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'A CLEAR AND PRESENT DANGER', WHY DOD ACTIVE DUTY FORCES MUST ASSIST IN THE SECURITY OF THE U.S. SOUTHERN BORDER.

by

David S. Davidson

Colonel, United States Army

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by

David S. Davidson

Colonel, United States Army

A paper submitted to the Faculty of the Joint Advanced Warfighting School in partial satisfaction of the requirements of a Master of Science Degree in Joint Campaign Planning and Strategy. The contents of this paper reflect my own personal views and are not necessarily endorsed by the Joint Forces Staff College or the Department of Defense.

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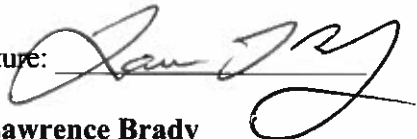
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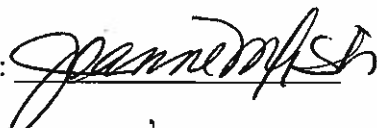
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ABSTRACT

This thesis examines the threat posed by the lack of security along the U.S. Southwestern border and recommends the employment of DoD Active Duty forces to assist in mitigating it. The rise of transnational terrorist organizations like Al Qaeda and its affiliates changed the dynamics of the security environment and requires a change to the nation's fundamental security assumptions and the historic division of roles and missions between domestic law enforcement and overseas warfighting. Analysis of the current situation and available historical data demonstrate the level of illegal activity and highlight the need for Department of Defense (DoD) assistance to aid the Department of Homeland Security (DHS). Lack of a "professional vocabulary" to define critical terms directly contributes to confusion, redundancies in funding, missions and inefficiencies in execution. The use of DoD Active Duty forces is essential to enhance the security of the Southwest border and protect the lives, property and sovereignty of the United States. Implementation requires thoughtful consideration of the full range of national security policies, strategy and law to ensure that the right capability, experience and tools are applied to the right problem. The current exemptions to the Posse Comitatus Act (PCA) are sufficient to allow the declaration of an "emergency situation" and use of DoD Active Duty (Title 10) forces in this role. The massive federal deficit and the austere economic times guarantee a reduction in federal spending and require efficiencies in execution across the "whole of government." This is a good first step in establishing a coherent policy and border security strategy before a catastrophic event occurs that can be linked to a lapse in the security at the nation's Southwest border. The American people deserve nothing less.

ACKNOWLEDGEMENT

I am forever grateful to God for all things including giving me the ability to complete this work and to my family for their love, sacrifice and support throughout this process. Without their steadfast support, and sacrificed nights and weekends, I would never have completed this project.

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Finally, to all the men and women who bravely ‘stand the post’ around the world in defense of freedom and a special thanks to the friends, families and comrades of those who have paid the ultimate price for freedom. Your sacrifice is not in vain and guarantees the continuation of the freedoms we enjoy and the freedom of millions of people around the world. May God bless you all.

“Scouts Out!”

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INTRODUCTION

The security threats arrayed against the United States of America in 2011 are significant and range from hostile nation states to transnational terrorist organizations and non-aligned individuals. The bi-polar world of the post World War II and Cold War era as well as the uni-polar world, with a single dominant super-power, no longer exists. The rise of transnational terrorist organizations intent on inflicting harm on the population, the institutions and the way of life of nations have fundamentally changed the security paradigm. Although terrorism, terrorist groups and individual actors have always existed and played a role in the politics and actions of nations, the emergence of the current global terrorist organizations constitutes a change in the dynamics of the security environment. The attacks executed on September 11, 2001 against the United States as well as the attacks in London, Madrid and elsewhere demonstrate the reach and nature of these organizations. Terrorism is currently defined as “the use of violence and threats to intimidate or coerce especially for political purpose”¹. The actions of the transnational terrorist organization have expanded the definition to include activities on a geo-political scale.

In the previous context, the goals of terrorists and terrorist organizations were generally limited to achieving a specific political end. The Palestinian Liberation Organization (PLO), the Provisional Irish Republican Army (IRA) and others had at their core a desire to affect political change within a nation state. The PLO demanded a Palestinian State and recognition on the world stage and targeted Israel and Israeli interests as a means to achieve it. The IRA demanded the removal of British troops from

¹ *Dictionary.com*. s.v. —terrorism. <http://dictionary.reference.com>. (accessed: December 27, 2010).

Northern Ireland and a united Ireland. They chose to target British interests and citizens to force the British government to comply. These terrorist organizations did execute attacks outside the geographic confines of the nation state they were attempting to influence however; their typical target selection methodology confined them to these local areas in order to support their objectives. Their operations were focused on achieving limited objectives without inciting large scale international condemnation or action from forces outside their targeted area. Although these organizations have been unsuccessful in achieving their ultimate ends, they have succeeded in highlighting their struggles to the world and achieving recognition, support and bargaining power. This newfound power and influence resulted in the establishment of political wings and the pursuit of political dialog and a shift away from overt terrorism. They have not given up on terrorism as a tool, or tactic, to achieve their ends but resort to it far less than they once did.

In recognition of the changes in the strategic security environment the United States faces, the National Defense Strategy (NDS), published in June 2008 described it as: “For the foreseeable future, this environment will be defined by a global struggle against a violent extremist ideology that seeks to overturn the international state system.”² The emergence of Al Qaeda and its affiliates transcends the geographic and political nature of the previous era and targets the existence of rival ideologies and the elimination of the nation states that advocate them. This is not unlike the cold war struggle between the United States and the Soviet Union in that it involved a struggle over ideology. The U.S. and the U.S.S.R. fought a global ‘war’ between capitalism and communism that involved many nations which created the bi-polar political system and

² U.S. Department of Defense, *National Defense Strategy 2008*, (Washington DC, 2008), 2.

quest to maintain a balance of power between the two that dominated the world for over 50 years. The threat posed by Al Qaeda and its affiliates presents a similar “war.” It is characterized by the struggle of Radical Islam against all non-Islamic people and their forms of government. The key difference in this struggle is that it is not for control of nation state’s political processes, economies or militaries in pursuit of a new balance of power on the world stage, but for the complete elimination of those who oppose the establishment of Islamic rule and an Islamic state. There are no longer restrictive geographic boundaries nor political solutions or compromises to contain or resolve the conflict. This is an entirely different circumstance requiring a different strategy and different methods of combat. The prediction made in the NDS in 2008 has proven accurate in the years since it was written. The nature, complexity and capability of these groups to extend their reach globally have continued to expand and the threat posed by them continues to grow. Effectively combating this threat demands a comprehensive national strategy employing all elements of national power. The 2010 National Security Strategy states that:

The United States must renew its leadership in the world by building and cultivating the sources of our strength and influence. Our national security depends upon America’s ability to leverage our unique national attributes, just as global security depends upon strong and responsible American leadership. That effort includes our military might, economic competitiveness, moral leadership, global engagement, and efforts to shape an international system that serves the mutual interests of nations and peoples.³

The United States has attempted to develop the comprehensive strategy required to meet the challenges outlined above, but thus far has not achieved it. The efforts undertaken to

³ President of the United States, *The National Security Strategy of the United States of America 2010*, (Washington, DC: 2010), 7.

this point have been consistently grafted onto the existing security model. These efforts have failed to challenge the underlying assumptions that form the collective foundation of national security policy and strategy. Identifying and defining the paradigm to solve this security dilemma is a daunting task and is well beyond the scope of this work. However, the problem of security along the U.S. Southern border is a pressing issue of immediate concern that is well within the capacity of this paper to evaluate and recommend actions to resolve.

This paper will evaluate the “clear and present” threat posed by the lack of effective security along the border between the United States and Mexico and show that despite the efforts of countless agencies, individuals and organizations, and the investment of billions of dollars, the border remains porous. The combination of the declared global ‘*Jihad*’ against the Western powers, and the recent reports of the presence and recruiting efforts by known terrorist groups like Hezbollah in Northern Mexico, highlight the immediate threat to the national security of the United States. It will prove the thesis that: ***To ensure the National Security of the United States, the U.S. Government must utilize Department of Defense Active Duty Forces to assist in the security the Mexican border.***

This work is divided into two major sections. Section one is “Defining the Problem,” and section two “Near Term Solutions”. Section one consists of Chapter One (Situation at the Border), Chapter Two (Historical Background) and Chapter Three (Homeland Security, Homeland Defense, National Security and who does what). This section will provide a detailed analysis of the current situation and establish the historical foundation for the division of responsibility between domestic and overseas departments

and agencies. Section two (Near Term Solutions) consists of Chapter Four (Why the Department of Defense (DoD) Must Assist), and Chapter Five (Posse Comitatus and Legal Options). At the core of section Two, the proposed near term solution, is the contentious issue of the level of involvement of the Department of Defense, and specifically Active Duty military units, in execution of security operations along the border and the implications of the Posse Comitatus Act of 1878. Chapter Six (Conclusion and Recommendations) will summarize the conclusions of this work and recommend areas for continued research and study. It will allow long term actions to expand the policies and strategy required to establish a new paradigm in National Security consistent with the threat faced by the nation now and in the future.

SECTION ONE
DEFINING THE PROBLEM

CHAPTER ONE

SITUATION AT THE BORDER

This chapter will specifically examine the three key issues of illegal immigration, drug trafficking, and human smuggling as they relate to security along the United States and Mexico border and the national defense of the United States. It will present statistics from the Customs and Border Patrol (CBP) to establish the scope of the immigration problem and statistics from the Drug Enforcement Administration (DEA) on the flow of illegal drugs and evidence of terrorist activity within the area of human trafficking. This data will establish the linkage between these illegal activities and the potential for infiltration of terrorists and weapons, including the potential for weapons of mass destruction (WMD), into the country.

The United States shares 1,969 miles of contiguous border with Mexico. Much of this border is open desert and rough, uninhabited terrain. The rugged nature of the terrain and the sparse population make this area difficult to secure and ideal for the conduct of illegal activity. It is used extensively by smugglers, drug traffickers, human traffickers and individuals attempting to gain illegal access to the United States. The security situation along this border has deteriorated in recent years as the global economic crisis has worsened and the ever expanding market for illicit/illegal drugs in the U.S. offers drug cartels and immigrants the opportunity for easy money or a chance at a new life if they can successfully move across the border into the United States. A thriving trade in trafficking of humans exists and offers immigrants safe passage and economic opportunity and as well it serves as a route for criminals and potential terrorists seeking entry. Following the attacks of September 11, 2001, the United States dramatically increased security measures at the air and sea ports of entry into the country. These

activities, as well as the operations of the Joint Inter-Agency Task Force (JIATF) – South, effectively reduced many historical maritime and aviation smuggling routes from Central and South America into the United States. This coupled with the anti-drug efforts of the administration of Mexican President Felipe Calderon and the Mexican Government forced Drug Trafficking Organizations (DTO) and smugglers to utilize the more difficult, dangerous, overland routes through Mexico to transport their illegal cargo into the country. This cargo consists of drugs, people and potentially weapons.

