



# Border Security: Immigration Enforcement Between Ports of Entry

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## Summary

Border enforcement is a core element of the Department of Homeland Security's (DHS's) effort to control illegal migration, with the U.S. Border Patrol (USBP) within the Bureau of Customs and Border Protection (CBP) as the lead agency along most of the border. Border enforcement has been an ongoing subject of congressional interest since the 1970s, when illegal immigration to the United States first registered as a serious national problem; and border security has received additional attention in the decade following the terrorist attacks of 2001.

Since the 1990s, migration control at the border has been guided by a strategy of “prevention through deterrence”—the idea that the concentration of personnel, infrastructure, and surveillance technology along heavily trafficked regions of the border will discourage unauthorized aliens from attempting to enter the United States. Since 2005, CBP has attempted to discourage repeat entries and disrupt migrant smuggling networks by imposing tougher penalties against certain unauthorized aliens, a set of policies known as “enforcement with consequences.”

Twenty-five years after the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603) marked the beginning of the modern era in border enforcement, this report reviews recent enforcement efforts, takes stock of the current state of border security, and considers lessons that may be learned about a quarter century of enhanced migration control efforts at U.S. borders. IRCA authorized a 50% increase in the size of the USBP, and at least 10 additional laws since then have included provisions related to migration enforcement and/or border security. Appropriations for the USBP have increased about 750% since 1989—a number which excludes many other programs related to border enforcement.

On one hand, robust investments at the border have been associated with a sharp drop in the number of aliens apprehended, especially in the sectors first targeted for enhanced enforcement. The number and proportion of people apprehended more than once (recidivists) and those with serious criminal records are also at the lowest levels ever recorded. On the other hand, overall illegal inflows continued to increase in the 20 years after 1986, with the estimated unauthorized population more than tripling, even after almost 3 million aliens were granted amnesty as part of IRCA. The only significant decrease in unauthorized migration appears to have occurred since 2007, and it is unclear how much of the drop-off is due to increased enforcement and how much is a result of the U.S. economic downturn and other systemic factors.

At the same time, enhanced border enforcement may have contributed to a number of secondary costs and benefits. To the extent that border enforcement successfully deters illegal entries—an effect that is also difficult to measure since deterrence ultimately involves decisions made in towns and villages far away from U.S. borders—such enforcement may reduce border-area violence and migrant deaths, protect fragile border ecosystems, and improve the quality of life in border communities. But to the extent that aliens are not deterred, the concentration of enforcement resources on the border may increase border area violence and migrant deaths, encourage unauthorized migrants to find new ways to enter illegally and to remain in the United States for longer periods of time, damage border ecosystems, harm border-area businesses and the quality of life in border communities, and strain U.S. relations with Mexico and Canada.

Thus, this report concludes by raising additional questions about future investments at the border, how to weigh such investments against other enforcement strategies, and the relationship between border enforcement and the broader debate about U.S. immigration policy.

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## Introduction

Although the country's immigration and naturalization laws have been subjects of episodic controversy since America's founding, illegal immigration per se only became an issue beginning in the early 20<sup>th</sup> century, when Congress passed the first strict restrictions on legal admissions. Illegal immigration receded as a policy problem during the Great Depression, when very few immigrants entered the United States, and during and after World War II, when most labor migration occurred through the U.S.-Mexico Bracero program.<sup>1</sup> Migration control re-emerged as a national concern during the 1970s, however, when the end of the Bracero program and new restrictions on Western Hemisphere migration along with growing U.S. demand for foreign-born workers caused the estimated unauthorized alien population to grow to about 1.7 million by 1979, and to about 3.2 million by 1986.<sup>2</sup>

Congress responded in 1986 by passing the Immigration Reform and Control Act (IRCA, P.L. 99-603). Among other provisions, IRCA described "an increase in the border patrol and other inspection and enforcement activities ... in order to prevent and deter the illegal entry of aliens into the United States" as an "essential element" of immigration control, and it authorized a 50% increase in Border Patrol staffing.<sup>3</sup> Border security has remained a topic of congressional interest since that time, and at least six additional laws have been passed to strengthen border enforcement per se, as discussed below.<sup>4</sup>

Despite a growing enforcement response, illegal immigration continued to increase over most of the next three decades, with the estimated unauthorized population peaking at 11.8 million-12.4 million in 2007.<sup>5</sup> Unauthorized migration has declined since 2007, with the estimated unauthorized population falling to 10.8 million-11.2 million in 2010,<sup>6</sup> and apprehensions of illegal migrants at the U.S.-Mexican border reaching a 42-year low in 2011.<sup>7</sup> Researchers estimate that unauthorized inflows to the United States averaged about 300,000 per year since 2007—just over one-third the level of inflows in 2000-2005, and about the same as the number of unauthorized aliens who return home each year.<sup>8</sup>

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<sup>1</sup> The Bracero program was a formal guest worker program managed jointly by the United States and Mexico that admitted about 4.6 million workers between 1942 and 1964.

<sup>2</sup> Jennifer Van Hook and Frank D. Bean, "Estimating Unauthorized Mexican Migration to the United States: Issues and Trends," in *Binational Study: Migration Between Mexico and the United States* (Washington, DC: US Commission on Immigration Reform, 1998), pp. 538-540. Estimates of the unauthorized population prior to 1979 ranged from 2 to 12 million; see U.S. Congress, House Select Committee on Population, *Legal and Illegal Immigration to the United States*, Committee Print, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 1978 (Washington: GPO, 1978), pp. 16-17. Van Hook and Bean consider estimates of the unauthorized population prior to 1979 to be unreliable.

<sup>3</sup> P.L. 109-63, § 111.

<sup>4</sup> The laws include the Immigration Act of 1990 (P.L. 101-649), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Div. C), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT, P.L. 107-56), the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), the REAL ID Act of 2005 (P.L. 109-13, Div. B), and the Secure Fence Act of 2006 (P.L. 109-367).

<sup>5</sup> CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

<sup>6</sup> *Ibid.*

<sup>7</sup> See Department of Homeland Security (DHS) Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2010*, Washington, DC, 2011, p. 91; DHS, *Annual Financial Report: Fiscal Year 2011*, Washington, DC, 2011, p. 14.

<sup>8</sup> Jeffrey S. Passel and D'Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, Pew (continued...)

The Obama Administration cites falling apprehensions, among other statistics, as evidence that the border is more secure than ever.<sup>9</sup> Yet some Members of Congress and others disagree with that characterization and have called on the Administration to do more to secure the border. Border security has been a recurrent theme in Congress's broader debate about comprehensive immigration reform since 2005, with some Members of Congress arguing that Congress should not consider additional immigration reforms until the border is more secure.<sup>10</sup>

Concerns about illegal immigration have overlapped with public safety and national security considerations, including efforts to prevent the inflow of illegal drugs and other contraband, terrorists, and weapons of mass destruction.<sup>11</sup> Enforcement to combat these diverse illicit flows inevitably converges at international borders, partly because transnational criminals and other mala fide actors seek to exploit the geographic and jurisdictional complexity that borders create.<sup>12</sup> Nonetheless, while policies to combat different illegal flows share some common features, each of these security tasks may demand a unique mix of policy tools, and lawmakers may set different standards for successful enforcement outcomes in each area.<sup>13</sup>

This report reviews border enforcement efforts in the 25 years since IRCA initiated the modern era in migration control, takes stock of the current state of border security, and considers lessons that may be learned about enhanced enforcement at U.S. borders. The report begins by reviewing the history of border control and the development of a national border control strategy during the 1990s. The following sections summarize appropriations and resources dedicated to border enforcement, indicators of enforcement outcomes, and possible secondary and unintended consequences of border enforcement. After discussing current legislative issues, the report concludes by describing what is known about the costs and benefits of the current approach and raising additional questions that may help guide the discussion of these issues in the future.

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Hispanic Center, Washington, DC, September 1, 2010, <http://pewhispanic.org/files/reports/126.pdf>; Damien Cave, "Better Lives for Mexicans Cut Allure of Going North," *The New York Times*, July 6, 2011.

<sup>9</sup> See, for example, U.S. Department of Homeland Security (DHS), "Secretary Napolitano's Remarks on Smart Effective Border Security and Immigration Enforcement," press release, October 5, 2011, <http://www.dhs.gov/ynews/speeches/20111005-napolitano-remarks-border-strategy-and-immigration-enforcement.shtm>; also see Julian Aguilar, "Rebuffing Perry: 'Border more Secure than Ever,' Officials Say," *Texas Tribune*, August 18, 2011.

<sup>10</sup> See, for example, Senator Jon Kyl, "Border Security: Linking Words to Actions," press release, June 14, 2010, <http://kyl.senate.gov/record.cfm?id=325651>.

<sup>11</sup> On border-related counternarcotics efforts, see CRS Report R41547, *Organized Crime: An Evolving Challenge for U.S. Law Enforcement*, by Jerome P. Bjelopera and Kristin M. Finklea; on DHS' intelligence enterprise to prevent terrorists from entering the United States see CRS Report R40602, *The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress*, by Jerome P. Bjelopera; on DHS' effort to detect and prevent the admission of weapons of mass destruction at U.S. ports of entry see CRS Report RL34750, *The Advanced Spectroscopic Portal Program: Background and Issues for Congress*, by Dana A. Shea, John D. Moteff, and Daniel Morgan.

<sup>12</sup> See CRS Report R41927, *The Interplay of Borders, Turf, Cyberspace, and Jurisdiction: Issues Confronting U.S. Law Enforcement*, by Kristin M. Finklea

<sup>13</sup> On the distinction between policies to combat illegal migration and policies to combat illegal narcotics, see, for example, Terry Goddard, *How to Fix a Broken Border: Hit the Cartels Where it Hurts*, Immigration Polic Center, Washington, DC, September 2011, [http://www.immigrationpolicy.org/sites/default/files/docs/Goddard-How\\_to\\_Fix\\_a\\_Broken\\_Border\\_091211.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Goddard-How_to_Fix_a_Broken_Border_091211.pdf).

## Background

Congress imposed few restrictions on international migration during the country's first hundred years, but then passed a series of immigration restrictions beginning in 1872 and culminating with the passage of the Immigration Act of May 26, 1924 (43 Stat. 153), which imposed permanent numeric restrictions on immigration from the Eastern Hemisphere and barred most immigration from Asia. Congress created the U.S. Border Patrol (USBP) within the Department of Commerce and Labor by an appropriations act two days later (Act of May 28, 1924; 43 Stat. 240) and charged the agency with securing all international borders between ports of entry.

The USBP focused initially on preventing the entry of Chinese migrants excluded by the 1924 Act, combating southbound gun trafficking, and preventing alcohol imports during prohibition, with the majority of agents stationed on the northern border.<sup>14</sup> The Border Patrol became part of the new Immigration and Naturalization Service (INS) in 1933, and the INS moved from the Department of Labor to the Department of Justice in 1940. The focus of border enforcement shifted to the Southwest border during World War II, and the Border Patrol undertook a major campaign in 1953-1954 to identify and return illegal Mexican migrants, resulting in 1.9 million deportations in two years.<sup>15</sup> Nonetheless, during most of the 20<sup>th</sup> century, the United States did not place a high priority on preventing illegal migration across the Southwest border.<sup>16</sup>

Illegal migration increased after 1965 as legislative changes restricted legal migration from Mexico at the same time that social and economic changes caused stronger migration “pushes” in Mexico (e.g., inadequate employment opportunities) and “pulls” in the United States (e.g., employment opportunities, links to migrant communities in Mexico).<sup>17</sup> Congress held hearings on illegal immigration beginning in 1971, and after more than a decade of debate passed the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603), which described border enforcement as an “essential element” of immigration control and authorized a 50% increase in funding for the Border Patrol, among other provisions.<sup>18</sup> Congress passed at least 11 additional laws addressing illegal immigration over the next decade, seven of which included provisions related to the border and are discussed below.<sup>19</sup>

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<sup>14</sup> See U.S. Customs and Border Protection (CBP), “Border Patrol History,” [http://www.cbp.gov/xp/cgov/border\\_security/border\\_patrol/border\\_patrol\\_ohs/history.xml](http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_ohs/history.xml); John Myers, *The Border Wardens* (Englewood Cliffs, NJ: Prentice-Hall, 1971).

<sup>15</sup> See Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York: Routledge, 1992).

<sup>16</sup> *Ibid.*; also see Mark Reisler, *By the Sweat of Their Brow: Mexican Immigrant Labor in the United States, 1900-1940* (Westport, CT: Greenwood Press, 1976); Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002).

<sup>17</sup> Legislative changes included the termination of the U.S.-Mexican Bracero guest worker program in 1965 and the imposition of numeric limits on migration from Mexico and other Western Hemisphere countries pursuant to the Immigration and Nationality Act Amendments of 1965 (P.L. 89-236), beginning in 1968. On social and economic “pushes” and “pulls” during this period, see, for example, Massey et al., *Beyond Smoke and Mirrors*; U.S. Domestic Council, Committee on Illegal Aliens, *Preliminary Report: Domestic Council Committee on Illegal Aliens*, Washington, DC, December 1976.

<sup>18</sup> The IRCA also included an amnesty for certain illegal immigrants, imposed sanctions on employers who knowingly hire unauthorized immigrant workers, and revised the existing H-2 visa program to create the current H-2A and H-2B programs.

<sup>19</sup> The four laws that did not include specific border-related measures were the Anti-Drug Abuse Act of 1988 (P.L. 100-690), the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-93), the Antiterrorism (continued...)

## Border Control Strategy

Seventy years after it began operations, the Border Patrol developed its first formal national border control strategy in 1994, the National Strategic Plan. The plan was updated in 2005 after the Border Patrol was directed to formulate a new national strategy following the 9/11 attacks, resulting in the 2005 National Border Patrol Strategy. The Department of Homeland Security (DHS) also developed a broader Secure Border Initiative in 2005 to coordinate its overall approach to border security and immigration control. The Border Patrol is expected to publish a new national strategy for 2012-2016 in 2012.<sup>20</sup>

All three of the existing national plans were organized around an operational strategy of “prevention through deterrence.”<sup>21</sup> Whereas the Border Patrol’s traditional approach to controlling illegal migration had been to arrest aliens after they entered the United States, the prevention through deterrence approach was to place personnel, surveillance technology, fencing, and other infrastructure directly on the border to deter illegal flows. As the strategy was described in 1994:

Although a 100 percent apprehension rate is an unrealistic goal, we believe we can achieve a rate of apprehensions sufficiently high to raise the risk of apprehension to the point that many will consider it futile to continue to attempt illegal entry.... The prediction is that with traditional entry and smuggling routes disrupted, illegal traffic will be deterred, or forced over more hostile terrain, less suited for crossing and more suited for enforcement.<sup>22</sup>

CBP has also attempted to deter illegal entries by increasing the penalties imposed on people who attempt to cross the border illegally, an approach the agency describes as “enforcement with consequences.”<sup>23</sup> By imposing more burdensome consequences on people who cross the border illegally, this effort seeks to disrupt smuggling cycles that often rely on multiple entry attempts and to raise the costs of illegal entry in order to discourage future attempts. The remainder of this section describes these plans and operational approaches in greater detail.

## National Strategic Plan

The National Strategic Plan (NSP) was developed in 1994 in response to a widespread perception that the Southwest border was being overrun by unauthorized immigration and that drug

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and Effective Death Penalty Act of 1996 (P.L. 104-132), and the Immigration and Naturalization Service Data Management Improvement Act of 2000 (P.L. 106-215). The seven laws that included border-related provisions were the Immigration Act of 1990 (P.L. 101-649), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Div. C), the USA-PATRIOT Act of 2002 (P.L. 107-56), the Homeland Security Act of 2002 (P.L. 107-296), the Intelligence Reform and Terrorism Prevention Act of 2004 (108-458), the REAL-ID Act of 2005 (P.L. 109-13, Div. B), and the Secure Fence Act of 2006 (P.L. 109-367).

<sup>20</sup> CBP Office of Legislative Affairs, December 14, 2011.

<sup>21</sup> U.S. Border Patrol, *Border Patrol Strategic Plan: 1994 and Beyond*, July 1994, p. 6. (Hereinafter, National Strategic Plan.)

<sup>22</sup> *Ibid.*, pp. 6-7.

<sup>23</sup> See U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border?* testimony of U.S. Border Patrol Chief Michael J. Fisher, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 4, 2011. (Hereinafter Fisher testimony 2011.)



smuggling was a serious threat along the Southwest border. Border security had been a focus of a study commissioned by the Office of National Drug Control Policy, which recommended that the INS change its approach from arresting illegal immigrants to preventing their entry.<sup>24</sup> With Congress and the Clinton Administration focused on immigration reform, the Border Patrol adopted a strategic planning process focused on how to prioritize USBP efforts over time and by geographic areas and how to define and measure success.<sup>25</sup>

The NSP described a multi-phased approach to deploying and focusing USBP resources on the areas of greatest illegal entry of people and goods. Phase I of the NSP involved the “Hold the Line” program in El Paso, TX, and Operation Gatekeeper in San Diego, CA.<sup>26</sup> Phase II included the expansion of Operation Rio Grande (1997) in the McAllen and Laredo sectors of Texas and Operation Safeguard (1999) in Tucson, AZ; and Phases III and IV involved the remaining areas of the Southwest border followed by the Gulf Coast and northern borders.<sup>27</sup> Along the Southwest border, the NSP emphasized (in descending order of importance) personnel, equipment, technology, and tactical infrastructure.<sup>28</sup> In addition to placing more agents “on the line” (i.e., directly on the border), these operations utilized landing mat fencing,<sup>29</sup> stadium lighting, and cameras and sensors to deter and detect unauthorized aliens. The northern border emphasized intelligence, cross-border collaboration, technology, equipment, and limited personnel.<sup>30</sup>

The implementation of Phase II and subsequent phases was to be based on the success of Phase I, with the plan describing a number of indicators of effective border enforcement, including the following:

- initial increase of arrests and entry attempts,
- eventual reduction of arrests and recidivism in main effort,
- change in traditional traffic pattern,
- increase in more sophisticated methods of smuggling at checkpoints,
- increase in ports of entry activity including more legal admissions and use of fraudulent documents,
- possible increase in complaints (Mexico, interest groups, etc.),
- shift in flow to other areas of the border,
- fee increase by smugglers,
- fewer criminal aliens entering the country and reduced criminal activity along the borders, and

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<sup>24</sup> U.S. Office of National Drug Control Policy, *National Drug Control Strategy: Reclaiming Our Communities from Drugs and Violence* (Washington, DC: U.S. Department of Justice, 1994), <https://www.ncjrs.gov/pdffiles1/ondcp/150489.pdf>.

<sup>25</sup> National Strategic Plan, p. 1.

<sup>26</sup> National Strategic Plan, pp. 9-10.

<sup>27</sup> National Strategic Plan, pp. 10-12.

<sup>28</sup> U.S. Customs and Border Protection, *Performance and Annual Report: Fiscal Year 2003*.

