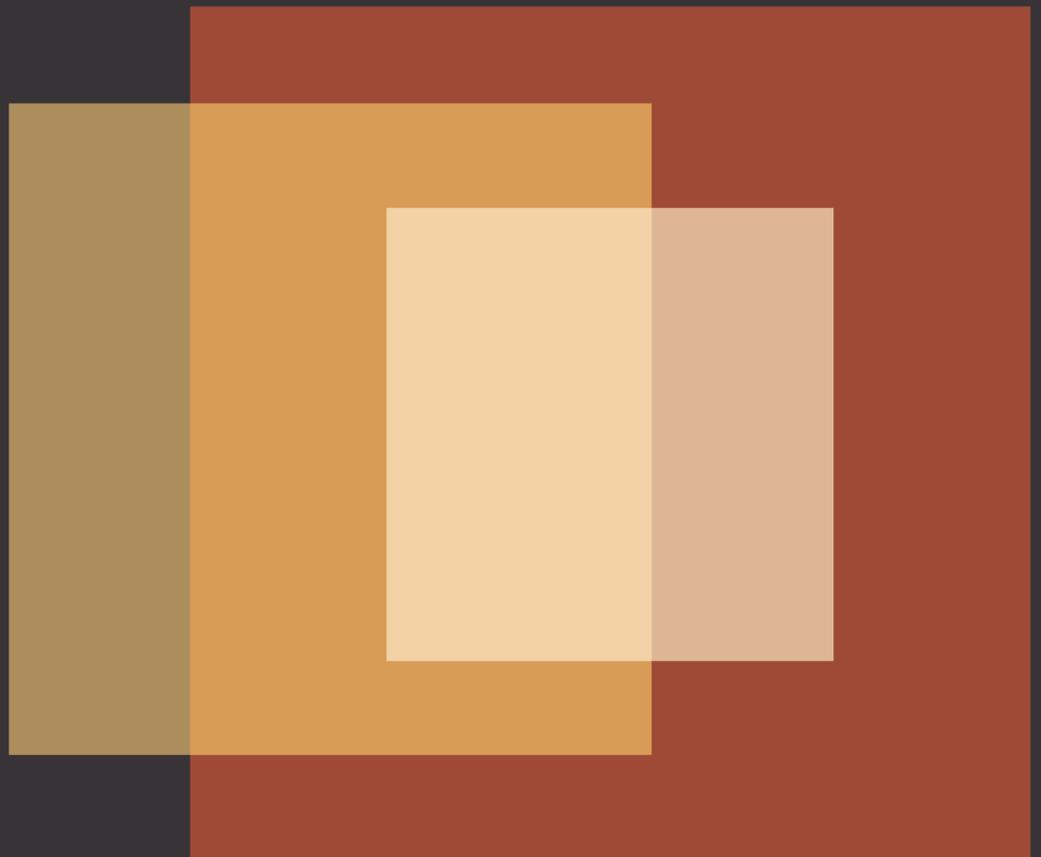


Accountability, Community Security and Infrastructure on the U.S.-Mexico Border

Policy Priorities for 2009-2010



U.S.-Mexico Border and Immigration Task Force

April 2009, Washington, D.C.

INTRODUCTION

The U.S.-Mexico Border and Immigration Task Force is comprised of over 50 individuals and organizations spanning 4 states and comprised of local elected officials, law enforcement, faith leaders, business, labor, academics and community advocates. The diversity of the coalition finds its strength in the notion that that people from very different perspectives can agree when assumptions about “enforcement” are challenged. The Border Task Force has repeatedly demonstrated over the course of many years that broad support exists for immigration reform and border security that is smart, accountable, and fiscally responsible.

The Task Force offers a new paradigm for immigration and border enforcement. It challenges dated ideas about enforcement and recognizes that the “border” is a dynamic concept, that border communities have important ties to both the United States and Mexico, and that these ties create a unique set of opportunities and challenges that affect both the border areas and the broader national interest. The Task Force’s work is built around ideas grounded in the complex realities of border life and a practical understanding that border and immigration policies must be formulated and implemented in ways that respect the rights and needs of border communities.

In November 2008, the U.S.-Mexico Border and Immigration Task Force released a report with over 70 specific recommendations for improving border and immigration enforcement policies. Since that time, the Task Force has worked to refine its recommendations and has prioritized three core areas in which to concentrate its work: accountability and oversight of border and immigration enforcement; community security and prevention of border violence; and infrastructure and ports of entry.