Competition for control of these routes between rival DTOs is intense and consequently increased the frequency and level of violence in Northern Mexico and the border areas of Texas, New Mexico, Arizona and California. Violence and unrest has spilled across the border into U.S. cities and threatens the lives and property of U.S. citizens. This prompted an increasing call for action to secure the border area and protect these interests. Media coverage and several high profile cases, including the killing of an Arizona rancher by a suspected illegal alien in March of 2010, raised the necessity of securing the border to the national level. The ensuing debate over the roles and responsibilities and agencies responsible for securing the border remains unresolved. On April 28th, 2010 a letter was sent to President Obama by seventeen members of the U.S. House of Representatives highlighting the increasing level of violence and the deteriorating security situation along the border. It requested immediate action by the “administration to grant requests from the governors of our nation border states for National Guard troops to be deployed to the U.S.-Mexico border.”¹ Immediately

¹ Ted Poe and Gabrielle Giffords, Letter to Pres Obama on Border Security, 28 April 2010, <http://poe.house.gov/news/DocumentSingle.aspx?DocumentID=183054>, (accessed 28 December 2010).

following submission of the letter to the President, the 111th Congress passed House Concurrent Resolution 273 dated 04 May 2010 which stated:

Resolved by the House of Representatives (the Senate concurring), that it is the sense of Congress that--

- (1) the escalating level of violence on the United States-Mexico border is a serious threat to the national security of the United States;
- (2) the Administration, as well as State and local authorities, should take appropriate steps to deal with this growing threat; and
- (3) the Administration should deploy the National Guard to the United States-Mexico border as has been requested by a number of border State Governors and Members of Congress; and
- (4) troops that are deployed should be given very clear rules of engagement and should be armed and allowed to defend themselves if attacked.²

This resolution was a direct message to the President and the Executive branch of the government that the Legislative branch considered the situation along the border to be a clear threat to the national security of the country that required immediate action to solve. On May 25, 2010 President Barack Obama ordered the deployment of over 1,200 National Guard troops to the Border States in order to assist federal border patrol and local law enforcement officials in dealing with the increasingly volatile situation. Senators John McCain and Jon Kyl of Arizona stated that the deployment was an “important first step” but went on to say that:

In 2006, President Bush deployed 6,000 National Guard troops to the Southwest border. We believe the situation on the border is far worse today than it was then due to the escalating violence between the Mexican drug cartels and the Mexican government. For this reason, we need to deploy *at least* 6,000 National Guard troops to the border region. The fact that President Obama announced today that he will only be sending one-fifth of the troops we believe are required is a weak

² Ted Poe and Gabrielle Giffords, United States House of Representatives (Senate Concurring) Concurrent Resolution 273, *Expressing the sense of Congress that the escalating level of violence on the United States-Mexico border is a serious threat to the national security of the United States.*, 111th Congress, 2d Session, May 4, 2010.

start and does not demonstrate an understanding of the current situation in the region.³

The decision to deploy units from the National Guard demonstrated an acknowledgment of the immediate problem, but served only to quiet the national debate for a short time. The debate reignited on July 22, 2010 when the United States Senate cut \$701 Million in funding for the hiring and training of CBP agents and a number of other programs designed to secure the border out of the Fiscal Year 2010 Supplemental Appropriations Bill. (See Appendix A for complete list of cuts). U.S. Representative Gabrielle Giffords (Arizona Congressional District 8) responded to the President's order to deploy the National Guard Troops and the cutting of funding for the other areas stating "Guard troops are scheduled to be deployed to the border starting on Aug. 1, but this long-overdue deployment was not to take place in a vacuum and the success of their mission now is in doubt." She further stated "that Guard troops were intended as a bridge until additional agents from the Border Patrol are hired, trained and in place. The Senate action yesterday removes funding for those additional agents, raising questions about the effectiveness of the Guard deployment."⁴ The funding was restored in August when the United States Congress passed and President Obama signed into law the Southwest Border Security Bill, a \$600 Million dollar measure specifically targeted to increase the effectiveness of efforts along the border. The bill funded the hiring of 1500 new border patrol agents, customs inspectors and other law enforcement officers and the purchase of

³ John McCain, Jon Kyl, Statement by Senators John McCain and Jon Kyl regarding National Guard Troops on the Southwest Border, 25 May 2010, http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=d1a1b8a0-9f75-de6e-945a-f112af2977eb&Region_id=&Issue_id=, (accessed 03 January 20 11).

⁴ Gabrielle Giffords, "U.S. Rep. Gabrielle Giffords Blasts Senate for Failing to fund border security.", <http://giffords.house.gov/2010/07/us-rep-gabrielle-giffords-blasts-senate-for-failing-to-fund-border-security.shtml>, (Accessed 03 January 2011).

two unmanned aerial vehicles (UAVs) to monitor activities along the border. President Obama stated during the signing ceremony that:

I have made securing our Southwest Border a top priority since I came to office. That is why my administration has dedicated unprecedented resources and personnel to combating the transnational criminal organizations that traffic in drugs, weapons, and money, and smuggle people across the border with Mexico. Today's action by Congress answers my call to bolster the essential work of federal law enforcement officials and improve their ability to partner with state, local, and tribal law enforcement. The resources made available through this legislation will build upon our successful efforts to protect communities along the Southwest border and across the country. And this new law will also strengthen our partnership with Mexico in targeting the gangs and criminal organizations that operate on both sides of our shared border. So these steps will make an important difference as my administration continues to work with Congress toward bipartisan comprehensive immigration reform to secure our borders, and restore responsibility and accountability to our broken immigration system.⁵

This legislation and the President's statement failed to address the underlying systemic problem that resulted in the requirement to deploy the National Guard troops to bolster the efforts of DHS and CBP agents in the first place. This is a clear example of the use of an outdated security paradigm to solve a contemporary problem. The paradigm used is that the problem along the border is a domestic security problem and can be solved by "domestic" security departments and agencies. The temporary deployment of National Guard troops is a stop gap measure designed to allow the DHS and the CBP to catch up is outdated. The belief that success would be achieved by hiring more CBP agents, purchasing more equipment and spending more money is out of step with the true nature of the problem. The underlying problem is not one of funding, hiring or equipping but one of organization, capability, unity of effort and most importantly recognition of the change in the dynamics of the problem. Given the current fiscal realities faced by the nation, the continuation of increased funding for hiring and purchasing of equipment

⁵ Barack H. Obama, U.S. President, Statement. *Statement by the President on Southwest Border Security*, (August 12, 2010).

without a clear strategy and measurable results is unlikely. Chapter Four (Why the Department of Defense (DoD) Must Assist) will examine the historic increase in funding since 2001 and the unsustainable nature of the current budgets given the economic and fiscal realities of the nation. The requirement to deploy troops from the National Guard was a stop gap measure until DHS/CBP and the other agencies involved were prepared to execute the mission is an invalid course of action. This conclusion is validated by a study commissioned by the Department of Homeland Security Office of Program Analysis and Evaluation through the Rand Homeland Security and Defense Center in 2010, which showed that despite the increased hiring of agents, purchase of additional equipment and the deployment of troops, they were still unable to cover all the areas required to ensure effective security along the length of the border. The study concluded that:

We think we know, from studying past practice and from consulting terrorism experts, where potential illegal migrants would be likely to attempt to cross. However, we can be wrong (especially if they know what we are doing), so we have to have *some* coverage everywhere. ***Still, with the proposed budget, we think that we can go about two-thirds down the list in covering the routes and modes of concern to a nominal level*** [emphasis added].⁶

The Rand study highlights the shortfalls in coverage along the border and the potential for gaps in coverage leading to unobserved cross border activity. On 15 February 2011, the Government Accountability Office (GAO) issued a report on Border security. The summary on the GAO official website states that “The Department of Homeland Security (DHS) reports that the nearly 2,000-mile U.S. border with Mexico is vulnerable to cross-border illegal activity.”⁷ The report titled: Preliminary Observations on Border Control

⁶ Henry H. Willis, et al, *Measuring the Effectiveness of Border Security Between Ports-of-Entry.*, Santa Monica, CA: RAND Corporation, 2010. http://www.rand.org/pubs/technical_reports/TR837, 45, (accessed December 15, 2010).

⁷ Government Accountability Office, *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border*, GAO-11-374T (Washington, DC, 2011), highlights.

Measures for the Southwest Border was compiled by Richard M. Stana, Director Homeland Security and Justice Issues. It concluded that the “Border Patrol reported achieving varying levels of operational control of 873 (44 percent) of the nearly 2,000 southwest border miles at the end of fiscal year 2010.”⁸ GAO’s preliminary analysis of the 873 border miles under operational control in 2010 showed that about 129 miles (15 percent) were classified as “controlled” and the remaining 85 percent were classified as “managed.”⁹ (See Appendix B for official DHS/CBP definitions of “Operational Control”, “Controlled” and “Managed”). The conclusions of the report show a slow increase in the areas of the border under the control of the border patrol since 2005 despite significant increases in CBP agents and technology. The current budget proposed for FY 2012 requests \$43.2 billion dollars for homeland security, an increase of approximately \$300 million dollars over 2011 levels.

The ultimate success of the troop deployment and the measures passed in the Southwest Border Security Bill is unknown and the impact is not immediately measurable. However, history provides a recent example that outlines a likely outcome. As quoted by Senators McCain and Kyl above, President George W. Bush ordered the deployment of National Guard troops to the border in support of Operation Jump Start in 2006. He stated at the time that "If we got a problem, let's address it square on. And if part of the problem is we're waiting to get new Border Patrol agents trained and we can't wait, let's move some troops in, National Guard troops, that will be able to help ... on the

⁸ *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border* , 5.

