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MASTER OF MILITARY STUDIES

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**Mexican Drug Trafficking Organizations:
A Threat to the United States' National Security**

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Mexican Drug Trafficking Organizations:
A Threat to the United States' National Security

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February 24, 2011

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Executive Summary

Title: Mexican Drug Trafficking Organizations: A Threat to the United States' National Security.

Author: Special Agent Michael Durham, Bureau of Alcohol, Tobacco, Firearms, and Explosives

Thesis: Mexican drug trafficking organizations (DTOs) present a threat the United States' national security. Consequently, the U.S. must employ a whole-of-government approach to defeat the threat. However, this paper will focus specifically on the following: the threat that DTOs present to the U.S., the permeability of the southwest border (SWB); and the political and social challenges of deploying armed U.S. troops to the SWB to protect U.S. citizens.

Discussion: Over the past two decades, DTOs operated throughout Mexico and South America with little fear of prosecution and established drug-trafficking networks across the SWB and into the United States. DTOs currently operate in at least 2500 cities within the U.S. and launder tens of billions of dollars each year from drug proceeds. Furthermore, since 2006, over 30,000 drug-related murders, including murders of politicians, military personnel, and law enforcement officers, have occurred in Mexico and in the U.S., and the continued spread of violence across the permeable SWB threatens the stability of the U.S.

Today, DTOs employ the use of terror, information, psychological, and criminal warfare to influence the governments and the citizenry of both the U.S. and Mexico. Whether DTOs resemble a terrorist organization, a criminal organization, or a hybrid of each, political leaders struggle with finding the appropriate avenue to counter and eventually alleviate the threat that DTOs present to the U.S. security. With this in mind, the U.S. government must employ a whole-of-government approach, including an increase of law enforcement personnel and a deployment of armed federal troops to the southern and northern borders of the U.S., to prevent DTOs from entering the U.S. However, this paper will focus specifically on the permeable SWB, the resulting threat of violence from DTOs, and the challenges of deploying armed federal troops to stop the influx of DTOs into the U.S.

Conclusion: The illicit sales of narcotics and the resulting violence by DTOs by DTOs, and their affiliated street gangs, threaten the national security of the United States. For decades, DTOs have been allowed to actively pursue narcotics sales throughout Mexico and South America with little fear of prosecution. Consequently, DTOs have increasingly spread violence throughout Mexico and into the United States across the permeable SWB. Seemingly each day, news agencies promulgate stories of mass murders, kidnappings, beheadings, mutilations, home invasion robberies, and murders of law enforcement officers in

Mexico, and in U.S. communities as well, and since 2006, over 30,000 drug-related murders have occurred in Mexico.

In the past, the Federal government has relied solely on the efforts of law enforcement personnel to combat the illicit activities of Mexican DTOs, and to secure the SWB. However, the Federal government must employ the full spectrum of national power, including an increase of law enforcement personnel and a deployment of armed U.S. military personnel to the southern and northern borders of the U.S., to have a lasting effect. The deployment of troops, however, presents a number of challenges to policy-makers, including PCA restrictions, training deficiencies, and public sensitivities. Yet, the deployment of troops would deter terrorists and heavily armed drug smugglers from crossing into the US.

While a whole-of-government approach plays a significant role in the fight against DTOs, the most important role belongs to the Government of Mexico. Calderon and his administration must bear the brunt of the responsibility for the growing DTO network. Mexico's strategy should include an open-border policy to allow U.S. law enforcement, with military assistance, to actively investigate and arrest mid and upper-level DTO operatives and prosecute the same in U.S. courts. The effort will be instrumental in alleviating the DTO security threat to the U.S.

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Introduction

Mexican drug trafficking organizations (DTOs) present a threat to the United States' national security. This paper focuses specifically on the permeable southwest border (SWB) of the U.S., the threat of violence from DTOs, and the challenges of deploying armed federal troops to stop the influx of DTOs into the U.S. National security, as defined by the U.S. Armed Services, is "...the condition provided by: a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert."¹ DTOs clearly fall under this definition as they represent covert non-state actors that cross the southwest border (SWB), legally and illegally, to subvert the rule of law in the U.S. by selling illicit narcotics and committing violent crimes and destroying the nation's stability.

Over the past two decades, DTOs operated throughout Mexico and South America with little fear of prosecution and established drug-trafficking networks across the SWB and into the United States. DTOs currently operate in at least 2,500 cities within the U.S. and launder tens of billions of dollars each year from drug proceeds.² Furthermore, since 2006, over 30,000 drug-related murders, including murders of politicians, military personnel, and law enforcement officers, have occurred in Mexico and in the U.S., and the continued spread of violence across the permeable SWB threatens the stability of the U.S.³

Today, DTOs employ the use of terrorism, information, psychological, and criminal warfare to influence the governments and the citizenry of both the U.S. and Mexico. As a result

of the DTOs use of a wide range of conflict, the lines delineating insurgency, terrorism, and criminal organization, become less clear. In a speech at the Council on Foreign Relations in September 2010, Secretary of State Hillary Clinton suggested that Mexican DTOs resembled an insurgency similar to Colombia's insurgency in the early 1990s.⁴ Clinton's remarks were met with political criticism on both sides of the border; however, the remarks brought to light the severity of the DTO threat to both Mexico and the U.S. While DTOs may resemble an insurgency, the suggestion may be far-reaching. As opposed to overthrowing the Government of Mexico, DTOs prefer a de-facto exemption from the government's rule of law. The exemption allows DTOs to operate throughout Mexico with impunity, and the resulting relationship with the government would allow the organizations to covertly subvert the rule of law in the U.S., while maintaining a safe-haven in Mexico that is free from international law.

