

FIGHTING THE HYDRA: AMERICA'S SOUTHERN BORDER AND NATIONAL SECURITY

BY

LIEUTENANT COLONEL GEORGE G. MALKASIAN
United States Marine Corps

DISTRIBUTION STATEMENT A:

Approved for Public Release.
Distribution is Unlimited.

USAWC CLASS OF 2011

This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.



U.S. Army War College, Carlisle Barracks, PA 17013-5050

The U.S. Army War College is accredited by the Commission on Higher Education of the Middle State Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

REPORT DOCUMENTATION PAGE

Form Approved
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. **PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.**

1. REPORT DATE (DD-MM-YYYY) 23-03-2011		2. REPORT TYPE Strategy Research Project		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE Fighting the Hydra: America's Southern Border and National Security				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Lieutenant Colonel George G. Malkasian				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Dr. Craig Nation Department of National Security and Strategy				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College 122 Forbes Avenue Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT The United States government's effort to secure America from the threat of terrorist attacks requires a defense in depth strategy that utilizes the available elements of national power. The wielding of these capabilities without infringing on individual rights requires careful consideration and debate. The border with Mexico is a significant source of weakness for the United States and is an avenue of approach open to terrorist and terrorist sympathizers. The Border Patrol's increasingly frequent interception of individuals with direct or potential terrorist links and the growing coordination of infiltration methods require a change in United States policy. The actions necessary to improve the security of the country will have a direct impact on politically sensitive issues such as illegal immigration. This paper evaluates the complexities of the southern border that have clouded the implementation of the security measures necessary to protect America. Allowing partisan concerns and public opinion to influence national security policy can undermine the safety of the country and its citizens. The United States government must demonstrate the resolution necessary to implement potentially contentious changes that will enhance the safety of America.					
15. SUBJECT TERMS Mexican Border, Terrorists, Drug Trafficking, Illegal Immigration, Department of Homeland Security, United States Border Patrol, Immigration and Customs Enforcement, Posse Comitatus Act					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UNCLASSIFIED	b. ABSTRACT UNCLASSIFIED	c. THIS PAGE UNCLASSIFIED			19b. TELEPHONE NUMBER (include area code)
			UNLIMITED	28	

USAWC STRATEGY RESEARCH PROJECT

**FIGHTING THE HYDRA: AMERICA'S SOUTHERN BORDER AND NATIONAL
SECURITY**

by

Lieutenant Colonel George G. Malkasian
United States Marine Corps

Dr. Craig Nation
Project Adviser

This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

ABSTRACT

AUTHOR: Lieutenant Colonel George G. Malkasian

TITLE: Fighting the Hydra: America's Southern Border and National Security

FORMAT: Strategy Research Project

DATE: 23 March 2011 **WORD COUNT:** 5,665 **PAGES:** 28

KEY TERMS: Mexican Border, Terrorists, Drug Trafficking, Illegal Immigration, Department of Homeland Security, United States Border Patrol, Immigration and Customs Enforcement, Posse Comitatus Act

CLASSIFICATION: Unclassified

The United States government's effort to secure America from the threat of terrorist attacks requires a defense in depth strategy that utilizes the available elements of national power. The wielding of these capabilities without infringing on individual rights requires careful consideration and debate. The border with Mexico is a significant source of weakness for the United States and is an avenue of approach open to terrorist and terrorist sympathizers. The Border Patrol's increasingly frequent interception of individuals with direct or potential terrorist links and the growing coordination of infiltration methods require a change in United States policy. The actions necessary to improve the security of the country will have a direct impact on politically sensitive issues such as illegal immigration. This paper evaluates the complexities of the southern border that have clouded the implementation of the security measures necessary to protect America. Allowing partisan concerns and public opinion to influence national security policy can undermine the safety of the country and its citizens. The United States government must demonstrate the resolution necessary to implement potentially contentious changes that will enhance the safety of America.

FIGHTING THE HYDRA: AMERICA'S SOUTHERN BORDER AND NATIONAL SECURITY

It is essential that the United States utilize the elements of national power to defend America and its citizens from threats to its national interests. Every presidential administration has been challenged to define the country's interests and identify what legitimately threatens them. On those rare occasions when the United States has been attacked domestically, the debate was minimal and the response resolute, unified and decisive. President Barack Obama entered office with an extant threat to the security of the United States and its citizens from terrorist organizations, one of four enduring American interests described in his National Security Strategy (NSS).¹ The challenge the administration faces is evolving or reshaping existing policies to leverage the elements of national power to meet the president's strategic objectives.

