



Testimony

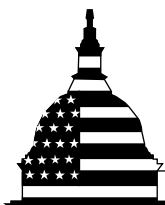
Before the Subcommittee on Border and
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BORDER SECURITY

Observations on Costs, Benefits, and Challenges of a Department of Defense Role in Helping to Secure the Southwest Land Border

Statement of Brian J. Lepore, Director
Defense Capabilities and Management Issues



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Why GAO Did This Study

DHS reports that the southwest border continues to be vulnerable to cross-border illegal activity, including the smuggling of humans and illegal narcotics. Several federal agencies are involved in border security efforts, including DHS, DOD, Justice, and State. In recent years, the National Guard has played a role in helping to secure the southwest land border by providing the Border Patrol with information on the identification of individuals attempting to cross the southwest land border into the United States. Generally, the National Guard can operate in three different statuses: (1) state status—state funded under the command and control of the governor; (2) Title 32 status—federally funded under command and control of the governor; and (3) Title 10 status—federally funded under command and control of the Secretary of Defense.

This testimony discusses (1) the costs and benefits of a DOD role to help secure the southwest land border, including the deployment of the National Guard, other DOD personnel, or additional units; (2) the challenges of a DOD role at the southwest land border; and (3) considerations of an increased DOD role to help secure the southwest land border.

The information in this testimony is based on work completed in September 2011, which focused on the costs and benefits of an increased role of DOD at the southwest land border. See *Observations on the Costs and Benefits of an Increased Department of Defense Role in Helping to Secure the Southwest Land Border*, [GAO-11-856R](#) (Washington, D.C.: Sept. 12, 2011).

View [GAO-12-657T](#). For more information, contact Brian J. Lepore at (202) 512-4523 or leporeb@gao.gov.

April 17, 2012

BORDER SECURITY

Observations on Costs, Benefits, and Challenges of a Department of Defense Role in Helping to Secure the Southwest Land Border

What GAO Found

The National Defense Authorization Act for Fiscal Year 2011 mandated that GAO examine the costs and benefits of an increased Department of Defense (DOD) role to help secure the southwest land border. This mandate directed that GAO report on, among other things, the potential deployment of additional units, increased use of ground-based mobile surveillance systems, use of mobile patrols by military personnel, and an increased deployment of unmanned aerial systems and manned aircraft in national airspace. In September 2011, GAO reported that DOD estimated a total cost of about \$1.35 billion for two separate border operations—Operation Jump Start and Operation Phalanx—conducted by National Guard forces in Title 32 status from June 2006 to July 2008 and from June 2010 through September 30, 2011, respectively. Further, DOD estimated that it has cost about \$10 million each year since 1989 to use active duty Title 10 forces nationwide, through its Joint Task Force-North, in support of drug law enforcement agencies with some additional operational costs borne by the military services. Agency officials stated multiple benefits from DOD's increased border role, such as assistance to the Department of Homeland Security (DHS) Border Patrol until newly hired Border Patrol agents are trained and deployed to the border; providing DOD personnel with training opportunities in a geographic environment similar to current combat theaters; contributing to apprehensions and seizures and deterring other illegal activity along the border; building relationships with law enforcement agencies; and strengthening military-to-military relationships with forces from Mexico.

GAO found challenges for the National Guard and for active-duty military forces in providing support to law enforcement missions. For example, under Title 32 of the United States Code, National Guard personnel are permitted to participate in law enforcement activities; however, the Secretary of Defense has precluded National Guard forces from making arrests while performing border missions because of concerns raised about militarizing the U.S. border. As a result, all arrests and seizures at the southwest border are performed by the Border Patrol. Further, DOD officials cited restraints on the direct use of active duty forces, operating under Title 10 of the United States Code in domestic civilian law enforcement, set out in the Posse Comitatus Act of 1878. In addition, GAO has reported on the varied availability of DOD units to support law enforcement missions, such as some units being regularly available while other units (e.g., ground-based surveillance teams) may be deployed abroad—making it more difficult to fulfill law enforcement requests.