Regardless of whether DTOs are an insurgency, a terrorist organization, a criminal organization, or a hybrid of each, political leaders struggle with finding the appropriate avenue to counter and eventually alleviate the threat that DTOs present to the U.S. security. With this in mind, the U.S. government must employ a whole-of-government approach, including an increase of law enforcement personnel and a deployment of armed federal troops to the southern and northern borders of the U.S., to prevent DTOs from entering the U.S.

Background

Mexican DTOs first entered the U.S. market in the mid 1960s when traffickers assisted in the sale and dissemination of marijuana in Mexico and in U.S. cities along the SWB. In the 1990s, as the U.S. and Colombian governments cracked down on existing cartels in Colombia,

drug supply routes through Florida diminished, causing Colombian cartels to seek alternate routes into the U.S. The proximity of the U.S., one of the largest markets for illicit drugs, and the poor economic state of Mexico presented great opportunities for the cartels. By the late 1990s, Mexican cartels began taking advantage of the highly profitable trade by establishing an expansive networking system throughout Mexico and in the U.S. In 2011, authorities estimate that Mexican DTOs generate anywhere from \$17 billion to \$47 billion dollars annually from the drug trade. Since most of the profits flow through illegal channels, the dollar amounts may be substantially higher than estimated.

As America's demand for illicit drugs have increased, the four most powerful and violent Mexican DTOs, the Sinaloa Cartel, the Gulf Cartel/Los Zetas, the Juarez Cartel, and the Tijuana Cartel, have expanded their drug trafficking networks into the U.S. The Sinaloa Cartel, led by Joaquin Guzman, manufactures, smuggles, and distributes high quantities of methamphetamines, marijuana, and heroin into the U.S. and facilitates the shipment of multiple tons of cocaine from Columbia to the United States each year.⁵ Guzman, better known as *El Chapo* in Mexico, established himself as a respected narcotics trafficker after facilitating cocaine purchases in the mid 1990s with the Colombian-based cartels. His popularity and wealth steadily grew throughout the early part of the century and, in November 2010, Forbes Magazine recognized Guzman as one of the richest and most powerful men in the world.⁶

The Gulf Cartel, currently led by Jorge Eduardo Costilla Sanchez, maintains close contacts with Colombian narcotics suppliers and distributes cocaine, marijuana, methamphetamines, and heroin into the US. The cartel is present in 13 Mexican states with

important areas of operation in the states of Tamaulipas, Nuevo Leon, and Michoacan.⁷ Known for its violent methods, the cartel imposes monetary penalties or taxes on anyone transporting narcotics and/or aliens through its territory. In recent years, the Gulf Cartel integrated with the Los Zetas, a team of former military men who had previously assisted the Gulf Cartel in a battle with the Sinaloa Cartel for control of the Nuevo Laredo corridor, one of the most profitable smuggling access points into Texas.⁸ While the Gulf Cartel continues its smuggling routes stretching from Matamoros to Nuevo Laredo, the Zetas operate a parallel network in Reynosa and Miguel Alemán.⁹

The Juarez Cartel operates in Ciudad Juarez, Chihuahua, Mexico, across the border from El Paso, Texas, and trafficks narcotics throughout the U.S. The cartel uses violent methods, including decapitation and mutilation, as a means to intimidate not only the general public and local law enforcement officials, but its primary rival, the Sinaloa Cartel.¹⁰

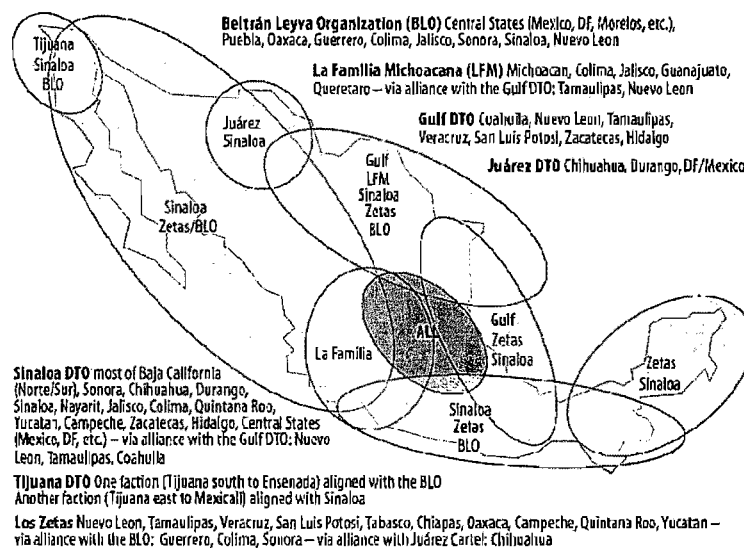
The Tijuana Cartel exercises control over northwest Mexico, particularly Tijuana, Mexicali, Tecate, Ensenada in Baja California, Zacatecas, and parts of Sinaloa and controls the Tijuana/Mexicali drug corridors to California.¹¹ The organization, considered “one of the most powerful, violent, and aggressive trafficking groups in the world,” maintains “high-level contacts within the Mexican law enforcement and judicial systems and is directly involved in street-level trafficking within the United States.”¹²