The Founding Fathers deliberately bound the federal government's application of power with the Constitution and the three branches of government. Government action has always been tempered by legality, proportionality and the inalienable rights of the individual. Every government has organic elements of power to leverage and achieve its domestic and international policy objectives. The initial four aspects, Diplomatic, Informational, Military and Economic have been expanded to include the Financial, Intelligence and Law Enforcement elements, collectively abbreviated as DIMEFIL. The application of these powers to confront a threat within the United States requires extraordinary care and diligence to prevent the abuse of citizens' rights. The debate on what is necessary in a crisis to protect the populace and what constitutes a violation of rights manifests at all levels of government and further complicates an already difficult

problem. In addition, the ever present political forces cloud the issue by diluting the government's actions due to partisan interests. Therefore, the government must coordinate the application of the elements of national power while balancing the imperative to provide security and protecting individual rights.

The government has not employed all of the available elements of national power due to concerns over individual rights and political considerations. The United States remains vulnerable to terrorist attacks by a determined and adaptive enemy. It is imperative that the United States change the current policies designed to detect, deter and defeat terrorists attempting to infiltrate or attack the country. The president's desired end state will be achieved more effectively with a thorough knowledge of the situation. Defining the problem using the elements of the design concept will build an understanding of the operating environment and its complexities. This will help create a holistic operational approach based on a coherent and thorough knowledge of the situation. The United States government must resolutely implement the policies necessary to enhance the security of the country and its citizens in spite of political considerations.

Defining the Problem

The ongoing threat posed by radical Islamist terrorists is the first significant danger to the security of the continental United States since the 1962 Cuban Missile Crisis. The terrorists do not pose a direct challenge to the sovereignty of the United States. However, their ideological fanaticism, intolerance and determination make them a danger to American citizens and interests and therefore, a threat to our national security. President George W. Bush initiated a sweeping set of reforms and reviews to

identify and rectify the weaknesses that left America vulnerable to the September 11 attacks. The government initially focused on preventing terrorists and sympathizers from entering the United States and denying them freedom of movement within the country.

Executive Order 13228, signed on 1 October, 2001, established the Office of Homeland Security and the Homeland Security Council (HSC). This improved the organization of the relevant government departments necessary to manage the defense of America.² The president subsequently issued a series of Homeland Security Presidential Directives (HSPDs) to make immediate enhancements to the security of the nation. Concurrently, the National Commission on Terrorist Attacks, or 9/11 Commission, began a detailed investigation of the attacks. HSPD-1, released on 29 October, 2001, delineated the membership and functioning of the HSC to increase the interagency cooperation of all aspects of homeland security.³ In November 2002, Congress established the Department of Homeland Security (DHS), the largest restructuring of the U.S. government since the National Security Act of 1947 created the Department of Defense. In a little over a year, a unified president and Congress made sweeping changes in the organization and policies of the government to counter the terrorist threat to America.

The 9/11 Commission's report, publicly released in July 2004, identified many issues within the DHS's security apparatus. The commission determined that the 19 terrorists who conducted the 9/11 attacks entered the United States with valid travel documents. The terrorists capitalized on the "significant security weaknesses" in the Saudi Arabian passport procedures to obtain them.⁴ The passports had suspicious

indicators or had been altered in ways that should have been detected and raised alarms regarding their authenticity.⁵ In addition, the commission found a significant lack of interagency coordination to identify and track known terrorists and persons of interest.⁶ The report also determined that the United States' coasts and land borders were vulnerable to infiltration.⁷ The report's findings increasingly tied control of the ports of entry and borders to improving the security of America.

President George W. Bush identified the United States' immigration policies as vulnerable to exploitation by terrorists and their supporters and fundraisers in HSPD-2: Combating Terrorism Through Immigration Policies. Enduring tenets of this policy are that immigration is a major source of power and growth for the United States and cooperation with the Mexican and Canadian governments will be essential to success. The directive identified a wide range of changes to remove those currently violating immigration policies as well as to deter and prevent future intrusions.⁸ The DHS focused its efforts to "prevent the entry of alien terrorist sympathizers and supporters into the United States and to detain and deport those already in U.S. borders."⁹ The Mexican border has received the vast majority of attention and effort due to the preponderance of illegal cross border activity occurring there.

Improving security along the 1,900 mile border with Mexico has led to many security initiatives in the intervening years. The Border Patrol has grown significantly, a 104 percent increase in personnel and 100 percent budget increase from 2001 to 2009.¹⁰ The southern border has received the majority of these additional resources, with 88 percent of its agents stationed there.¹¹ In addition, National Guard units have augmented the Border Patrol on two occasions in non-law enforcement activities to

include constructing several hundred miles of border fencing. Concurrently, the DHS commissioned the Secure Border Initiative network (SBInet) system to apply advance technology to remotely monitor the border with sensors. Secretary of Homeland Security Janet Napolitano cancelled the program in 2010 due to technical issues after four years of effort and between \$780 million and \$1.4 billion.¹² The Border Patrol concedes that as of 2010 it has achieved full operational control of only 129 miles and manageable control of 744 miles of the border.¹³ The remaining 1,000 miles of border remain outside of accepted standards for border security despite these efforts.¹⁴