Federal officials stated a number of broad issues and concerns regarding any additional DOD assistance in securing the southwest border. DOD officials expressed concerns about the absence of a comprehensive strategy for southwest border security and the resulting challenges to identify and plan a DOD role. DHS officials expressed concerns that DOD's border assistance is ad hoc in that DOD has other operational requirements. DOD assists when legal authorities allow and resources are available, whereas DHS has a continuous mission to ensure border security. Further, Department of State and DOD officials expressed concerns about the perception of a militarized U.S. border with Mexico, especially when Department of State and Justice officials are helping civilian law enforcement institutions in Mexico on border issues.

Chairman Miller, Ranking Member Cuellar, and Members of the Subcommittee:

I am pleased to be here today to discuss our observations on the costs, benefits, and challenges of a Department of Defense (DOD) role in helping to secure the southwest land border. The Department of Homeland Security (DHS) reports that the southwest border continues to be vulnerable to cross-border illegal activity, including the smuggling of humans and illegal narcotics. Several federal agencies are involved in border security efforts, including the Departments of Homeland Security, Defense, Justice, and State. In recent years, the National Guard has played a role in helping to secure the southwest land border by providing the Border Patrol with information on the identification of individuals attempting to cross the southwest land border into the United States. Last year, we reported to the Senate and House Armed Services Committees our observations on the use of the National Guard and active duty forces to help secure the southwest land border of the United States as directed by the Ike Skelton National Defense Authorization Act for Fiscal Year 2011.¹

My statement today is based on our work conducted in 2011 and will examine (1) the costs and benefits of a DOD role to help secure the southwest land border, including the deployment of the National Guard, other DOD personnel, or additional units; (2) the challenges associated with a DOD role at the southwest land border; and (3) considerations of an increased DOD role to help secure the southwest land border.

To conduct this work, we reviewed our previous assessments of southwest land border security and key documents related specifically to DOD efforts at the southwest land border, such as the legal authorities governing military forces operating under state, Title 32, and Title 10 status; the cost and benefits of recent efforts by DOD to assist DHS, including Operation Jump Start (2006-2008) and Operation Phalanx (2010-2011); DOD after-action reports and evaluations related to recent DOD efforts to support law enforcement efforts at the southwest land border; strategic and operational plans, and guidance related to

¹See Pub. L. No. 111-383, §1057 (2011) for the mandate directing our review as well as GAO, *Observations on the Costs and Benefits of an Increased Department of Defense Role in Helping to Secure the Southwest Land Border*, [GAO-11-856R](#) (Washington, D.C.: Sept. 12, 2011).

addressing security concerns at the southwest land border; funding and cost data and sources of funding related to the deployment of DOD personnel, equipment, unmanned aerial systems, and manned surveillance aircraft; and other key documents.

In addition, to better understand the cost, benefits, and challenges of a DOD role in helping to secure the southwest land border, we met with and interviewed officials from DOD, including the Office of the Secretary of Defense, military services, National Guard Bureau, U.S. Northern Command, U.S. Army North, and Joint Task Force-North. Further, to distinguish the impact of an increased DOD role in helping to secure the border, we spoke with officials from DHS, Customs and Border Protection (CBP) (including U.S. Border Patrol, Office of Air and Marine); the Department of Transportation, Federal Aviation Administration; and the Department of State, including the Bureau of International Narcotics and Law Enforcement Affairs and Office of Mexican Affairs.

We performed the work on which this testimony is based in accordance with generally accepted government auditing standards. Additional information on our scope and methodology can be found in the published report.

