora community serve with law enforcement would not only reduce the perceived alienation of the community, but would also provide invaluable insights about community needs to the authorities. While incentive and reward programs in agencies such as ICE and CBP exist for re-assigning current members of law enforcement proficient in authorized foreign languages, there need to be outreach

¹⁹⁵ GAO, *DHS Needs to Comprehensively Assess Its Foreign Language Needs*, 25.

¹⁹⁶ GAO, *DHS Needs to Comprehensively Assess Its Foreign Language Needs*, 26.

programs to actively solicit new recruits from within diaspora communities.¹⁹⁷ These recruits would be held to the same rigorous vetting procedures, and go through the same operational training. However, they would already be several steps ahead when it came to language or cultural training and re-training.

Community outreach programs could not only identify and recruit youth with potential for service within law enforcement, they could also identify strong performers for educational incentives. Providing positive avenues for idle youth would not only help divert their attention from gangs or dissident activities, but could provide more avenues for assimilation into the work force and society at large. Furthermore, parents and community leaders with children invested in programs to better their future should be all the more likely to report terrorist associates who might ruin or destroy such programs. Giving diaspora youth positive outlets through educational incentives should also help inoculate them against the faulty logic in fundamentalist-extremist propaganda.

2. DoD Language Capability

While reward and incentive programs exist for current members of border security and immigration enforcement agencies, why not make use of other government institutions with distinct language capabilities? DoD components possess a great number of proficient foreign language speakers, as well as many members native to particular diaspora communities within the U.S. In addition to naturalized members of the armed services native to foreign countries, there exists a developed pool of operators who also possess specialized language and cultural expertise. Special Operations Forces (SOF) operators not only have foreign language capabilities, but often have real world experience operating in countries which are home to ethnic diasporas within the U.S. and specifically from those countries designated as Special Interest Countries. Why not develop an incentive program which would recruit in SOF veterans or National Guard?

¹⁹⁷GAO, *DHS Needs to Comprehensively Assess Its Foreign Language Needs*, 22–23.

3. Expansion of JTF-North

Integrating DoD assets into joint operations with federal, state and local institutions has paid off in the past. Beginning in 1989, Joint Task Force Six (JTF-6) served as the coordinating operational headquarters to support local, state, and federal law enforcement agencies to counter the flow of illegal drugs into the U.S. across the southwestern border. The success of JTF-6 not only highlighted the greater potential for military assistance with counter drug efforts, it led to expanded cooperation and partnership among military and civilian law enforcement agencies. Renamed JTF-North under DoD Northern Command (NORTHCOM) in 2004, the task force's mission was expanded beyond counter-drug operations to include providing homeland security support to the nation's federal law enforcement agencies. From the early days of JTF-6 and the "War on Drugs," to the direct support of homeland defense by JTF-North, the task force has conducted over 6,000 missions with federal, state and local law enforcement agencies.

Perhaps the increased utilization of DoD assets — with appropriate changes or amendments to the Posse Comitatus Act — would not only increase deterrence for illegal cross-border human smuggling, but significantly reduce the capabilities of smuggling operations along the U.S.-Mexico border. For example, NORTHCOM could increase the utilization of National Guard under Title 32, which allows National Guard forces to perform law enforcement tasks without the restriction imposed on active duty units under Posse Comitatus. Using National Guard forces may also be well suited to assist on counter smuggling operations along the border, because they have roots in the community and because some state adjutants general also serve as both emergency managers and homeland security directors.¹⁹⁸

Despite not being able to perform law enforcement tasks, Title 10 active duty military units could provide more than aerial surveillance and rotary wing support to