⁹ Ibid, highlights.

front lines of securing our border,"¹⁰ Army Lieutenant General H. Steven Blum said at the outset of the operation that "the U.S. Border Patrol is currently beefing up of its ranks with the goal of doubling in size to about 18,000 agents within two years, At that time National Guard involvement in Operation Jump Start, which will grow to 6,000 troops, will come to an end."¹¹

According to the National Guard Bureau Fact Sheet dated 28 July 2008, the joint operation between the National Guard and the Border Patrol did end when the CBP reached its goal 18,000 agents. It was an extremely successful partnership with as many as 6,000 soldiers and airmen on the border at one time and more than 29,000 from every state and territory participating over the course of the two year mission. During a ceremony marking the end of the mission, W. Ralph Basham, CBP Commissioner called it "one of the greatest partnerships that I personally have ever had the pleasure of being involved with" and commented that "We can all admit now, that we did, in fact need your help".¹² According to figures from the National Guard Bureau the mission resulted in "more than 176,000 Un-Documented Aliens (UDA) apprehensions, seizure of over 1,100 vehicles and over 321,000 pounds of marijuana and cocaine. Over 28,000 hours of flight time and construction of over nineteen miles of road, thirty-eight miles of border fencing and ninety-six miles of vehicle barriers as well as the repair of 720 miles of road. The total cost of the operation as of 28 July 2008 was \$1.2 Billion dollars."¹³

In spite of the success outlined above during Operation Jump Start, Customs and Border Enforcement (CBE) records from 2008 indicate that 705,022 individuals were

¹⁰ Steven D. Smith, 'Operation Jump Start' Puts 2,500 Guardsmen on Southern Border in June, June 6, 2006, <http://www.defense.gov/news/newsarticle.aspx?id=16109>, (accessed December 27, 2010).

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

apprehended between the established border checkpoints attempting to gain illegal entry in to this country. It is impossible to determine conclusively the number of attempted entries or the number of successful attempts. However the Center of Migration Studies research shows that; “data for 1977-1988 suggest that the simple linear correlation between the number of apprehensions and the volume of illegal immigration is approximately 0.90 and that the size of the illegal migrant flow is roughly 2.2 times the number of Border Patrol arrests.”¹⁴ If this methodology is applied, the total attempts can be estimated at over 1.5 million in 2008 alone. More disturbing than the overall numbers are the 62,067 individuals apprehended whose home country was not Mexico. These individuals are categorized as *Other Than Mexican* (OTM). Table 1 provides a breakout of these individuals by country from 2005 through 2008.

Table 1.

U.S. Border Patrol Apprehensions by Border, Age, Gender and Leading Country of Nationality: Fiscal Years 2005 to 2008

Characteristic	2008		2007*		2006*		2005*	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Border								
Total	723,840	100.0	876,803	100.0	1,089,096	100.0	1,189,031	100.0
Southwest	705,022	97.4	858,737	97.9	1,071,979	98.4	1,171,391	98.5
Coastal	10,895	1.5	11,687	1.3	10,521	1.0	10,291	0.9
Northern	7,923	1.1	6,379	0.7	6,596	0.6	7,349	0.6
Gender								
Total	723,840	100.0	876,803	100.0	1,089,096	100.0	1,189,031	100.0
Male	606,761	83.8	730,217	83.3	893,380	82.0	969,879	81.6
Female	117,061	16.2	146,574	16.7	195,699	18.0	219,123	18.4
Unknown	18	0.0	12	0.0	17	0.0	29	0.0
Age								
Total	723,840	100.0	876,803	100.0	1,089,096	100.0	1,189,031	100.0
17 years and under	59,578	8.2	77,778	8.9	101,778	9.3	114,222	9.6
18 to 24 years	257,409	35.6	325,901	37.2	403,320	37.0	442,755	37.2
25 to 34 years	255,261	35.3	301,002	34.3	377,401	34.7	411,743	34.6
35 to 44 years	112,941	15.6	127,285	14.5	151,422	13.9	162,069	13.6
45 to 54 years	32,003	4.4	36,661	4.2	45,001	4.1	47,158	4.0
55 years and over	6,235	0.9	7,384	0.8	9,093	0.8	9,569	0.8
Unknown	413	0.1	792	0.1	1,081	0.1	1,515	0.1
Country of Nationality								
Total	723,840	100.0	876,803	100.0	1,089,096	100.0	1,189,031	100.0
Mexico	661,773	91.4	808,773	92.2	981,069	90.1	1,023,888	86.1
Honduras	19,351	2.7	22,914	2.6	28,709	2.6	52,741	4.4
Guatemala	16,395	2.3	17,337	2.0	19,925	1.8	22,594	1.9
El Salvador	12,684	1.8	14,114	1.6	41,391	3.8	39,309	3.3
Cuba	3,351	0.5	4,295	0.5	4,021	0.4	3,263	0.3
Ecuador	1,579	0.2	958	0.1	1,143	0.1	1,343	0.1
Nicaragua	1,467	0.2	1,646	0.2	2,736	0.3	3,921	0.3
Brazil	977	0.1	1,214	0.1	1,460	0.1	31,063	2.6
China, People's Republic	836	0.1	837	0.1	2,179	0.2	2,200	0.2
Dominican Republic	819	0.1	562	0.1	1,023	0.1	1,406	0.1
Canada	610	0.1	554	0.1	876	0.1	1,020	0.1
Other	3,998	0.6	3,599	0.4	4,564	0.4	6,283	0.5

* Data as of November-December 2008.

Source: U.S. Department of Homeland Security, Customs and Border Protection (CBP), Office of Border Patrol (OBP).

¹⁴ Thomas J. Espenshade, "Using INS Border Apprehension Data to Measure the Flow of Undocumented Migrants Crossing the U.S.-Mexico Frontier." *International Migration Review* (The Center for Migration Studies of New York, Inc.), 1995, 545.

It is important to note that the Total figures in the first block on the top left of Table 1 are broken out by geographic location and include the Southwest, Northern and Coastal areas of the country. The percentages are noted and the total Northern and Coastal percentage equals less than three percent in all years displayed. The figures on the rest of the chart are cumulative totals and percentages. No specific breakout of these figures by border area is available.

The majority of individuals categorized as OTM pose no increased security risk and are processed through normal channels. There is however, a subset of this population that either do not declare a home country or come from countries the United States has declared as *Special Interest Countries* (SIC). SIC was defined by Mr. David Aguilar (Chief, Office of Border Patrol, Customs and Border Protection) during Congressional testimony on April 28th of 2005, where he stated that they:

are basically countries designated by our intelligence community as countries that could export individuals that could bring harm to our country in the way of terrorism. And what that means is that anytime that we encounter an individual from those special interest countries, we pay particular attention to the individual, his or her background, where they come from, where they have transited to get to our country, and things of this nature.¹⁵

Once identified, these individuals are declared as *Special Interest Aliens* (SIA). They then are subjected to additional screening and are processed separately to ensure they have no terrorist ties and pose no security threat. In his opening statement, at the same congressional hearing, Senator Jon Cornyn is quoted “as we have heard time and time again, the same means of entry that can be used for someone who wants to come to the United States to work can likewise be used just as easily by those who want to come here

¹⁵ David Aguilar, Chief CBP, speaking to the Subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security of the Committee on the Judiciary United States Senate on April 28, 2005, 109th Congress, 1st Session, *Congressional Record*, Serial No. J-109-18, 13.

to commit crimes or perhaps acts of terrorism.”¹⁶ The figures in Table 1 indicate a peak number of 6,283 of these individuals in 2005 followed by a steady decline to 3,599 in 2007 and an increase of 399 in 2008 to 3,998 individuals. However, given the decrease of 465,891 in total apprehensions, the overall percentage of individuals fitting into this category is up only .01 percent over the four year span.

It is clear from the CBP statistics and the historical case study provided by Operation Jump Start that the current National Guard Troop deployment will undoubtedly provide a much needed backstop for the Department of Homeland Security (DHS), the Customs and Border Patrol (CBE), Drug Enforcement Administration (DEA) and state and local law enforcement. However, history is also very clear that this is a temporary, stop gap solution. Despite the efforts of the personnel involved and the vast amounts of money spent over the years, the porous nature of the southern border continues to be a National Security issue. The flow of illegal drugs, illegal immigrants and violence has continued virtually unabated while the DHS and the CBP has hired additional agents and purchased technologically advanced surveillance and monitoring equipment. The situation will continue unless the approach is fundamentally changed. In a fact sheet released by the White House on August 12, 2010 detailing the Administration’s border security efforts, one of the tangible results was “Since 2004, the Border Patrol has doubled in size to over 20,000 Border Patrol agents.”¹⁷ That total reflects an increase of 2,000 agents since the end of Operation Jump Start in July of 2008. As indicated above, a stated goal of Operation Jump Start was to ‘fill the gap’ until the

¹⁶ Jon Cornyn, Opening statement to the Subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security of the Committee on the Judiciary United States Senate on April 28, 2005, 109th Congress, 1st Session, *Congressional Record*, Serial No. J-109-18, 3.

¹⁷ *Statement by the President on Southwest Border Security.*

CBP could hire, train and field 18,000 agents. In the years since 2008, the situation has deteriorated significantly and once again requires the deployment of National Guard troops and an increase in the number of CBP agents to attempt to provide the security required. This clearly validates the fact that the current strategy is not working. In the words of President Ronald Reagan in 1984; “The simple truth is that we’ve lost control of our own borders, and no Nation can do that and survive.”¹⁸

That peril is real and growing. According to the recently released 2011 National Military Strategy; “Terrorists’ abilities to remotely plan and coordinate attacks is growing, sometimes facilitated by **global illicit trafficking routes**, [emphasis added] extending their operational reach while rendering targeting of their sanctuaries more difficult.”¹⁹

¹⁸ Ronald Reagan, U.S. President, Press Conference, June 14, 1984, London, UK, as included in *The Public Papers of President Ronald W. Reagan, June 1984*,

<http://www.reagan.utexas.edu/archives/speeches/1984/61484d.htm>, (accessed 10 March 20 11)

¹⁹ U.S. Department of Defense, *National Military Strategy 2011*, (Washington DC, 2011), 8.

CHAPTER TWO

HISTORICAL BACKGROUND

Chapter Two presents the historical background for the current division of responsibility between the departments and agencies assigned to conduct internal, domestic security and those departments assigned to fight and win the nation's wars and provide for the nation's security outside of the borders. This historic division of responsibility has significant implications and impact on the way security along the border is conducted. This chapter will examine two of the Nation's key founding documents, the Declaration of Independence and the United States Constitution, to identify the fundamental assumptions that form the basis for the strategic thinking on National Security and National Defense. It will identify the linkage between these fundamental assumptions and the clear division of responsibility for the conduct of domestic security and overseas defense.

The terrorist attacks of September 11, 2001 and the potential for future attacks on the United States highlighted the threat posed by transnational terrorists and reignited a long standing debate over the role of the military in securing the United States homeland. This debate traces its roots from the establishment of the nation and is weaved throughout the fabric of our laws, our founding documents and our national consciousness. The Constitution provides clear evidence of this in Article 1, Section 8 where it grants the Congress the power to “provide for the common Defence and general Welfare of the United States;”¹ but only authorizes it to “To raise and support Armies, *but no Appropriation of Money to that Use shall be for a longer Term than two Years*” [emphasis added]; and “To provide for calling forth the Militia to execute the Laws of the

¹ US Constitution, Art 1, Sec 8.