Background

National Guard

The National Guard, with its dual federal and state roles, has been in demand to meet both overseas operations and homeland security requirements. Over the last decade the National Guard has experienced the largest activation of its forces since World War II. At the same time, the Guard's domestic activities have expanded from routine duties, such as responding to hurricanes, to include activities such as helping to secure U.S. borders. Generally, the National Guard can operate in three different statuses: (1) state status—state funded under the command and control of the governor; (2) Title 32 status—federally funded under command and control of the governor (Title 32 forces may participate in law enforcement activities); and (3) Title 10 status—federally funded under command and control of the Secretary of Defense. Forces serving in Title 10 status are generally prohibited from direct participation in law enforcement activities, without proper statutory authorization, but may work to support civilian law enforcement. Although National Guard forces working in support of law enforcement at the southwest land border have been activated under Title 32, the Secretary of Defense has limited their

activities with regard to law enforcement. Specifically, these National Guard forces are not to make arrests. Since 2006, the National Guard has supported DHS's border security mission in the four southwest border states (California, Arizona, New Mexico, and Texas) through two missions:

- Operation Jump Start (June 2006-July 2008) involved volunteers from the border states and from outside the border states; its mission included aviation, engineering, and entry identification, among others, according to National Guard officials.
- Operation Phalanx (July 2010-September 30, 2011) involved volunteer units and in-state units. The Secretary of Defense limited the National Guard mission to entry identification, criminal analysis, and command and control, according to National Guard officials.

Active Duty Military Forces

In addition to the National Guard, DOD provided support at the southwest land border with active duty military forces operating in Title 10 status. While active duty forces are normally prohibited from direct participation in law enforcement, Congress has at times authorized it. For example, §1004 of the National Defense Authorization Act for Fiscal Year 1991, as amended, allows the Secretary of Defense to provide support for the counterdrug activities of any other department or agency of the federal government or of any state, local, or foreign law enforcement agency if certain criteria, set out in the statute, are met.

Costs and Benefits of a DOD Role in Helping to Secure the Southwest Land Border

Various factors influence the cost of a DOD role at the southwest land border, such as the scope and duration of the mission. Federal agency officials have cited a variety of benefits from having a DOD role at the southwest land border.

Factors that Affect the Cost of a DOD Role at the Southwest Land Border

The National Defense Authorization Act for Fiscal Year 2011 mandated that we examine the costs and benefits of an increased DOD role to help secure the southwest land border. This mandate directed that we report on a number of steps that could be taken that might improve security on the border, including the potential deployment of additional units, increased use of ground-based mobile surveillance systems, use of mobile patrols by military personnel, and an increased deployment of unmanned aerial systems and manned aircraft to provide surveillance of

the southern land border of the United States.² In September 2011, we reported that DOD estimated a total cost of about \$1.35 billion for two separate border operations—Operation Jump Start and Operation Phalanx—conducted by the National Guard forces in Title 32 status from June 2006 to July 2008 and from June 2010 through September 30, 2011, respectively. Further, DOD estimated that it has cost about \$10 million each year since 1989 to use active duty Title 10 forces nationwide, through its Joint Task Force-North, in support of drug law enforcement agencies with some additional operational costs borne by the military services.³

As we considered the various steps we were directed to address in our report, we found that the factors that may affect the cost of a DOD effort are largely determined by the legal status and the mission of military personnel being used, specifically whether personnel are responding under Title 32 or Title 10 (federal status) of the United States Code. For example, in considering the deployment of additional units, if National Guard forces were to be used in Title 32 status, then the factors that may impact the cost include whether in-state or out-of-state personnel are used, the number of personnel, duration of the mission, ratio of officers to enlisted personnel, and equipment and transportation needs. The costs of National Guard forces working at the border in Title 32 status can also be impacted by specific missions. For example, DOD officials told us that if National Guardsmen were assigned a mission to conduct mobile patrols, then they would be required to work in pairs and would only be able to perform part of the mission (i.e., to identify persons of interest). They would then have to contact the Border Patrol to make possible arrests or seizures because the Secretary of Defense has precluded National Guardsmen from making arrests or seizures during border security missions. Border Patrol agents, however, may individually conduct the full range of these activities, thus making the use of Border Patrol agents for these activities more efficient.

At the time of our review, Title 10 active duty military forces were being used for missions on the border, and cost factors were limited primarily to

² See [GAO-11-856R](#).