In February 2010, the major cartels aligned in two factions: the first faction consisting of the Juarez Cartel, the Tijuana Cartel, the Los Zetas, and the Beltran-Leyva Cartel; and the second

faction consisting of the Gulf Cartel, Sinaloa Cartel, and the La Familia Michoacana Cartel.¹³ The collusions created larger, more powerful organizational structures that enabled DTOs to operate more efficiently throughout Mexico and in the U.S.

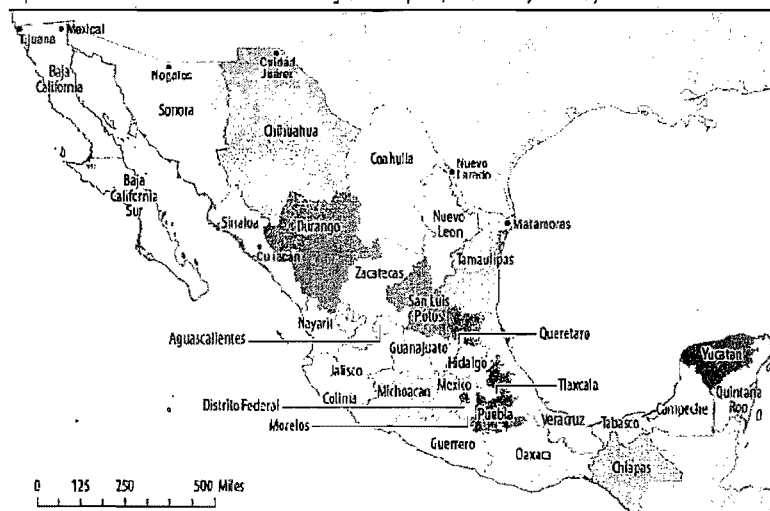
Figure 1 shows the areas of DTO influence within Mexico.¹⁴ However, DTOs work fluidly both geographically and organizationally, and align with others on an as-needed basis.

Figure 1. DTOs Areas of Influence Map



Source: U.S. Drug Enforcement Administration, September 2010, adapted by CRS graphics.

Note: (As of September 10, 2010). The areas of influence are very fluid and the alliances are in constant flux. Geographic information provided for each DTO is intended to show where the organizations operate, not necessarily where they are in control.



The DTO structure includes the involvement of U.S. street gangs to transport and sell narcotics throughout the U.S. According to the *National Drug Intelligence Center*, Mexican DTOs have created extensive networks with U.S. street gangs including the Latin Kings, the Mexican Mafia, La EME, and Mara Salvatrucha (MS-13) in order to control the retail distribution and sales of narcotics throughout the U.S. While the gangs have no known hierarchical relationship with DTOs, they provide a loose-knit, expansive networking system that complements the DTO operation in the U.S. In 2009, “midlevel and retail drug distribution in the United States was dominated by more than 900,000 criminally active gang members representing approximately 20,000 street gangs.”¹⁵ Street gangs offer DTOs an expansive criminal network whose members are familiar with the U.S. drug trade, and more alarmingly, with the policing policies and practices of U.S. law enforcement agencies.

Increase in DTO Violence along SWB

DTOs use low-skilled workers, including the young, the old, and the poor to facilitate drug trafficking across the SWB. Minors are commonly used to transport narcotics and, in some cases, commit murder for a DTO.¹⁶ Consequently, DTOs have essentially erased the line between drug trafficker and civilian by using men, women, and children, regardless of their willingness, to sell or transport narcotics. The forced use of civilians, some of whom never know their employer, provides a convenient buffer for DTO operatives when law enforcement personnel interdict a drug trafficking operation. Moreover, prosecutors face difficult decisions when faced with prosecuting unwitting, and in some cases, unknowing participants in illicit narcotics trafficking.

