



TESTIMONY OF

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ON

“Declining Deportations and Increasing Criminal Alien Releases – The Lawless Immigration
Policies of the Obama Administration”

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Chairman Sessions, Ranking Member Schumer, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss U.S. Customs and Border Protection's (CBP), and specifically the U.S. Border Patrol's (USBP), immigration enforcement efforts between our Nation's ports of entry (POEs).

As America's unified border agency, CBP protects the United States against terrorist threats and prevents the illegal entry of inadmissible persons and contraband, while facilitating lawful travel and trade. The USBP is specifically responsible for patrolling the 6,000 miles of land border, between the POEs, that we share with Mexico and Canada and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. Border Patrol agents work around the clock detecting, deterring and disrupting illicit cross-border activity, in all types of terrain and weather conditions.

Overview of Border Security Efforts

CBP protects the Nation through the coordinated use of personnel, technology, infrastructure and partnerships to detect, interdict, and prevent the entry of terrorists and their weapons, and the unlawful movement of people, illegal drugs, and contraband toward or across the borders of the United States. CBP implements intelligence-driven strategies focused on areas of greatest risk and on countering criminal networks, and deploys its capabilities to adapt to emerging threats along the border.

While there is still work to be done, the Nation's long-term investment in border security between the POEs has produced significant and positive results. In Fiscal Year (FY) 2015, USBP apprehensions – an indicator of illegal migration – declined to 337,117 nationwide compared to 486,651 in FY 2014. CBP also has a critical counter-narcotics role; in FY 2015, CBP seized or disrupted the movement of more than 3.3 million pounds of narcotics and more than \$129 million in unreported currency at and in between the POEs. CBP will continue to strategically deploy resources, technology, and frontline personnel in order to keep our borders secure, and the communities along it, safe.

Whole-of-Government Approach

Our overarching border security efforts require a whole-of-government approach that emphasizes the importance of joint planning and intelligence sharing. In recent months, we have taken additional steps to bring greater unity to our enforcement efforts and to expand coordination with other agencies. Secretary Johnson's Unity of Effort initiative has put in place new and strengthened existing management processes at DHS Headquarters to enable more effective DHS component operations. In addition, DHS-wide border security activities are being strategically guided by the Southern Border and Approaches Campaign (SBAC). Aimed at leveraging the range of unique Department roles, responsibilities, and capabilities, the Campaign enhances our operational capability, bringing together the entire agency to address comprehensive threat environments in a unified way

On November 20, 2014, the Secretary commissioned the creation of three pilot Joint Task Forces (JTF) to support the SBAC: JTF-West, JTF-East, and JTF-Investigations. All three incorporate elements from CBP, the U.S. Coast Guard (USCG), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS). JTF-West, led by CBP

Commander Robert Harris, bears responsibility for the Southwest land border and the West Coast. JTF-East, led by USCG Vice Admiral Dean Lee, is responsible for the Southern maritime and border approaches. JTF-Investigations, led by ICE's Homeland Security Investigations (HSI) Special Agent in Charge Janice Ayala, focuses on investigations in support of JTF-W and JTF-E.

This effort directs DHS resources in a more collaborative fashion to address the range of threats and challenges, including illegal migration, smuggling of illegal drugs, human and arms trafficking, illicit financing of such operations, and the threat of terrorist exploitation of border vulnerabilities. The creation of the JTFs along the Southwest border and in the approaches to the United States increases information sharing with Federal, state, local, and tribal law enforcement agencies; improves situational awareness; enhances border-wide criminal intelligence-led interdiction operations; and addresses transnational threats and associated violence.

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

Collaboration and information sharing between international, federal, state, local, and tribal law enforcement increases understanding of evolving threats and provides the foundation for law enforcement entities to exercise targeted enforcement in the areas of greatest risk. This intelligence-driven approach prioritizes emerging threats, vulnerabilities and risks, greatly enhancing our border security efforts.

Immigration Inspection, Repatriation, and Criminal Prosecution Consequences

As part of its border security mission, USBP shares responsibility for enforcing U.S. immigration laws with other CBP components, ICE, USCIS, and the Departments of State (DOS) and Justice (DOJ). USBP's role is focused on detecting, deterring, and apprehending individuals crossing the border illegally.

All individuals apprehended by USBP are subject to an immigration inspection, which includes interviewing the subject to establish identification, capturing biometric information¹ (e.g. photograph and fingerprints), entering information into a DHS case tracking and processing system, and checking biographic and biometric records against multiple databases for previous immigration encounters and removals. USBP also checks multiple crime and terrorist databases, including the National Crime Information Center (NCIC) for wants/warrants and criminal history, and the TECS database for possible lookouts. If derogatory information is discovered, the records are reviewed by Border Patrol agents and evaluated to determine if a criminal or

¹ For individuals 14 years of age and older.

administrative proceeding, or enforcement action, should be pursued. If there is a want or criminal warrant in the NCIC, the corresponding Federal, state, tribal, or local agency is contacted.

Consequence Delivery System

To apply consequences to subjects from attempting further illegal entries or participating in a smuggling enterprise, USBP has developed the Consequence Delivery System (CDS). The CDS guides management and agents through a process designed to evaluate each subject and identify the most effective and efficient administrative or criminal consequence applicable to the person in custody, with the goal of reducing further illegal activity.