<sup>29</sup> Landing mat fencing was constructed from equipment that had been used as temporary landing strips for airplanes during the Vietnam War.

<sup>30</sup> U.S. Customs and Border Protection, *Performance and Annual Report: Fiscal Year 2003*.

- fewer illegal immigrants in the interior of the United States.<sup>31</sup>

Many people viewed Operations Gatekeeper and Hold the Line as successful, at least within the San Diego and El Paso sectors. Apprehensions within these sectors fell sharply beginning in 1994-1995 (see “Southwest Border Apprehensions by Sector”), and a 1997 General Accounting Office (GAO) report was cautiously optimistic about the strategy.<sup>32</sup> “Prevention through deterrence” was embraced by Congress, with both House and Senate appropriators directing the INS in 1996 to hire new agents and to reallocate USBP agents from the interior to front line duty.<sup>33</sup> Pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Congress also expressly authorized the construction and improvement of fencing and other barriers along the Southwest border and required the completion of a triple-layered fence along 14 miles of the border near San Diego where the INS had begun to install fencing in 1990.<sup>34</sup>

## National Border Patrol Strategy

In the wake of the 9/11 attacks, the USBP refocused its priorities on preventing terrorist penetration, while remaining committed to its traditional duties of preventing the illicit trafficking of people and contraband between official ports of entry. Shortly after the creation of DHS, USBP was directed to formulate a new National Border Patrol Strategy (NBPS) that would better reflect the realities of the post-9/11 security landscape. In March 2005, the Border Patrol unveiled the National Border Patrol Strategy, which places greater emphasis on interdicting terrorists and features five main objectives:

- establishing the substantial probability of apprehending terrorists and their weapons as they attempt to enter illegally between the ports of entry;
- deterring illegal entries through improved enforcement;
- detecting, apprehending, and deterring smugglers of humans, drugs, and other contraband;
- leveraging “Smart Border” technology to multiply the deterrent and enforcement effect of agents; and
- reducing crime in border communities, thereby improving the quality of life and economic vitality of those areas.<sup>35</sup>

The NBPS was an attempt to lay the foundation for achieving operational control over the border, defined by the Border Patrol as “the ability to detect, respond, and interdict border penetrations in

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<sup>31</sup> National Strategic Plan, pp. 9-10.

<sup>32</sup> U.S. General Accounting Office, *Illegal Immigration: Southwest Border Strategy Results Inconclusive; More Evaluation Needed*, GAO/GGD-98-21, December 1997.

<sup>33</sup> U.S. Congress, Senate Committee on Appropriations, *Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Bill, 1996*, report to accompany H.R. 2076, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 104-139 and U.S. Congress, House Committee on Appropriations, *Making Appropriations for the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies For the Fiscal Year Ending September 30, 1996, and for Other Purposes*, report to accompany H.R. 2076, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 104-378.

<sup>34</sup> P.L. 104-208, Div. C §§ 102(a)-(b).

<sup>35</sup> Department of Homeland Security, Bureau of Customs and Border Protection, “National Border Patrol Strategy,” March 1, 2005. Hereafter referred to as *USBP National Strategy*.

areas deemed as high priority for threat potential or other national security objectives.”<sup>36</sup> The strategy emphasizes a hierarchical and vertical command structure, featuring a direct chain of command from headquarters to the field. The 2005 document builds on the “prevention through deterrence” strategy, but it places added emphasis on the rapid deployment of USBP agents to respond to emerging threats. This approach depends on tactical, operational, and strategic intelligence to assess risk and target enforcement efforts, relying in large part on sophisticated surveillance systems, including cameras, sensors, and other technologies. Additionally, the Border Patrol coordinates closely with CBP’s Office of Intelligence and other DHS and federal agencies’ intelligence apparatuses. Lastly, the Border Patrol National Strategy formulates different strategies for each of the agency’s three operational theaters: the Southwest border, the northern border, and the coastal waters around Florida and Puerto Rico.

## **Secure Border Initiative**

In November 2005, the Department of Homeland Security announced a comprehensive multi-year plan, the Secure Border Initiative (SBI), to secure U.S. borders and reduce illegal migration, reiterating many of the themes from the 1994 NSP and the 2005 NBPS.<sup>37</sup> Under SBI, DHS announced plans to obtain operational control of the northern and southern borders within five years by focusing attention in five main areas:

- Increased staffing. As part of SBI, DHS announced the addition of 1,000 new Border Patrol agents, 250 new ICE investigators targeting human smuggling operations, and 500 other new ICE agents and officers.<sup>38</sup>
- Improved detention and removal capacity. In October 2005, DHS announced plans to detain 100% of non-Mexicans apprehended at the border until they could be processed for removal (see “Enforcement with Consequences”). SBI supported this goal by adding detention capacity, initially increasing bed space by 2,000 to a total of 20,000. As part of SBI, DHS also announced plans to expand its use of expedited removal proceedings for aliens apprehended within 100 miles of a U.S. land border (see “Enforcement with Consequences”).<sup>39</sup>
- Surveillance technology. SBI included plans to expand DHS’ use of surveillance technology between ports of entry, including unmanned aerial vehicle (UAV) systems, other aerial assets, remote video surveillance (RVS) systems, and ground sensors.<sup>40</sup> These tools were to be linked into a common integrated system that became known as *SBI<sub>net</sub>* (see “Surveillance Assets” below).

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<sup>36</sup> *USBP National Strategy*, p. 3. This definition differs from the statutory definition found in Section 2 of the Secure Fence Act of 2006 (P.L. 109-367); see “Operational Control of the Border,” below.

<sup>37</sup> DHS, “Fact Sheet: Secure Border Initiative,” [http://www.dhs.gov/xnews/releases/press\\_release\\_0794.shtm](http://www.dhs.gov/xnews/releases/press_release_0794.shtm).

<sup>38</sup> *Ibid.*

<sup>39</sup> DHS, “Fact Sheet: Secure Border Initiative,” [http://www.dhs.gov/xnews/releases/press\\_release\\_0794.shtm](http://www.dhs.gov/xnews/releases/press_release_0794.shtm). Expedited removal is a form of formal removal with limited judicial review, and is generally reserved for arriving aliens who lack proper documentation or have committed fraud or willful misrepresentation of facts to gain admission into the United States. Aliens subject to expedited removal are only entitled to a removal hearing (i.e., to seek relief from an immigration judge) if they indicate an intention to apply for asylum or a fear of persecution; see 8 U.S.C. §1225(b) and CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

<sup>40</sup> DHS, “Fact Sheet: Secure Border Initiative,” [http://www.dhs.gov/xnews/releases/press\\_release\\_0794.shtm](http://www.dhs.gov/xnews/releases/press_release_0794.shtm).

- Tactical infrastructure. SBI continued DHS' commitment to the expansion of border fencing, roads, and stadium-style lighting. With the announcement of SBI, DHS announced plans to complete triple-layer fencing along the original 14-mile stretch of border in the San Diego sector where construction had begun in 1990.<sup>41</sup>
- Interior enforcement. SBI also included plans to expand enforcement within the United States at worksites through state and local partnerships, jail screening programs, and task forces to locate fugitive aliens.<sup>42</sup>

DHS noted that these programs would initially focus on the Southwest land border between official ports of entry and that it would deploy a mix of personnel, technology, infrastructure, and response assets in order to “provide maximum tactical advantage in each unique border environment.”<sup>43</sup>

## **Enforcement with Consequences**

Although not the subject of a formal policy document like those discussed above, an additional component of DHS's approach to border control over the last several years has been “enforcement with consequences.” Historically, immigration agents had returned most people apprehended at the border to Mexico with minimal processing or (in the case of non-Mexicans) allowed them to remain at large in the United States pending a formal deportation or removal hearing.<sup>44</sup> Since 2005, DHS has implemented several policies designed to raise the costs to migrants of being apprehended to make it more difficult for illegal migrants to reconnect with smugglers following a failed entry attempt, thereby discouraging people who have been apprehended from making subsequent efforts to enter the United States illegally.<sup>45</sup>

The first<sup>46</sup> element of DHS's enforcement with consequences approach was the expansion of the use of expedited removal (ER). ER is a provision of the INA that allows certain aliens to be formally removed from the United States without appearing before an immigration judge.<sup>47</sup> Thus,

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid. Interior enforcement programs are not discussed in this report; see CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel; and CRS Report R40002, *Immigration-Related Worksite Enforcement: Performance Measures*, by Andorra Bruno.

<sup>43</sup> Department of Homeland Security, *DHS FY2008 Congressional Budget Justification*, p. CBP-BSFIT 3.

<sup>44</sup> Pursuant to §§ 301-309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C), deportation and exclusion proceedings were combined into a unified “removal” proceeding (8 U.S.C. 1229a); and immigration judges were given discretion to permit aliens who are subject to removal to “voluntarily depart” in lieu of facing formal removal proceedings (8 U.S.C. 1229c). This report uses “deportation” to refer to the compulsory return of aliens to their country of origin prior to the implementation of IIRIRA in 1997, “removal” and “voluntary departure” to refer to aliens returned under these specific provisions since 1997, and “return” to refer to compulsory return policies that encompass both formal removals and voluntary departures.

<sup>45</sup> See U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border*, testimony of U.S. Border Patrol Chief Michael J. Fisher, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 4, 2011.

<sup>46</sup> The enforcement with consequences approach also depended on DHS having begun to collect biometric data from aliens apprehended at U.S. borders and to identify repeat offenders through the Automated Biometric Identification System (IDENT) system, which was implemented along the Southwest border beginning in 1999; see “Automated Biometric Identification System (IDENT) System.”

<sup>47</sup> See CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

ER orders can be implemented quickly and at minimal expense to CBP; but ER carries the same penalties for aliens as a standard removal order, including a five-year bar on receiving a visa to return to the United States and a 20-year bar for second and subsequent removal orders. Expedited removal was added to the INA in 1996, but the policy was initially reserved for aliens apprehended at ports of entry. In a series of four announcements between November 2002 and January 2006, DHS expanded the use of ER eventually to include certain aliens who had entered the United States within the previous two weeks and who were apprehended within 100 miles of any U.S. land or coastal border.<sup>48</sup>

A second element of enforcement with consequences has been a DHS policy to detain certain people facing removal until their orders are executed. Historically, most non-Mexicans apprehended at the border were placed in formal deportation or removal proceedings prior to being returned to their country of origin by airplane,<sup>49</sup> but backlogs in the immigration court system meant that most such aliens were released on bail or on their own recognizance with an order to reappear at a later date, and many failed to show up for their hearings.<sup>50</sup> Under a 2005 initiative to “end catch and release,” DHS announced plans to detain 100% of removable non-Mexicans apprehended at the border until their removal orders could be finalized and executed.<sup>51</sup> On August 23, 2006, DHS announced that the policy had been successfully implemented.<sup>52</sup>

Third, working with the Department of Justice (DOJ), DHS has increased the proportion of people apprehended at the border who are charged with immigration-related criminal offenses. (Unauthorized aliens apprehended at the border may face federal immigration charges,<sup>53</sup> but historically, most have not been charged with a crime; see **Figure 1**.) The most systematic effort to bring such charges has been Operation Streamline, a program through which CBP works with U.S. Attorneys and District Court judges in border districts to expedite criminal justice processing. The program permits groups of up to 40 criminal defendants to have their cases heard at the same time, rather than requiring judges to review individual charges, and arranges in most cases for aliens facing felony charges for illegal re-entry to plead guilty to misdemeanor illegal entry charges—a plea bargain that leads to the rapid resolution of cases.<sup>54</sup> Although Operation

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<sup>48</sup> Ibid. Under the 2006 policy, most Mexicans apprehended at the Southwest border were not placed in expedited removal proceedings unless they had previous criminal convictions.

<sup>49</sup> Most Mexicans were returned by bus to Mexico with minimal processing—an option that does not exist for aliens from non-contiguous countries.

<sup>50</sup> DHS estimated that there were 623,292 alien “absconders” in August 2006, many of whom had failed to appear for removal hearings after being apprehended at the border; see Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course*, Migration Policy Institute, Washington, DC, February 2009, p. 44, [http://www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).

<sup>51</sup> See U.S. Congress, Senate Committee on the Judiciary, *Comprehensive Immigration Reform II*, testimony of Department of Homeland Security Secretary Michael Chertoff, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., October 18, 2005. Several groups of aliens were already subject to mandatory detention during removal proceedings, including aliens convicted of certain crimes and aliens in expedited removal proceedings; see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Chad C. Haddal and Alison Siskin.

<sup>52</sup> CBP, “DHS Secretary Announces End to ‘Catch and Release’ on Southern Border,” [http://www.cbp.gov/xp/cgov/admin/c1\\_archive/messages/end\\_catch\\_release.xml](http://www.cbp.gov/xp/cgov/admin/c1_archive/messages/end_catch_release.xml).

<sup>53</sup> Aliens apprehended at the border may face federal immigration-related criminal charges for illegal entry (8 U.S.C. § 1325) or (on a second or subsequent apprehension) illegal re-entry (8 U.S.C. § 1326), and in some cases they may face charges related to human smuggling (8 U.S.C. § 1324) and visa and document fraud (8 U.S.C. § 1546). Unlawful presence in the United States absent additional factors is a civil violation, not a criminal offense. See CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia; and CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel.

<sup>54</sup> See Jennifer Chacon, “Managing Migration Through Crime,” *Columbia Law Review*, vol. 109 (2009), pp. 135-136. (continued...)

Streamline has been described as a zero tolerance program leading to prosecutions for 100% of apprehended aliens, the program confronts limits in judicial and detention capacity, resulting in daily caps on the number of people facing charges in certain districts.<sup>55</sup>

Operation Streamline was established in the USBP's Del Rio Sector in December 2005 and expanded to four additional sectors by June 2008.<sup>56</sup> The program mainly consists of procedural arrangements among DHS and DOJ officials at the local level, and 15 CBP agents have been detailed to DOJ in three Border Patrol sectors to assist DOJ attorneys and U.S. Marshalls with prosecutions.<sup>57</sup> A total of 164,639 people were processed through Operation Streamline through the end of FY2011.<sup>58</sup>

Mexicans who are apprehended in the United States and found to be smuggling aliens into the United States may also be subject to criminal charges in Mexico under the Operation Against Smugglers Initiative on Safety and Security (OASSIS). OASSIS is a U.S.-Mexican agreement in place since 2005 under which certain Mexican smuggling suspects who are apprehended in the United States are returned to Mexico to be prosecuted and, if convicted, serve time in that country. As of October 17, 2011, a total of 2,617 people have been transferred to Mexico for prosecution under the program since 2005.<sup>59</sup>

Finally, CBP also uses a pair of programs to disrupt smuggling operations by returning Mexicans to remote locations rather than to the nearest Mexican port of entry, thereby making it more difficult for people to reconnect with smugglers, who typically charge aliens a set fee to enter the United States regardless of the number of attempts. Under the Alien Transfer Exit Program (ATEP), certain Mexicans apprehended near the border are repatriated to border ports hundreds of miles away—typically moving people from Arizona to Texas or California.<sup>60</sup> Under the Mexican Interior Repatriation Program (MIRP), certain Mexican nationals are repatriated to their home towns within Mexico rather than being returned just across the border.<sup>61</sup>

To manage these diverse programs, CBP has developed a “Consequence Delivery System ... to uniquely evaluate each subject [who is apprehended] and identify the ideal consequences to deliver to impede and deter further illegal activity.”<sup>62</sup> Along stretches of the border, USBP agents use laminated cards with matrices describing the range of enforcement actions available for a particular alien as a function of the person's immigration and criminal histories, among other

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2009.

<sup>55</sup> In the Tucson sector, for example, the courts limits Streamline cases to 70 prosecutions per day; see National Research Council Committee on Estimating Costs of Immigration Enforcement in the Department of Justice, *Budgeting for Immigration Enforcement: A Path to Better Performance* (Washington, DC: National Academies Press, 2011).

<sup>56</sup> According to CBP Office of Legislative Affairs, Operation Streamline was initiated in the Yuma Sector in December 2006, Laredo Sector in October 2007, Tucson Sector in January 2008, and Rio Grande Valley Sector in June, 2008.

<sup>57</sup> CBP Office of Legislative Affairs, November 1, 2011.

<sup>58</sup> Ibid.

<sup>59</sup> CBP Office of Legislative Affairs, October 17, 2011.

<sup>60</sup> See U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border*, testimony of U.S. Border Patrol Chief Michael J. Fisher, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 4, 2011.

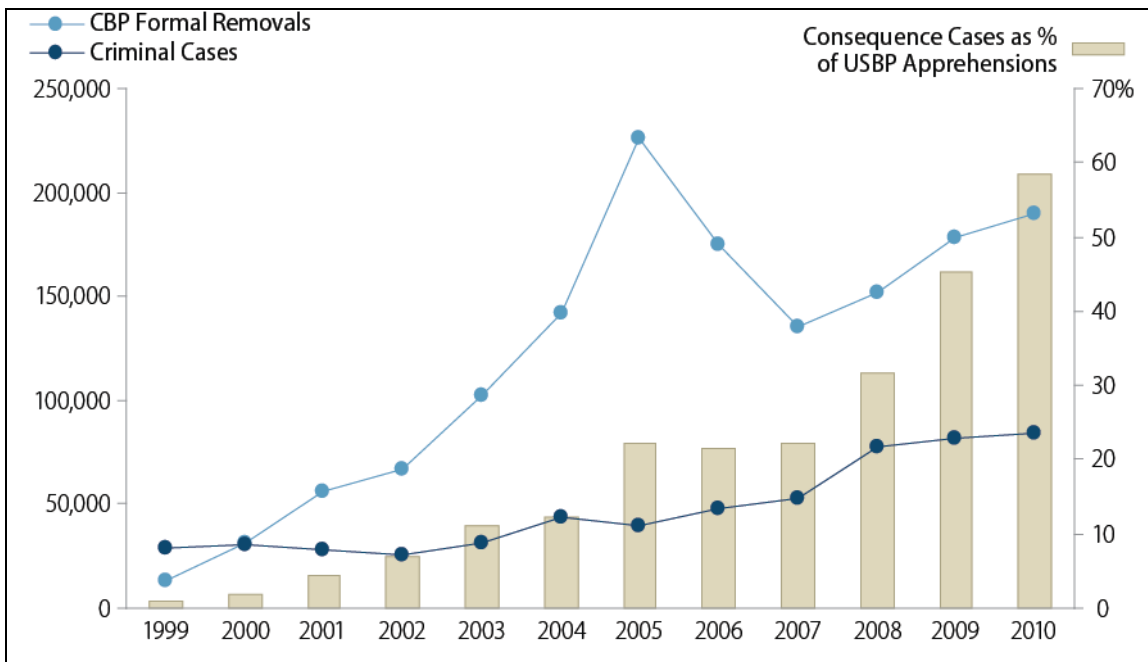
<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

factors. According to public comments by CBP Commissioner Alan Bersin, the goal of the Consequence Delivery System, in certain sectors of the border, is to ensure that virtually everyone who is apprehended faces “some type of consequence,” including criminal charges, formal removal, or one of the remote repatriation programs described above.<sup>63</sup>

**Figure 1** depicts trends in two indicators of enforcement with consequences: removal cases initiated by the Border Patrol and immigration-related criminal charges brought in the federal court system, including illegal entry and illegal re-entry.<sup>64</sup> As **Figure 1** indicates, the number of immigration-related criminal cases more than tripled between 1999 and 2010 (from 28,764 to 84,388 cases), and USBP removals increased fourteen-fold from 12,867 to 189,653. These increases occurred at a time of falling alien apprehensions, as described below (see **Figure 5**), so the ratio of aliens facing enforcement with consequences relative to USBP apprehensions increased from 1% in 1999 to 58% in 2010.<sup>65</sup>

**Figure 1. Enforcement with Consequences, Selected Indicators, FY1999-FY2010**



**Sources:** Apprehensions data from DHS Yearbook of Immigration Statistics; removal data from USBP Office of Legislative Affairs, November 11, 2011; criminal case data from U.S. Courts, Judicial Business of the U.S. Courts.