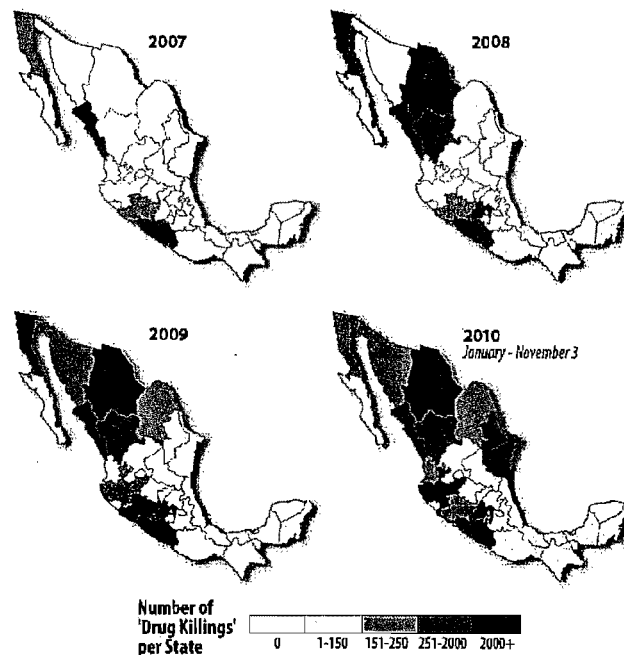
Over the last few years, unconscionable crimes including, murders, decapitations, mutilations, kidnappings, and armed home invasion robberies, have become the norm in cities along the SWB. The violence prompted the U.S. Department of State to warn U.S. citizens that “the U.S. government has no authority to investigate crimes committed in Mexico” and that “many cases of violent crime (in Mexico) are never resolved by Mexican law enforcement.”¹⁷ Furthermore, the murders of two U.S. Customs and Border Patrol (CBP) agents by DTO operatives in 2010, brought to the forefront the extent of DTO influence within U.S. territory. The murders prompted many sheriffs and police chiefs, including Cochise County Sheriff Larry Dever, to assert that the SWB remained vulnerable to terrorists and drug dealers, thus creating a threat to homeland security.¹⁸

Moreover, as recently as November 2010, the House Immigration Reform Caucus (IRC), led by Congressman and IRC Chairman Brian Bilbray, reported that the “rule of law in Mexico has degenerated to a point of near anarchy along our shared border,” thus allowing heavily armed traffickers to overwhelm U.S. border agents and local officers and forcing them to retreat from their duties along the SWB.¹⁹ The Caucus report titled, *Broken Neighbors, Broken Borders*, included an interview of a 19-year-old illegal immigrant who claimed to be an existing member of Los Zetas. The immigrant, who was arrested by the Zapata Sheriff’s Department while smuggling 400 pounds of marijuana across the border, claimed to have committed approximately 19 “executions of men and women of all ages.”²⁰ While the murders provide insight into the violence of DTOs, it’s the revelation that cartel members currently live in the U.S. for “future combat” against U.S. law enforcement officials and competing drug cartels that create the greatest concern for U.S. public safety agencies.²¹ The Caucus report concluded that the U.S.

must immediately deploy at least 25,000 armed troops to the SWB to stop the influx of “heavily armed drug smugglers and Al-Qaeda supporters” into the US.²²

Figure 2 shows the drug trafficking related murders in Mexico by state from 2007 through November 2010.²³

Figure 2. Drug Trafficking-Related Killings in Mexico by State



Source: Crime Indicator Database of the Trans-Border Institute (TBI) at the University of San Diego, adapted by CRS. The data represented are from *Reforma* newspaper.

Current Security at the SWB

While the Department of Homeland Security (DHS) Secretary Janet Napolitano concedes that Mexican drug cartels present a threat to the U.S. national security, she down-played the threat and asserts that the U.S. government has secured “effective control of the great majority”

of both the northern and southern borders of the U.S.²⁴ The Government Accountability Office (GAO) refuted the statement in a February 2011 report that stated the DHS had varying “levels of operational control” for only 873 miles (44 percent) of the 2000 mile SWB.²⁵ Of the 873 miles, only 129 miles were considered “controlled” by law enforcement personnel, while the remaining 744 miles were considered “managed.”²⁶ The remaining 1,100 miles (56 percent), while monitored to a limited degree, are considered highly vulnerable due to inaccessibility by U.S. officials or a lack of law enforcement resources.²⁷

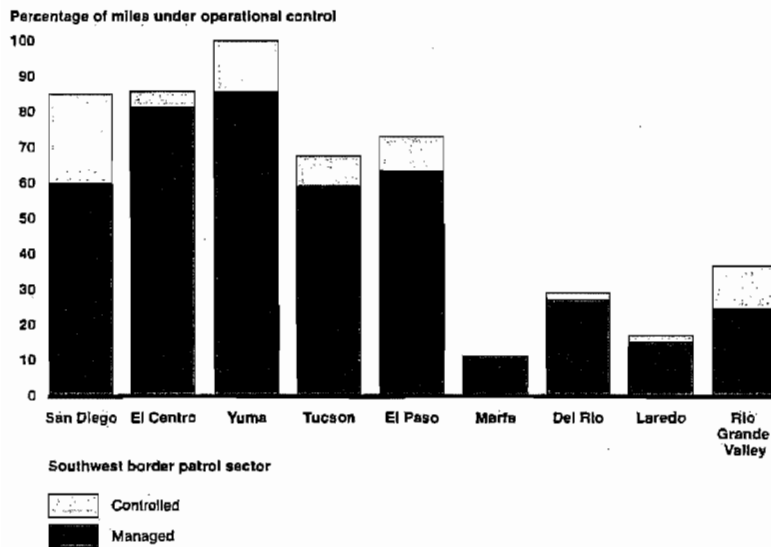
The following table includes the GOA analysis of the levels of current SWB control by the U.S. Border Patrol.²⁵

Table 1: Border Patrol Levels of Border Security Levels of border security	Definition
Controlled	Continuous detection and interdiction resources at the immediate border with high probability of apprehension upon entry.
Managed	Multi-tiered detection and interdiction resources are in place to fully implement the border control strategy with high probability of apprehension after entry.
Monitored	Substantial detection resources in place, but accessibility and resources continue to affect ability to respond.
Low-level monitored	Some knowledge is available to develop a rudimentary border control strategy, but the area remains vulnerable because of inaccessibility or limited resource availability.
Remote/low activity	Information is lacking to develop a meaningful border control strategy because of inaccessibility or lack of resources.