There is bi-partisan support for improving the security of America's southern border as part of the overall safety of the United States. The many factors associated with this problem have served to cloud and dilute the actions necessary to accomplish that mission. The Bush and Obama administrations have previously demonstrated the resolution to implement unpopular and controversial policies. These included the increased monitoring of private communications and the Transportation Security Agency's (TSAs) draconian airport security procedures. Both administrations supported these measures in the interest of protecting America and its citizens despite claims of violating individual rights. Efforts to improve security along the Mexican border have not received the same determination. Understanding the history and political factors intertwined with the Mexican border is essential to forming a vision of what is required and the necessary sacrifices.

The Operational Environment

A porous border is not in and of itself a threat to national security. America's border with Mexico took its present form after the conclusion of the Mexican-American

War in 1848 and the Gadsden Purchase of 1853. The border is comprised of very difficult, broken terrain interspersed with Mexican and American population centers in close proximity. Patrolling and policing these areas is a Herculean task that has never been performed adequately and would require coordination and support of both countries. The relationship between the United States and Mexico has been largely beneficial economically for both countries and border security has historically been a secondary issue. The recurring concerns have been illegal immigration and smuggling, which have continued to expand despite the two nations efforts. Despite these issues, the border remained open throughout much of the 19th and 20th century and the flow of workers and goods was uninhibited and largely unregulated.

Illegal Immigration

The United States recognized at the turn of the 20th century that uncontrolled immigration was becoming a problem that required a change in policy. This resulted in the first of a series of acts restricting immigration and tightening the requirements for entry. In support of these changes the United States Immigration Service Border Patrol was established in 1924 to actively patrol the border to stop or deter illegal immigration and interdict the illegal flow of contraband.¹⁵ The unit created was completely inadequate for the mission and focused its efforts on populated areas, largely ignoring the vast stretches of terrain between. The United States recognized that improved border security and controls were needed but the lack of commitment reflected the perception of the threat the border posed.

Throughout this period, unregulated seasonal migrant workers from Mexico remained a major factor in the farming industry of the Border States because of the low

wages they accepted. In 1942, at the onset of American involvement in World War II, the United States faced a shortage of workers in the crucial agricultural industry as American men went to war. The United States and Mexico created the Bracero (arm man) Program to establish short term contracts which set minimum wage levels and treatment standards for the workers.¹⁶ The program continued through the Korean War and was officially terminated in 1964. This did not prevent Mexican migrant workers from continuing to work within the United States outside of the Bracero Program and without the limited protection it provided. More than 4.2 million Mexicans entered the United States under this program, most of who never returned to Mexico.¹⁷

In 1954, President Dwight Eisenhower initiated the first large scale operation by the Border Patrol to reduce the number of illegal immigrants. Operation Wetback was designed to identify and deport illegal immigrants from the Bracero Program who had remained in the United States after their contract expired.¹⁸ The number of apprehensions and deportations were not significant, numbering several hundred thousand, but it is estimated that over 1.2 million Mexicans left the country in fear of being apprehended.¹⁹ The operation focused on repatriating illegal immigrants already in the country and did little to improve the actual security of the border.

Illegal immigration continued to grow and plague presidential administrations until President Ronald Reagan attempted a different tack to resolve the issue. He avoided the difficult proposition of deporting millions of illegal immigrants by granting them amnesty. The Immigration Reform and Control Act of 1986 made the vast majority of illegal aliens in the country legal citizens while making it unlawful to employ an illegal alien. President Reagan's policy of making employers liable for their hiring practices

attempted to reduce the incentive for illegal immigrants to come to the United States. Despite this, illegal immigrants continue to be a major factor in the American workforce due to the lack of enforcement on businesses. This has resulted in the policy's failure as illegal immigration continues to grow with anywhere between 4 and 10 million illegal aliens entering the United States through Mexico in 2005.²⁰

The growth of a strong political lobby within the burgeoning Hispanic community in America has increased the stakes in this area. Despite the wide recognition that border security must improve, there is strong opposition from this sector to any legislation or action that will hinder legal or illegal immigration from Mexico. The Hispanic community continues to focus a myopic lens on any proposed actions, looking only for the impact on their community even though illegal immigration is not solely a Mexican issue. Illegal immigrants from throughout the world flock to the United States and would fall under the same scrutiny as the Mexicans. The security of America is of paramount importance and a significant aspect of that is the ability to control the borders and police the interior. Accepting a weak and vulnerable border solely for the advantage of one demographic group is not sound policy and does not recognize the connection between illegal immigration and terrorist infiltration.