<sup>63</sup> Alan Bersin, *The State of US/Mexico Border Security*, Center for American Progress, August 4, 2011, <http://www.americanprogress.org/events/2011/08/usmexicoborder.html>. Bersin indicated that certain aliens would not be subject to enforcement with consequences, such as aliens younger than 18 years old traveling without a parent or legal guardian (i.e., unaccompanied minors).

<sup>64</sup> About two-thirds of immigration-related charges were brought in magistrate courts, overwhelmingly for misdemeanor illegal entry cases; and about three quarters of cases brought in federal district courts were for illegal entry or illegal re-entry cases, with the remainder including cases for immigrant smuggling, visa fraud, and other immigration offenses.

<sup>65</sup> Not all people facing immigration-related criminal charges were apprehended by USBP, and not all aliens subject to removal by USBP were apprehended during the same fiscal year. Thus, the proportion of aliens facing enforcement with consequences as described in **Figure 1** are not precisely defined as a percentage of USBP apprehensions, though USBP apprehensions represent the great majority of such cases.

**Notes:** Apprehensions and removal data are for aliens apprehended by USBP. Removals include expedited removal, notice to appear, and reinstatement of order of removal initiated by USBP. Criminal charges include immigration-related cases identified among U.S. District Court immigration cases commenced and U.S. Magistrate Court cases petty offense cases disposed of. Immigration-related cases include alien smuggling, illegal entry, illegal re-entry, fraud and misuse of visa/permit, and other immigration offenses.

## 2012 National Border Patrol Strategy

USBP is expected to release a new five-year national strategy early in 2012. Reflecting the fact that USBP and DHS have deployed many of the resources identified as priorities in previous strategic plans, the new strategy is expected to shift its focus from resource levels to a risk-based analysis that targets resources to the greatest border threats. Under such an approach, the Border Patrol is expected to work closely with other law enforcement agencies (both inside and outside of DHS) and with other stakeholders to identify top enforcement priorities; to move technology, manpower, and other resources around the border; and to draw on its full range of enforcement responses to maximize the overall effectiveness of DHS's border enforcement efforts.<sup>66</sup>

## Budget and Resources

Statutory changes since 1986 and the strategic and operational changes described above are reflected in appropriations for border enforcement and in increased investments in each of the three core elements of border enforcement: personnel, infrastructure, and surveillance technology. This section reviews trends in each of these areas.

### Border Patrol Appropriations

**Figure 2** depicts U.S. Border Patrol appropriations for FY1989-FY2012. For the most part, appropriations for USBP have grown steadily over this period, rising from \$232 million in 1989 to \$1.3 billion in FY2002 (the last data available prior to the creation of DHS), \$3.8 billion in FY2010, and a requested amount of \$3.6 billion in FY2012—a nominal increase of 1,450% and an increase of 750% when accounting for inflation.<sup>67</sup> The largest growth has come since the formation of DHS in FY2003, reflecting Congress's interest in enhancing border security in the aftermath of 9/11.

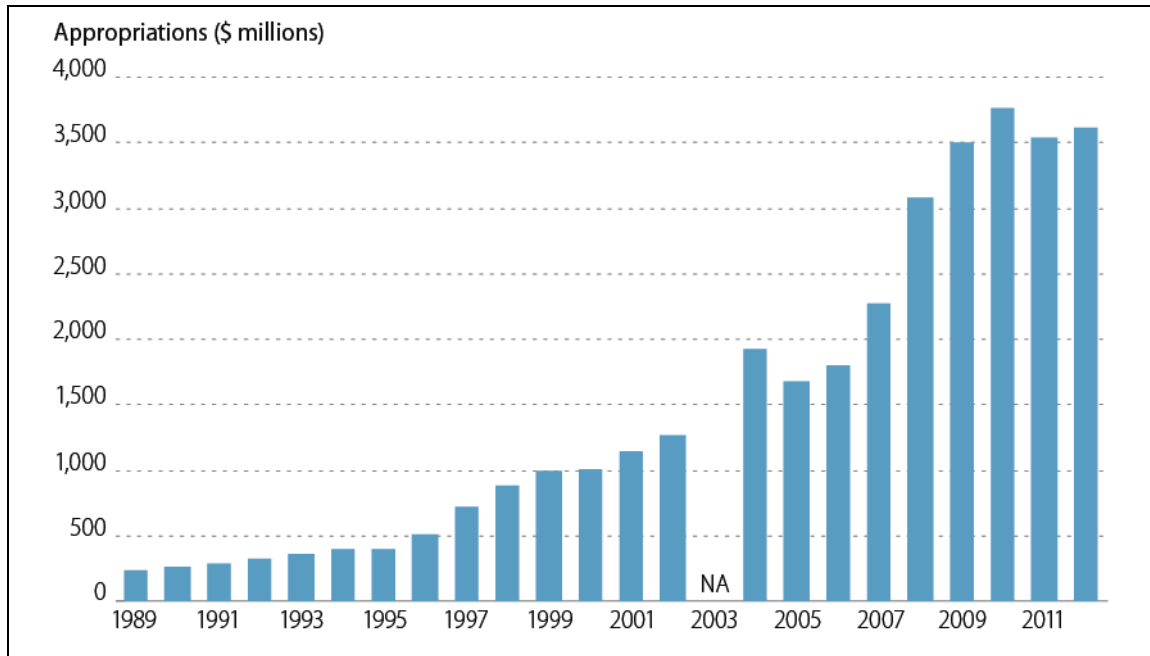
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<sup>66</sup> CBP Office of Legislative Affairs, December 14, 2011.

<sup>67</sup> See **Figure 2** for sources. Due to the manner in which the Border Patrol collects and organizes its data, all statistics presented in this report (except where otherwise indicated) are based on the federal fiscal year, which begins October 1 and ends on September 30. All dollar amounts in this report are nominal values for the year from which data are reported, with adjustments for inflation here and below based on CRS calculations using Bureau of Labor Statistics, "CPI Inflation Calculator," <http://data.bls.gov/cgi-bin/cpicalc.pl>.



**Figure 2. U.S. Border Patrol Appropriations, FY1989-FY2012**



**Sources:** Appropriations as enacted reported in INS Congressional Budget Justification FY1991-FY2002; H.Rept. 108-280 (FY2004), H.Rept. 108-774 (FY2005); H.Rept. 109-241 (FY2006); H.Rept. 109-699 (FY2007); Explanatory Statement to Accompany P.L. 110-161 Div. E (FY2008); Explanatory Statement to Accompany P.L. 110-329 (FY2009); H.Rept. 111-298 (FY2010); S.Rept. 112-74 (FY2011); and H.Rept. 112-331 (FY2012).

**Notes:** Appropriations for 1989-2002 reflect the “Border Patrol” sub-account of the INS Salaries and Expenses account of the DOJ annual appropriations. Appropriations for 2004-2012 reflect the “Border Security and Control between Ports of Entry” sub-account of the CBP Salaries and Expenses account of the DHS annual appropriations. Data are not available for FY2003 because neither the INS nor congressional appropriators provided a breakout of the salaries and expenses sub-accounts within the Enforcement and Border Affairs account during that year’s funding cycle. The overall Enforcement and Border Affairs account within INS for FY2003 was \$2,881 million, up from \$2,541 million in FY2001 and \$2,740 million in FY2002. With the establishment of DHS, the former INS, customs inspections from the former U.S. Customs Service, and the U.S. Border Patrol were merged to form the Bureau of Customs and Border Protection within DHS. As a result, data for years prior to FY2003 may not be strictly comparable with data for FY2004 and after. FY2005 figure includes a \$124 million supplemental appropriation from P.L. 109-13. FY2006 figure does not include any portion of the \$423 million in supplemental funding for CBP Salaries and Expenses in P.L. 109-234 because the law did not specify how much of this funding was for USBP; DHS reported in its FY2008 DHS Budget Justification that the Border Patrol received a \$1,900 million appropriation in FY2006. FY2010 figure includes a \$176 million supplemental appropriation from P.L. 111-230.

Appropriations reported in **Figure 2** are a subset of all border security and immigration enforcement funding and should not be interpreted as a full accounting of spending at the border or spending on immigration control. These data do not include, for example, additional CBP sub-accounts funding Headquarters Management and Administration (\$1.9 billion enacted in FY2012), Border Security Inspections and Trade Facilitation at Ports of Entry (\$2.5 billion), Air and Marine Operation Salaries (\$288 million), or additional CBP accounts funding Border Security Fencing, Infrastructure, and Technology (\$400 million in FY2012); Air and Marine Operations (\$504 million) and Construction (\$237 million).<sup>68</sup> A substantial portion of all of these

<sup>68</sup> U.S. Congress, House Committee on Appropriations, *Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012*, Conference Report to Accompany H.R. 2055, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., December 15, (continued...)

accounts are dedicated to border security and immigration enforcement, as these terms are commonly used. The data in **Figure 2** also exclude U.S. Immigration and Customs Enforcement (ICE) appropriations, which totaled \$5.4 billion for Salaries and Expenses for FY2011.<sup>69</sup> According to DHS, about a quarter of ICE's 20,000 personnel were deployed to the Southwest border in that year.<sup>70</sup> And **Figure 2** excludes border enforcement appropriations for other federal agencies—including the Departments of Justice, Defense, the Interior, and Agriculture, all of which also play a role in border security—as well as funding for the U.S. federal court system.<sup>71</sup>

## Border Patrol Personnel

Accompanying this overall budget increase, Congress has passed at least four laws since 1986 authorizing increased Border Patrol personnel.<sup>72</sup> Appropriators generally have supported such growth; USBP staffing has more than doubled over the past decade and increased more than nine-fold since 1998 (see **Figure 3**). As of September 30, 2011, the USBP had 21,444 agents, including 18,506 posted at the Southwest border and 2,237 posted at the northern border.<sup>73</sup> These numbers are up from a total of 2,268 Border Patrol agents in 1980 (including 1,975 at the Southwest border and 211 at the northern border) and 10,045 in 2002 (including 9,239 at the Southwest border and 492 at the northern border).

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2011, H.Rept. 112-331 (Washington: GPO, 2011), pp. 957-963. Also see CRS Report R41982, *Homeland Security Department: FY2012 Appropriations*, coordinated by William L. Painter and Jennifer E. Lake.

<sup>69</sup> Ibid.

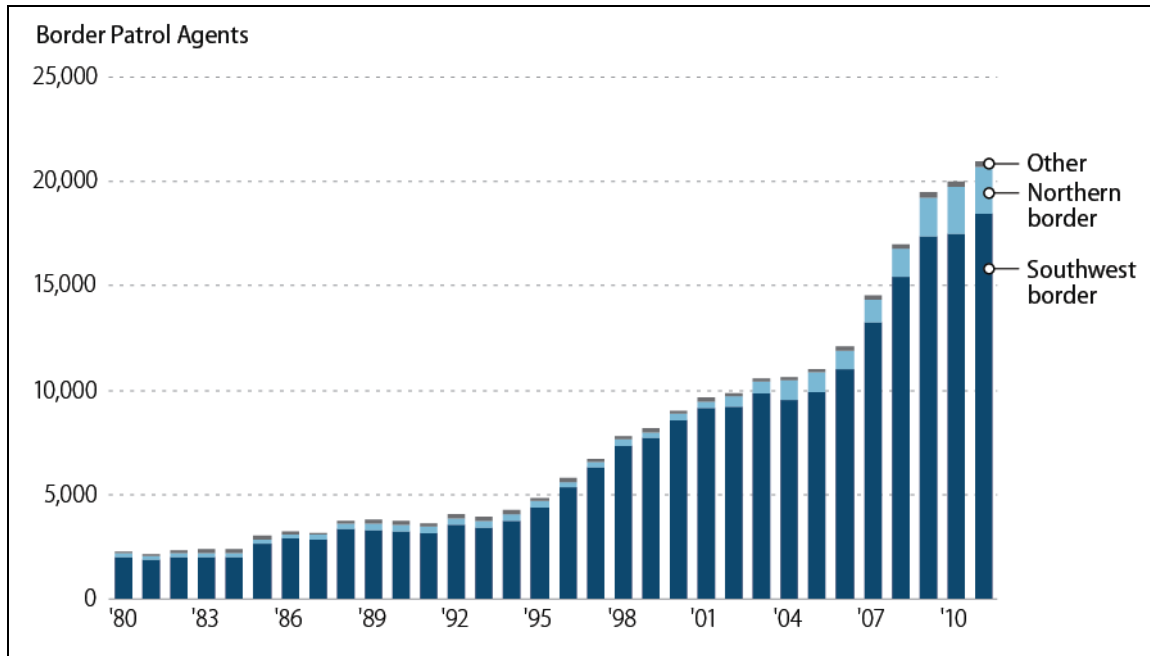
<sup>70</sup> Department of Homeland Security, "Secure and Manage Our Borders," [http://www.dhs.gov/xabout/gc\\_1240606351110.shtm](http://www.dhs.gov/xabout/gc_1240606351110.shtm).

<sup>71</sup> For example, over one-third of all federal criminal cases commenced in 2009-10 were for immigration cases; see U.S. Courts, *U.S. District Courts - Criminal Cases Commenced, by Offense*, Washington, DC, 2011, <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2010/tables/D02CMar10.pdf>. The prosecution of these cases involves expenditures by DOJ prosecutors, federal marshals, the federal bureau of prisons, and the U.S. district and magistrate court systems, among others. The costs of border enforcement borne by federal law enforcement and judicial officials outside of DHS are difficult to describe because these agencies do not list border-specific obligations in their budget documents. Also see National Research Council Committee on Estimating Costs of Immigration Enforcement in the Department of Justice, *op. cit.*

<sup>72</sup> The Immigration Act of 1990 (P.L. 101-649) authorized an increase of 1,000 Border Patrol agents; the IIRIRA (P.L. 104-208, Div. C) authorized an increase of a total of 5,000 Border Patrol agents in FY1997-FY2001; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT, P.L. 107-56) authorized DHS to triple the number of Border Patrol agents at the northern border; and the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) authorized an increase of 10,000 Border Patrol agents between FY2006 and FY2010.

<sup>73</sup> USBP, "Border Patrol Agent Staffing by Fiscal Year," [http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/staffing\\_92\\_10.ctt/staffing\\_92\\_10.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/staffing_92_10.ctt/staffing_92_10.pdf).

**Figure 3. U.S. Border Patrol Agents, Total and by Region, FY1980-FY2011**



**Source:** 1980-1991: CRS presentation of data from Syracuse University Transactional Records Access Clearinghouse; 1992-2011: CRS presentation of data provided by USBP Congressional Affairs.

**Note:** The total number of Border Patrol agents includes agents stationed in coastal sectors and at the Border Patrol headquarters.

In addition to Border Patrol personnel, the National Guard is authorized to support federal, state, and local law enforcement agencies (LEAs) at the border. Basic authority for the Department of Defense (DOD, including the National Guard) to assist LEAs is contained in Chapter 18 of Title 10 of the U.S. Code, and DOD personnel are expressly authorized to maintain and operate equipment in cooperation with federal LEAs in conjunction with the enforcement of counterterrorism operations or the enforcement of counterdrug laws, immigration laws, and customs requirements.<sup>74</sup> DOD may assist any federal, state, or local LEA requesting counterdrug assistance under the National Defense Authorization Act, as amended.<sup>75</sup> National Guard personnel also may serve a federal purpose, such as border security, and receive federal pay while remaining under the command control of their respective state governors.<sup>76</sup>

National Guard troops were first deployed to the border on a pilot basis in 1988, when about 100 soldiers assisted the U.S. Customs Service at several Southwest border locations, and National Guard and active military units provided targeted support for the USBP’s surveillance programs throughout the following decade. The first large-scale deployment of the National Guard to the border occurred in 2006-2008, when over 30,000 troops provided engineering, aviation, identification, technical, logistical, and administrative support to CBP as part of “Operation Jump Start.”<sup>77</sup> President Obama announced an additional deployment of up to 1,200 National Guard

<sup>74</sup> See CRS Report R41286, *Securing America’s Borders: The Role of the Military*, by R. Chuck Mason.

<sup>75</sup> P.L. 101-510, Div. A, Title X, §1004; also see *Ibid.*

<sup>76</sup> 32 U.S.C. §§ 502(a) and 502(f); also see CRS Report R41286, *Securing America’s Borders: The Role of the Military*, by R. Chuck Mason.

<sup>77</sup> See CRS Report R41286, *Securing America’s Borders: The Role of the Military*, by R. Chuck Mason.

troops to the Southwest border on May 25, 2010, with the National Guard supporting the Border Patrol, by providing intelligence work and drug and human trafficking interdiction.<sup>78</sup> The 2010 deployment was originally scheduled to end in June 2011, but the full deployment was extended twice (in June and September 2011) before the Administration announced in December 2011 that the deployment would be reduced to fewer than 300 troops beginning in January 2012.<sup>79</sup>

## **Fencing and Tactical Infrastructure**

The second key element of DHS's border enforcement strategy is tactical infrastructure, including roads, lighting, pedestrian fencing, and vehicle barriers. Tactical infrastructure is intended to impede illicit cross-border activity, disrupt and restrict smuggling operations, and establish a substantial probability of apprehending terrorists seeking entry into the United States.<sup>80</sup> The former INS installed the first fencing along the U.S.-Mexican border beginning in 1990, eventually covering the 14 miles of the border east of the Pacific Ocean near San Diego.