Source: GAO analysis of U.S. Border Patrol ORBBP documents.

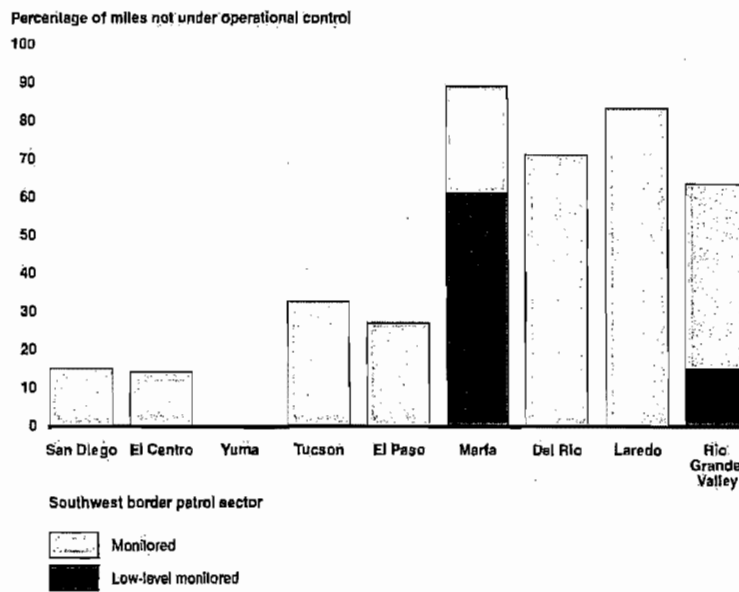
Figures 3 and 4 document the percentage of miles along the SWB currently under varying levels of operational control by CBP.²⁵

Figure 3: Southwest Border Miles under Operational Control of the Border Patrol by Level of Security, as of 9/30/2010.



Source: GAO analysis of Border Patrol data.

Figure 4: Southwest Border Miles That Were Not under Operational Control of the Border Patrol by Level of Security, as of September 30, 2010



Source: GAO analysis of Border Patrol data.

While the Customs and Border Patrol (CBP) contributes significantly to locating and arresting illegal immigrants and DTO operatives at the SWB, it remains under-manned and under-equipped to effectively cover the expansive areas between the ports of entry.²⁸ As a result, DTOs continue to cross the uncontrolled sections of the SWB, unabated by U.S. officials. While DHS continues to implement initiatives such as the use of barriers, remote sensors, manned and unmanned aerial vehicles, and an increase in law enforcement personnel, the reactive approach fails to stop DTOs from crossing the permeable SWB and building enduring relationships that will inevitably strengthen their illicit networking system within the U.S. With this in mind, the U.S. must make an immediate, comprehensive effort, including the use of armed military personnel, to stop DTO operatives from crossing the SWB.

Merida Initiative/National Southwest Border Counternarcotics Strategy

The U.S. Federal government has historically approached the Mexican DTO problem as a U.S. law enforcement matter. However, in 2007, the U.S. Government, in coordination with the Government of Mexico, implemented the *Merida Initiative*, a three-year (2007-2010), \$1.4 billion security cooperation agreement that incorporated training, equipment, and intelligence gathering with law enforcement initiatives to combat drug trafficking, transnational organized crime, and money laundering, specifically in Mexico and Central America.²⁹ The initiative extended U.S. military influence over Mexico and Central America through training and data collection programs and bolstered Mexican and U.S. domestic enforcement efforts and expanded “bilateral and regional cooperation” to disrupt DTO drug trafficking operations and dismantle the leadership structure of transnational crime organizations.³⁰

The early stages of the *Merida Initiative* focused on law enforcement initiatives to stem the illegal export of firearms from the U.S. to Mexico. The firearm strategy stemmed from the theory that only two certainties exist in the drug war: First, that drugs move north from Mexico; and second, that money and guns move south from the U.S. The theory was supported by a statement by the Bureau of Alcohol, Tobacco, Firearms, and Explosive (ATF) that over 90 percent of the traceable guns recovered in Mexico originated in the U.S. While there is no dispute that guns, including pistols and assault rifles, purchased in the U.S. end up in Mexico, the 90 percent claim may be misunderstood by many, including political leaders, law enforcement officials, and military personnel. In fact, many firearms recovered in Mexico are never traced by authorities. There are two reasons for the lack of tracing: First, not all Mexican police departments or military authorities have access to tracing capabilities, particularly to ATF's National Tracing Center (NTC). Second, not all firearms are traceable. While the U.S. requires firearms to be serialized, that requirement extends only to guns manufactured after the implementation of Gun Control Act of 1968. Furthermore, guns manufactured outside the U.S. and destined for other areas of the world are generally not traceable by the NTC. While the 90 percent claim may end up being true, a complete accounting of the recovered firearms in Mexico, including visible inspection by ATF's firearm interstate nexus experts, will be needed to accurately determine where the majority of Mexican crime guns originate.