Union, suppress Insurrections and repel Invasions;”.² This indicates the desire to maintain a distinction between the role of the Army as a tool of Foreign policy, to be established and used when needed and reduced or disbanded when no foreign threat exists and the standing militia that are charged to suppress insurrections and repel Invasions. The Constitutional authorization to “provide and maintain a Navy”³ demonstrates an understanding of the dual nature of the Naval force as an element of both foreign policy and defense of the homeland. This distinction is still valid today and enshrined in the specific missions assigned to the Navy and the Coast Guard. No similar approach was taken to account for a ground based threat.

Examination of the fundamental foundation of the nation’s strategic security policy shows that the clear distinctions envisioned by the framers of the Constitution and subsequent strategists and leaders were driven by three key assumptions. Those assumptions are: 1) the nation is protected by its near unique geographic position provided by the Caribbean Sea and two great oceans on its East and West; 2) no significant internal or external land-based threat exists to threaten the nation’s existence; and 3) a large standing Army is not necessary and any use of federal military forces in a domestic law enforcement or security role is to be avoided. Analysis of these assumptions will show that they are no longer valid in the current security environment.

The geographic position of the nation at its founding was dominated by the Atlantic Ocean and the Caribbean Sea. These vast bodies of water served as barriers between the new nation and the major European powers which were the preeminent threat of the time. Naval power was the only means of delivering a force capable of

² US Constitution, Art 1, Sec 8.

³ Ibid.

threatening the existence of the nation and these vast bodies of water provided an effective deterrent and early warning alarm. As the country expanded to the West, the Pacific Ocean served the same function by acting as a barrier to attack from the West. These barriers allowed the nation to develop in relative isolation from the rest of the world. Naval power was the key measure of military strength in the 18th and 19th Century and establishing an effective Navy was a logical and necessary action to protect the developing nation. The Navy was capable of providing adequate protection and early warning to the nation during this time. The establishment of the U.S. Coast Guard in August 1790 by the first Congress to enforce tariff and trade laws and to prevent smuggling represented the recognition of the requirement to formally divide the responsibility for protection against rival military forces (National Defense) and the enforcement of laws and protection of the commerce (Homeland/Domestic Security). This division of labor and responsibility between the Navy and the Coast Guard effectively established the U.S. Navy as an overseas fighting force and the Coast Guard as a domestic law enforcement agency. This division of responsibility continues to exist today. However, the threats to the nation are much broader and are no longer confined to the sea. They are now present in all domains. This realization invalidates the second assumption on which the paradigm is based.

The belief that no significant internal or external land-based threat exists to threaten the nation's existence is no longer valid. The framers believed that any enemy force that attempted a land based invasion could be repelled by maintaining a militia capable of being called up to repel it as specified in the Constitution. This belief was validated at many points throughout the nation's history. The war of 1812 against the

British constituted a rare threat to the nation's existence. However, the United States declared war on Britain and the resulting war required American forces to fight against several land invasion attempts, notably New York in 1814 and New Orleans in 1815, but because this war was declared by the U.S. it did not cause a significant change in the strategic thinking of the time concerning how to defend against land based threats. While there are other examples of land based threats, like the wars fought against the Native American Indians that required the employment of a Federal Army, these 'wars' did not threaten the existence of the nation. They were far removed from the bulk of the population and impacted on Southern and Westward expansion only. The existence of a standing Army to defend the frontier was acceptable. Similar to the War of 1812, it did not cause a change in the strategic thinking of the time. The notable excursions into Mexico also constituted an external threat but the Mexican Army did not have the capacity or desire to threaten the nation's existence, but simply to counter U.S. expansion and maintain its territory. These examples of the use of a standing Army reinforced the belief in the relative safety and security provided by the geographic and political boundaries the nation enjoyed. The ability of the militia to effectively deal with known threats coupled with the ability of the domestic agencies to enforce laws and maintain civil order validated the assumption that a large standing army was not required.

Prior to the American Civil War, no internal threat existed that exceeded the capability of domestic law enforcement to counter. The major powers of Europe maintained standing armies and given the experience of the colonies under British rule prior to the Revolutionary War, it is easy to understand the aversion and deep seated mistrust of an Army with a role in the domestic policing of the nation. Protections

against the potential for such abuses are well entrenched in the U.S. Constitution and Bill of Rights. The Civil War significantly tested the assumption that a standing army was not necessary and resulted in the raising and equipping of a large standing Army to fight on American soil. The Confederate Army constituted an internal threat with the capability to threaten the survival of the nation and exceeded the capability of the militia to suppress. In the years following the end of the war, the Union Army was assigned domestic law enforcement and civil governance duties across the South. Soldiers were often pressed into service by local law enforcement organizations to enforce laws and arrest violators. This activity significantly blurred the lines of the Army's role in domestic affairs envisioned by the founding fathers. The Army had taken on a significant domestic security and civil law enforcement role which led to the passage of the Posse Comitatus Act in 1878. This act will be discussed in detail in Chapter Five, (Posse Comitatus and Legal Options). It also constituted a shift in thinking concerning a standing Army and opened the debate over the required size and capability of the force required.

The notion that wars would be fought against external threats far from the nation's borders is deeply entrenched in the strategic thinking of the nation. This belief is still firmly rooted in our thinking today. The idea that an Army could be raised, funded, equipped and utilized to engage in combat operations to secure the nation's interests and then return home and undergo a significant reduction in manning and funding is critical to understanding the nation's domestic security paradigm. This American paradigm is particularly evident following the wars of the Twentieth century. A brief look at U.S. history shows that the period following the major conflicts (WWI, WWII, Korea,

Vietnam, the Cold War and Operation DESERT SHIELD/STORM) was characterized by the assumption of a “peace dividend.” The military structure endured the rapid demobilization of forces and significant reduction in the defense budget, including significant reductions in the research and development of weapon systems and modernization. (See Appendix C for specific budget totals from 1950 to present) With the exception of the period between the end of the Cold War and the initiation of hostilities in the Persian Gulf, which was too short for the full effect to be realized, this dividend resulted in a military establishment that was unprepared for the conflict that ultimately followed. This idea still resonates in the nation’s strategic thinking today.

The threats faced by the United States in 2011 invalidate these basic security assumptions and create a security environment that demands a new paradigm in strategic thought and a re-assessment of traditional roles and responsibilities. The threats are no longer nation states with uniformed militaries bound by the traditional requirements of an invading army, no massing of forces or stockpiling of weapons, no uniforms or clearly identifiable traits; invasions come in the form of individual infiltrations rather than massed formations. They move individually, secretly and infiltrate the society before executing their attacks. The security apparatus of the nation is not prepared to deal effectively with threat posed by these individuals or groups. The threat of individuals gaining access to and control of the world’s most lethal weapons (Nuclear, Biological and Chemical/WMD) and the technologies associated with them and then sneak them into the country to be used against civilian population centers and infrastructure is ever present. The geographic position, internal security apparatus and current military assumptions that

make up our collective security paradigm are insufficient to deal with this threat. The situation along the border is a manifestation of this insufficiency.

CHAPTER THREE

HOMELAND SECURITY, HOMELAND DEFENSE, NATIONAL SECURITY AND WHO DOES WHAT?

This chapter will examine the definition of key terms used in the discussion and application of security measures along the U.S. Southern border. The definition of the terms “Homeland Security,” “Homeland Defense” and “National Security” are critical in the ongoing attempt to identify appropriate roles and responsibilities for the myriad of government departments, agencies and organizations conducting activities along the border. Unfortunately, none of these terms is clearly defined in the nation’s National Strategy documents or Joint Doctrine of the armed forces. This lack of specificity in definitions has led to an unclear understanding of responsibilities and redundant programs and processes across all agencies operating along the border. The examination of the strategy and policy guidance contained in the 2010 National Security Strategy, the 2010 Counter Drug Strategy, the 2010 Homeland Security Strategy, the 2010 Quadrennial Defense Review, the 2006 National Strategy for Combating Terrorism and other national strategy and policy documents identify the specific responsibilities assigned to cabinet level agencies. The examination of mission statements and definitions will demonstrate that no clear, universally accepted strategy for assigning roles and responsibilities or missions and tasks currently exists. The understanding of this shortcoming in the current process is critical to understanding the complexity of the bureaucracies attempting to control and direct actions and activities and how that complexity contributes to the current unmanageable situation.

Prior to engaging in a discussion of definitions related to the conduct of Homeland Security (HS) or Homeland Defense (HD), it is important to understand the

definition of “National Security” and its evolution since the National Security Act of 1947. There is no single universally accepted definition of “National Security” in any of the previously mentioned documents however they all refer to the term. The typical definition states that it is required to maintain the survival of the nation-state through the use of economic, military and political power and diplomacy. The Department of Defense Dictionary of Military and Associated Terms define it as:

national security — A collective term encompassing both national defense and foreign relations of the United States. Specifically, the condition provided by: a. a military or defense advantage over any foreign nation or group of nations; b. a favorable foreign relations position; or c. a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.¹

The basis for this modern interpretation of “National Security” traces its roots to the National Security Act of 1947 and its subsequent amendments. In the original act dated July 26, 1947, section 2 states that “In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security.”² That fundamental restructuring of the national security apparatus recognized the need for the independent operation of the departments, agencies and functions of the Government in matters of national security. More importantly it recognized the requirement to coordinate and direct those efforts of all government agencies in a cohesive manner to respond effectively to future security challenges. The reforms implemented by this act and its subsequent amendments laid the foundation for the

¹ U. S. Department of Defense, *Department of Defense Dictionary of Military and Associated Terms*, (Washington, DC: 2010), 252.

² United States Congress, *National Security Act of 1947*, <http://nsarchive.chadwyck.com/nsa/documents/IP/00002/all.pdf>, 4. (accessed 07 January 2011).

national security structure that was in place during and following the attacks of September 11, 2001. Equally important in this discussion is the Goldwater-Nichols Department of Defense Reorganization Act of 1986 which sought to integrate the DoD Joint and Inter-Agency (IA) efforts in all matters of national defense as well as the Professional Military Education (PME) system that trains and educates members of the United States military. This governmental and military organization and structure functioned well as long as the assumptions identified in Chapter Two were valid. Unfortunately, they were ineffective in preventing an attack from a determined transnational terrorist threat that challenged the core assumptions of the security environment.