Commerce

Trade between Mexico and the United States is essential to the prosperity of the two nations. The value of that commerce has continued to expand since the implementation of the North American Free Trade Agreement (NAFTA) in 1994. This agreement gradually eliminated tariffs between the United States, Mexico and Canada and encouraged increased foreign investment. Since its implementation, trade has

flourished and fears did not materialize that the removal of protective tariffs would harm the Mexican economy. Agricultural exports to Mexico increased from \$4.1 billion to \$7.9 billion and imports to America grew from \$2.9 billion to \$6.3 billion (all amounts adjusted for inflation) from 1993 to 2003.²¹ The world financial crisis did not slow this development, exports to Mexico advanced nearly 27 percent and imports from Mexico improved 30 percent from 2009 to 2010.²² Mexico is the United States second largest export and third largest import trade partner.

The efficient and timely flow of goods and materials is one of the most important aspects of the success of NAFTA. The well established interstates and transportation networks in both countries serve as the conduit of the commerce. One of the most efficient means of transporting these goods is via tractor trailers which readily access the United State interstate system after clearing the port of entry. The illegal immigrants and drug smugglers utilize these same shipping routes to quickly move away from the border and disperse throughout the country. The DHS based its ongoing approach to increasing border security and maintaining the rapid flow of commerce on improved coordination with Mexico and technological advances to pre-screen and document shipments.²³ The reduction in inspection requirements may increase the agents available to scrutinize border traffic without the correct authorizations.

Maintaining a “strong, innovative, and growing U.S. economy in an open international economic system” is an enduring national interest of the United States.²⁴ The requirements for efficient cross border transit and increased border security potentially bring these two national interests into competition. To ensure that confusion does not exist, the government must establish a priority between increasing the free

flow of commerce and improving border defense. Tighter security at the ports of entry will deter the use of commerce for smuggling and human trafficking. On the contrary, the drug cartels, illegal immigrants and terrorists will exploit any reduction in protection at the ports. Stricter border security must be the bedrock of the DHS's programs to allow the free flow of trade without increasing the country's vulnerability.

Smuggling

The illegal transport of alcohol across the border during Prohibition was one of the original motives for establishing the Border Patrol in the 1920's. Since that time, the smuggling of illegal goods has continued to grow into an extremely lucrative and dangerous business. The expansion of illegal drug trafficking has continued as production has become a major business in Latin America, earning between \$18 and \$39 billion annually.²⁵ The Mexican drug cartels controlling the flow of drugs into the United States have continued to increase with the pervasiveness of the drugs and the revenues generated. The cartels utilize the same routes to transport their cargo across the border that the illegal immigrants use to enter. The efficiency of these movement corridors has led to the increased role of Mexico as a conduit of drugs from throughout the world into the United States. The State Department estimated that in 2009 up to 90 percent of the cocaine consumed in the America entered through Mexico.²⁶

These movement corridors provide access to more than drug smugglers and illegal immigrants; they are used by terrorists and terrorist sympathizers. In 2001, Mahmoud Youssef Khourani, a member of the Lebanese terrorist organization Hezbollah, bribed a Mexican consular official in Beirut to obtain a travel visa to Mexico.²⁷ Once there, he paid Coyotes to escort him across the border where he proceeded to

establish a residence in a largely Lebanese area of Dearborn, Michigan.²⁸ Khourani held meetings and raised funds to support Hezbollah until he was arrested in 2004. The Border Patrol is apprehending increasingly larger numbers of illegal aliens who are Other Than Mexicans (OTM's). In 2005, the Border Patrol detained over 165,178 OTMS, compared to 44,614 in 2004.²⁹ In 2008, three men with known terrorist links and 530 persons from "special interest countries" were apprehended at border patrol checkpoints between 25 and 100 miles within the United States.³⁰ The DHS estimates that 30 percent of illegal activity along the border is detected and prevented. Therefore it can be extrapolated that 1,750 persons with potential terror links and 9 with known terror connections entered America through Mexico in 2008.³¹

The evidence continues to grow of an organized effort to smuggle persons associated with terrorism into the United States leveraging the same Coyotes and routes that illegal immigrants use. In 2004, Neeran Zaia and Basemi Sesi were arrested in Mexico for smuggling over 200 men from Syria, Iraq and Jordan into the United States.³² In January of 2011, the radical Muslim cleric Said Jaziri was arrested in San Diego, CA while being smuggled across the border. He was banned from Canada and France for his extremist views which included the murder of Danish cartoonist Kurt Westergaard for drawing a cartoon of Mohammed. After discovering that he lied on his travel papers, the Canadians deported him to Tunisia. From there he flew to Mexico where he paid a Coyote \$5,000 to smuggle him into the United States. The ability of terrorists and their sympathizers to utilize the established networks and avenues to enter the United States undetected remains a critical vulnerability. The commonality in infiltration methods inextricably links the various types of illegal aliens, those seeking

employment, the drug smugglers and the terrorists. Any actions taken to impede one group will directly affect the rest.