³The Deputy Assistant Secretary of Defense for Counternarcotics receives about \$1.1 billion annually for counternarcotics efforts, of which about \$10 million goes towards law enforcement mission support needs nationwide, according to DOD officials.

situations whereby DOD may provide military support to law enforcement agencies for counternarcotic operations. Support can include direct funding, military personnel, and equipment. With the estimated \$10 million that DOD spends each year for Title 10 active duty forces in support of drug law enforcement agencies nationwide, DOD is able—through its Joint Task Force-North—to support approximately 80 of about 400 requests per year for law enforcement assistance. These funds have been used for activities in support of law enforcement such as operations, engineering support, and mobile training teams. For example, DOD was able to provide some funding for DOD engineering units that constructed roads at the border. While DOD provided the manpower and equipment, CBP provided the materials. In addition, DOD was able to provide some funding for DOD units that provided operational support (e.g., ground based mobile surveillance unit) to law enforcement missions.

We also reported on the cost factors related to deploying manned aircraft and unmanned aerial systems. DOD officials did not report any use of unmanned aerial systems for border security missions because these systems were deployed abroad. DOD officials, however, did provide us with cost factors for the Predator and Reaper unmanned aerial systems. Specifically, in fiscal year 2011, the DOD Comptroller reported that a Predator and a Reaper cost \$859 and \$1,456 per flight hour, respectively. DOD uses maintenance costs, asset utilization costs, and military personnel costs to calculate these figures. In addition, DOD officials identified other factors that may impact operating costs of unmanned aerial systems, including transportation for personnel and equipment, rental or lease for hanger space, and mission requirements.

With regard to manned aircraft, DOD provided cost factors for a Blackhawk helicopter and a C-12 aircraft, which were comparable to the type of rotary and fixed-wing aircraft used by DHS. For example, in fiscal year 2011, DOD reported that a Blackhawk helicopter and a C-12 aircraft cost \$5,897 and \$1,370 per flight hour, respectively. DOD uses maintenance costs, asset utilization costs, and military personnel costs to develop their flight hour estimates. Furthermore, according to DOD officials, in fiscal year 2011, DOD contracted for a Cessna aircraft with a forward-looking infrared sensor (known as the Big Miguel Program), which costs \$1.2 million per year and assisted at the southwest land border.

Federal Officials See Some Benefits of a DOD Role in Helping to Secure the Border

Federal officials cited a variety of benefits from a DOD role to help secure the southwest land border. For example, DOD assistance has (1) provided a bridge or augmentation until newly hired Border Patrol agents are trained and deployed to the border; (2) provided training opportunities for military personnel in a geographic environment similar to combat theaters abroad; (3) contributed to apprehensions and seizures made by Border Patrol along the border; (4) deterred illegal activity at the border; (5) built relationships with law enforcement agencies; and (6) maintained and strengthened military-to-military relationships with forces from Mexico. Specifically with regard to Operation Jump Start (June 2006-July 2008), CBP officials reported that the National Guard assisted in the apprehension of 186,814 undocumented aliens, and in the seizure of 316,364 pounds of marijuana, among other categories of assistance, including rescues of persons in distress and the seizure of illicit currency. Based on these reported figures, the National Guard assisted in 11.7 percent of all undocumented alien apprehensions and 9.4 percent of all marijuana seized on the southwest land border.⁴ During the National Guard's Operation Phalanx (July 2010-June 30, 2011), CBP reported that as of May 31, 2011, the National Guard assisted in the apprehension of 17,887 undocumented aliens and the seizure of 56,342 pounds of marijuana. Based on these reported figures, the National Guard assisted in 5.9 percent of all undocumented alien apprehensions and 2.6 percent of all marijuana seized on the southwest land border. In fiscal year 2010, active duty military forces (Title 10), through Joint Task Force-North, conducted 79 missions with 842 DOD personnel in support of law enforcement and assisted in the seizure of about 17,935 pounds of marijuana, assisted in the apprehension of 3,865 undocumented aliens, and constructed 17.26 miles of road, according to DOD officials.⁵

With regard to unmanned aerial systems at the time of our report, DOD had fewer systems available, since they were deployed to missions abroad, including operations in Afghanistan, Iraq, and elsewhere.