In the aftermath of the September 11, 2001 attacks, it became apparent that the current structure was not organized, prepared or equipped to effectively respond to the threat posed by transnational terrorists. Congress and the President recognized a change was required and passed the Homeland Security Act of 2002. This act created the Department of Homeland Security (DHS) and combined the missions, activities and oversight of twenty-two government agencies under the control of a single executive department with a single cabinet level secretary. This effort promised to increase efficiency, coordination and information sharing across all agencies and provide the required organization and capability to protect the United States homeland from further attacks. It marked the largest reorganization of the federal government since the National Security Act of 1947 created the Department of Defense. The intent of the legislation was to consolidate the oversight of the various agencies and increase the sharing of information to adapt to the security realities of the post September 11 world. However,

as stated previously, and validated by Homeland Security Secretary Janet Napolitano it has not yet fully met that intent. Secretary Napolitano stated in the February 2010

QHSR:

In the years since 9/11, homeland security has become commonly and broadly known as both a term and as a Federal department. Less well understood, however, has been its ongoing purpose and function. What is homeland security? Is it more than preventing terrorism? If so, what else does it take to achieve a safe and secure homeland? What risks are we willing to accept? Who has the responsibility, authority, capabilities, and resources to do all that needs doing?³

Nearly ten years after September 11, 2001, the nation is still struggling to provide adequate answers to these questions. One possible reason lies in the fact that legislation and subsequent National Strategic guidance failed to provide a clear definition of Homeland Security or Homeland Defense. These documents failed to articulate the tasks, roles and responsibilities required to effectively secure the nation and by extension the Southwestern border. The act provided clear definitions of critical terms such as the “American Homeland,” “appropriate congressional committee,” “executive agency,” “terrorism” and the “United States,”⁴ but only attempted to define the term “Homeland Security” in paragraph B, of Section 889 (Homeland security funding analysis in President’s Budget) where it stated the following: “In this paragraph, consistent with the Office of Management and Budget’s June 2002 “Annual Report to Congress on Combating Terrorism,” the term “homeland security” refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.”⁵ This definition was included in the budget portion of the legislation

³ U. S. Department of Homeland Security, 2010 *Quadrennial Homeland Security Review (QHSR)*, (Washington, DC: 2010), 1, http://www.dhs.gov/xlibrary/assets/qhsr_report.pdf , (accessed 08 Jan 11).

⁴ United States Congress, *Homeland Security Act of 2002*. Stat2135, Washington, DC: U.S. Government Printing Office, 2002, 6-7.

⁵ Ibid, 113-114.

in order to justify the allocation of funding and to establish appropriate budgetary classification for the expenditures. It was not used in any context to describe or define missions, roles or responsibilities elsewhere in the document. The term “Homeland Defense” was not referenced nor defined in the legislation despite its importance in defining the roles and responsibilities between DHS and DoD. A precise, universally accepted definition of these terms is still elusive. The vague definition of such critical terms continues to cause confusion in assigning specific responsibilities and has resulted in unnecessary redundancy and increased budgetary expense in the departments, agencies and organizations charged with executing it.

The intent of this work is not to assign a definitive definition to these terms nor direct a specific interpretation, but to demonstrate the various definitions currently in use across the myriad of strategic and operational guidance and doctrine available. Both Homeland Security (HS) and Homeland Defense (HD) are used frequently by politicians, Government leaders, journalists and virtually anyone else who has an opinion on how to protect the nation. Unfortunately, these terms are used interchangeably and loosely to describe any and all activity related to the topic. There is a vague understanding of the relationships involved and little understanding of the specific statutory guidance for who is responsible for what or who has the authority to direct policy or control actions.

Effective execution of complex tasks by any organization (military, governmental or civilian) requires a clear understanding of what must be accomplished, who is responsible for accomplishing it and when and how it will be accomplished. This clarity begins with a common understanding of the terms used to assign tasks, specify methods and determine outcomes. A “*professional vocabulary*” that concisely defines these terms

is essential. It provides a common understanding and ensures that all participants are striving to accomplish the same end. In the case of Homeland Security and Homeland Defense this professional vocabulary is strikingly absent from the nation's strategic and policy documents and guidance. A side-by-side comparison of the available definitions contained in the 2002 Homeland Security Act, the 2010 National Security Strategy, Quadrennial Defense Review and Quadrennial Homeland Security Review as well as multiple other relevant national level strategic documents (2004 National Military Strategy, 2006 National Strategy for Combating Terrorism, 2006 National Security Strategy, Joint Publication 3-27 (2007), 2007 National Strategy for Homeland Security, 2008 National Defense Strategy, U.S. Department of Homeland Security Strategic Plan for Fiscal Years 2008-2013, 2010 National Drug Control Strategy) shows the range of definitions in use. It also highlights the number of documents that fail to apply any definition at all. Table 2 provides a comparison of the documents and the definitions contained in each one.

Table 2: Comparison of Definitions

National Strategic Document	Homeland Security (HS)	Homeland Defense (HD)
2002 Homeland Security Act	Refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories. P113/114 ⁶	None
2004 National Military Strategy	None	None
2006 National Security Strategy	None	None
2006 National Strategy for Combating Terrorism	IAW National Strategy for Homeland Security, "Homeland Security is a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur." ⁷	The protection of U.S. territory, sovereignty, domestic population and critical infrastructure against external threats and aggression. Also see Homeland Security and Civil Support. ⁸
2007 National Strategy for Homeland Security	A concerted national effort to prevent terrorist acts within the United States, reduce America's vulnerabilities to terrorism, and minimize the damage and recover from attacks that do occur. HS missions are those typically conducted by federal, state, tribal, and/or local law enforcement, government agencies, and the private sector and include law enforcement missions related to terrorism and other criminal activities, as well. ⁹	None
Joint Publication 3-27 (2007)	As defined in the National Strategy for Homeland Security, a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur. ¹⁰	The protection of US sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression, or other threats as directed by the President. ¹¹
2008 National Defense Strategy	None	None
U.S. Department of Homeland Security Strategic Plan for Fiscal Years 2008-2013	None	None
2010 National Security Strategy	Homeland security traces its roots to traditional and historic functions of government and society, such as civil defense, emergency response, law enforcement, customs, border patrol, and immigration. In the aftermath of 9/11 and the foundation of the Department of Homeland Security, these functions have taken on new organization and urgency. Homeland security, therefore, strives to adapt these traditional functions to confront new threats and evolving hazards. It is not simply about government action alone, but rather about the collective strength of the entire country. Our approach relies on our shared efforts to identify and interdict threats; deny hostile actors the ability to operate within our borders; maintain effective control of our physical borders; safeguard lawful trade and travel into and out of the United States; disrupt and dismantle transnational terrorist, and criminal organizations; and ensure our national resilience in the face of the threat and hazards. Taken together, these efforts must support a homeland that is safe and secure from terrorism and other hazards and in which American interests, aspirations, and way of life can thrive. ¹²	None
2010 National Drug Control Strategy	None	None
2010 Quadrennial Defense Review	None	None
2010 Quadrennial Homeland Security Review	A concerted national effort to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards where American interests, aspirations, and way of life can thrive. ¹³	None

Analysis of the data in Table 2 reveals a relatively consistent definition for

Homeland Security (HS) across the range of documents that attempt to define the term.

⁶ *Homeland Security Act of 2002*, 113-114.

⁷ President of the United States, *National Strategy for Combating Terrorism*, (Washington, DC:, 2006), 35.

⁸ Ibid.

⁹ President of the United States, *National Strategy for Homeland Security*, (Washington, DC:, 2007), 12.

¹⁰ Joint Chiefs of Staff, *Homeland Defense. Joint Pub 3-27*, (Washington, DC: 2007), GL-8.

¹¹ Ibid.

¹² *The National Security Strategy of the United States of America 2010*, 15.

¹³ U. S. Department of Homeland Security, *2010 QHSR*, (Washington, DC: 2010), 13, http://www.dhs.gov/xlibrary/assets/qhsr_report.pdf (accessed 08 January 2011).

However, it shows a significant shortcoming in providing a common definition for Homeland Defense (HD). This shortcoming raises two major questions. Is there a difference in the two terms and what impact does that difference make on the way either task is performed? As pointed out earlier these terms form the basis for assigning tasks and determining responsibilities at the highest levels of the United States Government (USG). If the basic term is not clearly defined, with specific boundaries and areas of responsibility clearly outlined, the result is blurred reporting lines, overlapping areas of responsibility and unclear task and mission assignment. The old adage of ‘anyone could do it, but no one did’ comes to mind. This describes the current situation along the Southwest border. Multiple departments, agencies, bureaus, organizations and individuals are taking actions that they believe will accomplish the mission and provide a secure border. However, these actions are uncoordinated, inefficient, redundant and in some cases detrimental to achieving the ultimate goal of a secure border.

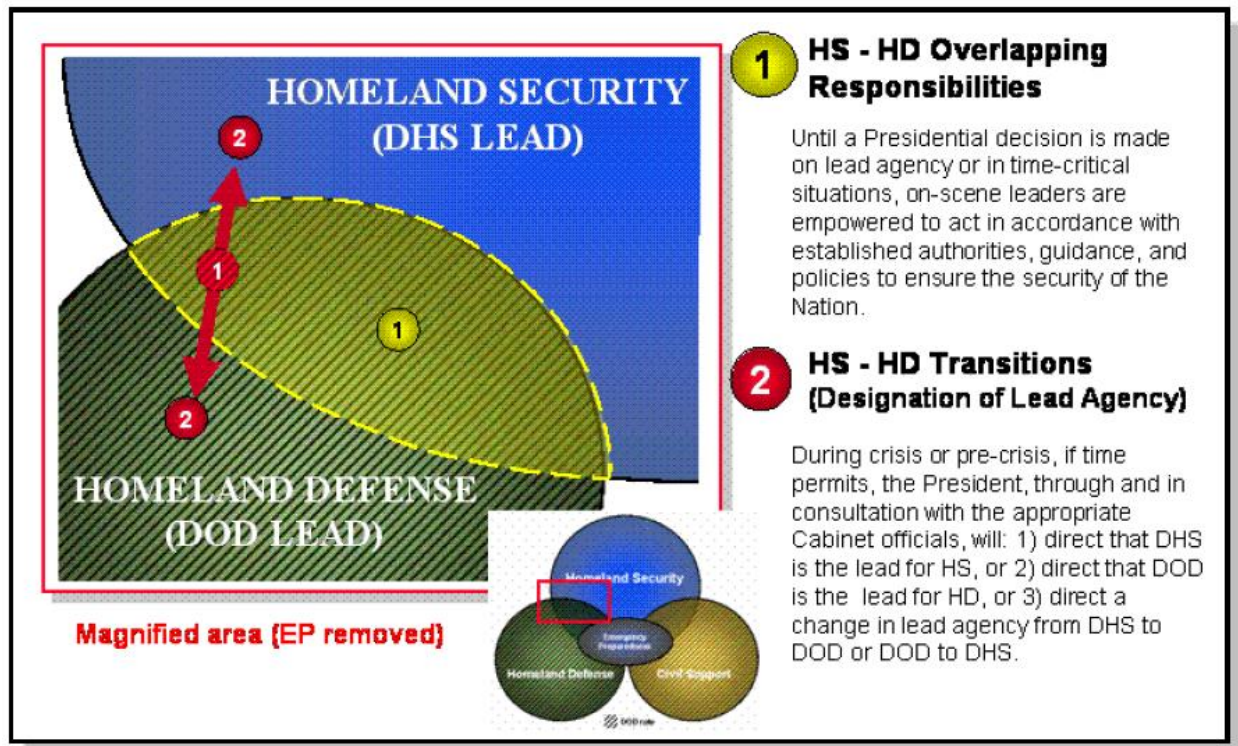
In order to answer the question of the difference in the two terms, a comparison of the definitions provided by DHS and DoD is required. The definition for Homeland Security provided in the most recent Department of Homeland Security (DHS) strategic guidance, the Quadrennial Homeland Security Review published in 2010, is: “A concerted national effort to ensure a homeland that is ***safe, secure, and resilient against terrorism and other hazards*** [emphasis added] where American interests, aspirations, and way of life can thrive.”¹⁴ The definition of Homeland Defense provided in Joint Publication 3-27, produced by the Department of Defense is: “The protection of ***US sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression***, [emphasis added] or other threats as directed by the

¹⁴ QHSR, 13.

