

**U.S House of Representatives  
Committee on Homeland Security  
Subcommittee On Border and Maritime Security**

**Testimony by  
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**“Border Security and Enforcement-  
Department of Homeland Security’s Cooperation  
With State and Local Law Enforcement Stakeholders”  
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**INTRODUCTION:** Cochise County, Arizona constitutes approximately 6200 square miles of the southeast corner of the state. We share 83.5 miles of international border with Mexico. It is one of four counties that comprise the Tucson Sector of the Border Patrol. There are 9 such sectors along the southwest border of the United States. For the past several years, beginning in 1999, this area has led the nation in apprehensions of illegal aliens and drug seizures, accounting for almost half of both categories across the entire border.

This area has historically been one of the most popular drug smuggling corridors into our nation, but in 1998 the floodgates opened as hundreds of thousands of illegal aliens began pouring across our southern border. The wave peaked in 2000 when the Border Patrol reported approximately 620,000 apprehensions. Over time, federal law enforcement assets began have been assigned to dealing with the problem and today, the apprehension totals are down to around 220,000 a year, while drug seizures are significantly higher. These numbers are the basis for what the federal government is statistical evidence that the border is “more secure than ever.”

**PROBLEM:** “Ever” is a very long time. There is little question that the southern Arizona border is more secure in more places more often that it was 15 years ago. The building of physical barriers, improved technology, air support and a large increase in federal agents have proved positive. Also, federal programs such as Stonegarden and Secure Communities have helped develop important partnerships with state and local law enforcement agencies that bring important value to the effort. There are three primary reasons, however, in spite of all these efforts, the border is still far from being secure.

First and foremost, by its own admission, the Department of Homeland Security still has not developed its own definition of what means to have a “secure border.” In fact, they are just now, after all these years, beginning the discussion. It is unlikely if not impossible that anyone can achieve success or know how to apply assets without a clear objective.

Second, as long as I have been in this business, federal strategists, policy makers and planners have failed to include local officials and residents in the process. These are the people who know the environment, understand the challenges and can best provide meaningful input. Inviting them in on the backend of discussion is a recipe for losing the battle and deep criticism in the face of certain failure.

Third, The Department of Justice and Department of Homeland Security keep punting the border enforcement ball back and forth and the smugglers continue to win.

**CONDITIONS ON THE GROUND:** In 1987 when local and state law enforcement officials came together to organize a joint narcotics enforcement task force, in Cochise County, there was no presence of the DEA, the FBI, there was maybe a total of 40 Border Patrol Agents and four Customs Office of Enforcement officers. Cocaine and marijuana were pouring across our border and we went out and put a hurt on the, collectively. Illegal immigration was just an afterthought. We seized thousands of pounds of cocaine, 10’s of thousands of pounds of marijuana and millions of dollars in cash and smuggler assets. Today, there are 1300 Border Patrol agents, 30+ ICE agents, a fully staffed office of the FBI and most recently a fully functional office of the BTAF in the county. All that, and

we are still at the point of the spear for all the associated illegal border activity. With a 6200 square mile county and only 86 deputies, Border Patrol Agents are often our first responders, holding ground while my deputies respond from miles away for criminal activity not always associated with the border. We are extremely thankful for that. We interact daily with other federal agencies in our common desire to bring the situation under control. But, to say our border is “more secure than it has ever been” and use the increase in resources to demonstrate that is simply disingenuous. Secure does not equate to safe, and I will tell you that the border region is more dangerous than it has ever been.

Bottom line is, any one who wants to cross our southern border can. And there are, statistically, some very bad people in the mix. The last number supplied by CBP was that 17% of the people they apprehend have previous criminal records in this country. In other words, caught, convicted, deported and coming back. Who knows how many have serious criminal records in their homelands but are migrating to communities everywhere U.S. A. No doubt, I.C.E. has recorded a record number of deportations of these criminal aliens the past two years, but you have to question the value of deportation if re-entry is still a viable and likely option.

And why is the border region more dangerous than it has ever been? The nature of the enemy. Smugglers who used to run, now stand and fight. They have put on a very dire and deadly face and demonstrate their determination every day. Virtually every smuggling group we encounter, drug and human, is armed and prepared to protect their cargo. Assaults by the ordinary “person just looking for work” on agents is at an all time high. Where people used to show up asking for food, shelter or work, they now demand it with threatening postures. Citizens are regularly intimidated by these groups and told that if they don’t help, then what they have will be taken from them.