Congress expressly authorized the construction and improvement of fencing and other barriers under Section 102(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208, Div. C), which also required (pursuant to Section 102(b)) the completion of a triple-layered fence along the original 14 miles near San Diego. The Secure Fence Act of 2006 (P.L. 109-367) amended IIRIRA Section 102(b) with a requirement for double-layered fencing along five segments of the Southwest border, totaling about 850 miles.<sup>81</sup> IIRIRA was amended again by the Consolidated Appropriations Act, FY2008 (P.L. 110-161). Under that amendment, the law now requires the Secretary of Homeland Security to construct reinforced fencing "along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border."<sup>82</sup> The act further specifies, however, that the Secretary of Homeland Security is *not* required to install

fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.<sup>83</sup>

As of October 6, 2011, DHS had installed 351 miles of pedestrian fencing and 299 miles of vehicle fencing (total of 650 miles) out of 651 miles DHS had identified as appropriate for fencing and barriers in order to achieve and maintain operational control of the border (see

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<sup>78</sup> Ibid.

<sup>79</sup> Associated Press, "National Guard Troops at Mexico Border Cut to Fewer Than 300," *USA Today*, December 20, 2011.

<sup>80</sup> Customs and Border Protection, "Tactical Infrastructure: History and Purpose," [http://www.cbp.gov/xp/cgov/border\\_security/ti/about\\_ti\\_history.xml](http://www.cbp.gov/xp/cgov/border_security/ti/about_ti_history.xml).

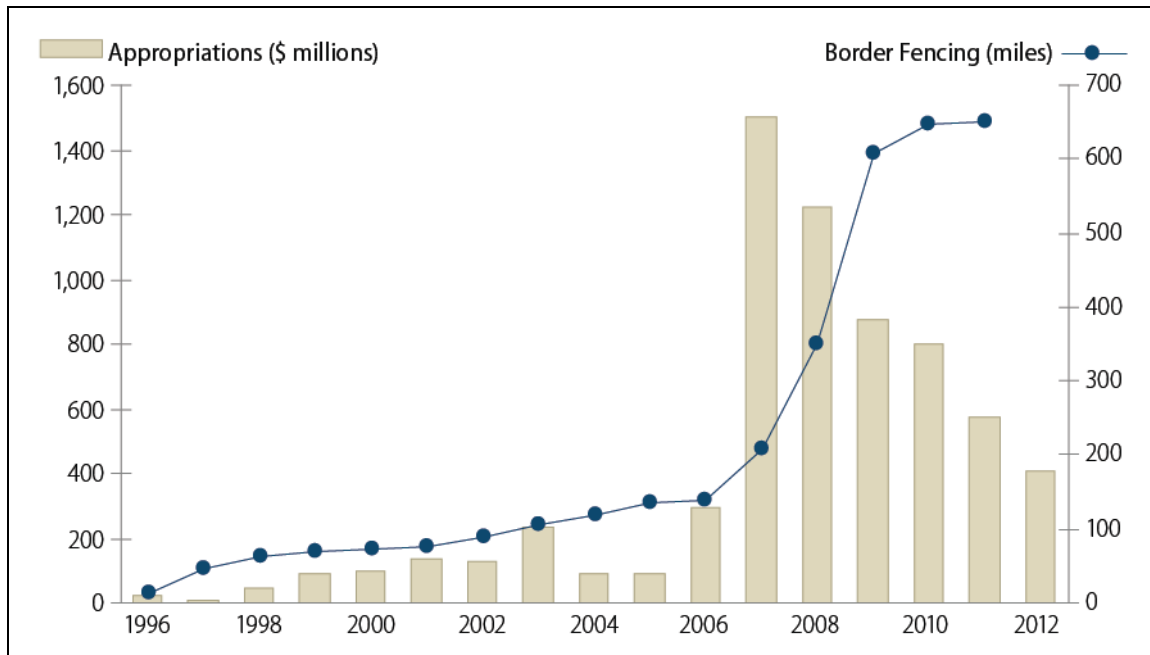
<sup>81</sup> P.L. 109-367 identified five specific stretches of the border where fencing was to be installed; CBP Congressional Affairs provided CRS with this estimate of the total mileage covered by the law on September 25, 2006.

<sup>82</sup> P.L. 110-161, Div. E, § 564. Unlike under prior law, the Consolidated Appropriations Act, as enacted, does not specify that reinforced fencing be "at least 2 layers." See P.L. 104-208, Div. C, § 102(b), as amended by P.L. 109-367, § 3. Also see CRS Report RL33659, *Border Security: Barriers Along the U.S. International Border*, by Chad C. Haddal and Michael John Garcia.

<sup>83</sup> P.L. 110-161, Div. E, § 564.

**Figure 4).**<sup>84</sup> **Figure 4** also summarizes annual appropriations for tactical infrastructure (including surveillance technology) for FY1996-FY2012. Appropriations increased from \$25 million in FY1996 to \$298 million in FY2006, an eleven-fold increase (eight-fold when adjusting for inflation), and then jumped to \$1.5 billion in FY2007 as DHS created a new Border Security Fencing, Infrastructure, and Technology (BSFIT) account and appropriated money to pay for the border fencing mandate in the Secure Fence Act of 2006. BSFIT appropriations remained at over \$1 billion in FY2008 before falling to \$573 million in FY2011 and \$400 million in FY2012.

**Figure 4. Tactical Infrastructure Appropriations and Miles of Border Fencing, FY1996-FY2012**



**Sources:** FY1996-FY2002 tactical infrastructure funding is from the FY2003 INS Congressional Budget Justification. FY1996 construction funding is from P.L. 104-134. FY1997 funding is from P.L. 104-208. FY1998 construction funding is from P.L. 105-119. FY1999 construction funding is from P.L. 105-277. FY2000 construction funding is from the FY2001 INS Congressional Budget Justification and H.Rept. 107-278. FY2001 and FY2002 construction funding are from the FY2002 INS Congressional Budget Justification. FY2003 construction and tactical infrastructure funding is from the FY2005 DHS Congressional Budget Justification. FY2004-FY2005 construction and tactical infrastructure appropriations are from the FY2006 DHS Congressional Budget Justification. FY2006 construction and tactical infrastructure appropriations are from the FY2007 DHS Congressional Budget Justification. FY2007 construction and Border Security Fencing, Infrastructure, and Technology (BSFIT) appropriations are from P.L. 109-234 and P.L. 109-295. FY2008 BSFIT appropriation is from P.L. 110-161. FY2009 BSFIT appropriation is from P.L. 110-329 and P.L. 111-5. FY2010 BSFIT appropriation is from P.L. 111-83 and P.L. 111-230. FY2011 BSFIT appropriations is from P.L. 112-10. FY2012 BSFIT appropriation is from P.L. 112-74.

**Notes:** In FY2003, immigration inspections from the former INS, customs inspections from the former U.S. Customs Service, and USBP were merged to form the Bureau of Customs and Border Protection within DHS. As a result, data for years prior to FY2003 may not be comparable with the data for FY2004 and after. Data for FY1996-FY2002 include USBP construction and tactical infrastructure accounts. Construction account funding has been used to fund a number of projects at the border, including fencing, vehicle barriers, roads, and USBP stations and checkpoints. Funding for FY1998-FY2000 includes San Diego fencing as well as fencing, light, and

<sup>84</sup> CBP Office of Congressional Affairs communication with CRS, October 6, 2011.

road projects in El Centro, Tucson, El Paso, and Marfa. Data for FY2003-FY2006 include DHS construction and tactical appropriations. Data for FY2007-FY2012 include DHS total appropriations to CBP's Border Security Fencing, Infrastructure, and Technology (BSFIT) account, created by appropriators in FY2007. This account funds the construction of fencing, other infrastructure such as roads and vehicle barriers, as well as border technologies such as cameras and sensors.

## Surveillance Assets

The Border Patrol utilizes advanced technology to augment its agents' ability to patrol the border. USBP's primary system of border surveillance assets has its origins in the former INS' Integrated Surveillance Information System (ISIS), initiated in 1998. ISIS was folded into a broader border surveillance system named the America's Shield Initiative (ASI) in 2005, and ASI was made part of DHS' Secure Border Initiative (SBI) the following year, with the surveillance program renamed *SBI<sub>net</sub>* and managed under contract by the Boeing Corporation.

Under all three of these names, the system consisted of a network of Remote Video Surveillance (RVS) systems (including cameras and infrared systems), and sensors (including seismic, magnetic, and thermal detectors), linked into a computer network, known as the Integrated Computer Assisted Detection (ICAD) database. The system was intended to ensure seamless coverage of the border by combining the feeds from multiple cameras and sensors into one remote-controlled system linked to a central communications control room at a USBP station or sector headquarters. USBP personnel monitoring the control room screened the ICAD system to re-position RVS cameras toward the location where sensor alarms were tripped (although some camera positions are fixed and cannot be panned). Control room personnel then alerted field agents to the intrusion and coordinated the response.

All three of these systems struggled to meet deployment timelines and to provide USBP with the promised level of "situational awareness" with respect to illegal entries.<sup>85</sup> DHS also faced criticism of ASI and *SBI<sub>net</sub>* for non-competitive contracting practices, inadequate oversight of contractors, and cost overruns.<sup>86</sup> DHS Secretary Napolitano ordered a department-wide assessment of the *SBI<sub>net</sub>* technology project in January 2010 and suspended the *SBI<sub>net</sub>* contract in March 2010.<sup>87</sup> The review confirmed *SBI<sub>net</sub>*'s history of "continued and repeated technical

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<sup>85</sup> See, for example, testimony of DHS Inspector General Richard L. Skinner before the House Homeland Security Committee, Subcommittee on Management, Integration, and Oversight, *New Secure Border Initiative*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., December 16, 2005; GAO, *Secure Border Initiative: DHS Needs to Address Significant Risks in Delivering Key Technology Investment*, GAO-08-1086, September 22, 2008; and GAO, *Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed*, GAO-09-896, <http://www.gao.gov/new.items/d09896.pdf>.

<sup>86</sup> In FY2005, the General Services Administration's Inspector General (GSA IG) released a report that criticized the USBP for its contracting practices regarding RVS system. The GSA IG found that the contracts were awarded without competition, and that in many cases the contractor failed to deliver the services that were stipulated within the contract, leading to RVS sites not being operational in a timely manner. In a 2005 report, the DHS Inspector General (DHS IG) noted that deficiencies in contract management and processes resulted in 169 incomplete RVS sites. DHS IG audits of *SBI<sub>net</sub>* similarly found that DHS did not have adequate organizational capacity to manage *SBI<sub>net</sub>* at program initiation or adequate controls and effective oversight of *SBI<sub>net</sub>* support service contact workers; see DHS IG, *Secure Border Initiative: DHS Needs to Address Significant Risks in Delivering Key Technology Investment*, DHS OIG-09-80, Washington, DC, June 2009. And in 2010 the DHS IG reported additional oversight problems with respect to the completion of contracted program tasks; see DHS IG, *Controls Over SBI<sub>net</sub> Program Cost and Schedule Could Be Improved*, DHS OIG-10-96, Washington, DC, June 2010.

<sup>87</sup> Testimony of CBP Assistant Commissioner Mark Borkowski before the House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *After SBI<sub>net</sub>—The Future of Technology on the Border*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., March 15, 2011.

problems, cost overruns, and schedule delays, raising serious questions about the system's ability to meet the needs for technology along the border.<sup>88</sup> DHS terminated *SBI*net in January 2011.<sup>89</sup>

Under DHS's new Alternative Surveillance Technology Plan, DHS plans to deploy a mix of Remote Video Surveillance Systems (RVSS) consisting of fixed daylight and infrared cameras that transmit images to a central location, Mobile Surveillance Systems (MSS) mounted on trucks and monitored in the truck's passenger compartment, hand-held equipment, and existing *SBI*net integrated towers.<sup>90</sup> A November 2011 GAO review of the new technology plan found that CBP's analysis leading to the new plan did not adequately justify the specific mix of technologies to be deployed and that the planning process did not include sufficient risk and uncertainty analysis. GAO questioned the cost-effectiveness of some elements of the plan, including the deployment of *SBI*net Integrated Fixed Towers in certain parts of Arizona.<sup>91</sup>

In addition to these ground-based surveillance assets, CBP's Office of Air and Marine (OAM) deploys 270 aircraft and 280 marine vessels to conduct surveillance operations and contribute to the interdiction of unauthorized aliens and other smuggling operations.<sup>92</sup> OAM operates nine unmanned aircraft systems (UAS), including four Predator B systems from the National Air Security Operations Center (NASOC) in Sierra Vista, AZ; two Predator B systems from NASOC in Grand Forks, ND; and maritime variants of the Predator B, known as Guardians, from NASOC stations in Cocoa Beach, FL, and two from Corpus Christi, TX.<sup>93</sup> The UASs are used to conduct homeland security, law enforcement, and disaster relief missions in areas that are difficult to access or otherwise considered too high-risk for manned aircraft or personnel on the ground.<sup>94</sup>

## Enforcement Outcomes

For many years, the INS and DHS have used apprehensions by the USBP as a proxy measure of illegal entries,<sup>95</sup> and changes in apprehensions as an indicator of border enforcement outcomes.

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<sup>88</sup> DHS, *Report on the Assessment of the Secure Border Initiative Network (SBI)net Program*, Washington, DC, 2010, p. 1.

<sup>89</sup> See DHS, *Annual Financial Report: Fiscal Year 2011*, Washington, DC, 2011, p. 14.

<sup>90</sup> Statement of Randolph C. Hite, Director, Information Technology Architecture and System Issues, Testimony Before the Subcommittees on Management, Investigations, and Oversight; and Border, Maritime, and Global Counterterrorism; Committee on Homeland Security, House of Representatives, *Secure Border Initiative: DHS Needs to Follow Through on Plans to Reassess and Better Manage Key Technology Program*, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Thursday, June 17, 2010.

<sup>91</sup> GAO, *Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed Before Proceeding*, GAO-12-22, November 2011, <http://www.gao.gov/new.items/d1222.pdf>.

<sup>92</sup> U.S. Customs and Border Protection, *Fact Sheet: Office of Air and Marine*, Washington, DC, January 2011, [http://www.cbp.gov/linkhandler/cgov/newsroom/fact\\_sheets/marine/air\\_marine.ctt/air\\_marine.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/marine/air_marine.ctt/air_marine.pdf).

<sup>93</sup> U.S. Customs and Border Protection, "CBP receives Fourth Predator-B in Arizona," press release, December 27, 2011, [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/12272011.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/12272011.xml).

<sup>94</sup> U.S. Customs and Border Protection, "UAS Overview," [http://www.cbp.gov/xp/cgov/border\\_security/air\\_marine/uas\\_program/uasoverview.xml](http://www.cbp.gov/xp/cgov/border_security/air_marine/uas_program/uasoverview.xml). CBP reportedly plans to expand its UAS fleet to 24 such systems, dependent on funding; see U.S. Government Accountability Office, *Observations on the Costs and Benefits of an Increased Department of Defense Role in Helping to Secure the Southwest Land Border*, GAO-11-856R, September 12, 2011; also see William Booth, "More Predator Drones Fly U.S.-Mexico Border," *Washington Post*, December 21, 2011.

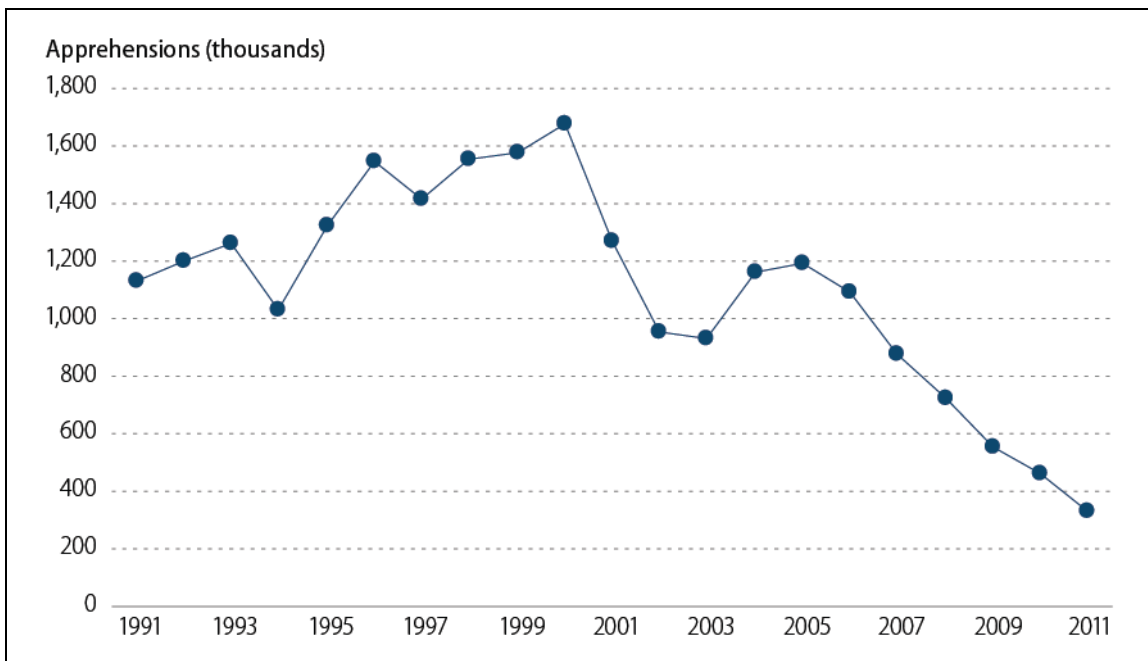
<sup>95</sup> See, for example, CBP, *Securing America's Borders: CBP Fiscal Year 2010 in Review Fact Sheet*, Washington, DC, March 15, 2011, [http://www.cbp.gov/xp/cgov/newsroom/fact\\_sheets/cbp\\_overview/](http://www.cbp.gov/xp/cgov/newsroom/fact_sheets/cbp_overview/) (continued...)

Apprehensions data are difficult to interpret, however, for several reasons discussed below. Thus, after discussing apprehensions data, this section describes DHS’s measure of operational control of the border as well as several additional metrics that may be used as indicators of border enforcement outcomes.

## Alien Apprehensions

**Figure 5** depicts total USBP apprehensions of deportable and removable aliens for FY1991-FY2011. Apprehensions are easy to monitor and they allow for long-term comparisons because DHS and its predecessor agencies have been recording apprehension trends for almost 100 years.<sup>96</sup> Thus, while apprehensions data alone should not be used to draw conclusions about the effectiveness of border enforcement (see “The Limits of Apprehensions Data”), apprehensions are a key source of information about the number of people attempting to enter the country illegally.

**Figure 5. U.S. Border Patrol Apprehensions of Deportable Aliens, FY1991-FY2011**



**Source:** DHS Office of Immigration Statistics, Statistical Yearbook; DHS Annual Financial Report FY2011.

**Figure 5** suggests two distinct trends. Border patrol apprehensions generally increased between FY1991 and FY2000, climbing from 1.13 million to 1.68 million during that decade. And

(...continued)

fy2010\_factsheet.xml; the fact sheet states that “Nationwide Border Patrol apprehensions of illegal aliens decreased from nearly 724,000 in FY 2008 to approximately 463,000 in FY 2010, a 36 percent reduction, indicating that fewer people are attempting to illegally cross the border.”