⁴The official start date for *Operation Jump Start* was June 15, 2006, and the official end date was July 15, 2008. Data from CBP is reported monthly, and as the beginning and end dates of *Operation Jump Start* fell in the middle of the calendar month, for the purposes of this analysis, the 24-month period analyzed was July 2006 (the first full month of the mission) through June 2008 (the last full month of the mission).

⁵Statistics on apprehension and seizure amounts were provided to DOD by CBP. DOD does not independently collect information on apprehensions and seizures, since DOD is not involved in those aspects of the law enforcement mission.

Moreover, DOD's access to the national airspace is constrained given the safety concerns about unmanned aerial systems raised by the Federal Aviation Administration, specifically the ability of the unmanned aerial system to detect, sense, and avoid an aircraft in flight. We also reported that, conversely, pilots of manned aircraft have the ability to see and avoid other aircraft, and thus may have more routine access to the national airspace. Further, DOD reports that manned aircraft are effective in the apprehension of undocumented aliens. For example, during fiscal year 2011, DOD leased a manned Cessna aircraft (the Big Miguel Program) that was used to assist in the apprehension of at least 6,500 undocumented aliens and the seizure of \$54 million in marijuana, as reported to DOD by DHS.

Challenges of a DOD Role in Helping to Secure the Southwest Land Border

A number of challenges exist for both the National Guard and for active-duty military forces in providing support to law enforcement missions on the southwest land border.

National Guard

National Guard personnel involved in activities on the border have been under the command and control of the governors of the southwest border states and have received federal funding in Title 32 status. In this status, National Guard personnel are permitted to participate in law enforcement activities; however, the Secretary of Defense has limited their activities, which has resulted in the inability of the National Guard units to make arrests while performing border security missions. The National Guard mission limitations are based in part on concerns raised by both DOD and National Guard officials that civilians may not distinguish between Guardsmen and active duty military personnel in uniform, which may lead to the perception that the border is militarized. Therefore, all arrests and seizures at the southwest land border are performed by the Border Patrol.

Additionally, we found that the temporary use of the National Guard to help secure the border may give rise to additional challenges. For example, we reported that the use of out-of-state Guardsmen for long-term missions in an involuntary status may have an adverse effect on future National Guard recruitment and retention, according to National Guard officials. Finally, CBP officials noted that the temporary nature of National Guard duty at the border could impact long-term border security planning. These impacts are due to difficulties of incorporating the National Guard into a strategic border security plan, given the variety and

number of missions that the National Guard is responsible for, including disaster assistance.

Active Duty Military Forces

In meeting with DOD officials, we heard of multiple challenges to providing support to law enforcement missions. Specifically, there are legal restraints and other challenges that active duty forces must be mindful of when providing assistance to civilian law enforcement. For example, the 1878 Posse Comitatus Act, 18 U.S.C. §1385, prohibits the direct use of Title 10 (federal) forces in domestic civilian law enforcement, except where authorized by the Constitution or an act of Congress. However, Congress has authorized military support to law enforcement agencies in specific situations such as support for the counterdrug activities of other agencies.⁶

DOD further clarifies restrictions on direct assistance to law enforcement with its guidance setting out the approval process for Title 10 forces providing operational support for counternarcotic law enforcement missions.⁷ The request of law enforcement agencies for support must meet a number of criteria, including that the mission must:

- Have a valid counterdrug nexus.
- Have a proper request from law enforcement (the request must come from an appropriate official, be limited to unique military capabilities, and provide a benefit to DOD or be essential to national security goals).
- Improve unit readiness or mission capability.
- Provide a training opportunity to increase combat readiness.

⁶ See Pub. L. No. 101-510, §1004 (1990), as amended. For additional examples of statutes in which Congress has authorized military support to law enforcement, see 10 U.S.C. § 124 and 10 U.S.C. § § 371-382. See also 10 U.S.C. §375, which directs the Secretary of Defense to prescribe regulations to ensure that activities carried out in support of civilian law enforcement agencies, under the authorities provided in Chapter 18 of Title 10 of the United States Code, do not include or permit direct participation by a member of the Army, the Navy, the Air Force, or the Marine Corps in a search, seizure, arrest or other similar activity unless participation in such activity by such member is otherwise authorized by law.