Drug Cartels

The Mexican drug cartels control much of Northern Mexico and have fostered a culture of corruption that has prevented meaningful law enforcement in the region. Mexico is one of the most dangerous countries in the world due to the cartels reign. Mexican President Felipe Calderon's efforts since 2006 to break the drug cartels and restore government control of Northern Mexico have had limited success. The city of Ciudad Juarez, which borders El Paso TX, earned the dubious distinction as the most violent city in Mexico, suffering more than 3,000 murders in 2010.³³ The deteriorating situation in Mexico led the U.S. State Department to issue a formal travel warning on September 9, 2010 recommending that U.S. citizens not travel to Mexico or at a minimum considers the risks.³⁴ The United States can expect minimal assistance in improving border security until the Mexican government reasserts control.

In its campaign against the cartels, the Mexican government has had to place the Mexican Army in the lead of its efforts to confront the rampant corruption among local governments. The Army ordered the local police in the border city of Tijuana to surrender their weapons due to their potential ties to the cartels.³⁵ The loyalty of the local population remains highly contested as the cartels have maintained de facto control of these regions and have supplanted the government as protector and provider. In December of 2010, the people in the cities of Morelia and Apatzingan held rallies to remember and protest the death of Nazario Moreno, leader of the La Familia drug cartel, killed by the Mexican Army.³⁶ Despite the Mexican government's efforts, the drug

cartels maintain control of large regions of Mexico and continue to traffic drugs and people.

The security of the United States border with Mexico is a complex problem with many long standing issues that are interwoven. Although the terrorists, drug smugglers and illegal immigrants have dissimilar purposes, they use common methods to enter the United States undetected. Mexico's inability to manage and police its territory has facilitated the ability of these groups to exploit the border and the commerce flowing between the two nations. Due to the lawlessness of the region, every illegal alien entering the United States has the potential to be a terrorist or terrorist sympathizer. The uniform application of security policies within the United States, regardless of race, sex, or religion, is essential to improving safety in America. Security related policies are increasingly evaluated for their effect on political issues such as illegal immigration rather than on their efficacy to deter and detect terrorists. In order to achieve President Obama's stated goal, the government must accept that the efforts of the last 10 years have been a failure and simply reinforcing old policies will not improve the situation. A new operational approach must be implemented that better utilizes the elements of national power available.

A New Operational Approach

Secretary Napolitano stated in the 2010 Quadrennial Homeland Security Review (QHSR) that ensuring the security of America will require an "enterprise-wide" effort encompassing the federal, state and local governments working in concert.³⁷ The organization of DHS presents a defense in depth strategy for securing America well suited to this. The Border Patrol remains the first line of defense in securing the border

from intrusion and has focused its efforts near major population centers and border crossings. The mission of the Immigration and Customs Enforcement (ICE) agency is the criminal and civil enforcement of federal laws regarding immigration, customs and border enforcement.³⁸ ICE agents form the second line of defense to investigate and apprehend those that elude the Border Patrol. The continued influx of illegal immigrants, drug traffickers and increasing presence of OTMs has proven that these agencies do not have the resources to accomplish their missions. The federal government has not utilized several elements of power that have the potential to enhance the ability of these agencies to improve the security of the nation. Leveraging the military, law enforcement, and economic elements of national power are some of the most controversial but also most effective means of achieving the desired end state. To be successful, the government must truly take a holistic approach to the problem and accept the political fallout that may accompany these policies.

The Role of the Military

The United States has imposed strict prohibitions on the use of the military along the border due in large part to the Posse Comitatus Act (PCA) of 1878. This law was enacted at the end of the reconstruction period of the Civil War in response to the unpopularity of the use of the Union Army as a police force in the south. The PCA bans the military from performing a policing role against American citizens. The law does allow the military to monitor and provide surveillance on people entering the country illicitly. The legal authority is based on the precept that anyone crossing the border illegally is not a United States citizen and therefore not protected by the PCA.³⁹ Military

servicemen do not have the authority to make any apprehensions in these cases; however they can coordinate the arrest with law enforcement agencies.

The military has been and continues to be used in limited roles to assist the Border Patrol. Since 1989 Joint Task Force (JTF) North, formerly JTF Six, has been providing military assistance to the Border Patrol along the border. JTF North was established after President George H. W. Bush began the War on Drugs and has the mission “to support our nation’s federal law enforcement agencies in the identification and interdiction of suspected transnational threats within and along the approaches to the continental United States.”⁴⁰ The transnational threats targeted include narcotics trafficking, terrorists, alien smuggling and weapons of mass destruction (WMD’s). The military units supporting JTF North are assisting federal authorities and performing a mission that is consistent with their training for future operations. In addition, National Guard units have been mobilized twice to perform administrative, construction, or analysis functions for the Border Patrol. The National Guard has not directly assisted in providing border security.

