

STATEMENT BY

MAJOR GENERAL HUGO E. SALAZAR

THE ADJUTANT GENERAL, ARIZONA NATIONAL GUARD

BEFORE THE

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THE HOUSE COMMITTEE ON HOMELAND SECURITY
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Opening Remarks

Chairwoman Miller, Ranking Member Cuellar, distinguished members of the subcommittee; I am honored to represent the men and women of the Arizona National Guard. Since September 11th, 2001, over 9,000 of our Arizona Soldiers and Airmen have been mobilized and served, or are currently serving in harm's way.

As you know, the National Guard has a dual mission and must be ready and capable of performing both its state and federal mission. In addition to serving the Nation on a federal deployment or mobilization, members of the National Guard also serve the state and as such, stand ready if called upon by the Governor when needed to assist in disaster response to protect the lives and property of the citizens of the state. As The Adjutant General of Arizona, I am a federally recognized General Officer but also have the privilege of serving as a state employee appointed by our Governor to serve as the Director of the Arizona Department of Emergency and Military Affairs. Today, I appear before you in a state status representing the State of Arizona in my capacity as The Adjutant General and Director of the Arizona Department of Emergency and Military Affairs.

The dual mission and locality of National Guard forces located throughout our communities make us a viable option for assisting both our Nation and State in times of crisis. In addition to the mobilizations already mentioned, the last five years have included a response by the Arizona National Guard to two separate Presidential declarations to enhance the efforts of the Department of Homeland Security (DHS); specifically, U.S. Customs and Border Protection (CBP) with detecting and deterring

illegal activity along our border with Mexico. I would like to take the opportunity today to address the role of the Arizona National Guard with respect to these efforts.

National Guard Status - State Active Duty, Title 32, Title 10:

Before discussing National Guard operations on the Southwest Border, it is important to note the various authorities that Soldiers and Airmen can operate under, as these directly impact mission sets, command and control, and ultimately organization readiness. There are three different statuses that a National Guard Service Member can operate under while performing military duties: “State Active Duty”, “Title 32”, or “Title 10”.

Under state active duty status, the National Guard is, at all times, a state government entity operating under the command and control of the Governor of Arizona and the Adjutant General. National Guard forces under State Active Duty are paid with state funds and perform duties authorized by the Governor and in accordance with state law. While National Guard forces are in a State Active Duty status, the Posse Comitatus Act (18 U.S. Code, § 1385), which restricts federalized troops from performing law enforcement duties, does not apply because they are not under the command and control of the federal government. The Posse Comitatus Act, along with its supporting legislation and regulations, precludes federal military forces from acting as a primary instrument of law enforcement. It has come to symbolize the separation of civilian affairs from military influence. Nonetheless, National Guard troops in a State Active Duty status may participate in law enforcement duties in accordance with the applicable provisions of state law and as directed by the Governor of Arizona.

The U.S. Constitution also authorizes the National Guard to operate under state control but in the service of the federal government – “Title 32”. Title 32 of the U.S. Code, authorizes the use of, and provides federal funds to National Guard forces performing a federal mission while under the command and control of their respective Governor. For example, National Guard forces were deployed by Governors using federal funds and in compliance with prescribed federal operational standards to our nation’s airports following the terrorist attacks of September 11, 2001. Although, federal appropriations were used to fund National Guard forces for a federal mission, Posse Comitatus did not apply because National Guard forces were not under the command and control of the federal government, but rather with their respective Governors.

Title 32 funds are also provided to National Guard forces to prepare and train Service Members for federal missions. Title 32 U.S. Code § 502(a) authorizes federal funding for weekend drills and annual training assemblies to ensure unit readiness and military skill-sets. If National Guard forces are needed on a full-time basis, section 502(f) provides for funds in addition to those requirements under 502(a). When National Guard forces are under Title 32 duty status, section 502(f) of the same title provides for federal funds to execute the federal mission. However, while troops are executing their mission under 502(f), as a matter of fiscal policy, there is no requirement for those troops to attend their monthly unit training assembly each month or their two week annual training as provided for in section 502(a). A review of the fiscal policy under 502(f) is needed to grant Governors and Adjutant Generals the option of requiring Title 32 troops to attend the monthly training requirements under 502(a) to maintain unit readiness and not degrade military skill-sets.