<sup>96</sup> See DHS Office of Immigration Statistics, Yearbook of Immigration Statistics FY2010, Washington, DC, August 2011, Table 33, <http://www.dhs.gov/files/statistics/publications/YrBk10En.shtm>.

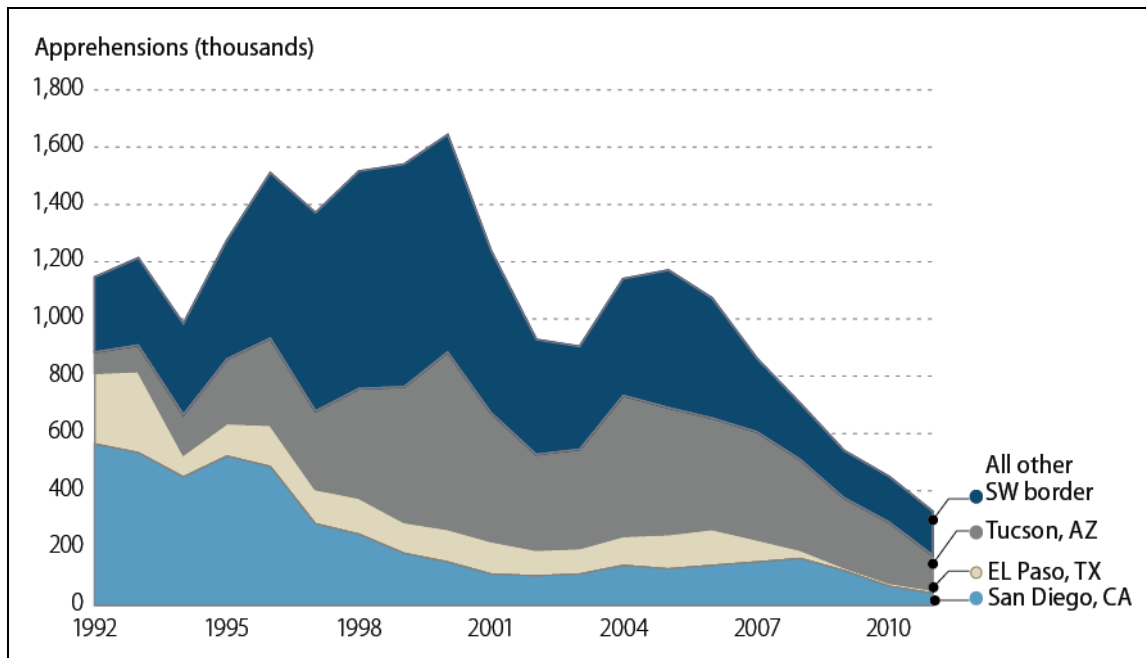


apprehensions have generally fallen since that time (with the exception of FY2004-FY2006), reaching 327,577 in FY2011—the lowest level since FY1970.<sup>97</sup>

### Southwest Border Apprehensions by Sector

**Figure 6** depicts apprehensions along the Southwest border for FY1992-FY2010, broken down by certain Border Patrol sectors. The sector-specific apprehension pattern generally adheres to the predictions of the 1994 National Strategic Plan. Increased enforcement in the El Paso and San Diego sectors was associated with high apprehensions in those sectors during the early 1990s, and then with falling apprehensions by the middle of the decade as unauthorized migrants adopted alternative approaches to enter the United States. Apprehensions in the San Diego and El Paso sectors remained well below their early-1990s levels throughout the following decade—findings that suggest border enforcement in those sectors has been broadly effective.

**Figure 6. U.S. Border Patrol Apprehensions of Deportable Aliens, Southwest Border, by Selected Sectors, FY1992-FY2011**



**Source:** DHS Office of Immigration Statistics, *Yearbook of Immigration Statistics FY2010*; USBP, *Fiscal Year Apprehension Statistics 2011*

Falling apprehensions in San Diego and El Paso during the late 1990s were more than offset by rising apprehensions in the Tucson, AZ, sector and other Southwest border locations, however. And while apprehensions along the rest of the Southwest border returned to their early-1990s levels beginning in 2007, apprehensions in the Tucson sector remained above their historical

<sup>97</sup> CRS calculations based on DHS Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2010*, Washington, DC, 2011, p. 91. The INS reported a total of 345,353 apprehensions of removable aliens in 1970, a figure which included apprehensions by the USBP and by INS Office of Investigations, within the United States. Historically, USBP apprehensions accounted for about 93% of total INS apprehensions, based on CRS calculations from the *Yearbook of Immigration Statistics*.

levels—representing almost half of all Southwest border apprehensions—through 2010, before falling back below their 1994 level in 2011. Thus, it appears that some of the success in the San Diego and El Paso sectors came at the expense of other Border Patrol sectors, though apprehensions are down sharply across the entire border since 2007.

### **The Limits of Apprehensions Data**

While apprehensions data are useful indicators of illegal inflow trends, they are problematic indicators of broader trends in illegal immigration—or of the effectiveness of U.S. enforcement—for at least three reasons. First, apprehensions data exclude three important groups: *successful* unauthorized aliens (including aliens who enter without inspection, aliens who use fraudulent documents to enter through a port of entry, and aliens who enter legally and overstay their visas); certain *unsuccessful* unauthorized aliens (including aliens who are denied entry by CBP officers at ports of entry; aliens who are apprehended by local, state, or federal law enforcement officials other than USBP; and aliens who die while crossing the border); and *would-be* unauthorized aliens who are deterred by border enforcement and do not migrate (including aliens who remain in their communities of origin, or cases of “remote deterrence,” and aliens who attempt to enter the United States but are dissuaded at the border, or cases of “immediate deterrence”). These excluded groups mean that apprehensions data are an incomplete picture both of unauthorized migration and of migration enforcement.

Second, apprehensions data count events rather than people. Thus, an unauthorized migrant who is caught trying to enter the country three times in one year counts as three apprehensions in the data set. To the extent that apprehensions are interpreted as a direct indicator of illegal migration, the data therefore may overestimate the actual number of people trying to cross the border.

Finally, individual and aggregate migration decisions are highly complex, reflecting not only the risk of apprehension and the costs of migration, but also—at least as importantly—a range of socio-economic “push” and “pull” factors at both ends of the migration chain, as well as social and family networks that facilitate migration.<sup>98</sup> Thus, it is difficult to interpret the meaning of a change in alien apprehensions: do fewer apprehensions imply fewer illegal entry attempts, or a lower apprehension rate for the same number of entries? And even if attempted entries are falling, is it a function of increased enforcement or of other changes, such as the U.S. economic downturns in 2001-2002 and since 2007, and/or demographic changes in Mexico?<sup>99</sup>

### **Operational Control of the Border**

Section 2 of the Secure Fence Act of 2006 (P.L. 109-367) requires the Secretary of Homeland Security to “take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime border of the United States.” The section defines operational control to mean “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of

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<sup>98</sup> See, for example, Douglas S. Massey, Joaquin Arango, and Graeme Hugo, et al., *Worlds In Motion: Understanding International Migration at the End of the Millenium*, 2<sup>nd</sup> ed. (New York: Oxford University Press, 2005).

<sup>99</sup> On the effects of Mexico’s falling birthrate on U.S. immigration, see Gordon H. Hanson, Esther Duflo, and Craig McIntosh, “The Demography of Mexican Migration to the United States,” *American Economic Review*, vol. 99, no. 2 (May 2009), pp. 22-27.

terrorism, narcotics, and other contraband.” The section also requires the Secretary to submit annual reports to Congress on the progress made toward achieving operational control.

Most experts agree that preventing 100% of unlawful entries across any border is an impossible task—particularly a border as large and open as that of the United States.<sup>100</sup> Through FY2010, the Border Patrol classified portions of the border as being under “effective” or “operational” control if the agency “has the ability to detect, respond, and interdict illegal activity at the border or after entry into the United States.”<sup>101</sup> The agency conducted a five-level assessment of border security, with the two top levels (“controlled” and “managed”) defined as being under effective control, and the three remaining levels (“monitored,” “low-level monitored,” and “remote/low activity”) defined as not being under effective control.<sup>102</sup> These evaluations were based on operational indicators of enforcement (e.g., apprehensions, known illegal entries) and qualitative assessments of border security by USBP officials at the sector and national levels. **Table 1** summarizes the number of border miles under effective control for FY2005-FY2010.

**Table 1. Miles of the Southwest Border Under “Effective Control”**

Fiscal Year	Miles	Percent of Border
2005	288	15
2006	449	23
2007	599	31
2008	757	39
2009	939	48
2010	1,107	57

**Source:** DHS Annual Financial Report, FY2009; U.S. Congress, House Committee on Homeland Security, February 15, 2010.

As of FY2011, USBP no longer uses this measure of effective control.<sup>103</sup> DHS reportedly has begun to develop a more sophisticated quantitative indicator of border security, and according to CBP officials, effective control will be replaced by a “border condition index,” which will combine multiple dimensions of border security, public safety, and quality of life into a holistic “score” that can be calculated for different regions of the border.<sup>104</sup>

<sup>100</sup> See, for example, Edward Alden and Bryan Roberts, “Are US Borders Secure? Why We Don’t Know, and How to Find Out,” *Foreign Affairs*, vol. 90, no. 4 (July/August 2011), pp. 19-26.

<sup>101</sup> U.S. Government Accountability Office, *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border*, GAO-11-374T, February 15, 2011, p. 7.

<sup>102</sup> *Ibid.*, p. 8.

<sup>103</sup> DHS did not report on border miles under effective control in its FY2010 Annual Performance Report; see DHS, *Annual Performance Report: Fiscal Years 2010-2012*, Washington, DC, April 2011, [http://www.dhs.gov/xlibrary/assets/cfo\\_apr\\_fy2010.pdf](http://www.dhs.gov/xlibrary/assets/cfo_apr_fy2010.pdf).

<sup>104</sup> CBP Office of Legislative Affairs, December 9, 2011; also see U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Securing the Border: Progress at the Federal Level*, testimony of Secretary of Homeland Security Janet Napolitano, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., May 4, 2011.

## **Additional Measures of Border Enforcement**

Given these limitations, this section describes other metrics that may offer added insight into illegal migration across U.S. borders and the effects of recent border enforcement efforts.

### **Automated Biometric Identification System (IDENT) System**

In 1989, Congress authorized the INS to develop an automated fingerprint-based system to identify and track aliens.<sup>105</sup> The system was conceived to identify serial border crossers and criminal aliens. In 1994, Congress appropriated funding for the INS to develop and deploy a biometric database, which grew into the Automated Biometric Identification System (IDENT) system. IDENT was first deployed in the Border Patrol's San Diego sector in December 1994; by the end of 1995, it was installed at 52 Southwest border sites; and by the end of 1999, it was deployed at 408 INS sites, including all Border Patrol stations. The IDENT database, managed by DHS' U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) division, combines photographs, 10 rolled fingerprints, and biographical data, and includes about 138 million individual records.<sup>106</sup>

The INS initially used a two-fingerprint-based system (index fingers only) to minimize processing time and because two prints were deemed adequate for identification purposes. USBP began collecting 10 rolled prints in 2004 and deployed workstations that are interoperable with the Federal Bureau of Investigation's (FBI) 10-print Integrated Automated Fingerprint Identification System (IAFIS), a biometric database that includes data on criminal records.<sup>107</sup> By 2005, all Border Patrol stations were searching the IDENT and IAFIS biometric databases on persons in custody. In 2011, USBP also began automatic searches against biometric records in the Department of Defense (DOD) Automated Biometric Identification System (ABIS).

Today, the Border Patrol uses dedicated workstations that feature digital cameras and electronic fingerprint scanners to identify and track illegal aliens through IDENT. Biometric data submitted to IDENT is matched against similar information that is stored in multiple data sets, including the "recidivist" database, which is used to track repeat entrants, and the "lookout" database, which is used to identify criminal aliens. This process in IDENT takes approximately two minutes. The system also automatically searches the FBI IAFIS Criminal Master File and the DOD ABIS database, with results typically returned in less than 10 minutes. When a potential match is found in any of these searches, the station displays the fingerprints, photographs, and biographical information of the matched data. Based on this information, the Border Patrol agent determines whether the data indicate a probable match to the person in custody or whether to submit the subject for additional vetting by a certified fingerprint examiner.<sup>108</sup>

The IDENT database provides additional insight into border enforcement outcomes by describing the number of unique individuals apprehended by USBP per year (see **Figure 7**), rather than the number of apprehension events, as described above. (The data in **Figure 7** reflect certain

<sup>105</sup> Immigration Act of 1990 (P.L. 101-649), Sec. 503 (b).

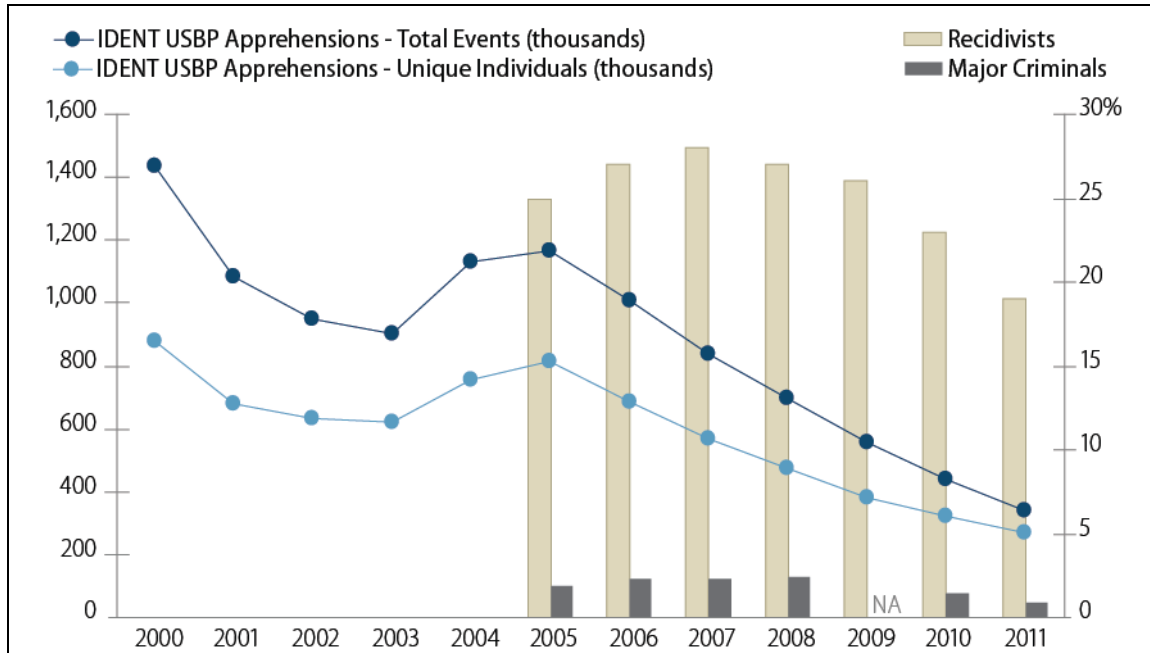
<sup>106</sup> CRS communication with US-VISIT Office of Congressional Affairs Dec. 16, 2011.

<sup>107</sup> CRS communication with CBP Office of Congressional Affairs Dec. 12, 2011. For information on IAFIS see U.S. Federal Bureau of Investigation, Integrated Automated Fingerprint Identification System, [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/iafis/iafis](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis).

<sup>108</sup> CRS communication with CBP Office of Congressional Affairs Dec. 22, 2011.

reporting differences from the overall USBP data. The figure therefore also includes total USBP apprehensions as reported in the IDENT database.) As **Figure 7** indicates, the number of unique individuals apprehended by USBP fell from about 880,000 in 2000 to about 618,000 in 2003 before climbing back to about 818,000 in 2005 and then dropping sharply to about 269,000 individuals in 2011. Thus, perhaps more importantly, the ratio of total apprehensions to unique individuals apprehended also fell during this period: from an average of 1.63 apprehensions per individual in 2000 to an average of 1.27 apprehensions per individual in 2011.

**Figure 7. U.S. Border Patrol IDENT Apprehensions, 2000-2011**



**Source:** CRS presentation of data provided by US-VISIT Office of Congressional Affairs, December 16, 2011, and CBP Office of Congressional Affairs, December 22, 2011.

**Notes:** *Apprehensions events* refers to the total number of USBP apprehensions enrolled in the US-VISIT IDENT database; *unique individuals* refers to the number of different people apprehended based on IDENT’s Fingerprint Identification Number (FIN), the system’s unique biometric identifier. The recidivism rate is the percentage of unique individuals who are apprehended two or more times in a given fiscal year. The criminality rate is the number of apprehension events (i.e., not unique apprehensions) in which subjects are found to have a previous conviction for a major crime based on searches of IAFIS and IDENT’s lookout database. Major crimes include assault, dangerous drugs, homicide, kidnapping, robbery, and sexual assault. Due to a software error, IAFIS records were not captured during the first half of FY2009, and data are not available for that year.

**Figure 7** also presents IDENT data since FY2005 on the percentage of unique subjects apprehended by the Border Patrol more than once in a fiscal year (the recidivism rate) and the percentage of subjects with a prior conviction for a major crime (i.e., assault, dangerous drugs, homicide, kidnapping, robbery, or sexual assault) based on searches of the IDENT lookout database and FBI IAFIS database. The recidivism rate during these years peaked at 28% in 2007, and fell to 20% in FY2011, the lowest level since USBP began collecting recidivist data. With respect to criminality, the proportion of people apprehended by the Border Patrol with previous convictions for major crimes hovered between 1.9% in 2005 and 2.5% in 2008 before falling to 0.9% in FY2011, the lowest level since USBP began matching records against IAFIS. A total of 90,700 people with major criminal records were apprehended in FY2005-FY2011 (excluding FY2009, when a software error prevented data from being recorded), a figure which may include

multiple records for certain individuals. Fewer than 10,000 aliens with major criminal records were apprehended by the Border Patrol in FY2010 and FY2011 combined.

## **Successful Illegal Entries**

One way to use apprehensions data to gauge the effectiveness of border enforcement would be to compare apprehensions to the total number of illegal border crossers (i.e., successful illegal entrants), and thus describe the proportion of border crossers that is apprehended.<sup>109</sup> Precise estimates of how many aliens successfully evade capture and enter the country illegally do not exist, however. Most numbers cited are based on changes in the estimated unauthorized alien population in the United States, which grew from about 3.5 million in 1990, to 7 million-8.5 million in 2000, to 11.8million-12.4 million in 2007, before falling to 10.8 million-11.2 million in 2010, according to widely cited sources.<sup>110</sup> Based on these data, the total unauthorized population, on average, grew by about 385,000 people per year in the 1990s, by about 1 million per year in 2000-2007, and by about 300,000 per year during the 2000s overall. These estimates should be interpreted with caution, however, because they are based on a residual analysis of U.S. Census data, which is necessarily somewhat imprecise.<sup>111</sup>

Moreover, changes in the total unauthorized population do not correlate precisely with successful illegal entries for two reasons. First, not all unauthorized aliens enter the United States illegally; previous research suggests that between one-third and one-half enter the country legally and overstay their visas.<sup>112</sup> For this reason, changes in the total unauthorized population *over-estimate* the number of illegal border crossers. Second, annual data on the total unauthorized population do not account for unauthorized migrants who enter the country, stay temporarily, and then leave. Because some unauthorized migrants leave the country (including as a result of being deported), and some may leave and re-enter multiple times, changes in the total unauthorized population also *under-estimate* the number of people successfully entering the country each year.