However, in order to facilitate the tracing process, ATF quickly moved to distribute Spanish language *eTrace* software and the accompanying equipment and training to the 31 states of Mexico.³¹ *ETrace* provides Mexican authorities with direct access to firearms transaction

records maintained by the NTC to identify individuals purchasing and subsequently trafficking firearms to cartel members. Additionally, ATF, in coordination with Mexican officials, “bridged the Integrated Ballistic Identification Systems (IBIS)” which “allows the sharing of digital images, ballistic markings, and other arms-related information” to help identify leads in violent crimes both in Mexico and in the United States.³¹ While the efforts, in time, will assist authorities in identifying the origins of firearms purchased in the U.S. and subsequently recovered in Mexico, the Government of Mexico must establish other enforcement initiatives to stem the flow of firearms from South America and other parts of the world.

Following the implementation of the *Merida Initiative*, U.S. Attorney General (AG) Eric Holder, in 2008, introduced the *National Southwest Border Counternarcotics Strategy* to focus on “increased cooperation between the U.S. and Mexican governments, as well as enhanced communication within U.S. law enforcement agencies” to provide “an effective way forward that will crack down on cartels” to make the U.S. safer.³² The effectiveness of the strategy became evident on October 22, 2009, when U.S. federal authorities concluded *Operation Coronado*, the largest US investigation ever against a Mexican DTO operating in the U.S.³³ The investigation spanned 19 states and led to the arrest of 1,186 people and the seizures of approximately \$33 million, almost 2 metric tons of cocaine, 1,240 kilograms of methamphetamine, 13 kilograms of heroin, 7,430 kilograms of marijuana, and 389 weapons.³⁴ However, the investigation, once again, revealed the extent to which DTOs have spread into the U.S. Even with the successes of the *Merida Initiative* and the *National Southwest Border Counternarcotics Strategy*, U.S. law enforcements agencies face the daunting challenge of investigating transnational organizations with the ability to travel to and from a safe haven in Mexico.

Challenges of Deploying U.S. Military Troops to SWB

Constitutional/Legal Restrictions

While the deployment of military troops would invariably serve as a deterrent for drug traffickers and terrorists, particularly in the rural areas between the United States' 327 land, air, and waterway ports of entry along the SWB, the question remains as to how to use the troops within the borders of the U.S. With the "traditional concern that a powerful military engaged in domestic policies is in a better position to challenge civilian authority," Americans have always accepted the strict separation between civil law enforcement and the U.S. military.³⁵ The establishment of the Posse Comitatus Act (PCA) in 1878, following the Civil War, ensured the separation of entities. Although the PCA criminalizes the use of the Army and Air Force in civil law enforcement, it "does not prohibit all military action in support of civilian law enforcement."³⁶ It leaves open the possibility for use "in cases and under circumstances expressly authorized by the Constitution or an Act of Congress."³⁷

Presently, the U.S. military may be used in a limited civil role, specifically to stop insurrections and to conduct "operations to ensure that Federal laws are being enforced."³⁸ While Title 10, United States Code (USC), Section 375, specifically prohibits military personnel from directly participating in a "search, seizure, arrest, or other similar activity," Congress has increasingly allowed the military to assist civil law enforcement in the fight against drug trafficking organizations. The 1982 Department of Defense Authorization Act, codified under Title 10, USC, Sections 371-374, allows the Department of Defense to share intelligence information, equipment, transportation, facilities, and to maintain and operate equipment during

the detection, monitoring, and communication of air and sea traffic, including aerial reconnaissance, as well as surface traffic outside the United States.³⁹ Military participation in surveillance activities can continue up to 25 miles within the U.S. borders as long as the criminal activity began outside the borders.⁴⁰

While Congress firmly upholds the foundation of the PCA, specifically that military personnel remain prohibited from participating in searches, seizures, and arrests on U.S. soil, advantages exist for placing military personnel in active law enforcement roles along the SWB. As noted earlier, DTOs commonly use un-skilled workers to transport narcotics across the border. It follows that military personnel stationed at the SWB will inevitably confront legal and illegal immigrants in possession of narcotics and, in some cases, deadly weapons. To ensure the safety of both military personnel and the immigrants they confront, military personnel must have authority to search suspicious individuals and illegal immigrants crossing the border. Without active law enforcement authority, any narcotics-related evidence seized from an immigrant will be inadmissible in a domestic court of law. The process would only frustrate the efforts of criminal investigators who commonly use the threat of prosecution to ensure cooperation from drug traffickers.

Short of Congressional changes to the PCA, the President retains authority to deploy active duty armed troops within the U.S. upon “sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence” of the United States.⁴¹ The Presidential authority, derived from Title 10, USC, Sections 332 and 333 allows the President to use both the militia and the armed forces to suppress any insurrection, domestic violence, or

conspiracy if the criminal activity “hinders the execution of the laws of a State” or the U.S. and if law enforcement officials remain unable to protect U.S. citizens’ rights and privileges.⁴² In fact, the President maintains authority to deploy troops in an active law enforcement role to suppress such activity.