Their refined recommendations are the result of several months of hard work and multiple strategy sessions along the US border communities. These recommendations and policies can substantially improve security and safety in the border region and in the nation as a whole. As the debate over border issues becomes more prevalent, and comprehensive immigration reform moves to the top of the President’s agenda, the expertise of border leadership is more critical than ever to the development of appropriate and meaningful border security measures. Border communities must be engaged by lawmakers in finding and creating solutions and being a part of the decision-making process. The following recommendations must be a part of discussions on both the legislative and administrative reform of border and immigration policy.

I. ACCOUNTABILITY AND OVERSIGHT FOR BORDER AND IMMIGRATION ENFORCEMENT

It is critical that the civil and human rights of all people along the U.S.-Mexico border, regardless of their race, ethnicity or citizenship status, are respected. Policies and practices that target migrants and border residents and that concentrate federal agents along the border can lead to human rights abuses if law enforcement officers and agencies are not held accountable to the communities in which they operate. Accountability and oversight should be viewed as assets rather than limitations on effective law enforcement and public security because they assist law enforcement agencies in focusing their attention and resources. A relationship of mutual trust between communities and law enforcement organizations meaningfully enhances community and national security through greater cooperation and open sharing of information.

Recommendations:

1. Create a United States Border Enforcement and Immigration Review Commission (the “Commission”). The Commission should be an independent entity established to assess, monitor and investigate all federal border and immigration policies, projects, programs, and activities, both those of DHS—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Citizenship and Immigration Services (USCIS)—and those of other relevant agencies. It should be vested with legal authority to provide recommendations regarding federal immigration and border security policy, enforcement, and complaint procedures, and it should be empowered to hold federal immigration agencies accountable. The Commission’s broad purposes should be to require due process and equal protection of the law for all those present at and near the border, to promote best civil and human rights practices in border law enforcement, to enhance internal capacities within border agencies, and to strengthen relations between the community and government agencies.

The Commission should be composed of a diverse group of individuals who understand the complexities of the border, and a majority of Commission members should be border stakeholders and residents.

The Commission must have, at a minimum, three powers: (1) investigatory power, including the power to subpoena, (2) auditing power, and (3) legal power.

The Commission must be able to formulate and fund an effective outreach strategy to border communities. The Commission should report annually to Congress.

In addition to its primary mandate, the Commission should conduct an independent study that examines whether border policies and agencies are accomplishing their stated goals, whether those goals are appropriate agency functions and recommend changes and alternatives. Such a study would consider (1) the quality and capacity of agency oversight, accountability, and management regarding challenging issues such as use of force, potential for abuse, potential for corruption and illegal activity, remoteness, and relative invisibility of field activities; (2) the degree to which government officials have been engaged in inappropriate action, malfeasance, or illegal activity; and (3) other critical policy-assessment questions.

2. Improve the complaint process. Although the creation of the Commission would provide the opportunity for a more robust complaint process, in the interim, the Department of Homeland Security must take steps to quickly review and investigate complaints. The DHS Office for Civil Rights and Civil Liberties should be empowered to ensure that the mandate, resources, and staffing to investigate and resolve complaints and to respond to public inquiries regarding the status of complaints is fulfilled. The Commission and/or the DHS Office for Civil Rights and Civil Liberties should ensure that complaint procedures are accessible, transparent, consistent, effective, and fair. Complaints should be publicly accessible records and copies of complaints and their resolution should be permanently preserved.

Essential characteristics of a revised and effective complaint process include:

- a) A uniform complaint procedure with definite specification of to whom, how, and where complaints are to be filed, tracked, and resolved for all Border Patrol stations and Ports of Entry, from San Diego to Brownsville.
- b) Protections that ensure if a person complains, she or he is not penalized (similar to the protections provided to a plaintiff in a “whistle-blower” case, who cannot be terminated for raising an issue). Complainants should be protected from arrest and removal proceedings for immigration violations, whether directly or indirectly detected due to the filing of the complaint. Complainants should receive full assistance from DHS in filing complaints, including language assistance and accurate and complete responses to their questions.
- c) The creation of a national, standardized database that tracks and analyzes complaints and their resolution.