Bearing these caveats in mind, the Pew Hispanic Center has estimated unauthorized inflows per se, a figure which accounts for some return flows, and found that unauthorized inflows (including illegal border crossers and visa overstayers) averaged 850,000 people per year in 2000-2005, 550,000 per year in 2005-2007, and 300,000 people per year in 2007-2009.<sup>113</sup> CBP also reportedly plans in 2012 to introduce a measure of total illegal crossings at the Southwest border

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<sup>109</sup> In the words of House appropriators, CBP should develop better measures of “the number of illegal crossers and volume of contraband coming across the border” to provide a “better quantification of the denominators”; see U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2012*, Report to Accompany H.R. 2017, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., May 6, 2011, H.Rept. 112-91 (Washington: GPO, 2011), p. 33.

<sup>110</sup> See CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

<sup>111</sup> The residual methodology estimates the unauthorized population by subtracting citizens and authorized aliens from the total population identified by the U.S. Census Current Population Survey (CPS). The CPS asks about citizenship, but not about legal status, so the estimate is based on a demographic model of the unauthorized population, adding uncertainty to the estimate. In addition, estimates must account for the fact that unauthorized migrants have incentives to under-report their presence. For a discussion of the methodology see Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply*.

<sup>112</sup> CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*, by Ruth Ellen Wasem.

<sup>113</sup> Passel and Cohn, *US Unauthorized Immigration Flows Are Down Sharply*. This estimate is also based on the residual methodology discussed in footnote 111, and subject to similar uncertainty.

based on a statistical model using apprehensions, recidivism data, and data from external sources, such as U.S. Census data; these successful illegal entry data will be incorporated into CBP's border conditions index.<sup>114</sup> Overall, existing estimates of the unauthorized population and of unauthorized inflows are inconclusive with respect to the effectiveness of border enforcement, though all of the data point to a substantial drop in unauthorized flows since about 2007.

## **Smuggling Fees**

The majority of unauthorized migrants to the United States make use of human smugglers (often referred to in Mexico as “coyotes” or “polleros”) to facilitate their illegal admission to the country. Indeed, whereas about 80% of unauthorized migrants from Mexico reportedly relied on human smugglers during the 1980s, about 90% did so in 2005-2007, though the use of smugglers may have declined a bit during the recent economic downturn.<sup>115</sup> Migrants' reliance on human smugglers, along with prices charged by smugglers, are an additional potential indicator of the effectiveness of U.S. border enforcement efforts, as more effective enforcement should increase the costs to smugglers of bringing migrants across the border, with smugglers passing such costs along to their clients in the form of higher fees.<sup>116</sup>

**Figure 8** summarizes available time-series data describing average smuggling fees paid by certain unauthorized migrants from Mexico to the United States. The data come from a pair of long-term projects conducted by academic research teams at the University of California, San Diego (UCSD) and Princeton University. In both cases, the data reflect reported smuggling fees based on surveys conducted with unauthorized migrants in the United States and in Mexico (i.e., after migrants had returned home), with fees adjusted for inflation and reported in 2010 dollars.

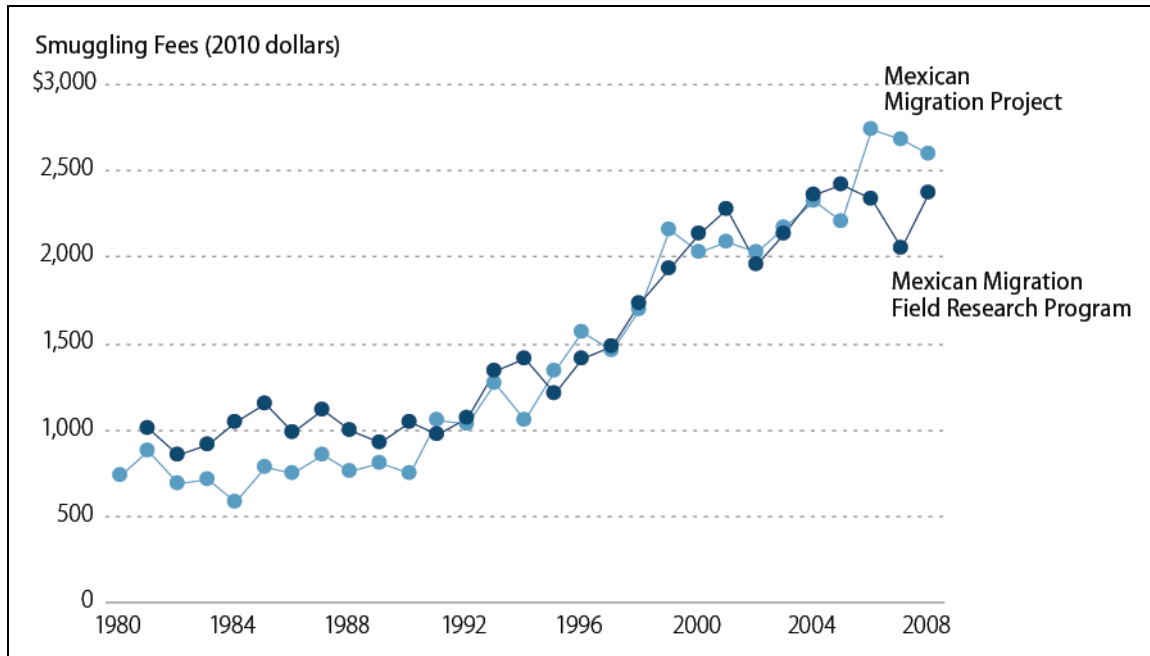
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<sup>114</sup> CBP Office of Congressional Affairs, Dec. 22, 2011; also see U.S. Government Accountability Office, *U.S. Customs and Border Protection's Border Security Fencing, Infrastructure and Technology Fiscal Year 2011 Expenditure Plan*, GAO-12-106R, November 17, 2011, slide 53, <http://www.gao.gov/new.items/d12106r.pdf>.

<sup>115</sup> See Princeton University Mexican Migration Project, “Access to Border-Crossing Guides and Family/Friends on First Undocumented Trip,” <http://mmp.opr.princeton.edu/results/002coyote-en.aspx>.

<sup>116</sup> See Bryan Roberts, Gordon Hanson, and Derekh Cornwell, et al., *An Analysis of Migrant Smuggling Costs along the Southwest Border*, DHS Office of Immigration Statistics, Washington, DC, November 2010, <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf>. The extent to which smugglers may pass their costs along to migrants also depends on the elasticity of migration with respect to such costs, as Roberts et al. discuss; smuggling fees may also therefore depend on the broader migration context, including economic “pulls” and “pushes” in the United States and its migration partner states.

**Figure 8. Smuggling Fees Paid by Unauthorized Mexican Migrants, 1980-2009**



**Source:** Princeton University Mexican Migration Project and University of California, San Diego Mexican Migration Field Research Program.

**Notes:** Data based on surveys of unauthorized Mexican migrants about their most recent unauthorized trip to the United States, with reported amounts adjusted for inflation using Bureau of Labor Statistics Consumer Price Index Research Series Using Current Methods (CPI-R-US). MMFRP data are a weighted two-year moving average for 1981-2007 to account for a small sample size, and a weighted three-year average (including three observations from 2009) for 2008. MMP data are a weighted two-year average for 2007 to account for a small sample size, and a weighted four-year average (including four observations from 2009 and six observations from 2010) for 2008.

According to these data, smuggling fees were mostly flat throughout the 1980s, at about \$750-\$1,000, with an average annual growth rate of less than 1.5%.<sup>117</sup> Smuggling fees began to rise during the early 1990s, climbed by an average of over 7% per year throughout the 1990s and early 2000s to \$2,400-\$2,700 in 2005-2006, and have remained roughly flat since that time—possibly because lower earnings since 2007 by intending migrants’ U.S.-based families have placed an economic constraint on what smugglers may charge.<sup>118</sup> Thus, these data suggest that

<sup>117</sup> Smuggling fees averaged \$752 and increased by 1.5% per year in 1980-1990 according to the MMP; fees averaged \$1,002 in 1980-1990 and increased by 1.1% per year according to the MMFRP. Other research indicates that smuggling fees were \$675 - \$1,200 (converted by CRS to 2010 dollars using Bureau of Labor Statistics, “CPI Inflation Calculator”) during the 1970s, and that about 25-40% of Mexican immigrants relied on smugglers during the 1970s; see U.S. Domestic Council, Committee on Illegal Aliens, *Preliminary Report*, Washington, DC, December 1976, p. 143; U.S. Congress, House Select Committee on Population, *Legal and Illegal Immigration to the United States*, Committee Print, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 1978 (Washington: GPO, 1978), p. 13; Comptroller General of the United States, *More Needs to Be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States*, B-125051, July 1973, pp. 20-21.

<sup>118</sup> Smuggling fees averaged \$1,763 and increased by 9.6% per year in 1991-2006 according to the MMP; fees averaged \$1,776 and increased by 7.3% per year in 1992-2005 according to the MMFRP. Fees averaged \$2,634 and decreased by 2.6% per year in 2007-08 according to the MMP; and fees averaged \$2,254 and decreased by 0.1% per year in 2006-08 according to the MMFRP.



crossing the border illegally became somewhat more difficult (or at least most expensive) in the decade after the USBP began to implement its national strategy.

## **Probability of Apprehension**

The UCSD and Princeton surveys also provide data on the probability of apprehension among some migrants attempting to enter the United States illegally. CBP also reportedly plans in 2012 to introduce its own measure of the probability of apprehension, which will contribute to the “border conditions index” now being developed.<sup>119</sup> Both existing data sources indicate that the majority of Mexican migrants who attempt to enter without inspection eventually succeed, though many are apprehended one or more times prior to their successful entry. According to the UCSD data, a growing proportion of Mexicans who attempt to migrate illegally are apprehended at the border at least once. Among migrants from Jalisco, Mexico, for example, the once-or-more apprehension rate increased from 28% for aliens attempting to enter prior to 1986 to 41% for aliens attempting entry in 2002-2009.<sup>120</sup> According to the Princeton data, the probability of being apprehended on any given crossing has hovered around 25% since 1965. The probability of apprehension fell somewhat during the 1990s to less than 20% in 2001, possibly as a function of increased use of smugglers during this period. This trend was reversed between 2001 and 2006, as the probability of apprehension climbed to an all-time high of about 35%; but by 2011 the probability of apprehension had once again fallen below 20%.<sup>121</sup>

Nonetheless, these surveys have found little change in overall success rates of intending illegal immigrants (i.e., in their ability to cross the border illegally on one or more attempts during a single trip to the border). In the UCSD surveys, 98% of intending migrants from Jalisco, Mexico, eventually managed to enter the United States before 1986, and 97% eventually succeeded in 2002-2009.<sup>122</sup> Overall, the UCSD researchers recorded eventual success rates of 92% or higher in four different surveys conducted between 2005 and 2009.<sup>123</sup> Similarly, 99% of Mexicans in the Princeton data reported being able to enter the United States illegally after one or more attempts.<sup>124</sup> Taken together, the UCSD and Princeton data offer additional evidence that it became somewhat more difficult to cross the Southwest border illegally in the decade after 1994, but that the border remains broadly vulnerable to illegal crossers.

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<sup>119</sup> CBP Office of Congressional Affairs, Dec. 22, 2011; also see U.S. Government Accountability Office, *U.S. Customs and Border Protection’s Border Security Fencing, Infrastructure and Technology Fiscal Year 2011 Expenditure Plan*, GAO-12-106R, November 17, 2011, slide 53, <http://www.gao.gov/new.items/d12106r.pdf>.

<sup>120</sup> UC San Diego MMFRP data provided to CRS Sept. 23, 2010.

<sup>121</sup> Princeton University Mexican Migration Project, “Probability of Apprehension on an Undocumented Border Crossing,” <http://mmp.opr.princeton.edu/results/008apprehension-en.aspx>.

<sup>122</sup> *Ibid.*

<sup>123</sup> Jonathan Hicken, Mollie Cohen, and Jorge Narvaez, “Double Jeopardy: How U.S. Enforcement Policies Shape Tunkaseno Migration,” in *Mexican Migration and the U.S. Economic Crisis*, ed. Wayne A. Cornelius, Davide FitzGerald, Pedor Lewin Fischer, and Leah Muse-Orlinoff (La Jolla, CA: University of California, San Diego Center for Comparative Immigration Studies, 2010), p. 66.

<sup>124</sup> CRS analysis of Princeton University MMP migratory experience (MIG) database, <http://opr.princeton.edu/archive/mmp/>.

## Unintended and Secondary Consequences of Border Enforcement

The preceding discussion includes estimates of what may be described as the primary costs and benefits of border enforcement, defined in terms of congressional appropriations and deployment of enforcement resources on one hand, and alien apprehensions and other indicators of successful enforcement on the other. A comprehensive analysis of the costs and benefits of border enforcement policies must also consider possible unintended and secondary consequences of border enforcement. Such consequences may produce both costs and benefits—many of which are difficult to measure—in at least four areas: border-area crime and migrant deaths, migrant flows, environmental impacts and effects on border communities, and U.S. foreign relations.

### Border-Area Crime and Migrant Deaths

Illegal border crossing has always been associated with a certain level of border crime and violence and, in the most unfortunate cases, with deaths of illegal border crossers and border-area law enforcement officers. Illegal migration may be associated with crime and mortality in at least three distinct ways. First, illegal migration is associated with crime—apart from the crime of illegal entry per se—because most unauthorized migrants contract with immigrant smugglers, as noted above, and unauthorized migrants may engage in related illegal activity, such as document fraud. (On the other hand, fear of the police may make unauthorized aliens *less* likely to engage in other types of criminal activity, and most research on the subject finds low immigrant criminality rates, especially when accounting for education levels and other demographic characteristics.<sup>125</sup>) Second, illegal migrants may also be likely to be targeted and become crime victims, including victims of violent crime, because they often carry large amounts of cash and may be reluctant to interact with law enforcement officials.<sup>126</sup> Third, illegal border crossers face risks associated with crossing the border at dangerous locations, where they may die from exposure to extreme conditions or from drowning.<sup>127</sup>

Border *enforcement* therefore may affect crime and migrant mortality in complex ways.<sup>128</sup> On one hand, the concentration of enforcement resources around the border may exacerbate adverse outcomes by making migrants more likely to rely on smugglers, as noted above (see “Smuggling Fees”), and likely to cross in more dangerous locations. Indeed, the 1994 National Strategic Plan predicted a potential short-term rise in border violence for these reasons.<sup>129</sup> On the other hand, to the extent that enforcement successfully deters illegal crossers, such prevention should reduce

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<sup>125</sup> See CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel.

<sup>126</sup> See Debra A. Hoffmaster, Gerard Murphy, and Shannon McFadden, et al., *Police and Immigration: How Chiefs are Leading Their Communities through the Challenges*, Police Executive Research Forum, Washington, DC, 2010, <http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>;

<sup>127</sup> In 2011, for example, of the 238 migrants deaths for which DHS was able to determine a cause of death, 139 were attributed to exposure to heat or cold or water-related; data provided to CRS by CBP Office of Legislative Affairs December 15, 2011.

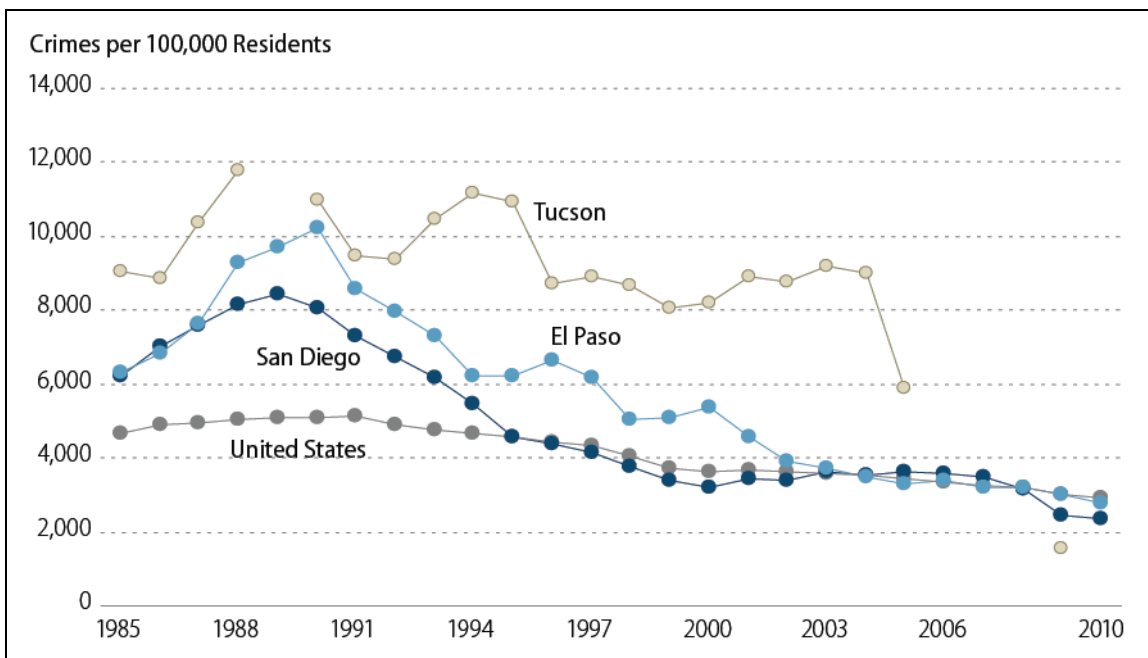
<sup>128</sup> Also see Karl Eschbach, Jacqueline Hagan, and Nestor Rodriguez, et al., “Death at the Border,” *International Migration Review*, vol. 33, no. 2 (Summer 1999), pp. 430-454.

<sup>129</sup> National Strategic Plan, p. 11-12.

crime and mortality. The concentration of law enforcement personnel near the border may further enhance public safety and migrant protection, especially where CBP has made a priority of protecting vulnerable populations.<sup>130</sup>

The empirical record suggests that crime rates have fallen faster in certain Southwest border cities than in other cities of a similar size, but the impact of border enforcement on border-area crime and migrant mortality is unknown because available data cannot separate the influence of border enforcement from other factors.<sup>131</sup> **Figure 9** depicts trends in property crime rates for 1985-2009 for San Diego, CA; Tucson, AZ; and El Paso, TX—the three cities most closely associated with enhanced border enforcement since the 1990s—as well as overall U.S. property crime rates, which include both urban and rural areas.