For example, in May 1992, President George Bush ordered 4000 active duty soldiers and Marines to Los Angeles, California, to suppress the violence and crime that occurred following the trial and subsequent acquittal of four white officers prosecuted for beating black motorist Rodney King. As crime and violence increased throughout the city, Bush issued Executive Order (EO) 12804 based on Title 10, USC, Sections 331 through 333, to employ troops to suppress the violence and to restore law and order in the Los Angeles and surrounding areas.⁴³

Even though the EO provided authorization for the military to participate in a law enforcement role, the Joint Task Force (JTF) Commander in Los Angeles misunderstood the EO and the exceptions to the PCA.⁴⁴ The Commander, who oversaw the efforts of Soldiers, Marines, and federalized units of the California National Guard, held that, “it was not the military’s mission to solve Los Angeles’ crime problem, nor was the military “trained to do so.”⁴⁵ As a result, the JTF and its accompanying troops became “largely unavailable for most assignments requested by the LAPD.”⁴⁶ Consequently, military troops did little more than provide a show of force as opposed to actively assisting law enforcement personnel.

The Joint Task Force (JTF), known today as JTF-North, under U.S. Northern Command (USNORTHCOM), which coordinates military and civilian law enforcement activities in the United States, recognized the failures of the deployment and later included in its Operational

Support Planning Guide that, “Innovative approaches to providing new and more effective support to law enforcement agencies are constantly being sought, and legal and policy barriers to the application of military capabilities are gradually being eliminated.”⁴⁷

Notwithstanding the above, the Los Angeles incident clearly met the conditions as set forth in the Statutes for the active employment of troops in a law enforcement capacity. However, short of a legislative change in the PCA, the lines become blurred when considering the employment of military personnel along the SWB in an active law enforcement role. History shows that Congress has avoided changes to the PCA, opting instead for amendments that allow for passive military involvement with law enforcement entities.

The President, when considering a military response to the border, must broadly interpret Title 10, USC, Sections 332 and 333. At first blush, the Statutes appear to support the requests outlined by the IRC in *Broken Neighbors, Broken Borders*. Mexican DTOs currently operate within the borders of the U.S. and their crimes include domestic violence, drug trafficking, murder, home invasion robbery, and conspiracy. Through intimidation and murder of law enforcement personnel, DTO crimes hinder the execution of the laws of Texas, Arizona, New Mexico, California, and the United States, thus depriving the American public of protection named in the Constitution and secured by law. Additionally, as noted in the Caucus report, law enforcement authorities along the SWB assert that they are overwhelmed by heavily-armed criminals and unable to protect the rights and privileges of the public. However, should the President choose to use his authority, he would have to withstand the scrutiny of the public, the legislature, and the judiciary.

Should the President choose to use his power to deploy military personnel to the SWB in an active law enforcement role, civil law enforcement training must be provided to military personnel to ensure they have the requisite knowledge of civilian law, particularly when the inevitable mistakes occur during enforcement actions. For instance, in 1997, Corporal Clemente Banuelos, a 22-year-old Marine participating in a four-man patrol in support of a counter-drug initiative, shot and killed Esequiel Hernandez Jr., an 18-year-old high school student who worked as a goat herder on a ridge overlooking Redford, Texas. For unknown reasons, the youth fired at the Marines with a .22 caliber rifle. Banuelos, who feared for his life and the lives of his fellow Marines, returned fire with an M-16 rifle and killed the youth. The incident marked "the first time that military forces, on anti-drug duty, have shot and killed a U.S. citizen."⁴⁸ As a result of the killing, Presidio County prosecutor Albert Valadez pursued a criminal Grand Jury investigation on Banuelos and the other Marines. At that time, Valadez stated, "This is not government soil and we're not on a military base... We're going to act as we would in any case involving a shooting"⁴⁹ The Marines subsequently faced criminal prosecution for the unjustified use of deadly force and for failing to provide medical attention to a dying suspect.

Because of the criminal investigation, the Pentagon suspended military operations on the border and even questioned whether to resume "these kinds of missions."⁵⁰ One top Pentagon anti-drug official asked, "Is it fair to the Banuelos' of the world--who joined the Marines knowing they may go fight in a war and die--that in the conduct of their duties they could end up spending their life in jail for murder?"⁵¹ A good question considering the Federal government placed military personnel in a position without the requisite domestic law enforcement training.

The United States Supreme Court holds that all federal, state, and local law enforcement officers must be trained in their core tasks, including the rules for the use of force.⁵² Consequently, law enforcement officers, having unique rules of engagement, train each day to use the highest restraint during enforcement missions, including search and arrest warrants, and to equally protect dangerous suspects and innocent bystanders from harm. An officer may use as much force as is reasonably necessary, short of deadly force, to retain custody of a suspect. If the suspect resists, the officer may increase the force to counter the resistance and at no time does the officer have a legal duty to retreat. It follows that if the suspect presents the officer, fellow officers, or any other bystander with imminent death or serious bodily harm, the officer may use deadly force to gain custody of the suspect.