A good example of requiring troops to attend drill while performing the duties as a full-time National Guard member is the Arizona National Guard's counter-drug program. Title 32 § 112 provides for the authorization and funding for the Joint Counter Narcoterrorism Task Force, the Arizona National Guard's counter-drug program. Under this section, National Guard members may be ordered to perform full-time National Guard duty under section 502(f) of Title 32 to support the federally mandated counter-drug program. However, section 112(b)(2)(A) requires National Guard members to also participate in the training required under section 502(a). This is to ensure that the use of units and personnel of the Arizona National Guard supporting the counter-drug program does not degrade the training and readiness of such units and personnel. This requirement recognizes the importance of requiring National Guard members to continue to drill with their regularly assigned units so that the program does not degrade the readiness of each individual service member's assigned unit.

Finally, in addition to State Active Duty and Title 32 status, National Guard troops can also be in a "Title 10" status. National Guard troops under Title 10 U.S. Code are federally funded and federal controlled for national defense purposes. The federal government has the authority to "federalize" National Guard forces to mobilize and deploy troops for federal missions. These troops are commonly known to be in "Title 10 duty status," meaning that the President and the federal government solely command and control units under this title. This approach places the federalized National Guard forces in Title 10 status under the Command and Control of the President, the Secretary of Defense, and a Combatant Commander. It severs the National Guard's relationship with its state Governor.

Arizona Border Operations - Historical Perspective

Geographically speaking, Arizona has a total area of just over 113,998 square miles and is the sixth largest state in the Union. With an estimated population of well over six million, Arizona is currently ranked as the second fastest growing state by the U.S. Census Bureau. Arizona shares 389 miles of international border with Mexico and has seven major Ports of Entry. Found between Arizona's ports of entry are a variety and combination of barriers that include pedestrian fencing, vehicle fencing, Normandy barriers, triple strand barbed wire fencing and cattle guard crossings located on Tohono O'odham Indian Reservation only.

Joint Counter Narco-Terrorism Task Force (1989 - current):

Pursuant Title 32, section 112 of the US Code, the National Guard Counter Drug program is authorized up to 4,000 National Guard members performing drug interdiction or counterdrug activities in all 54 states and territories. In Arizona, the state Counter Drug program is referred to as the Joint Counter Narco-Terrorism Task Force (JCNTF). JCNTF began operations in 1989 and is currently the third largest (behind California and Texas) of all National Guard counterdrug programs in the states and territories. The mission of the JCNTF is to provide military counterdrug and drug demand reduction support to local, state and federal law enforcement agencies and community based organizations.

The JCNTF is currently staffed with 81 Army National Guard Soldiers and 46 Air National Guard Airmen totaling 127 personnel serving on Full Time National Guard Duty status in accordance with United States Code, Title 32, Section 112. These Soldiers

and Airmen are assigned to National Guard units throughout the state and are authorized to perform "Support-Only" Counter Drug duties.

According to the President's budget request, the National Guard Counter Drug Program is expected to remain flat for FY '12, which, due to the rising cost of conducting business, continues to slowly reduce the support available to Law Enforcement agencies. Arizona's program has shrunk over the years from a program consisting of well over 300 personnel in the early 1990s to a program of approximately only 130 personnel today.

In FY 2010, JCNTF's support to local, state and federal drug law enforcement agencies resulted in a total of \$7,025,300 in property, 801 weapons, 450 vehicles and \$39,634,210 in cash seized or recovered. In addition, 1,421 lbs of cocaine, 4.3 lbs of crack, 150 lbs of heroin, 131,221 lbs of marijuana, 726 lbs of methamphetamines and 20,044 marijuana plants were seized during operations supported by members of the Arizona National Guard serving on JCNTF.

The JCNTF currently provides Supply Reduction support to over 30 law enforcement agencies and fusion centers such as the Metro Intelligence Support and Technical Investigation Center throughout the state. Currently, approved JCNTF support missions include the following categories:

Linguist Support (2a): Supports over 30 agencies with transcribing pre-recorded tapes and other Spanish media in direct support of criminal investigations.