**Figure 9. Property Crime Rates, Selected Southwest Border Cities, 1985-2010**



**Source:** FBI Uniform Crime Reporting Statistics.

**Notes:** Crime rates are based on the number of reported offenses, by police departments (for San Diego, Tucson, and El Paso data) and/or sheriff departments, per 100,000 population based on population covered by the reports submitted by the particular agencies. The U.S. crime rate includes urban and rural areas. Tucson property crime rate for 2009 excludes larceny-theft crimes. Tucson data are not available for 1989, 2005-2008, and 2010.

As **Figure 9** illustrates, property crime rates in these three cities were one-and-a-half to two times the national average in 1985. Property crime climbed to record high levels around 1990, with San

<sup>130</sup> The USBP’s Border Patrol Search, Trauma, and Rescue Unit (BORSTAR) is comprised of agents with specialized skills and training for tactical medical search and rescue operations. BORSTAR agents provide rapid response to search and rescue and medical operations, including rescuing migrants in distress. According to CBP Office of Legislative Affairs (Dec. 9, 2011), BORSTAR agents rescued 1,070 migrants in FY2011.

<sup>131</sup> Uniform Crime Report (UCR) data provide the most information about crime rates, but they are not sufficiently fine-tuned to provide information on the diverse factors affecting such trends; see CRS Report RL34309, *How Crime in the United States Is Measured*, by Nathan James and Logan Rishard Council.

Diego, El Paso, and Tucson having the 11<sup>th</sup>, 26<sup>th</sup>, and 28<sup>th</sup> lowest people crime rates, respectively, out of 33 large cities (i.e., cities of at least 500,000 people) in that year.<sup>132</sup> Property crime rates fell throughout the country in the following two decades, with these three border cities being among the cities with the most dramatic decreases in property crime rates during this period. In 2009, the most recent year for which data for all three cities are available, Tucson, San Diego, and El Paso had the 1<sup>st</sup>, 5<sup>th</sup>, and 6<sup>th</sup> lowest property crime rates, respectively, out of 34 large cities.<sup>133</sup> Violent crime rates displayed less variation over this time period but also showed relative improvements in two of the three border cities discussed here: Tucson, El Paso, and San Diego had the 7<sup>th</sup>, 8<sup>th</sup>, and 12<sup>th</sup> lowest violent crime rates, respectively, out of 32 large cities in 1990; and San Diego, El Paso, and Tucson had the 3<sup>rd</sup>, 4<sup>th</sup>, and 15<sup>th</sup> lowest crime rates, respectively, out of 33 large cities in 2009.<sup>134</sup> Thus, crime rates are lower in these border cities than in other large cities, and crime rates appear to have fallen faster in these border cities than in other large cities during the period of enhanced border enforcement since 1990. As noted above, however, changes in crime rates also reflect a number of factors unrelated to migration and the impact of enhanced border enforcement on crime rates is unknown.

Available data about migrant deaths along the Southwest border are presented in **Figure 10**. The figures come from academic research based on local medical investigators' and examiners' offices in California, Arizona, New Mexico, and Texas between 1985 and 1998 (the University of Houston's Center for Immigration Research, CIR); Mexican foreign ministry and Mexican media counts compiled by the American Civil Liberties Union of San Diego; and data compiled by DHS based on bodies recovered on the U.S. side of the border.<sup>135</sup> All three data sources reflect *known* migrant deaths, and therefore undercount actual migrant deaths since some bodies may not be discovered, especially in the case of migrants who drown while crossing the border, migrants who die from exposure in remote locations, and homicide victims.<sup>136</sup> Additionally, U.S. data sources generally do not include information from the Mexican side of the border and therefore further undercount migration-related fatalities. Nonetheless, changes in known migrant deaths over time may offer insight into changes in migrant mortality.

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<sup>132</sup> CRS calculation from FBI, Uniform Crime Reporting Statistics – UCR Data Online. Tucson data are biased downward because they exclude theft and larceny statistics. The FBI warns against using UCR data to rank cities by their urban crime rates, though such data may be more useful for making comparisons over time, as in **Figure 9**; see FBI, “Caution Against Ranking,” <http://www.ucrdatatool.gov/ranking.cfm>.

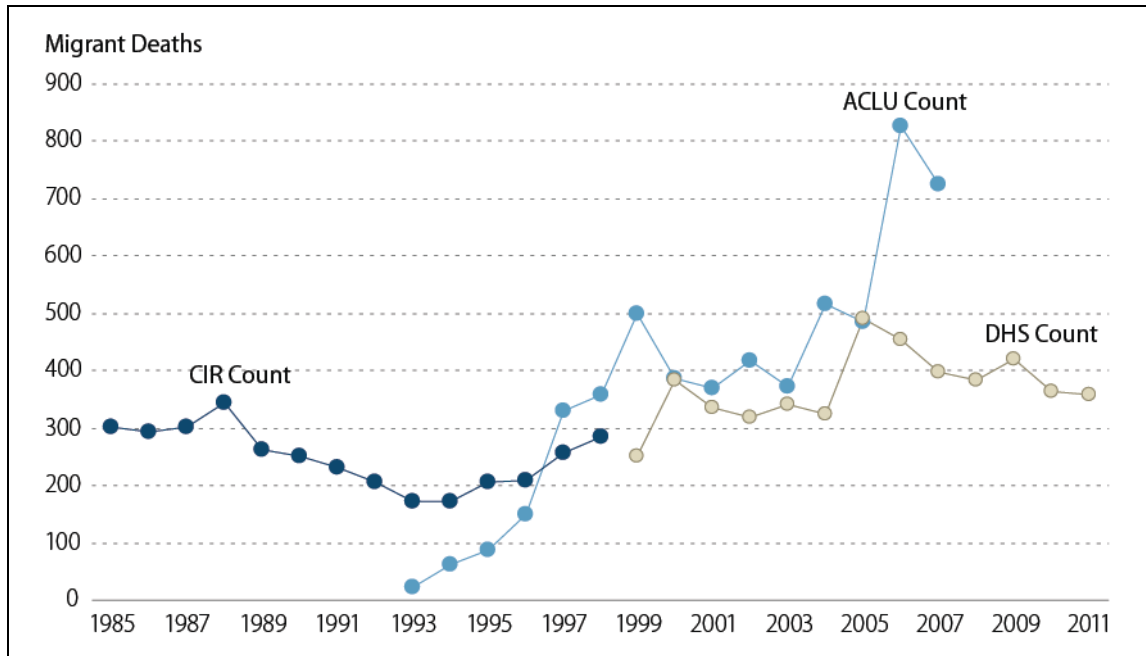
<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> See Stanley Bailey, Karl Eschbach, and Jacqueline Hagan, et al., “Migrant Death on the US-Mexico Border 1985-1996,” *University of Houston Center for Immigration Research Working Paper Series*, vol. 96, no. 1 (1996); Jimenez, “Humanitarian Crisis,” 2009.

<sup>136</sup> The Border Patrol has drawn criticism from human rights activists who claim that the agency's migrant death count understates the number of fatalities. Some contend that the Border Patrol undercounts fatalities by excluding skeletal remains, victims in car accidents, and corpses discovered by other agencies or local law enforcement officers; see, for example, Raymond Michalowski, “Border Militarization and Migrant Suffering: A Case of Transnational Social Injury,” *Social Justice*, Summer 2007.

**Figure 10. Known Migrant Deaths, Southwest Border, 1985-2011**



**Source:** University of Houston Center for Immigration Research; Jimenez, “Humanitarian Crisis,” 2009; CBP Office of Congressional Affairs.

As **Figure 10** illustrates, data from the CIR indicate that known migrant deaths fell from a high of 344 in 1988 to a low of 171 in 1994 before climbing back to 286 in 1998. According to DHS data, known migrant deaths climbed from 250 in 1999 to 492 in 2005, and averaged 431 deaths per year in 2005-2009 before falling to an average of 360 per year in 2010-2011. The largest growth in migrant deaths, and the highest totals overall, were recorded by the ACLU, which found that known migrant deaths increased from an average of just 80 per year for 1993-1996 to 496 per year in 1997-2007. The apparent increase in migrant deaths is particularly noteworthy in light of the declining number of alien apprehensions (i.e., estimated unauthorized entries) during the same period, as noted above (see “Alien Apprehensions”). Overall, these data offer evidence that border crossings have become more hazardous since the “prevention through deterrence” policy went into effect in the 1990s, though once again the precise impact of enforcement on migrant deaths is unknown.

## Migration Flows: “Caging” Effects and Alternative Modes of Entry

With illegal border crossing becoming more dangerous and more expensive, some unauthorized aliens appear to have adapted their behavior to avoid crossing the border via traditional pathways. First, social science research suggests that border enforcement has had the unintended consequence of encouraging illegal aliens to settle permanently in the United States rather than working temporarily and then returning home, as was more common prior to the mid-1980s.<sup>137</sup>

<sup>137</sup> In general, see Wayne Cornelius, “Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control Policy,” *Population and Development Review*, vol. 27, no.4 (December 2001); Wayne Cornelius, “Evaluating Recent US Immigration Control Policy: What Mexican Migrants Can Tell Us,” in *Crossing and Controlling Borders: Immigration Policies and Their Impact on Migrants’ Journeys*, ed. Mechthild Baumann, Astrid Lorenz, and Kerstin Rosenhow (Farmington, MI: Budrich Unipress Ltd, 2011); Douglas S. Massey, Jorge Durand, and Nolan J. Malone, (continued...)

The primary evidence for this so-called “caging” effect is that illegal migrants appear to be staying longer in the United States and raising families here more often rather than making regular trips to visit families that remain in countries of origin.<sup>138</sup> Although other factors also likely contribute to these changes,<sup>139</sup> survey results appear to confirm that border enforcement has been an important factor behind these longer stays.<sup>140</sup>

A second unintended consequence of enhanced border enforcement between ports of entry has been an apparent increase in illegal entries through ports of entry and other means. According to UCSD Mexico Migration Field Research Program research, illegal Mexican migrants from one community in Mexico interviewed in 2009 used six different methods to enter the United States illegally, with one in four such aliens passing illegally through a port of entry by using borrowed or fraudulent documents or by hiding in a vehicle.<sup>141</sup> Based on three different surveys conducted between 2008 and 2010, UCSD researchers found that the probability of being apprehended while passing illegally through a port of entry was about half as high as the probability of being apprehended while crossing between the ports.<sup>142</sup> Data from CBP on the number of aliens denied admission at ports of entry also seems to confirm increased illegal flows through the ports since 2006, though many other factors may also influence the number of aliens denied admission, including CBP screening procedures.<sup>143</sup> There is also anecdotal evidence that unauthorized aliens have recently turned to maritime routes and border tunnels as alternative strategies to cross the U.S.-Mexican border.<sup>144</sup>

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(...continued)

*Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (Russell Sage Foundation, 2002).

<sup>138</sup> Whereas almost half of unauthorized aliens from Mexico who arrived in 1980 remained in the United States for less than a year, fewer than 20% of unauthorized Mexicans who entered in 2010 returned home within a year; see Mexican Migration Project, “Probability of Return within 12 Months,” <http://mmp.opr.princeton.edu/results/010returnpers-en.aspx>. Also see Hicken et al. “Double Jeopardy,” 56-57. And whereas an estimated 60-90% of unauthorized migrants during the 1970s were single men, by 2008 men only accounted for an estimated 53% of unauthorized aliens, with women representing 34% and the remainder children; see U.S. Domestic Council, Committee on Illegal Aliens, *Preliminary Report*, Washington, DC, December 1976, p. 137; Jeffrey S. Passel and D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, Washington, DC, April 14, 2009, p. 4, <http://pewhispanic.org/files/reports/107.pdf>.

<sup>139</sup> For example, changes in U.S. labor markets have resulted in more permanent (non-seasonal) employment opportunities for unauthorized aliens as well as more employment opportunities for unauthorized women; See CRS Report R41592, *The U.S. Foreign-Born Population: Trends and Selected Characteristics*, by William A. Kandel.

<sup>140</sup> Half of the Mexico-based family members of unauthorized aliens interviewed by the UC, San Diego MMFRP in 2009 indicated that they had a relative who had remained in the United States longer than they had intended because they feared they would be unable to reenter the United States if they returned home; see Hicken et al. “Double Jeopardy,” 57-58.

<sup>141</sup> Hicken et al., “Double Jeopardy,” pp. 60-61.

<sup>142</sup> Probability of apprehension on an alien’s most recent attempt to illegally pass through a port of entry was 0.36, compared to 0.73 on the most recent entry attempt between ports of entry; UC San Diego MMFRP data provided to CRS Sept. 23, 2010.

<sup>143</sup> According to CBP data provided by CBP Office of Legislative Affairs on Nov. 14, 2011, a total of 264,317 aliens were denied admission at land ports of entry in FY2006, including 138,188 at northern ports and 126,129 at southwestern ports; and a total of 1,460,281 aliens were denied admission at such ports in FY2011, including 880,951 at northern ports and 579,330 at southern ports.

<sup>144</sup> See, for example, Richard Marosi, “Border Battle Over Illegal Immigration Shifts to Beaches,” *Los Angeles Times*, March 24, 2011; Associated Press, “Major Drug Tunnel Found in San Diego,” *Washington Post*, November 30, 2011. Border tunnels are mainly used to smuggle narcotics into the United States, rather than for illegal migration.

## **Environmental Impact and Effects on Border Communities**

A third set of potential unintended consequences of border enforcement are environmental impacts and the effects of enforcement on border communities. As with the effects of enforcement on border crime and violence, the effects of enforcement on the environment and border communities are complex because they reflect changes in migrant behavior and the secondary effects of enforcement per se.

On one hand, border enforcement benefits local communities because unauthorized migration imposes a number of costs on local schools and other public programs and undermines the rule of law. Many illegal border crossers also transit through sensitive environmental areas, cutting vegetation for shelter and fire, causing wildfires, increasing erosion through repeated use of trails, and discarding trash.<sup>145</sup> Thus, to the extent that border enforcement successfully deters illegal flows, enforcement benefits local communities by reducing these undesirable outcomes. In addition, the deployment of enforcement personnel and other resources may have a stimulative effect on border-community economies.

On the other hand, the deployment of border enforcement personnel and infrastructure also entails a number of costs at the local level. First, the construction of fencing, roads, and other tactical infrastructure may damage border-area ecosystems. These environmental considerations may be especially important because much of the border runs through remote and environmentally sensitive areas.<sup>146</sup> For this reason, even when accounting for the possible environmental benefits of reduced illegal border flows, some environmental groups have opposed border infrastructure projects because they threaten rare and endangered species as well as other wildlife by damaging ecosystems and restricting the movement of animals, and because surveillance towers and artificial night lighting have detrimental effects on migrant birds.<sup>147</sup>

Border enforcement may also have detrimental social and economic effects on border communities. Business owners on the Southwest and northern borders have complained that certain border enforcement efforts threaten their economic activities, including farming and ranching activities that are disrupted by the deployment of USBP resources to the border and commercial activities that suffer from reduced regional economic activity.<sup>148</sup> More generally, some people have complained that the construction of barriers divides communities that have straddled international land borders for generations.<sup>149</sup> Some people are concerned that Operation

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<sup>145</sup> Department of Homeland Security, *Environmental Impact Statement for the Completion of the 14-mile Border Infrastructure System, San Diego, California* (July 2003), pp. 1-11.

<sup>146</sup> According to the GAO, about 25% of the northern border and 43% of the Southwest border consist of federal and tribal lands overseen by the U.S. Forest Service and Department of the Interior; see GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, pp. 4-5.

<sup>147</sup> See, for example, Defenders of Wildlife, "Wildlife and Border Policy," [http://www.defenders.org/programs\\_and\\_policy/habitat\\_conservation/federal\\_lands/border\\_policy/](http://www.defenders.org/programs_and_policy/habitat_conservation/federal_lands/border_policy/).

<sup>148</sup> See, for example, Mark Harrison, "Beefed Up Border Patrol Jolts Farmers, Cows," *Seattle Times*, November 13, 2011; Rafael Carranza, "Leaders Blame Lost Business Deals on Border Fence," *KGBT Channel 4 News*, November 2, 2009, <http://www.valleycentral.com/news/story.aspx?id=371266#.Tt0oAmNM8rs> Also see U.S. Chamber of Commerce, *Steps to a 21<sup>st</sup> Century U.S.-Mexico Border*, [http://www.uschamber.com/sites/default/files/reports/2011\\_us\\_mexico\\_report.pdf](http://www.uschamber.com/sites/default/files/reports/2011_us_mexico_report.pdf).

<sup>149</sup> See, for example, Associated Press, "Quebec-Vermont Border Communities Divided by Post-9/11 Security," *CBC News: Canada*, August 14, 2011, <http://www.cbc.ca/news/canada/montreal/story/2011/08/14/quebec-vermont-border.html?ref=rss>

Streamline and related programs overwhelm district courts and divert scarce enforcement resources away from more serious crimes.<sup>150</sup> Some residents of border communities see enhanced border enforcement as leading to racial profiling, wrongful detentions, and other adverse consequences.<sup>151</sup> And migrant rights groups have argued that CBP detention facilities subject aliens to abusive conditions.<sup>152</sup> Few systematic efforts have been made to measure these secondary costs of border enforcement.

## Effects on Regional Relations

What are the effects of U.S. border enforcement policies on U.S. relations with its continental neighbors, Mexico and Canada? The United States and Canada have a strong record of collaborative border enforcement, including through 15 binational, multi-agency Integrated Border Enforcement Teams (IBETs) operating at 24 locations at and between U.S.-Canadian ports of entry. President Obama and Prime Minister Stephen Harper also signed a joint declaration on February 4, 2011, the Beyond the Border agreement, intended to deepen security cooperation and move toward a common approach to perimeter security. The countries released an Action Plan on December 7, 2011, to implement the agreement.<sup>153</sup> While questions about how to balance public safety and national security concerns against the protection of individual rights and the efficient flow of commercial traffic at U.S.-Canadian ports of entry appear to have contributed to a slower-than-expected implementation of the 2011 agreement,<sup>154</sup> border enforcement between the ports has not been identified as a significant source of bilateral tension.