¹⁹⁸ Greg A. Thomas, "Posse Comitatus and the use of the Military in Denying Terrorist Access to the United States Along the Border with Mexico" (Strategy Research Project, USAWC, 2005), 9, <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA433672>

border security and immigration enforcement operations. The military has an unprecedented pool of experienced units and soldiers with ten years of continuous combat against asymmetric adversaries. The asymmetric fighting in Afghanistan and Iraq has enhanced capabilities within the military for identifying, analyzing, and defeating illicit networks. Why not utilize this body of knowledge and apply it to the fight against human smuggling operations in the southwest U.S.? While numerous military aviation units provide operational support to the Border Patrol and other agencies in the southwest, perhaps an increase in intelligence support and general support could further enhance counter-smuggling efforts. Employing SOF operators who have extensive experience and expertise in defeating dark networks could provide invaluable insight into targeting and network analysis. SOF operators and intelligence analysts could assist not only with techniques for preventing cross-border smuggling, but with identifying and defeating smuggling operations that operate within the U.S. Additionally, SOF operators could provide increased general support through mobile training teams designed to share expertise with their civilian law enforcement counterparts and increase capabilities for operating in austere desert terrain to defeat transnational threats.

4. Border Region Military Live Fire Training Areas

While direct support to federal, state and local border security and immigration enforcement can help deter illegal cross-border smuggling, military activity in the southwest border region could also significantly deter would-be terrorist smugglers. Just as many units utilize JTF-North taskings to train and hone their skills prior to deploying to Afghanistan and Iraq, why not open specific areas of the border region as military maneuver space? Allowing military units to utilize the region as a live fire training area would not only increase the government/law enforcement presence in the area, but would potentially increase fear of apprehension (or death) by would-be illegal smugglers. This would require changes or amendments to the Posse Comitatus Act, providing military units some capacity to detain illegal immigrants and smugglers until law enforcement arrived. Military units would also have to develop very specific Rules of Engagement for encountering illegal aliens and smugglers, especially during live fire training events.

Some might object this would totally militarize the border region. However, there is already a significant military and law enforcement presence in place, and military training areas would be well outside of high density urban areas. The intent of establishing military live fire training areas is not to increase the mortality rate of illegal migrants, but rather to increase the fear factor and push undocumented travelers towards more built-up areas nearer to traditional ports of entry. Ideally, it would deter them from trying to cross at all.

Drawdowns from Iraq and Afghanistan will free up troops, allowing them to fill jobs and execute tasks not associated with deploying to combat theaters, to include supporting rotations to the border. Not only would increasing military participation and partnership with domestic law enforcement and homeland defense organizations raise the country's collective ability to deter and defeat terrorism, but a military presence on the southern border would also put some teeth back into national security.

G. CONCLUSION

In 2010 the number of illegal immigrants apprehended by the U.S. Border Patrol was 463,382. Of these, there were 59,017 OTM aliens. Among these OTM aliens, 663 were illegal immigrants from Special Interest Countries.¹⁹⁹ If 663 ASIC apprehensions represent even 30%²⁰⁰ of the cross-border illegal immigrant traffic, an estimated 2,210 Special Interest Country illegal aliens could have crossed the border into the U.S. undetected—in 2010 alone. Given these staggering numbers, the potential for terrorist operatives to both mingle among these aliens and gain access to the U.S. is alarming.

While some may write this off as alarmist and barn-burning sensationalism, the documented recent rise in homeland terror activities and verified human smuggling pipelines exhibit a very real threat to national security.²⁰¹

¹⁹⁹ U.S. Customs and Border Patrol, *Final Response to Freedom of Information Act Request: Judicial Watch* (Washington: U.S. Department of Homeland Security, 2011).

²⁰⁰ The CBP study *A Line in the Sand* stated that only an estimated 10%-30% of illegal aliens crossing the border are apprehended.

²⁰¹ *The Vigilance Project: An Analysis of 32 Terrorism Cases Against the Homeland* (New York: New York State Intelligence Center, 2010), 21.

This thesis was not written to forecast an inevitable attack on the U.S., but to examine how easy it would be for terror operatives to enter the U.S undetected by law enforcement. By getting in, then hiding in plain sight and staying off law enforcement radar, the true danger they represent is the potential to establish dark networks of trained, financed, and prepared terror cells capable of conducting destabilizing attacks throughout the U.S.

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