Investigative Case and Analyst Support (2b): Embedded analysts in law enforcement offices throughout the State of Arizona serve to improve information sharing between federal, state and local agencies; provide deconfliction of ongoing

narcotics investigations; result in better utilization of law enforcement resources; and enable supported agencies to affect accurate strategic analysis for key southwest border initiatives such as Domestic Highway Enforcement.

Communication Support (2d): Technical experts are assigned to law enforcement agencies such as the United States Customs and Border Protection at their stations along the international border and assist with command and control operations. This support requires the mastery of many complex monitoring devices, cameras, ground sensors, and voice communication equipment and directly enhances officer safety in the field.

Surface Reconnaissance (Nighthawk) (5a): JCNTF's ground reconnaissance teams support local, state, and federal law enforcement agencies with uniquely suited advanced optical technology such as the FLIR RECON III system. These teams operate covertly in support of law enforcement in field conditions and provide military specific skills to supported agencies interdiction efforts against the flow of drugs that enter the United States between Arizona's Ports of Entry. Based on input from the Arizona Governor, the JCNTF is shifting available resources towards its ground reconnaissance mission in order to increase the footprint along the International border with what is a proven military unique skill-set. Over the past 12 months, we have added an additional Nighthawk team and will continue to shift JCNTF resources to this mission as resources become available. Since 1 October 2010, Arizona Nighthawk teams have been instrumental in the seizure of over 17,000 pounds of marijuana, 25 weapons, assorted confiscated equipment, and the apprehension of over 200 smugglers and undocumented aliens. When compared to the annual budget for the entire JCNTF

program, this mission alone provides a complete return on investment for the operating cost of the entire 130 member task force.

Aerial Reconnaissance (5b): JCNTF employs both the OH-58 helicopter and RC-26 fixed-wing aircraft as aerial observation assets. Arizona National Guard OH-58 helicopters are available to support law enforcement during both day and night operations using Forward Looking Infrared systems, thermal imaging reconnaissance, Aviator's Night Vision Imaging System, live video downlink and Nightsun illumination systems. The RC-26 aircraft is employed as a regional asset for high value counter drug and narco-terrorism cases. This Air National Guard fixed-wing platform provides superior stand-off capability for covert operations. Both aerial assets provide enhanced officer safety, improved interdiction operations in remote drug corridors, and other forms of valuable aerial command and control capabilities.

Demand Reduction Support (6): Drug Demand Reduction (DDR) teams work closely with community based organizations and support the specific needs of local communities and school systems. All DDR efforts are focused on identifying, supporting, educating, and mentoring/coaching Arizona youth in collaboration with local community organizations.

Operation Jump Start (June 2006 – July 2008):

Operation Jump Start was a presidentially declared, two-year, \$1.2 billion program spread across the four Southwest Border States. The mission required 6,000 Guardsmen the first year and 3,000 the second year. The Department of Homeland Security and Customs and Border Protection allocated forces based on their assessed needs that resulted with Arizona receiving 40% of the forces – the largest percentage of

the four Southwest Border States. Guard members from 51 of the 54 States and Territories served in Arizona performing duties that included Entry Identification Teams, camera operators, logistical support, aviation support and engineering support. During the first year of Operation Jump Start, an average of 2,400 National Guard personnel conducted operations in support of law enforcement efforts in Arizona. That number was reduced to 1,200 personnel the second year.

Operation Phalanx (July 2010 – current)

Operation Phalanx authorizes 1,200 Soldiers and Airmen across the four Southwest Border States to support the Department of Homeland Security. Arizona was authorized 560 of the 1,200 personnel for the mission which equates to 46%. Operations began in Arizona on 1 Oct 2010 and plans are currently being finalized to end all operations in June 2011.

Like Operation Jump Start, National Guard personnel are funded under Title 32 § 502(f) – in accordance with the published Department of Defense order. The authorized missions for Operation Phalanx are: overt Entry Identification Teams (EIT); Remote Video Surveillance System support; and Intelligence Analysts to support DHS. These mission sets were selected by DHS without input from the respective state Governor or Adjutant General and support was limited to only DHS federal law enforcement agencies. The key differences between Operation Jump Start and Operation Phalanx are primarily in the total number of personnel authorized for the missions as well as the types of approved mission sets. Unlike Operation Jump Start where aviation and engineer support were significant, aviation and engineer support are not authorized for Operation Phalanx. Additionally, unlike Operation Jump Start, all National Guard

personnel on orders in Arizona during Operation Phalanx are organic to the Arizona National Guard.