3. Ensure that the funding of oversight endeavors is comparable to those of other Federal agencies and commensurate with the size and scope of the Department of Homeland Security operational budget. The size and resources of the DHS Office of Inspector General and the DHS office of Civil Liber-

ties and Civil Rights must reflect the explosive growth of DHS. DHS policy orientation and organizational capacity must be strengthened to identify, investigate, and terminate abusive or corrupt actions by federal officers. To be credible and effective, oversight must be properly funded to reflect authorities’ commitment to ensuring that all agency operations take place strictly within legal boundaries.

4. Require human rights certification of local and federal agents. Department of Homeland Security officers and state and local law enforcement officers working in the border region should receive comprehensive and consistent training in ethics, civil rights, human rights, cultural sensitivity, community relations, and non-lethal approaches to incidents. Training should occur both in the academy curriculum and at regular intervals on the job and should be conducted with input from the Department of Justice Civil Rights Division and the DHS Office for Civil Rights and Civil Liberties. DHS leadership must develop consistent humane treatment guidelines, with high standards, for all operations (sectors, etc.) along the border. Supervisors should be made accountable for both delivering human rights certification and holding officers in their unit responsible for following guidelines and best practices.

II. COMMUNITY SECURITY AND PREVENTION OF BORDER VIOLENCE

Community security is an integral part of both national and border security. True community security builds on a vision of the border that sees law enforcement--federal, state, and local--as contributing to the safety and security of residents of the borderlands, and of the whole United States. It also speaks to working with partners in Mexico regain community security in a cooperative fashion that respects the border’s binational culture and relationships. Community safety and security operations should focus on dangerous criminals and traffickers, as opposed to law-abiding undocumented persons, and to be effective, responses must de-link criminal enforcement from civil immigration enforcement. Community security begins with and contributes to the rights and liberties of all peaceful members of a community.

Communities along the border have long experienced the impact of violence generated by organized crime engaged in cross border smuggling of illicit goods, namely narcotics and firearms, as well as humans. The Border Task Force believes it is counterproductive to exaggerate concerns to suit particular political agendas, such as the justification of harmful immigration policy. It is important to note that:

- The recent violence at the US/Mexico border has not been generated or sustained by immigrant workers, immigrant families or the millions of border residents who live, work, and raise their families in the region.
- Despite mainstream media outlets and congressional representatives' dramatic warnings of the threat of "spillover" violence, we, local law enforcement and elected officials, report that this violence has not crossed our borders as reported.
- In the Mexican border city of Ciudad Juárez alone, over 1,600 people were killed in 2008 in drug cartel-related violence whereas its neighbor sister city, El Paso, is the 3rd safest city of its size in the United States.

This situation suggests that effective protection of U.S. borders lies, not with further militarization of the border region, but by strengthening the internal linkages between community members - citizens, legal residents, and unauthorized residents - and local and federal law enforcement agencies.

Recommendations:

1. Pursue community security and safety policies designed to integrate, protect and engage all members of border communities – citizens, legal residents, and undocumented residents – in efforts to address criminal threats. One of the fundamental principles of effective community policing is that community members must be motivated to work with law enforcement agencies to effectively combat threats to the community. Border communities are a valuable resource to detect and prevent cross-border violence. Special considerations need to be made in the implementation of effective community policing programs in border communities. We recommend:

- a) Strict guidelines limiting the role of local law enforcement agencies in the enforcement of administrative immigration violations to the identification and referral of convicted felons (other than immigration) to DHS. To this end, abolish 287(g) programs and redirect Operation Stonegarden resources and personnel to focus on violent and organized crime.
- b) Active inclusion of community members and leaders in planning border security, immigration, and other border law enforcement programs and projects, including congressional field hearings and delegations to engage directly with border communities.

- i. Perform community-impact studies. Community-impact studies should be required prior to all significant local, state, and federal security and law enforcement initiatives impacting border communities. Such studies should include meaningful consultation with the local community and consider the social, cultural, environmental, and economic impacts of policy implementation.

- c) Enhancement of community/law enforcement relationships through the rigorous protection of the human rights and civil liberties of all community members, regardless of immigration status through:

- i. Effective human and civil rights training of federal law enforcement officials assigned to the border region
- ii. A transparent, prompt and effective grievance procedure
- iii. Prompt and thorough investigation and, when appropriate, sanction of law enforcement officials who commit human or civil rights abuses
- iv. Community engagement in oversight mechanisms to monitor law enforcement operations within their community

2. Require DHS to plan for border security using comprehensive risk assessment methodologies,¹

¹ On comprehensive risk assessment, see Government Accountability Office [GAO], "Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions," Report GAO-07-454, August 17, 2007, at p. 2 of summary statement, accessed at <http://www.gao.gov/new.items/d07454.pdf>

with transparent procedures and recommendations that are made public. DHS and other federal agencies should plan and allocate resources proportionate to the degree of threat – noting distinctions between violent crime and serious risk to human safety and indiscriminate enforcement of civil immigration violations.