President.”¹⁵ Comparison of these definitions shows the level of duplication in both tasks and responsibilities between the two departments. Both departments are tasked to protect the territory, sovereignty, people and infrastructure of the United States against terrorism and other hazards. The logical question is where is the line of demarcation between the two? Is the boundary marked by a geographic line like the border which defines an internal versus external threat? Is it based on the capabilities of the threat or is it an ideological line? What are its defining traits? The recent Joint Advanced Warfighting School (JAWS) research trip to Washington D.C. and the briefings provided by the Department of Homeland Security confirmed that this distinction is a topic of discussion within DHS and there are no clear, easy answers. This ambiguity is evident in the Department of Defense Homeland Defense and Civil Support Joint Operating Concept, version 02, published in October of 2007 when the concept attempts to draw clear boundaries between the two. The concept highlights the difficult task of determining the Lead Federal Agency (LFA) in unclear, ambiguous situations. The DoD paradigm for making the decision is displayed at Figure 01, and clearly identifies the designation of LFA as an Executive, Presidential level decision. It shows the DoD paradigm and criteria for making the decision in a time sensitive or emergency situation. It does not however, identify the LFA for a time sensitive, enduring situation such as security of the border.

¹⁵ *Homeland Defense. Joint Pub 3-27, GL-8.*

Figure 01 (Homeland Security/Homeland Defense Overlap)



Determining where a particular scenario or incident falls within this paradigm will be a coordinated effort among appropriate agencies to determine who should lead the effort. This responsibility ultimately rests with the President as Commander in Chief and Chief Executive. In many situations, the answer is unequivocal. In clear cases of foreign aggression and threats to national security, DOD will be the lead and will conduct operations necessary to defeat an attack (including, if applicable, actions taken in anticipatory self-defense to preempt an attack before it takes place) with applicable support from its partners. In cases with clear law enforcement responsibility, DHS, DOJ, or other agencies will coordinate and assume lead responsibility, and DOD may or may not be directed to perform a supporting role. It is also possible for DOD and its partners to coordinate the transition of lead responsibility during a crisis (either on their own or by Presidential direction) to another federal agency or vice versa should changing circumstances warrant (for example, if non-DOD capabilities are unexpectedly exceeded).¹⁶

The concept goes on to state that “Determining LFA responsibility in situations that are neither clearly military nor clearly law enforcement can be a complex challenge,

¹⁶ Strategy and Policy Division (J52), United States Northern Command (NORTHCOM). "The Department of Defense Homeland Defense and Civil Support Joint Operating Concept, Version 02.", 7.

especially in time sensitive situations.”¹⁷ So, the fundamental questions of what the mission is and who is responsible for execution of it remain unanswered. If these basic questions cannot be answered clearly and succinctly, how can responsibility for the execution of the tasks be clearly assigned among agencies or departments attempting to accomplish them? The research for this thesis indicates that there is no consistently definable boundary between the two terms or the specific lead agency responsible for their execution resulting in the situation the nation currently faces along the border. The full weight of the nation’s power is not being brought to bear in a consistent, coordinated effort to solve a pressing National Security vulnerability.

“Homeland Security” and “Homeland Defense” are critical to the safety and security of the nation. President Obama stated in Presidential Security Directive-1 (PSD-1) in July 2009; “I believe that Homeland Security is indistinguishable from National Security – conceptionally [sic] and functionally, they should be thought of together rather than separately. Instead of separating these issues we must create an integrated effective and efficient approach to enhance the National Security of the United States.”¹⁸ The national level strategy documents reflect the desire to attain this ‘indistinguishable’ end of an integrated approach to “Homeland Security”, “Homeland Defense” and “National Security”. The 2010 National Security Strategy states:

we must integrate our approach to homeland security with our broader national security approach. We are improving the integration of skills and capabilities within our military and civilian institutions, so they complement each other and operate seamlessly. We are also improving coordinated planning and policymaking and must build our capacity in key areas where we fall short. This requires close cooperation with Congress and a deliberate and inclusive

¹⁷ "The Department of Defense Homeland Defense and Civil Support Joint Operating Concept, Version 02." 7.

¹⁸ Barack H. Obama, U.S. President, *Organizing for Homeland Security and Terrorism*. Presidential Study Directive-1(PSD-1), (Washington, DC: 2009), 1-2.

interagency process, so that we achieve integration of our efforts to implement and monitor operations, policies, and strategies. To initiate this effort, the White House merged the staffs of the National Security Council and Homeland Security Council. However, work remains to foster coordination across departments and agencies. Key steps include more effectively ensuring alignment of resources with our national security strategy, adapting the education and training of national security professionals to equip them to meet modern challenges, reviewing authorities and mechanisms to implement and coordinate assistance programs, and other policies and programs that strengthen coordination.¹⁹

A great deal of effort, time, money and brain power has been expended in the articulation of the policy and the development of a strategy to achieve it; but as demonstrated, the nation is not there yet and much more work is required to achieve the desired endstate of a secure Southern Border and by extension a secure nation.

¹⁹ *The National Security Strategy of the United States of America 2010*, 14.

SECTION TWO

NEAR TERM SOLUTIONS

This section will evaluate the role of the Department of Defense (DoD) and propose the creation of a Joint Inter-Agency Task Force (JIATF) to address the situation and provide the security required to protect the lives, property and interests of the citizens along the border. It will examine the legal and moral boundaries of the use of DoD Active Duty (Title 10) forces in a historically domestic security role.

CHAPTER FOUR

WHY THE DEPARTMENT OF DEFENSE (DoD) MUST ASSIST

The Department of Defense should **not** lead the long term effort to secure the U.S. Southwest border. Every strategic document produced by the Department of Defense reinforces that DoD is a subordinate partner to domestic, civil authorities and agencies in matters of domestic security. The 2008 National Defense Strategy states clearly that: “The Department will continue to be both a bulwark and a protector in these areas. Yet, in the long run the Department of Defense is neither the best source of resources and capabilities nor the appropriate authority to shoulder these tasks.”¹ However, in the short term, the increasing violence and potential for catastrophic events emanating from the lack of security along the Southwest border demonstrates the level of risk the nation is assuming and demands that the nation launch an immediate response to the crisis. DoD is the only department capable of providing that response. This chapter argues for establishment of a Joint Inter-Agency Task Force (JIATF) to leverage the full capabilities of the Department of Defense and the Inter-Agency in a dedicated “homeland defense” operation.

In the days following the terrorist attacks of September 11, 2001, the nation determined that the Unified Command plan for the Armed Forces required changes to adapt to the new realities of the security environment. In response to this a new command was formed with specific geographic responsibility for North America. The previous Unified Command Plan (UCP) divided the world into geographic areas of responsibility but excluded the Continental United States (CONUS) and North America. (See UCP map at Appendix D for the 1999 UCP boundaries and responsibilities). The

¹ *National Defense Strategy 2008*, 7.

UCP signed by Secretary of Defense William Cohen on October 07, 1999 assigned

United States Joint Forces Command (USJFCOM) headquartered in Norfolk, Virginia:

the mission of providing military assistance to civil authorities for consequence management of weapons of mass destruction (WMD) incidents within the continental United States, its territories and possessions. To fulfill that mission a standing Joint Task Force for Civil Support, under USJFCOM, will plan for and integrate the Defense Department's support to the lead federal agency for consequence management during a WMD incident. The Joint Task Force for Civil Support will be commanded by a two-star general officer, from the reserve component, with a small headquarters staff of approximately 36 military and civilian personnel.²

The UCP reasoned that the creation of a standing Joint Task Force for Civil Support would be sufficient to coordinate the response and consequence management required following an event involving the use of a Weapons of Mass Destruction (WMD) within the United States. Other contingencies affecting CONUS would be effectively managed by the domestic security and law enforcement agencies in line with the assumptions previously discussed. Application of the nation's military capability was not necessary unless there was a specific, credible threat. If that was the case the military could be used in support of the civil authorities (MSCA) to deal with the specific threat and then re-focused on its primary task of fighting and winning the nations wars overseas. The attacks of September 11, 2001 changed that dynamic. The transnational nature of the attack and the realization that it was a persistent and credible threat to the United States Homeland forced the military and the nation to reassess the UCP's assignment of roles and responsibilities. This reassessment resulted in the creation of the United States Northern Command and a realignment of boundaries and responsibilities. (See Appendix E, UCP Map for current boundaries). According to USNORTHCOM's

² U. S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), Press Release No. 470-99, October 07, 1999.

official website: “U.S. Northern Command (USNORTHCOM) was established Oct. 1, 2002 to provide command and control of Department of Defense (DOD) homeland defense efforts and to coordinate defense support of civil authorities...”³

USNORTHCOM’s specific mission is: “USNORTHCOM conducts homeland defense, civil support and security cooperation to defend and secure the United States and its interests.”⁴ For the first time in the nation’s history a Combatant Commander was assigned specific responsibility for CONUS and North America. The Area of Responsibility (AOR) is large and includes the

air, land and sea approaches and encompasses the continental United States, Alaska, Canada, Mexico and the surrounding water out to approximately 500 nautical miles. It also includes the Gulf of Mexico, the Straits of Florida, portions of the Caribbean region to include The Bahamas, Puerto Rico, and the U.S. Virgin Islands. The commander of USNORTHCOM is responsible for theater security cooperation with Canada, Mexico, and The Bahamas.⁵

“USNORTHCOM consolidates under a single unified command existing missions that were previously executed by other DOD organizations. This provides unity of command, which is critical to mission accomplishment.”⁶ “USNORTHCOM plans, organizes and executes homeland defense and civil support missions, but has few permanently assigned forces. The command is assigned forces whenever necessary to execute missions, as ordered by the president or secretary of defense.”⁷

The establishment of USNORTHCOM and its subordinate Joint Task Forces was a key element in the nation’s response to correcting the problems that were evident following the September 11, 2001 attacks. The establishment of Joint Task Force-North

³ U. S. Northern Command (NORTHCOM) Website, <http://www.northcom.mil/About/index.html>, (accessed 13 February 2011).