Expanding the surveillance and patrolling functions of the military and National Guard beyond what JTF North is already doing would bring to bear unparalleled personnel and systems capabilities to aid the Border Patrol. In addition, the random patrolling activities of units would disrupt illegal movement corridors and deter cross border activity. The widespread application of these assets would enable the Border Patrol to focus its personnel on apprehensions resulting from the military’s observation.⁴¹ The use of the military is not a panacea that will result in a completely secure border; however, the increased presence would introduce a level of uncertainty into what have

been reliable means of illegal entry. This will not completely deter or prevent illegal activity, therefore the DHS' defense in depth approach must be expanded as well to identify and capture those that cross the border illegally and evade the Border Patrol.

Law Enforcement

As of 2008, there were nearly 900,000 law enforcement professionals enforcing America's laws and investigating crime throughout the United States.⁴² The Immigration and Nationality Act of 1986 (INA) allows local law enforcement agents to arrest and detain illegal immigrants apprehended in the conduct of a criminal act.⁴³ As illegal immigration is not a criminal act, only federal agents can investigate, detain or arrest these persons. In addition, the best tools available to identify terrorists are managed by the Federal government and are not immediately available to local law enforcement. In May 2010, the DHS issued a terror warning to Texas authorities after a Somali man was indicted for smuggling hundreds of Somalis into the United States through Mexico by way of Brazil and providing them false documents.⁴⁴ Many of these men had ties to Somali terrorist organizations and remain at large. Based on current policies, a police officer interacting with one of these men in a routine nature does not have the ability or authority to determine their legal status or detain them for processing.

The INA does allow the DHS to approve, train and supervise non-federal law enforcement agencies to identify and apprehend illegal immigrants during routine non-criminal interactions. However, the government has failed to leverage this capability and nearly a million law enforcement professionals, intimately familiar with the local environment, are not utilized to identify and investigate potential terrorists. The government has continued to assert that enforcing immigration is a federal role despite

the DHS's statement that agencies at all levels of government need to be involved in securing America's borders.⁴⁵ In addition, the United States Constitution acknowledges that states have the innate authority to enforce those laws that the Federal government cannot to protect its citizens.⁴⁶

In April of 2010, Arizona enacted S.B. 1070 which empowered local and state police to verify immigration status when probable cause was present during non-criminal law enforcement. The law was initiated due to increased levels of violence and illegal cross border activity originating from the Mexican border. Although the law specifically precluded racial profiling, the impact the Arizona law would have on illegal immigrants sparked a political backlash mainly amongst Americans of Mexican descent. The effectiveness of the law in improving the security of Arizona was never a factor in the debate. The Obama administration challenged the law in court arguing that the law usurped the federal government's power and authority.

Although the federal government recognized that it must work in concert with governmental agencies at all levels, it attacked S.B. 1070 as a challenge to its authority. Increasing the ability of state and local law enforcement agencies to identify illegal immigrants would improve the detection of terrorists by vastly increasing the number of officers investigating their legal status. This would significantly enhance the defense in depth approach that DHS seeks, allowing the federal agents to respond to and assist local authorities when necessary. In addition, the local authorities have a greater understanding of the local environment and this knowledge would enhance their ability to discern anomalies. This policy would result in an increase in the identification of illegal immigrants from throughout the world. Rather than treating S.B 1070 as an

usurpation of power, the government should embrace the efforts of the local and state governments and work with them to ensure unity of effort and coordination. President Obama has stated that securing the United States is of vital national interest; as such the security concerns of the nation should outweigh the political concerns of illegal immigrants.

Economic Policies

An essential element of the defense in depth of America is denying terrorists the safe havens they require to hide and remain anonymous. A significant aspect of their ability to blend with the local populace is finding local employment. The United States currently utilizes the free online E-Verify system to verify the citizenship of prospective employees through a database operated and maintained by the United States Citizenship and Immigration Services (USCIS). The system was established in 1997 to assist in enforcement of the Immigration Reform and Control Act of 1986 which made it illegal for a business in the United States to employ an illegal alien. Despite the legislative requirements, participation in the program is not mandatory for non-governmental employers. It is difficult to assess the effectiveness of the system as those companies hiring illegal aliens are not likely to participate in the program. Although employing illegal aliens is a crime, ICE does minimal enforcement in employment areas. In 2009, of 10.4 million work hours logged by ICE agents, only 5.2 percent of the time was spent inspecting workplaces.⁴⁷

The DHS recognizes that terrorists will be able to gain entry into the United States. Every effort must be made to make the interior of the United States an inhospitable place for them. The employment of illegal aliens is already a federal law,

the enforcement of the statute is lacking. The E-verify system must be a mandatory requirement for all employers. An additional impediment to ICE's activities are the growing number of cities declaring themselves as "Sanctuary Cities," where local law enforcement is ordered not to identify illegal aliens to Federal agents. Initially begun as a means to encourage illegal aliens to cooperate with police without fear of deportation, the practice has evolved into a political show of support for immigrant communities. The harboring of illegal aliens may be politically fortuitous and sincerely intended; however, the resulting permissive climate is ideal for terrorists seeking anonymity and shelter. The ability of ICE to coordinate with state and local law enforcement officers to inspect and investigate compliance will reduce the ability of terrorists and sympathizers to find the refuge they require.