The CDS uses a combination of criminal and administrative consequences, relying on strategic partnerships with governmental agencies, including the U.S. Attorney's Office, U.S. Marshals Service, and the Government of Mexico. With the assistance of ICE, CBP also targets suspected and known smugglers, disrupting smuggling efforts along the border of the United States. These partnerships, our targeting efforts, and the availability of criminal and administrative consequences allow USBP to match the individual with a consequence in the most effective and efficient way to achieve the desired border security results.

The ability of CBP to impose consequences on those illegally entering the United States varies between each state, judicial district, sector and field office. Each area has unique conditions that afford a wide range of applicable consequences in response to cross-border illegal activity. The following initiatives represent examples of the CDS that aids the overarching effort to improve the safety and security of the border:

- **Operation Against Smugglers Initiative on Safety and Security (OASISS)** is a bilateral, criminal prosecution agreement between the United States and Mexico. Since 2005, this program allows Mexican citizens found smuggling aliens in the United States to be prosecuted by the Government of Mexico.
- **Criminal Consequence Initiative (formerly known as Operation Streamline)** is a criminal prosecutions program targeting individuals who illegally enter the United States through defined geographic locations. Under current law, aliens may be subject to criminal prosecution for entering the United States illegally. If an alien unlawfully enters again after having been previously ordered removed, the alien is subject to a felony charge of reentry after removal. Consequences are imposed through consistent application of prosecutorial resources to reduce illicit cross-border activity. The Criminal Consequence Initiative is a multi-agency effort that relies heavily upon the collaborative efforts of CBP, the U.S. Magistrate, the Federal Judiciary, the U.S. Attorney's Office, the U.S. Marshals Service, ICE, and the Executive Office of Immigration Review (EOIR).
- **Standard Prosecution** is the recommendation for criminal prosecution of a subject for violation of U.S. immigration laws and/or any other federal criminal laws that CBP has the authority to enforce.

- **Alien Transfer Exit Program (ATEP)** repatriates certain aliens, upon their removal, into regions different than that of their entry location to disrupt future coordination with smugglers after their arrest and removal. ATEP is designed to disrupt the smuggling cycle that often reunites removed aliens with their hired smugglers to attempt another illegal entry.
- **Expedited Removal (ER)** proceedings are initiated against certain aliens who are present without admission and without proper documentation, and encountered by an immigration officer within 100 air miles of the United States border, where they have not been physically present in the United States for the 14-day period immediately before their arrest. In most cases, aliens processed for expedited removal are not referred to an immigration judge. Instead, those processed for expedited removal are immediately removed from the United States (unless they claim fear of persecution as described below), and, upon removal, are barred lawful entry for at least five years. If an alien expeditiously removed re-enters illegally, he or she may be considered for criminal prosecution (Illegal Re-entry after Removal), or may be served with a second expedited removal order, barring re-entry for 20 years.
- **Reinstatement of Removal** allows DHS to reinstate a previously executed removal order for an alien who has illegally reentered the United States. If an alien is found to have reentered the United States after removal, the prior order of removal is reinstated from its original date and is not subject to review. In most cases, aliens processed for reinstatement are not referred to an immigration judge. Reinstatement does not preclude criminal prosecution in accordance with local procedures and guidelines. Much like expedited removal, reinstatement of a final order is an efficient means for immigration officers to remove aliens who fit within this category from the United States without adding to immigration courts' dockets.
- **Voluntary Return** is used at the discretion of Border Patrol agents and their supervisors to allow qualifying aliens from Canada or Mexico to be returned to their country of origin from the United States in lieu of being subject to formal removal proceedings. Grant of a voluntary return reduces processing time for agency personnel, while at the same time allowing the alien to avoid the potential penalties attached to a formal removal.
- **Warrant of Arrest / Notice to Appear** is used when Border Patrol agents refer an alien for a hearing before an immigration judge. Generally speaking, whenever an alien is processed for an NTA, a significant commitment of resources is required from USBP, ICE and EOIR. Aliens re-arrested in the United States after removal may be criminally charged with a felony, Illegal Re-entry after Deportation.

During processing, Border Patrol agents conduct an interview to determine whether an alien has any fear of persecution or torture if returned to his or her home country. If an alien processed through expedited removal expresses a fear of return to his or her country, or an intent to apply for or request asylum from the United States, he or she is referred to ICE to schedule a credible fear interview with a USCIS Asylum Officer. Similarly, if an alien processed through reinstatement of removal expresses a fear of return to his or her country, he or she is referred to ICE to schedule a reasonable fear interview with a USCIS Asylum Officer.

Conclusion

Over the past four years, the Administration has established priorities that govern how DHS uses its immigration enforcement resources. These priorities focus resources on threats to national security, public safety, and border security.

The strategic deployment of resources to the Southwest border and prioritization of recent border entrants and convicted criminals has helped CBP continue to drive down illicit cross border traffic. USBP will continue to impose consequences and take other steps to deter illegal activity and, in coordination with USCIS and ICE, enforce our Nation's immigration laws and strengthen the safety and security of the border.

Chairman Sessions, Ranking Member Schumer, and distinguished Members of the Subcommittee, thank you for this opportunity to testify today. I look forward to answering your questions.