⁷ Deputy Secretary of Defense Memorandum, *Department Support to Domestic Law Enforcement Agencies Performing Counternarcotic Activities* (October 2, 2003).

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- Avoid the use of Title 10 forces (military services) for continuing, ongoing, long-term operation support commitments at the same location.

Given the complexity of legal authorities and policy issues related to DOD providing support to law enforcement and the number of DOD entities that must approve a support mission by Title 10 forces, it can take up to 180 days to obtain final approval from the Office of the Secretary of Defense to execute a mission in support of law enforcement. While supporting law enforcement, DOD may be subject to certain limitations. For example, one limitation is that DOD units working on border missions cannot carry loaded weapons. Instead, DOD units working on the border rely on armed Border Patrol agents, who are assigned to each military unit to provide protection.

In addition, we reported in September 2011 that DOD's operational tempo may impact the availability of DOD units to fill law enforcement support missions. While some DOD units are regularly available to meet specific mission needs at the border (e.g., mechanized units to construct roads), other DOD units (e.g., ground-based surveillance teams) are deployed or may be deployed abroad making it more difficult to fulfill law enforcement requests at any given time. Further, DOD officials we spoke with also raised information-sharing challenges when providing support to law enforcement missions. For example, DOD officials commented that because there are different types of law enforcement personnel that use information differently (e.g., make an immediate arrest or watch, wait, and grow an investigation leading to a later arrest), it was sometimes difficult for DOD to understand whether information sharing was a priority among law enforcement personnel. DOD officials also noted that a lack of security clearances for law enforcement officials affects DOD's ability to provide classified information to CBP.

Considerations of an Increased DOD Role at the Southwest Land Border

During our examination of an increased role for DOD at the southwest land border, agency officials we spoke with raised a number of broader issues and concerns surrounding any future expansion of such assistance. Agency officials identified four areas of concern:

- DOD officials expressed concerns about the absence of a comprehensive strategy for southwest border security and the resulting challenges to identify and plan a DOD role.
- DHS officials expressed concerns that DOD's border assistance is ad hoc in that DOD has other operational requirements. DOD assists

when legal authorities allow and resources are available, whereas DHS has a continuous mission to ensure border security.

- Department of State and DOD officials expressed concerns that greater or extended use of military forces on the border could create a perception of a militarized U.S. border with Mexico, especially when Department of State and Justice officials are helping support civilian law enforcement institutions in Mexico to address crime and border issues.
- Federal Aviation Administration officials, who are part of the Department of Transportation, stated that they are concerned about safety in the national airspace, due to concerns about the ability of unmanned aerial systems to detect, sense, and avoid an aircraft in flight. The Federal Aviation Administration has granted DHS authority to fly unmanned aerial systems to support its national security mission along the U.S. southwest land border, and is working with DOD, DHS, and the National Aeronautics and Space Administration to identify and evaluate options to increase unmanned aerial systems access in the national airspace.

We did not make any recommendations in our September 2011 report.

Chairman Miller, Ranking Member Cuellar, and Members of the Subcommittee, this concludes my prepared statement. I am pleased to answer any questions that you may have at this time.

GAO Contacts and Staff Acknowledgments

For future questions about this statement, please contact me on (202) 512-4523 or LeporeB@gao.gov. Individuals making key contributions to this statement include Mark Pross, Assistant Director; Yecenia Camarillo; Carolynn Cavanaugh; Nicole Willems; Lori Kmetz; Charles Perdue; Richard Powelson; Terry Richardson; and Jason Wildhagen.

Related GAO Products

Border Security: Additional Steps Needed to Ensure That Officers Are Fully Trained. [GAO-12-269](#). Washington, D.C.: December 22, 2011.

U.S. Customs and Boarder Protection's Border Security Fencing, Infrastructure and Technology Fiscal Year 2011 Expenditure Plan. [GAO-12-106R](#). Washington, D.C.: November 17, 2011.

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Secure Border Initiative: Controls over Contractor Payments for the Technology Component Need Improvement. [GAO-11-68](#). Washington, D.C.: May 25, 2011.

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