**TBS:** Advances in technology, increases in the number of personnel, and equipment enhancements are limited in their effectiveness by strategic and tactical application...all of which is driven by ideology and policy. While law enforcement on our side of the border are constrained in many ways, the bad guys know no such boundaries and learn very quickly from our foibles. TBS, or Turn Back South under the old model was limited to working the line. If attempted crossings were deterred at the fence, then it was recorded as a Turn Back South effort. Deterrence is clearly the ultimate objective. Sadly, even at the fence in today’s environment, it only means to the border crosser that they must come back and try another day, which they will, and after enough attempts, win the prize. It appears, according to numerous reports from current and former border agents, that this practice has gravitated many miles north of the border. That means that, regardless of proximity to the border, people who are detected but not caught are considered to be “Turned Back South.”

There is another place, at a different level where TBS is in effect. It is at the prosecutorial and judicial level. There are policies in place that establish thresholds for quantities of drugs and numbers of illegal aliens before consideration for prosecution can be entertained. In at least one Federal District in Texas, if you are caught smuggling less than 750 kilos of marijuana, you will not be subjected to prosecution. If you are caught smuggling fewer than 6 illegal aliens, you will not be subject to prosecution. And if you are a lone illegal border crosser, you get at least seven chances before you are even charged with a misdemeanor. And after that, you get seven more chances before you are

eligible for prosecution of a second offense felony. TBS occurs at many levels and is quickly assimilated into the understanding of the bad guys on how to game the system. Oh, and in Arizona, if you are a juvenile caught smuggling drugs, you won't be prosecuted at all in the Federal Courts. All this then levies heavy pressure on the local criminal justice system to take up the slack, with no hope of remuneration.

**PARTNERSHIPS:** Since Sept. 11, 2001 and the establishment of the Department of Homeland Security, they have been on an aggressive outreach effort to State and local law enforcement and emergency responders to help in securing our homeland. I have participated in many of the meetings designed to promote this idea. The language has been clear. The promoted concept is to "empower and partner with" state and local agencies. A noble concept and long awaited. And, the idea is beginning to come to fruition, but as is the idea that our border is secure, there is still a long way to go. There are still many barriers to break down, not the most notable as those between the various federal agencies themselves.

I mentioned earlier that DHS and DOJ are punting the ball back and forth. On the one hand, DHS announces that no one will cross the border without consequences. Then DOJ sets up intake and sentencing guidelines that totally contravene that policy. They must get on the same page, but unfortunately current policy and practice from neither organization will provide the avenue to do this. And as all of us, federal, state, local, citizens, sit down here on the border day and night fighting this fight, we hear our President announce a de facto sanctuary policy for all but "criminal aliens."

**WHERE WE ARE TODAY:** The federal government, following the passing in Arizona of Senate Bill 1070 claims that it has sole jurisdiction over immigration law. This position is curious inasmuch as all federal agencies partner with and reach out to state and local law enforcement agencies to support and participate in enforcement of drug smuggling, gun running, money laundering, sex trade and a myriad of other border related crime. And then when a state steps up to protect itself from the federal governments failure to control our border, we get sued by the Department of Justice. In the meantime, law enforcement officers--CBP agents, State Dept. of Public Safety Investigators, Sheriff's Deputies, City Police Officers and our own citizens are paying a heavy price every day fighting the fight of our lives to protect our homeland. It is simply not right that we should be down here waging this battle while some communities and even our own federal government are participating in sanctuary policies.

Just over a year ago, as Department of Homeland Security Officials were declaring they had secured operational control of most of the southern Arizona border, my friend Rob Krentz was senselessly murdered on his ranch. Another elderly couple were tied up in their home, their possessions stolen, loaded into their own car and driven off. CBP Agent Brian Terry was gunned down by border bandits. And just within the past two weeks a local resident who reportedly was trying to get out of the smuggling business was abducted from his home and hasn't been seen since. These travesties are being committed in communities throughout our nation every day, committed by individuals, groups and gangs--people who should never been allowed to enter or remain in our country.

This battle is not just for the border. It is for every community and every legal resident of this country to assure that they may continue to live peaceably with a quality of life that

they have worked for their entire lives. When that quality of life is restored to our border communities, those who live here will be the first to stand up and tell you, it is done. Success will require the full force and attention of a cooperative Local, State and Federal effort. That will require comprehensive immigration enforcement. Thank you very much.