Conversely, military personnel train primarily for combat operations in unsecure environments, requiring troops to kill armed combatants whenever necessary to accomplish the mission. While combat training remains the highest priority for troops, young Marines and Soldiers, some with minimal life and professional experience, face the difficult challenge of understanding changes in the rules of engagement, particularly when undertaking an active law enforcement role within the U.S. At first glance, the changes appear simple to implement. However, law enforcement officers are engrained with due process considerations and the rules and regulations as set forth by the U.S. judicial system, whereas many soldiers, unfamiliar with judicial constraints and restraints, focus primarily on simply accomplishing the mission. The difference in mindset places military personnel at a disadvantage when faced with criminal prosecution following the use of deadly force. Oftentimes, an officer's ability or inability to

properly articulate his/her actions following a use of force incident while serving in a law enforcement role and with legal authority determines whether that officer is convicted or acquitted in a civilian court of law.

The Banuelos case also brought to light other military training failures, particularly the requirement that law enforcement officers must render medical aid to a dying suspect at the earliest possible time, even if that officer used deadly force on the suspect. The Marines, one of which was a trained medic, failed to administer first aid or call for emergency medical help for at least twenty minutes after they notified law enforcement officials of the incident.⁵³ The autopsy stated that, "Hernandez did not die instantly, but bled to death."⁵⁴ Understandably, the Marines lacked the legal knowledge, readily known by law enforcement personnel, that requires a law enforcement officer to render medical aid to a dying suspect. An officer who fails to do so faces criminal prosecution, including murder, if the suspect dies.

Despite the grand jury's exoneration, Banuelos and his counterparts faced the unenviable position of articulating their actions during a criminal investigation initiated by a civilian prosecutor. The arrests and subsequent charges, however, highlighted the need for Congress to examine the existing civil laws, particularly those relating to the use of force, to determine how the laws affect military personnel placed in active law enforcement roles within the U.S.

Sensitivities of American Public

While the deployment of armed troops on the SWB presents policy-makers with a number of challenges, the sensitivities of the American public, particularly the infringement or

perceived infringement upon the freedoms and liberties of the public, should remain the highest priority for U.S. law-makers. However, as DTO violence spreads into the U.S., the privileges normally enjoyed by the American public may be adversely affected to ensure an individual's safety. Armed troops may be required to conduct patrols; surveillance; checkpoints; identification checks; and in some cases, temporary detainments, and the added security may become the norm in some border towns.

Future Initiatives

While the *Merida Initiative* provides a collaborative U.S./Mexico effort to fight DTOs, U.S. involvement within the borders of Mexico remains limited. Federal law enforcement agencies, namely the ATF and the Drug Enforcement Administration (DEA), provide Mexican law enforcement agencies with information and training to strengthen their institutional capabilities, while U.S. military personnel provide specialized training to elements of the Mexican military.

While the training plays an integral part in the long-term strategy to defeat DTO operatives in both Mexico and the U.S., a short-term plan must be implemented to deny DTOs access into the U.S. The U.S. has assured that "deference would be given to Mexico's sovereignty," and that U.S. troops would not be used during the fight against Mexican DTOs and other criminals; however, the continued spread of violence may require Mexico to open its borders to U.S. law enforcement and military personnel.⁵⁵ The strategy, although controversial, would allow U.S. law enforcement, with assistance from military personnel, to actively

investigate and arrest upper-level DTO operatives in Mexico who conspire to transport and sell narcotics in the U.S. Furthermore, the strategy would lower the incidents of compromise by Mexican law enforcement and military authorities corrupted by DTO operatives. In order to successfully implement the strategy, the Government of Mexico, the Mexican public, and the U.S. Congress must be convinced that the effort does not threaten the sovereignty of the Mexican state or infringe upon the freedoms and liberties of the law-abiding public. The argument may be difficult to overcome as Mexico's sovereignty remains a high priority for both governments. Regardless of Mexico's sovereignty argument, the U.S. must act by any means necessary to protect the United States' national security.

Conclusion

The illicit sales of narcotics and the resulting violence by Mexican drug trafficking organizations (DTOs), and their affiliated street gangs, threaten the national security of the United States. For decades, DTOs have actively pursued narcotics sales throughout Mexico and South America with little fear of prosecution. Consequently, DTOs have increasingly spread violence throughout Mexico and into the United States through the permeable SWB. Seemingly each day, news agencies promulgate stories of mass murders, kidnappings, beheadings, mutilations, home invasion robberies, and murders of law enforcement officers in Mexico, and in U.S. communities as well.

In the past, the Federal government has relied solely on the efforts of law enforcement personnel to combat the illicit activities of Mexican DTOs, and to secure the SWB. However,

the Federal government must employ the full spectrum of national power, including an increase of law enforcement personnel and a deployment of armed U.S. military personnel to the southern and northern borders of the U.S., to have a lasting effect. The deployment of troops, however, presents a number of challenges to policy-makers, including PCA restrictions, training deficiencies, and public sensitivities. Yet, the deployment of troops would deter terrorists and heavily armed drug smugglers from crossing into the US. While a whole-of-government approach plays a significant role in the fight against DTOs, the most important role belongs to the Government of Mexico. Calderon and his administration must bear the brunt of the responsibility for the growing DTO network. Mexico's strategy should include an open-border policy to allow U.S. law enforcement, with military assistance, to actively investigate and arrest mid and upper-level DTO operatives and prosecute them in U.S. courts. The effort will be instrumental in disrupting the DTO security threat to the U.S.

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