Of the 560 personnel authorized for Operation Phalanx in Arizona the majority of the personnel are tasked to support entry identification sites that operate on a 24-hour basis in close proximity to the Arizona-Mexico border. Due to the increased threat and violence along the International Border, Arizona National Guard personnel are armed and assume a higher arming status than similar missions during Operation Jump Start. Rules for the Use of Force have been clearly defined, published, and provided to each member on the mission. Two of the entry identification sites are supported with a Mobile Surveillance System provided by Customs and Border Protection. All entry identification team sites and camera support operations are conducted in the Tucson Sector of Customs and Border Protection.

Funding for Operation Phalanx was initially programmed for \$135 million but was reduced to \$110 million. The cost of Arizona's portion during Operation Phalanx is estimated at \$34 million through 30 June 2011.

During Operation Phalanx, Arizona initiated numerous cost-saving measures focused on a solid relationship with Davis Monthan Air Force Base, Fort Huachuca and law enforcement partners. Use of existing active duty installations for lodging and contracted apartments saved an estimated \$25,000 per day in lodging expenses. More importantly, it also bolstered force protection and increased the safety for Soldiers and Airmen. The relationship with law enforcement partners has been exceptional with a positive partnership at all levels. Border Patrol equipment (radios, vehicles and thermal technology) has been entrusted with our National Guard Soldiers and Airmen to

enhance operations. Additionally, using law enforcement provided equipment when available has resulted in significant savings to the Arizona National Guard.

One of the limitations of having personnel on orders during Operation Phalanx is a direct result of the type of funding source: Title 32, Section 502(f). Personnel on 502(f) orders with Operation Phalanx are not authorized, except under certain circumstances, to attend monthly drills at their parent Arizona National Guard unit. This creates a negative impact on unit readiness and especially when the individual volunteering to serve on Operation Phalanx is in a leadership position at his/her unit.

Throughout the duration of Operation Phalanx, the Arizona National Guard has supported the Department of Homeland Security in a commendable manner and the working relationship between National Guard and Law Enforcement has been nothing short of exemplary. Currently, Arizona National Guard plans are being finalized to end Operation Phalanx on 30 June 2011. To complete all administrative and logistical actions required, operations will effectively stop no later than the second week of June.

Closing Remarks

As the Adjutant General of the Arizona National Guard, I am extremely proud of the support and demonstrated professionalism members of the National Guard have provided law enforcement agencies during Operation Jump Start, Operation Phalanx, and the long-standing state counter drug support program. The unique skill sets the military brings to bear in support of law enforcement agencies act as a force multiplier in their continued efforts to secure the international border and deter the flow of illegal drugs and associated violence along the border.

The Arizona National Guard's Joint Counter-Narco Terrorism Task Force has enjoyed a positive working relationship with local, state and federal law enforcement agencies for over 20 years. JCNTF soldiers and airmen are aware of the impact they are making in the counter drug and border security arenas, and individual readiness is enhanced from their experience performing real world missions on a daily basis. This readiness makes our military units stronger and better trained for war-time missions.

The Arizona JCNTF is currently staffed with 127 personnel serving on Full Time National Guard Duty status. The military unique skill sets, training, and specialized equipment that Arizona National Guard members bring to the mission enhance the operational capabilities of the law enforcement agencies they support. Rather than short-term operations such as Operation Jump Start and Operation Phalanx, an argument can be made that military support to law enforcement efforts would be better served with an increase in funding to JCNTF. Increasing JCNTF support would allow law enforcement elements—potentially in all jurisdictions—to more effectively synchronize, plan, and integrate National Guard resources and personnel, knowing they will have a sustained and predictable level of support from JCNTF for an extended period of time. This argument was reinforced on 11 March 2009 and 6 April 2010 when, to support the growing instability along the Arizona-Mexico border, the Governor of Arizona formally requested additional aviation assets and an increase in JCNTF personnel of the President and the Secretary of Defense.

I appreciate the opportunity to be here today and invite your questions and comments.