End States

The DHS correctly stated that "the success of our Nation's immigration policy plays a critical role in advancing homeland security."⁴⁸ The related efforts to improve security along the border while increasing the scrutiny of illegal aliens within the interior of the country are necessary tenets of this policy. To be effective, the execution phase must be consistent and uniform, avoiding any semblance of racial profiling. This will result in the identification of many people from diverse countries who are here illegally. The vast majority of these illegal aliens are not terrorists or terrorist sympathizers and finding one in a 100,000 may not appear worthwhile; however it only took 19 men to kill nearly 3,000 people on September 11th. The implications of not vigorously enforcing the country's existing laws to improve security may result in another catastrophic attack. The loss of a single life due to political consideration will not be acceptable to American

citizens. It is imperative the government resolutely apply its powers to improve the security of the country.

The DHS has properly surmised that it is impossible to completely prevent infiltration through America's borders and ports. The layered organization of the DHS is well designed to present a difficult challenge to a terrorist. However, the organization does not have the ways and means to successfully accomplish its mission.⁴⁹ In accordance with the 9/11 Commission, interagency coordination and support must increase in order to succeed. The cooperation of the military with the Border Patrol to more effectively monitor and detect illegal border crossing will enhance efforts and provide deterrence by being more effective. The increased cooperation of federal, state and local law enforcement to identify, detain and investigate illegal aliens and ensure employers comply with federal work laws will make the interior of the country less hospitable. This will reduce the terrorist's freedom of maneuver and deter future illegal immigration.

The individual application of the elements of national power will not be effective in securing the United States. Only through the combined effects of the various elements working together can the government reasonably expect to succeed in improving the safety of Americans. To date the federal government has not applied all of the elements of power at its disposal. As a result, the United States remains vulnerable to attack and evidence of illegal aliens related to terror organizations crossing the Mexican border continues to mount. The increased use of the elements of power in support of the DHS will have secondary effects on non-terror groups and significant political ramifications. The government has displayed the necessary resolve

and determination in implementing politically charged policies such as the Patriot Act. President Obama and the United States Congress must put do the seemingly impossible, set aside political considerations and apply the elements of national power to secure the nation.

Endnotes

¹ Barrack H. Obama, *A National Security Strategy* (Washington, DC: The White House, May 2010), 7.

² George W. Bush, *Executive Order 13228: Establishing the Office of Homeland Security and the Homeland Security Council* (Washington, DC: The White House, October 2001).

³ George W. Bush, *Homeland Security Presidential Directive 1: Organization and Operation of the Homeland Security Council* (Washington, DC: The White House, October 2001).

⁴ National Commission on Terror Attacks, *Entry of the 9/11 Hijackers into the United States: Staff Statement No. 1* (Washington, DC: U.S. National Commission on Terror Attacks, January 2004), 2.

⁵ *Ibid.*, 9.

⁶ National Commission on Terror Attacks, *The 9/11 Commission Report* (Washington, DC: U.S. National Commission on Terror Attacks, January 2004), 352.

⁷ National Commission on Terror Attacks, *Entry of the 9/11 Hijackers into the United States: Staff Statement No. 1*, 1.

⁸ George W. Bush, *Homeland Security Presidential Directive 2: Combating Terrorism Through Immigration Policies* (Washington, DC: The White House, October 2001), 1.

⁹ *Ibid.*, 2.

¹⁰ Chad C. Haddal, *People Crossing Borders: An Analysis of U.S. Border Protection Policies* (Washington DC: Congressional Research Service, May 2010), 33.

¹¹ U.S. Government Accountability Office, *Border Patrol: Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness* (Washington, DC: U.S. Government Accountability Office, August 2009), 5.

¹² Laura L. Myers, "Border Security – Take Two," *C4ISR Journal*, March 2011, <http://www.c4isrjournal.com/story.php?F=5635722> (accessed March 13, 2011).

¹³ U.S. Government Accountability Office, *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border* (Washington, DC: U.S. Government Accountability Office, February 2011), 8.

¹⁴ U.S. Government Accountability Office, *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border*, 10.

¹⁵ During this time, the flow of alcohol across the border in violation of the Prohibition Act was the major commodity being transported illegally.

¹⁶ Fred L. Koestler, "Bracero Program," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/omb01> (accessed February 13, 2011).