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

(JTF-N) as the “Department of Defense (DOD) organization tasked to support our nation’s federal law enforcement agencies in the interdiction of suspected transnational threats within and along the approaches to the continental United States”⁸ provided a single point of contact for the coordination of DoD response and assistance to the civil authorities within the Continental United States (CONUS). The Joint Task Force (JTF) is based out of Biggs Army Airfield at Fort Bliss, Texas. (See Appendix F for complete history, mission statement and specific definition of tasks and capabilities). The existence of JTF-N presents the nation an opportunity to leverage an existing command to serve as the higher headquarters of a JIATF created specifically to combat the problems faced at the border. This can effectively streamline the command and control relationships and serve as a Federal response to a fundamentally Federal problem. This approach to the problem would relieve the border states of the responsibility and requirement to provide increased law enforcement and/or National Guard presence along the border and provide the needed assistance to the Federal Agencies (CBP, ICE).

Joint Inter-Agency Task Force – South (JIATF-S) based out of Key West, Florida, is an example of a subordinate JTF in Southern Command (SOUTHCOM) that is successfully integrating the full capability of the joint, interagency team to protect the nation by conducting “interagency and international Detection & Monitoring operations, and facilitates the interdiction of illicit trafficking and other narco-terrorist threats in support of national and partner nation security.”⁹ The successes of JIATF-S in combating the flow of illegal narcotics and movement of illegal persons in the maritime domain is a contributing factor in the increased use of overland smuggling routes out of Mexico into

⁸ NORTHCOM Website.

⁹ Joint Inter-Agency Task Force-South (JIATF-S) Website, <http://www.jiatfs.southcom.mil/index.html>, (accessed 18 Feb 11).

the United States. It is a logical conclusion that the success of this JIATF can and should be used as a model to achieve a similar level of success in controlling the movement of people, weapons and narcotics in the land domain. The United States Congress agrees and in section 885 of the Homeland Security Act of 2002 stated:

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.¹⁰

During the Joint Advanced Warfighting School (JAWS) research trip to Washington, D.C. in January of 2011, the question was posed to the DHS and CBP representatives at the DHS Headquarters that given the current situation along the border with Mexico, the increasing violence and potential for terrorist infiltration what, if any, was the role DoD could play in solving the problem? The response identified three areas where DoD could assist in the solution. Those areas were: 1) Training of DHS and CBP personnel; 2) by providing technology either not currently available to agents and personnel executing the mission or not in sufficient quantities to accomplish the mission; and 3) assist in providing command and control (C2) and intelligence sharing capability to the operations. According to the Department of Defense Homeland Defense and Civil Support Joint Operating Concept, version 02, published in October of 2007:

In **Emergency Circumstances, [emphasis in original]** DOD could be directed to act quickly to provide unique capabilities when the need surpasses the capacities of civilian responders. In such circumstances, other federal agencies take the lead and DOD supports. Examples of circumstances include responding to an attack or

¹⁰ *Homeland Security Act of 2002*, 113-114.

to catastrophic natural / man-made events such as earthquakes, forest fires, floods, hurricanes, tornados, or infectious epidemics.¹¹

The reference does not specifically list the threat posed by ineffective border security and the threat of terrorist and weapon infiltration as an Emergency Circumstance. However, given the severity of the consequences of such an act being successful and the immediacy required to prevent it, it is the position of this thesis that it should qualify. Other research conducted in the course of completing this thesis shows that these areas are potential areas of cooperation between DHS and DoD that can result in increased efficiencies in manpower, budgets and overall effectiveness of the mission. Additionally, the current fiscal and economic conditions facing the nation will require all departments of the Federal Government to identify areas of “common ground” to reduce the overall costs and increase efficiency. This is true for both defense and homeland security. This mission provides a unique opportunity for the departments to combine forces to solve a critical “National Security” problem while preserving both force structure and capability in each department. The remainder of this chapter will examine the current budget environment and propose areas of efficiency between DHS and DoD and then discuss how DoD can assist in the areas identified by DHS.

The current fiscal environment will impact both DHS and DoD immediately. Cuts in operational budgets are imminent and the Secretaries of each Department have already taken the first steps to reduce costs and improve efficiency. The closure of the Joint Forces Command (JFCOM) is a visible example of these cuts. Since the creation of DHS in 2002, its budget has increased consistently from year to year. A report issued by the Sustainable Defense Task Force on 11 June 2010 titled *Debt, Deficits and Defense A*

¹¹ "The Department of Defense Homeland Defense and Civil Support Joint Operating Concept, Version 02.", 7.

Way Forward, showed that the budget allocation for homeland security increased over \$27 billion dollars or a total of 170% from 2001 to 2010. DoD's non-war budget increased significantly as well, rising \$215 billion dollars or an increase of 68% overall during the same period.¹² This massive expenditure of money to ensure the security of the nation is unsustainable in the current fiscally constrained environment. The increases in budget expenditures for DHS resulted in the doubling of CBP agents from 2004 to 2010 and the purchase of high tech equipment, including Unmanned Aerial Vehicles (UAVs). Despite this, the border remains porous, as described in previous chapters. This provides the first area of budgetary efficiency and capability DoD can provide to DHS. In 2010, Congress passed the Southwest Border Security Bill. This bill allocated \$600 million dollars for 1500 additional agents and purchase of two UAVs to conduct surveillance over the Southwest border. DoD maintains trained, equipped and capable units across the Joint Force with the experience and technical capability to conduct this mission without the purchase of additional equipment or the training of additional personnel. The extensive use of UAVs in the execution of operations in Iraq and Afghanistan, and the development and proliferation of the technology throughout the services, coupled with the increased ability of units to collect, analyze and disseminate intelligence data in real time to drive operations are an ideal skill set to apply to the problem of border security. Leveraging this skill set to assist DHS could save substantial sums of money in the near term by partnering with DoD to leverage these assets and not attempting to create a comparable capability within DHS. This will allow DoD to maintain the force structure, equipment and training of units and personnel that will be

¹² The Sustainable Defense Task Force, *Debt, Deficits and Defense, A Way Forward*, Washington, DC 2010, 5.

needed to conduct operations in the future both in CONUS to protect the homeland and overseas as part of any contingency operation.

The efficiencies identified in the above example are not unique to UAVs, the wars in Iraq and Afghanistan are responsible for producing units that are trained in all aspects of reconnaissance, surveillance, target acquisition (RSTA) and direct action operations. These are the skills required to provide effective security at the border. Over the next year, the military will substantially reduce the number of forces committed to the war in Iraq and begin to drawdown forces in Afghanistan. Those efforts and the ongoing effort to reduce forces in established overseas bases in Germany, Korea, and Japan will significantly increase the forces consolidated in the Continental United States (CONUS) and provide a larger pool of forces to take on a role in the security and defense of the homeland. These forces are trained and equipped to employ a vast array of modern technology from weapon systems to intelligence collection, analysis and dissemination, surveillance and target acquisition and have a wealth of experience that can and should be leveraged to protect the homeland. The Rand Study commissioned by DHS proposed a conceptual model of border security that identified three fundamental functions that must be accomplished to achieve the national policy objective of a secure border. These functions are:

- Interdiction: disrupting illegal movements across borders
- Deterrence: convincing would-be smugglers, criminals, or terrorists not to attempt to illegally cross borders
- Exploiting networked intelligence: contributing to and using shared intelligence information across organizational boundaries¹³

Execution of these tasks is currently the exclusive role of DHS and its subordinate agencies. As discussed in the previous chapters the effectiveness of execution along the

¹³ *Measuring the Effectiveness of Border Security Between Ports-of-Entry*, xii.

border is not sufficient to protect the nation. Using these three functions as ‘core tasks’ for comparison against DoD Active Duty units core Mission Essential Task List (METL) tasks (See Table 3) shows that several units are trained to execute tasks similar to those identified as essential by the Rand Study. These units are capable of providing a credible interdiction capability. The presence of an armed military force will also serve as a deterrent to those considering attempting to cross the border into the country illegally. The fused intelligence and increased situational understanding provided by the all source intelligence cells within each unit and the dissemination technology will greatly enhance the sharing of intelligence across organizational boundaries. The technical capability and nearly a decade of overseas combat experience along the international borders in Iraq and Afghanistan makes these forces an ideal solution to fill the gap and partner with DHS and its subordinate agencies to secure the United States border.

Table 3: Unit Mission Essential Task List

Unit	Mission Statement	Core Tasks
Battlefield Surveillance Brigade (BFSB)	Conduct intelligence collection, Reconnaissance and Surveillance (R&S) to answer the higher supported commander's information requirements (IR), enabling the commander to focus joint elements of combat power. The BFSB also provides assets to enhance the intelligence collection and R&S capability of other brigades, including BCTs. When directed, it produces intelligence in support of its higher supported headquarters.	<u>Doctrinal Missions:</u> - Perform Intelligence Collection - Reconnaissance and Surveillance <u>Tasks:</u> - Conduct Command and Control - Perform Intelligence, Surveillance and Reconnaissance - Conduct Reconnaissance and Security Operations - Decide Surface Targets¹⁴
Military Intelligence Brigade	Conducts multidiscipline Intelligence, Surveillance, Reconnaissance (ISR) operation in support of national, combined, Joint Task Force (JTF), Interagency, multi-national, and theater Army service component Command (ASCC) requirements	<u>Doctrinal missions:</u> - Support to Force Generation - Support to Situational Understanding - Perform Intelligence, Surveillance, and Reconnaissance - Support to Targeting and Information Superiority <u>Tasks:</u> - Conduct Command and Control - Support Force Generation - Support Situational Understanding - Perform ISR - Counter the Threat¹⁵
Heavy, Infantry, Stryker Brigade Combat Team (BCT)	To disrupt or destroy enemy military forces, control land areas including populations and resources and be prepared to conduct combat operations to protect US national interests.	<u>Doctrinal missions:</u> - Offense/Defense - Stability Operations - Security Operations <u>Tasks:</u> - Conduct Command and Control - Conduct Offensive/Defensive Operations - Conduct Security/Stability Operations - Employ Fires - Conduct Civil Support Operations(ARNG only)¹⁶

It is important to note the last task under the BCTs carries the caveat of Army National Guard (ARNG) only. This is in keeping with current DoD policy and regulations and highlights the changes that are required to implement a plan as proposed by this thesis.