3. Encourage DHS and ATF to target additional resources for state and local law enforcement approaches to firearms interdiction, money laundering and violence prevention activities. For DHS, redirect resources aimed at the enforcement of administrative immigration violations, worksite and community raids towards carefully tailored border crime reduction/prevention programs, including programs to curb arms trafficking. Ensure that federal funding provided to combat criminal activity is strictly monitored to ensure that it is being used exclusively for its primary and intended purpose and not for identifying individuals for civil immigration enforcement. Localities that inappropriately utilize federal funding for unintended purposes should lose such funding.

4. Federal support of corridor programs and intelligence fusion centers responding to border criminality, smuggling, and violence should be carefully monitored under the following guidelines in order to protect the civil liberties and civil rights of borderlands residents. We recommend:

a) Conduct a review of existing fusion center models, including an evaluation of the cost-benefit analysis based on effectiveness of these centers for identifying real threats and the impact these centers have on privacy and civil liberties. The results of fusion center approaches should be weighed against the effectiveness of community policing and other traditional policing and intelligence gathering methods for combating crime. The mission of each fusion center must be clearly defined with regular reviews to assure that the objectives of the intended mission continue to be on target. Centers will be required to issue regular reports regarding the type of information being collected, how it is being used, by whom, and with whom it is being shared.

b) Federal regulatory mechanisms for oversight

and accountability need to be developed, including subjecting fusion centers to the federal Freedom of Information Act and state and local open records laws. Clear guidelines must be developed regarding to specify who has access to information levied by fusion centers and under what circumstances. Minimization procedures that prevent the intentional collection, retention, and dissemination of private information where there is no reasonable indication of criminal activity must be developed.

c) Military personnel and private sector entities should be excluded from participation in law enforcement operations and investigations conducted by fusion centers.

d) Individuals should have some form of due process before arbitrarily being placed on a watch list or listed in other security documents.

5. The military is unsuited for frontal involvement in support of border law enforcement.

a) Immediately withdraw U.S. military and National Guard personnel from all armed operations in support of civilian law enforcement within 25 miles of the border.

b) Per the Posse Comitatus Act, Military forces, including the National Guard, should not be engaged in law enforcement, either directly or indirectly, on domestic soil.

c) Recent amendments to the federal Insurrection Act, which sets forth exceptions under the Posse Comitatus Act, stipulate that the President can summon the military for domestic intervention to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition. The Administration, Congress, and the courts should clarify that this “public order” exception does not cover and should not be invoked for normal border law-enforcement activities (immigration, narcotics, criminal activity), as it might be for an “emergency” equivalent to a natural disaster or major public disorder.

6. Use human rights and civil rights as a policy standard. The cycle of violence at the border can only be stopped if the government recognizes the civil and human rights of border residents. Any legislation

or policy that fails to recognize fundamental rights is destined to fail and undermines the basic premise of security for the country.

III. INFRASTRUCTURE AND PORTS OF ENTRY

Ports of Entry play a critical role in the cross-border movement of people and goods as well as economic and national security. According to a June 2005 study developed by the San Diego Association of Governments, over sixty million crossings are made annually in both directions via the three Ports of Entry located in San Diego County, with the average border crossing at that time taking 45 minutes. The economic impact that long border delays have on the Tijuana/San Diego border area alone is astonishing: “over 3 million potential working hours in San Diego County are spent in delays at the border, averaging about 45 minutes per work trip, which may result in \$42 million in wages lost. The overall impact at the State level, given that 5% of the trips are headed outside the San Diego region, is over \$1.32 billion in addition to the \$44.3 million in income loss for work trips.” The San Diego example is representative of all Ports of Entry spanning the border.