¹⁷ Ibid.

¹⁸ Fred L. Koestler, "Operation Wetback," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/pqo01> (accessed February 13, 2011).

¹⁹ Ibid.

²⁰ Michael T. McCaul, chmn., *A Line in the Sand: Confronting the Threat at the Southwest Border* (Washington DC: House Committee on Homeland Security, December 2006), 3.

²¹ U.S. Government Accountability Office, *International Trade: U.S. Agencies Need Greater Focus to Support Mexico's Successful Transition to Liberalized Agricultural Trade under NAFTA* (Washington, DC: U.S. Government Accountability Office, May 2005), 12.

²² U.S. Department of Commerce, International Trade Administration, "Top U.S. Trade Partners," http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003218.pdf (accessed March 3, 2011).

²³ Janet Napolitano, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland* (Washington, DC: Department of Homeland Security, February 2010), 46-48.

²⁴ Obama, *A National Security Strategy*, 7.

²⁵ Kristin M. Finklea, coord., *Southwest Border Violence: Issues in Identifying and Measuring Spillover Violence* (Washington DC: Congressional Research Service, August 2004), 7.

²⁶ Ibid., 4.

²⁷ McCaul, *A Line in the Sand: Confronting the Threat at the Southwest Border*, 29-30.

²⁸ The term "Coyote" refers to persons that lead groups of illegal aliens across the U.S. border and to their final destination for a price. U.S. Government Accountability Office, *Border Patrol: Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, 16.

²⁹ “Iranian Suicide-Bombing Book Found in Arizona Desert,” January 28, 2011, <http://www.homelandsecuritynewswire.com/iranian-suicide-bombing-book-found-arizona-desert> (accessed February 12, 2011).

³⁰ Special Interest Countries are defined by U.S. State Department as those countries that pose a potential terrorist threat to the United States. U.S. Government Accountability Office, *Border Patrol: Checkpoints Contribute to Border Patrol’s Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, 18-19.

³¹ U.S. Government Accountability Office, *Border Patrol: Checkpoints Contribute to Border Patrol’s Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, 5.

³² McCaul, *A Line in the Sand: Confronting the Threat at the Southwest Border*, 29.

³³ “Ciudad Juarez Sees 40 Killed in Violent Weekend,” February 21, 2011, <http://www.bbc.co.uk/news/world-latin-america-12521696> (accessed March 3, 2011).

³⁴ U.S. State Department, “Travel Warning, U.S. Department of State, Bureau of Consular Affairs: Mexico,” http://travel.state.gov/travel/cis_pa_tw/tw/tw_4755.html (accessed January 10, 2011).

³⁵ William Finnegan, “In the Name of the Law,” October 18, 2010, http://www.newyorker.com/reporting/2010/10/18/101018fa_fact_finnegan (accessed January 12, 2011).

³⁶ Gustavo Ruiz, “Mexicans March in Support of “Craziest” Kingpin,” December 12, 2010, http://www.huffingtonpost.com/2010/12/13/mexicans-march-in-support_n_795738.html (accessed January 15, 2011).

³⁷ Napolitano, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, 19.

³⁸ *United States Immigration and Customs Enforcement Home Page*, <http://www.ice.gov/about/overview/> (accessed February 2, 2011).

³⁹ R. Chuck Mason, *Securing America’s Border: The Role of the Military* (Washington, DC: Congressional Research Service, June 2010), 4-5.

⁴⁰ *Joint Task Force North Home Page*, <http://www.jtfn.northcom.mil/default.htm> (accessed January 15, 2011).

⁴¹ The Services current overseas obligations are a significant factor in any increase of support requested which would require significant research that cannot be explored here.

⁴² United States Department of Labor, Bureau of Labor and Statistics, “Occupational Outlook Handbook, 2010-11 Edition: Police and Detectives,” <http://www.bls.gov/oco/ocos160.htm#outlook> (accessed February 12, 2011).

⁴³ Local law enforcement includes state and local city police, to include sheriffs and tribal police.

⁴⁴ Jana Winter, "Feds Issue Terror Watch for the Texas/Mexico Border," May 26, 2010, <http://www.foxnews.com/us/2010/05/26/terror-alert-mexican-border/> (accessed December 12, 2010).

⁴⁵ Napolitano, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, 44.

⁴⁶ Michael John Garcia, coord., *State Efforts to Deter Unauthorized Aliens: Legal Analysis of Arizona's S.B. 1070* (Washington DC: Congressional Research Service, May 2010), 2.

⁴⁷ U.S. Government Accountability Office, *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Washington, DC: U.S. Government Accountability Office, December 2010), 31.

⁴⁸ Napolitano, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland*, 27.

⁴⁹ The ways in this case are the necessary direction and political support of the Obama administration. The means are the personnel and technologies needed to enforce the existing laws that are already in place.