The United States and Mexico also cooperate extensively on border enforcement operations at the Southwest border; but with Mexicans being the most frequent target of U.S. immigration enforcement efforts and with the United States being the primary market for illicit drugs from Mexico as well as a source of illegal weapons flowing into Mexico, border enforcement occasionally has been a source of bilateral tension.<sup>155</sup> On one hand, given that Mexicans represent a majority of all unauthorized migrants in the United States and of aliens apprehended at the border,<sup>156</sup> and given that drug-related violence in Mexico raises persistent concerns about

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<sup>150</sup> See, for example, National Immigration Forum, *The Costs of Operation Streamline*, Washington, DC, December 2010, <http://www.immigrationforum.org/images/uploads/2010/OperationStreamlineCosts.pdf>; See, for example, Joanna Lydgate, *Assembly Line Justice: A Review of Operation Streamline*, Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, Berkeley, CA, January 2010, [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf);

<sup>151</sup> See, for example, NY School of Law, NY Civil Liberties Union, and Families for Freedom, *Justice Derailed: What Raids On New York's Trains And Buses Reveal About Border Patrol's Interior Enforcement Practices*, New York: November, 2011, [http://www.nyclu.org/files/publications/NYCLU\\_justicederailedweb.pdf](http://www.nyclu.org/files/publications/NYCLU_justicederailedweb.pdf); Lornet Turnbull and Roberto Daza, "Climate of Fear Grips Forks Illegal Immigrants," *Seattle Times*, June 26, 2011.

<sup>152</sup> No More Deaths/No Mas Muertes, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody*, 2011, <http://www.cultureofcruelty.org/wp-content/uploads/2011/09/CultureofCrueltyFinal.pdf>;

<sup>153</sup> DHS, "Beyond the Border Action Plan," December 2011, <http://www.dhs.gov/files/publications/beyond-the-border-action-plan.shtm>; also see CRS Report 96-397, *Canada-U.S. Relations*, coordinated by Carl Ek and Ian F. Fergusson.

<sup>154</sup> See Gar Pardy, *Shared Vision or Myopia: The Politics of Perimeter Security and Economic Competitiveness*, Rideau Institute, Ottawa, ON, September 2011.

<sup>155</sup> See, for example, Marc R. Rosenblum, *Obstacles and Opportunities for Regional Cooperation: The US-Mexico Case*, Migration Policy Institute, April 2011, <http://www.migrationpolicy.org/pubs/USMexico-cooperation.pdf>.

<sup>156</sup> Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, Pew Hispanic Center, February 1, 2011.



“spillover” violence on the U.S. side of the border,<sup>157</sup> the U.S.-Mexican border is inevitably a major focus of U.S. enforcement. On the other hand, while Mexico does not question U.S. authority to make and enforce its own immigration laws, Mexicans from across the political spectrum have expressed concerns about the construction of border fencing, the effects of border enforcement on migrant deaths, and the protection of unaccompanied minors and other vulnerable groups of migrants.<sup>158</sup> More generally, the use of military technology and the heavy presence of law enforcement personnel at the U.S.-Mexican border may work against the diplomatic and commercial goals of a closer economic and political partnership among the United States, Mexico, and other Latin American countries.

## Legislative Issues

Border security between ports of entry has been an ongoing issue of congressional concern over the last three decades, especially since the 9/11 attacks. Border security has also been a persistent topic in the context of Congress’ ongoing debate about visa reform, legalization, and other aspects of “comprehensive immigration reform.” The 112<sup>th</sup> Congress focused on several issues related to border security during its first session, and this section discusses four topics that may receive additional attention in 2012.

### Border Patrol Personnel

The FY2012 Consolidated Appropriations Act (P.L. 112-74) included a raise for Border Patrol agents and fully funded USBP personnel at levels proposed by the Administration.<sup>159</sup> Several bills have been introduced in the 112<sup>th</sup> Congress that would authorize additional increases in Border Patrol personnel and/or National Guard deployments to the Southwest border.<sup>160</sup>

At the same time, however, some members of Congress may be concerned about the pace of growth in the Border Patrol since the 1990s. One inevitable effect of such growth has been a decline in the average experience level of Border Patrol agents. A 1999 GAO report noted that the percentage of agents with less than two years of experience had almost tripled, from 14% to 39%, between 1994 and 1998.<sup>161</sup> The GAO report also found that rising attrition rates made it difficult for USBP to meet its hiring objectives. Rapid hiring also presents challenges for CBP integrity

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<sup>157</sup> CRS Report R41075, *Southwest Border Violence: Issues in Identifying and Measuring Spillover Violence*, coordinated by Kristin M. Finklea.

<sup>158</sup> See, for example, Marc R. Rosenblum, *Obstacles and Opportunities for Regional Cooperation: The US-Mexico Case*, Migration Policy Institute, April 2011, <http://www.migrationpolicy.org/pubs/USMexico-cooperation.pdf>.

<sup>159</sup> H.Rept. 112-331, p. 957; also see CRS Report R41982, *Homeland Security Department: FY2012 Appropriations*, coordinated by William L. Painter and Jennifer E. Lake.

<sup>160</sup> For example, H.R. 152 would direct the Department of Defense to deploy 10,000 U.S. National Guard troops to the Southwest border until DHS certifies that it has achieved operational control of border; the Border Security Enforcement Act of 2011 (H.R. 1507/S. 803) would authorize the deployment of 6,000 National Guard troops and an increase of 5,000 USBP personnel by FY2016; and the Secure America Through Verification and Enforcement Act of 2011 (SAVE Act, H.R. 2000) would authorize DHS to hire 6,000 additional USBP agents by FY2016.

<sup>161</sup> U.S. General Accounting Office, *Border Patrol Hiring: Despite Recent Initiatives, Fiscal Year 1999 Hiring Goal Was Not Met*, GAO/GGD-00-39, December 1999, p. 2.

programs, including the agency's ability to subject new and continuing employees to background investigations and polygraph examinations, an issue Congress held hearings on in 2011.<sup>162</sup>

## Surveillance Assets

Congress may consider additional mechanisms to strengthen CBP's surveillance capability, including by expanding the agency's use of unmanned aerial systems and other Department of Defense surveillance technology—subjects that were raised in congressional hearings and proposed bills in 2011.<sup>163</sup> At the same time, historical problems associated with border surveillance technology contracting and system performance, along with questions raised by GAO in its 2011 review of CBP's current surveillance plan,<sup>164</sup> may cause Congress to subject CBP's surveillance programs to strict oversight, including through the appropriations process. Congressional appropriators have regularly subjected funding for surveillance technology to special reporting requirements in recent years.<sup>165</sup> House and Senate Appropriations Committees both proposed cuts to border surveillance funding in their FY2012 Committee Reports, and the Consolidated Appropriations Act of 2012 (P.L. 112-74) reduced Border Security Fencing, Infrastructure, and Technology funding by \$128 million compared to the Administration's request while directing CBP to provide the committee with a detailed expenditure plan as well as a multi-year investment and management plan.<sup>166</sup>

## Fencing and Tactical Infrastructure

The FY2008 Consolidated Appropriations Act (P.L. 110-161) required DHS to construct 700 miles of fencing along the Southwest border, but it also appears to allow the Secretary of Homeland Security to determine the amount of fencing required to achieve and maintain operational control of the border. Under this provision, DHS had installed 650 miles of pedestrian and vehicle fencing as of October 6, 2011, out of a total of 651 miles DHS has identified as

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<sup>162</sup> See U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Ad Hoc Subcommittee on Disaster Recovery and Intergovernmental Affairs, *Border Corruption: Assessing Customs and Border Protection and the Department of Homeland Security Inspector General's Office Collaboration in the Fight to Prevent Corruption*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., June 9, 2011; and testimony of CBP Assistant Commissioner James F. Tomascheck before the Senate Homeland Security and Governmental Affairs Committee, Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 11, 2010.

<sup>163</sup> See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Protecting the Homeland: How Can DHS Use DOD Technology to Secure the Border*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., November 15, 2011; also see, for example the Border Security Enforcement Act of 2011 (H.R. 1507/S. 803), H.R. 1921, and the SAVE Act, all of which would encourage greater DHS-DOD collaboration, including by expanding DHS' use of unmanned aerial surveillance systems.

<sup>164</sup> GAO, *Arizona Border Surveillance Technology: More Information on Plans and Costs is Needed Before Proceeding*, GAO-12-22, November 2011, <http://www.gao.gov/new.items/d1222.pdf>.

<sup>165</sup> Congress appropriated \$1.5 billion for fencing, infrastructure, and technology at the border in FY2007 (see **Figure 4**), but included a provision requiring the DHS IG to evaluate all contracts or task orders over \$20 million awarded in conjunction with SBI projects; see H.Rept. 109-699, p. 124. Congress also expressed concern about the overall coordination of SBI program in FY2008 and directed DHS to provide a briefing within 120 days of enactment on how the program is being effectively coordinated and how FY2007 funds had been obligated; and the Appropriations Acts in FY2008, FY2009, and FY2010 all withheld portions of SBI funding until expenditure plans for each year were received and approved; See Division E of P.L. 110-161; H.R. 2638, as Enrolled by the House and the Senate, pp. 83-84.

<sup>166</sup> H.Rept. 112-331, pp. 961-962; also see CRS Report R41982, *Homeland Security Department: FY2012 Appropriations*, coordinated by William L. Painter and Jennifer E. Lake.

appropriate (see “Fencing and Tactical Infrastructure,” above). Nonetheless, several bills have been proposed in the 112<sup>th</sup> Congress that would authorize or require DHS to construct additional fencing.<sup>167</sup>

## **Access to Federal Lands**

As mentioned, about 25% of the northern border and 43% of the Southwest border consist of federal and tribal lands administered by the U.S. Department of Agriculture (USDA) and the Department of the Interior (DOI).<sup>168</sup> Border security on federal lands has been challenging because these areas are geographically remote and have limited law enforcement coverage. Border control efforts on certain federal lands was blocked or delayed by lawsuits based on environmental laws and regulations prior to 2008.<sup>169</sup> And border security may have been hindered at times by problems related to differences in missions and jurisdictional complexity among USDA, DOI, and DHS.<sup>170</sup> Thus, problems related to border security on federal lands have been a subject of ongoing congressional attention in recent years.<sup>171</sup>

Congress and the George W. Bush and Obama administrations have taken steps to ensure that neither environmental laws and regulations nor jurisdictional complexity hinder border enforcement. First, legislative and regulatory action since 2005 has given DHS broad authority to waive any environmental laws and regulations deemed necessary by DHS for the expeditious construction of fencing and tactical infrastructure.<sup>172</sup> Second, USDA, DOI, DHS, and CBP signed a total of four memoranda of understanding that appear to have addressed the jurisdictional disputes that had been identified on federal lands.<sup>173</sup> Nonetheless, GAO still found in 2010 that

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<sup>167</sup> For example, the Unlawful Border Entry Prevention Act of 2011 (H.R. 1091) would authorize DHS to construct an additional 350 miles of border fencing; the Border Security Enforcement Act of 2011 (H.R. 1507/S. 803) would require DHS to replace single-layer fencing with double- or triple-layer fencing at locations to be determined by the Secretary; and the Build the Fence Now Act of 2011 (H.R. 1921) would require DHS to build double-layer fencing along the entire Southwest and northern borders, except in parts of the border expressly exempted from the requirement by a subsequent act of Congress.

<sup>168</sup> See GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, pp. 4-5.

<sup>169</sup> *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119 (D.D.C. 2007), cert denied, 128 S. Ct. 2962 (2008); *Save Our Heritage Org. v. Gonzales*, 533 F. Supp. 2d 58 (D.D.C. 2008); *County of El Paso v. Chertoff*, 2008 U.S. Dist. LEXIS 83045 (W.D. Tex. Aug. 29, 2008), cert denied, *County of El Paso v. Napolitano*, 129 S. Ct. 2789 (2009).

<sup>170</sup> See GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010

<sup>171</sup> See, for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *The Border: Are Environmental Laws and Regulation Impeding Security and Harming the Environment?* 112<sup>th</sup> Cong., 1<sup>st</sup> sess., April 15, 2011.

<sup>172</sup> Section 102 of the REAL ID Act of 2005 (P.L. 109-13, Div. B) authorized DHS to waive all legal requirements deemed necessary by the Secretary for the expeditious construction of authorized border infrastructure, and DHS published five notices in the Federal Register between September 22, 2005 and April 8, 2008 to exercise this waiver authority for certain laws along several sections of the border. See 70 *Fed. Reg.* 55622-23, Sept. 22, 2005; 72 *Fed. Reg.* 2535-36, Jan. 19, 2007; 72 *Fed. Reg.* 2535-36, Jan. 19, 2007; 73 *Fed. Reg.* 18293-94, Apr. 3, 2008; and 73 *Fed. Reg.* 19078-80, Apr. 8, 2008.

<sup>173</sup> Memorandum of Understanding among DHS, DOI and USDA Regarding Cooperative National Security and Counter-terrorism Efforts on Federal Lands Along the United States' Borders, March 24, 2006; Memorandum of Understanding among DHS, DOI and USDA Regarding Secure Radio Communication, July 10, 2008; Memorandum of Agreement between CBP and DOI Regarding Natural and Cultural Resource Mitigation Associated with Construction and Maintenance of Border Security Infrastructure along the Border of the United States and Mexico, Jan. 14, 2009; (continued...)

federal lands on the Southwest border in parts of Arizona are “high-risk areas for cross-border threats related to marijuana smuggling and illegal migration.”<sup>174</sup> Thus, some Members of Congress remain concerned that federal lands are a point of vulnerability, and bills have been introduced in the 112<sup>th</sup> Congress to broaden DHS’ exemption from environmental laws and its authority to conduct law enforcement activities related to border security on federal lands.<sup>175</sup>

## **Conclusion: Understanding the Costs and Benefits of Border Enforcement Between Ports of Entry**

The United States has focused an unprecedented amount of resources along its land borders to prevent and control illegal migration since the 1980s, but more is known about the direct costs of these efforts than their intended and unintended effects. Congressional appropriations for the U.S. Border Patrol have increased 750% since 1989. This number understates total spending at the border, which also includes a number of additional local, state, and federal law enforcement agencies, as well as associated judicial costs. Looking back at the 25 years since IRCA’s passage, almost 20 years of investments in “prevention through deterrence,” and over five years of increased “enforcement with consequences,” the Southwest border has been transformed—mostly in ways that were predicted by the Border Patrol’s 1994 National Strategic Plan.

Measuring the overall *effects* of border enforcement is more difficult. On one hand, Border Patrol apprehensions have fallen sharply since climbing to a high-point in 2000, and they reached a 42-year low in FY2011. The Border Patrol’s IDENT database also indicates a declining proportion of aliens apprehended more than once (recidivists), and that less than 1% of aliens apprehended by the Border Patrol in FY2011 had serious criminal records. These data are consistent with evidence that illegal inflows have fallen sharply since the mid-2000s. Yet the direct effects of enforcement are impossible to measure because DHS’ enforcement strategy seeks to deter millions of potential migrants up to thousands of miles from U.S. borders—a process that cannot be observed.

On the other hand, there is also some evidence that migrants have adapted to more difficult conditions at the border by using other means to enter the United States and by remaining here longer. A comprehensive accounting for the effects of border enforcement must also consider the effects of border infrastructure, surveillance technology, and personnel on the civil rights of legal residents and U.S. citizens in the border region and migrants’ human rights, on the quality of life

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(...continued)

and Memorandum of Agreement for Coordination and Review between DOI and CBP for the Secure Border Initiative, Jan. 11, 2008. All four memoranda available at <http://robbishop.house.gov/UploadedFiles/DHS.pdf>.

<sup>174</sup> See GAO, *Southwest Border: Border Patrol Operations on Federal Lands*, GAO-11-573T, April 15, 2011, p 13. GAO (p. 9) found that 22 out of 26 USBP agents-in-charge with jurisdictions including federal lands reported that the border security status of their area had not been affected by land management laws. USBP Deputy Chief Ronald Vitiello testified in April 2011 that existing agreements with DOI and USDA allow CBP to carry out its border security mission; see U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *The Border: Are Environmental Laws and Regulation Impeding Security and Harming the Environment?* testimony of U.S. Customs and Border Protection Deputy Chief Ronald Vitiello, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., April 15, 2011.

<sup>175</sup> Under the National Security and Federal Lands Protection Act (H.R. 1505), for example, 35 environmental and other laws would be waived within 100 miles of all international land and marine borders; and USDA and DOI would not be authorized to impede, prohibit, or restrict DHS border security activities on public lands.

in border communities, on the environment and wildlife, and on U.S.-regional relations—all of which suffer at least some adverse effects from the build-up around the border. DHS’ forthcoming “Border Conditions Index” may offer a more sophisticated tool for evaluating these overall effects of border enforcement.

Even with better measures of border outcomes, however, the immigration system remains highly complex. In particular, the recent drop in illegal inflows has been correlated not only with enhanced border enforcement, but also with reduced labor demand in the United States and with some signs of reduced migration pushes in Mexico. This correlation makes it impossible to draw conclusions about the relative importance of these factors in explaining recent patterns, or to predict how illegal migration flows will be affected if and when demand for low-skilled labor returns to historic levels.

What do these findings mean for Members of Congress who oversee border security? Especially in light of current fiscal constraints, some Members of Congress may evaluate future border enforcement in terms of expected returns on America’s investments, and they may consider the possibility that certain additional investments at the border may be met with diminishing returns. Border fencing may offer the best example: with 650 miles of fencing already in place along the Southwest border, including in all of the high-flow areas DHS has identified as requiring such barriers, each additional mile of fencing would be in ever more remote locations, and therefore more expensive to install and maintain and more likely to deter fewer unauthorized migrants. Similarly, some Members of Congress may question the concrete benefits of deploying more sophisticated surveillance systems across the entire northern and southern borders, including vast regions in which too few personnel are deployed to respond to the occasional illegal entry that may be detected.

Deciding how to allocate border resources therefore requires a clear definition of the goals of border security. Zero admissions of unauthorized migrants may not be a realistic goal when it comes to migration control, as noted above, and may be a higher standard than is expected of most law enforcement agencies. Indeed, with estimated illegal inflows at or below estimated outflows (i.e., with no new net illegal migration) and few people with serious criminal records being apprehended, some people might describe the border as already being secure with respect to illegal migration under current conditions.

While this report focuses on migration control at U.S. borders, border security also encompasses the detection and interdiction of weapons of mass destruction (WMD), narcotics, and other illicit goods; policies to combat human trafficking; and other security goals. These diverse goals are often conflated in an undifferentiated debate about “border security”; but each of these goals may suggest a different mix of border investments, as well as different metrics and different standards for successful enforcement outcomes. Should policies to prevent illegal migration be held to the same standards as policies to prevent the entry of WMDs, for example?

Finally, when viewed from this perspective, the costs and benefits of additional investments at the border may also be weighed against alternative enforcement strategies and placed in a broader policy context. The border is a key locus of enforcement, but migration control also occurs within the United States, at ports of entry, and within countries of origin. To the extent that existing policies have already substantially raised the costs of illegal entry between ports of entry, some Members of Congress may believe that future investments should focus on screening admissions at ports and on enforcement away from the border, including within the United States and in countries of origin. Similarly, to the extent that existing policies have already accomplished a

degree of border security, additional investments in migration control may offer limited returns in the absence of more systemic changes to reduce the underlying causes of illegal migration.

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