When the Department of Homeland Security took over the administration and enforcement at the nation’s land ports, residential and commercial border crossers, noted a dramatic increase in waiting times and an increase in inappropriate, and often unlawful, behavior by Customs and Border Protection (CBP) agents. Abuse-of-authority complaints against CBP agents reflected that officials were targeting and racially profiling U.S. citizens and other individuals of Latino descent entering through the ports of entry for a variety of issues. The complaints primarily alleged verbal abuse, physical abuse, sexual harassment, arbitrary detentions, destruction of documents, and denial of entry.

Port management issues demand a significant reform. A 2008 study in the Journal of Homeland Security and Emergency Management confirms that current CBP personnel practices at Ports of Entry are inconsistent and, thus, undermine the public security and law enforcement goals of port inspections. Furthermore, a significant number of border crossers perceive treatment at Ports of Entry to be arbitrary and unfair. Port management issues demand significant reform.

Recommendations:

1. Expedite border crossing at Ports of Entry. DHS must invest in improving infrastructure and technology at the Ports of Entry in order to expedite border crossings. Programs such as SENTRI lanes and car-pool lanes should be increased. Ports of Entry should also provide access to basic human services (adequate restrooms, water, shade, etc.).

2. Improve staffing levels and training for port personnel. Ports of Entry are understaffed, contributing to long wait times and inadequate cargo/container inspection. Congress should appropriate sufficient funding for their proper operation. In addition, DHS should ensure that all port personnel are consistently trained in legal, human, and civil rights compliance during inspections procedures, including question-

ing, searches, and handling of documents. Consistent training procedures and job evaluations that emphasize evidence-based inspections rather than impermissible profiling should be developed and implemented. Training procedures and job evaluations should emphasize respectful and effective interpersonal interaction and should be consistently applied to all personnel at all ports.

3. Promote due process and an accessible, transparent and fair CBP complaint process. CBP Primary and Secondary Inspection booths should clearly post their mission statement, regulations regarding required documents to enter the U.S., and information about submitting a complaint. Complaints should not result in people being “flagged” by CBP. Additionally, DHS should significantly scrub and improve watch lists to minimize the detention or denial of entry of individuals wrongly placed, or wrongly believed to be, on those lists and provide sufficient due process. Finally, we recommend that Congress establish baseline search and seizure rights at ports.

4. Clarify and publicize the documents necessary to enter the U.S. Border residents report being denied entry to the U.S. and receiving inconsistent information from CBP agents regarding the documents needed to enter the United States. CBP must publicize and respect agency policies regarding the documents that various legal categories of border crossers must present when entering the United States and the agency must be consistent in their application of these regulations. This requires improved communication between CBP and the Department of State. DHS should postpone the date for final implementation of WHTI until the following issues are addressed: (a) how to handle people without birth certificates (i.e. accept midwife produced documents); (b) how to mitigate expenses for families who would need individual passports. We recommend to explore idea of issuing family passport cards.

5. Invest in technology, infrastructure, and staffing at ports of entry to ensure focused interdiction and detection of southbound money and arms and northbound drugs.

a) Firearms interdictions should be conducted independently of immigration interdiction activities.

b) Southbound checkpoints should be placed at the actual border or existing ports of entry. Southbound inspection should not be used to add another layer of checkpoints, roadblocks, or immigration sweeps in the interior of the United States, including in the border region.

c) ICE or CBP should not be deployed to southbound firearms checkpoints located separate from Ports of Entry. Instead, local law enforcement officials should staff any interior southbound checkpoints in coordination with ATF as appropriate, with federal funding resources to supplement this activity.

d) The mission of all federal, state and local agents placed at southbound checkpoints must be clearly defined and limited to confronting gun trafficking and money laundering. Agencies participating in southbound checkpoints should create and provide guidance to agents regarding standard operating procedures and policies to ensure protection of civil and human rights.

e) Grievance procedures for southbound checkpoints, including those at Ports of Entry, must be clearly defined and posted as public notices. Since the initiation of southbound checkpoints in the San Diego sector, advocates have reported a marked increase in grievances for civil and human rights violations.

f) Allocate sufficient resources for the ATF to aggressively engage in identifying, investigating and sanctioning of Federal Firearms License holders in Border States who are a sizeable source of firearms trafficked to Mexico.

6. The EPA must conduct environmental assessments at Ports of Entry. The federal government should conduct environmental assessments to determine the impacts of waiting traffic on air pollution and other potential environmental threats. The assessment should include recommendations on infrastructure, staffing, and inspections policies that could mitigate negative impacts.

US-Mexico Border and Immigration Task Force

For more information and full list of members please visit www.bordertaskforce.org

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