These units are presented as a representative sample of capabilities that DoD could employ to assist in the security of the border. They are not intended to be the

¹⁴ U. S. Army Combined Arms Center, HQ, Department of the Army, Approved Unit METL, PowerPoint briefing dated 25 May 2010, slide 9.

¹⁵ Ibid, slide 19.

¹⁶ Ibid, slide 3.

complete solution, nor should any service related bias be implied. All elements of the Joint DoD Force (Army, Navy, Air Force and Marines) have trained and ready forces and capabilities that can be applied to assist in solving this problem. The example forces are Army and as the predominant land combat force are the most likely forces to be tasked to assist in this mission. While each has a specific mission and purpose on the battlefield, they are all designed to be employed as part of a joint team. The optimum mix of forces to accomplish this mission is a Stryker Brigade Combat Team (SBCT) supported by a Battlefield Surveillance Brigade (BFSB) or a Military Intelligence (MI) Brigade in support of an equivalent task force from across the Joint Force. These forces should be assigned to the JIATF for an established time period. They should be employed in conjunction with the agents of the CBP and elements of the Interagency to conduct the training, provide the equipment and manpower and form the core of the Joint Headquarters. This force structure will provide the required command and control and intelligence sharing operation and capability to leverage all aspects of national power across the joint force in order to assist in securing the border between the ports of entry.

The specific command relationships and authorities required to create, man, equip and employ this JIATF are complicated. These authorities must be clearly articulated and understood by all participants prior to operationalizing the concept. Chapter Five will address these requirements and the implications and limitations imposed by the Posse Comitatus Act of 1878 on the use of Federal Forces in a historically Domestic Security role.

CHAPTER FIVE

POSSE COMITATUS AND LEGAL OPTIONS

Chapter Five will examine the legal aspects of the use of Active Duty (Title 10) forces in a domestic security role by analyzing the current laws and the implications of the Posse Comitatus Act of 1878 on the use of DoD forces in the execution of Military Support to Civil Authorities (MSCA) along the Southwestern border. A brief historical summary of the events that led to the passage of the act in 1878 will explain how the original act has evolved into the current version contained in the United States Code and what impact it has on the conduct of border security.

John R. Brinkerhoff does a good job of establishing the requirement for the act in his February 2002 article '*The Posse Comitatus Act and Homeland Security*' where he states:

In 1854, Caleb Cushing, attorney general for President Franklin Pierce, blessed the posse comitatus doctrine and opined that marshals could summon a posse comitatus and that both militia and regulars in organized bodies could be members of such a posse. This was done to improve the enforcement of the Fugitive Slave Act of 1850. Among other things, this meant that the United States was responsible for expenses incurred by U.S. marshals in employing local police, state militia, or others in apprehending and safeguarding fugitive slaves. The Cushing Doctrine meant that even though the armed forces might be organized as military bodies under the command of their officers, they could still be pressed into service by U.S. marshals or local sheriffs as a posse comitatus without the assent of the president. This doctrine was merely the opinion of the attorney general and was not subjected to judicial or legislative review prior to its enunciation.¹

The 'Cushing Doctrine' was used extensively to justify using federal troops to enforce civil laws in the West where the Army was often the only form of law

¹ John N. Brinkerhoff, "The Posse Comitatus Act and Homeland Security," The Homeland Security Studies and Analysis Institute.
<http://www.homelandsecurity.org/journal/articles/brinkerhoffpossecomitatus.htm>, (accessed 27 February 2011)

enforcement available. During the post Civil War reconstruction years (1865-1877), Union troops were used by U.S. Marshals and local Sheriffs to maintain order and enforce laws in the Southern states. As the Southern states reentered the union, the U.S. Congress became increasingly concerned about the use of federal forces in this manner and believed that this use was not in keeping with their original purpose of defending the nation. On June 18, 1878, as a rider on the Army Appropriations bill, the Posse Comitatus Act (PCA) was passed. The original wording of Chapter 263, Section 15 of the 2nd session of the 45th Congress was:

From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section, and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or by both such fine and imprisonment.²

The act has been amended on a number of occasions since its original passage. Each amendment attempted to clarify when or how it was applied or to modify some specific element in the law. For example it was amended in 1959 to ensure it included the newly added State of Alaska and in 1994 to remove the \$10,000 dollar limit on the fine that could be imposed on those convicted of violating it. Title 18, U.S. Code, Section 1385 wording is: “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or

² Bonnie Baker, *The Origins of the Posse Comitatus*, Maxwell Air Force Base, Montgomery, AL, 1999, 1.

the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”³

A great deal of research has been done and multiple papers written attempting to explain the PCA and outline its restrictions, exemptions, and application. This paper is not an attempt reexamine the act or critique the body of work already completed. The intent is to use that work to validate the concept of employing a Joint Interagency Task Force (JIATF) to solve the security problem at the Southwest border by highlighting the current accepted exemptions that will allow the legal use of the Active Duty (Title 10) force. The PCA is widely seen as a significant legal impediment to the use of these forces to assist the civil authorities conducting ‘law enforcement’ operations. This is a correct interpretation of the Act under normal circumstances. It is the position of this thesis that the current situation at the Southwest border is not a “normal” circumstance. The nature of the security environment and the threat posed by transnational terrorists, drug trafficking organizations and individuals is a clear threat to the National Security of the United States. As discussed in detail in previous chapters, DoD is the only department in the Federal Government with the capability to immediately provide the required assistance to DHS and its subordinate agencies to secure the border and mitigate the danger posed by these threats.

The PCA was passed to prevent the Army, and under current law, the active military, from being pressed into service to enforce laws by local authorities without the consent or knowledge of Congress and the President. This prohibition was re-validated in 2002 when Congress passed the Homeland Security Act. Section 866 reaffirmed its importance:

³ US Code Title 18, § 1385.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the “Posse Comitatus Act”), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized

by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President’s obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the “Insurrection Act”), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.⁴

Subparagraph 4 of the findings is particularly important to the proposal forwarded by this thesis.

The PCA is not the only regulatory guidance that limits the use of Title 10 Forces in securing the border. “The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the

⁴ *Homeland Security Act of 2002*. 113-114.

Executive departments and agencies of the Federal Government.”⁵ United States Code, Title 10 regulations address the specific roles, responsibilities and functions of the Armed Forces. Title 10, Subtitle A, Part I, Chapter 18 is the section that regulates military support for civilian law enforcement departments and agencies. The particular subsections that are relevant to this discussion are Section 373 (Training and advising civilian law enforcement officials), and Section 375 (Restriction on direct participation by military personnel). Section 373 states that:

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available—
(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and
(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.⁶

This regulation specifically authorizes the Secretary of Defense to use Active Duty units and personnel to train and provide ‘expert’ advice to Federal, State and Local law enforcement officials. Section 375, outlines the restrictions on use of these personnel and specifically forbids the use of personnel as defined below:

375. Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter ***does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.***[emphasis added]⁷

⁵ Code of Federal Regulations (CFR): Main Page, <http://www.gpoaccess.gov/cfr/about.html>, (accessed 23 February 2011).

⁶ US Code Title 10, § 373.

⁷ US Code Title 10, § 375.

This policy is a clear prohibition against Title 10 forces from participating in ‘law enforcement’ activities. There are however, exemptions that allow participation by DoD Title 10 forces. According to the NORTHCOM website:

The United States Congress has enacted a number of exceptions to the PCA that allow the military, in certain situations, to assist civilian law enforcement agencies in enforcing the laws of the U.S. The most common example is counterdrug assistance (Title 10 USC, Sections 371-381). Other examples include:

The Insurrection Act (Title 10 USC, Sections 331-335). This act allows the president to use U.S. military personnel at the request of a state legislature or governor to suppress insurrections. It also allows the president to use federal troops to enforce federal laws when rebellion against the authority of the U.S. makes it impracticable to enforce the laws of the U.S.

Assistance in the case of crimes involving nuclear materials (Title 18 USC, Section 831). This statute permits DoD personnel to assist the Justice Department in enforcing prohibitions regarding nuclear materials, when the attorney general and the secretary of defense jointly determine that an “emergency situation” exists that poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies.

Emergency situations involving chemical or biological weapons of mass destruction (Title 10 USC, Section 382). When the attorney general and the secretary of defense jointly determine that an “emergency situation” exists that poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies. DoD personnel may assist the Justice Department in enforcing prohibitions regarding biological or chemical weapons of mass destruction.⁸

All of the exemptions listed above have one common theme. The common theme is the presence of an “emergency situation” that “poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies.”⁹ In light of the current threats and the security environment in the post 9-11 world, use of the Armed Forces in these roles should be requested by the President and authorized by Congress. This is a reasonable response to the ‘serious emergency’ situation emanating from the

⁸ NORTHCOM Website.

⁹ Ibid.

lack of effective security along the border. A Presidential request with the approval of Congress would alleviate the legal issues with using Title 10 forces to secure the border. This request could be limited in scope and duration to allow time for a more thorough long term solution to be developed. This would solve the immediate problem while serious consideration of the fundamental assumptions that inform the nation's security paradigm as discussed in Chapter Two were debated and an informed comprehensive strategy developed by the nation's leaders.

The establishment of Joint Interagency Task Force – South (JIATF-S) to assist in the counterdrug effort in the maritime and air domain sets an ideal precedent for establishing a similar exemption to extend to the land domain. The movement of illegal narcotics has migrated to land as outlined in Chapter Two, and when coupled with the additional issues of illegal immigration, human smuggling and the potential for terrorist infiltration across the border, the problem is more severe and more immediate than the situation facing JIATF-S. The recent assignment of a standing reaction force to respond to events involving Weapons of Mass Destruction (WMD) to Joint Task Force - Civil Support (JTF-CS) constitutes another clear exemption to the PCA. There is no equivalent force currently assigned to respond or assist in Non-WMD events. Joint Task Force – North (JTF-N) has no assigned forces and must wait on a request for assistance from civil authorities and rely on units that volunteer to participate in the resulting ad hoc response. This can and should be changed to allow more flexibility to provide assistance prior to catastrophic events.

CHAPTER SIX

CONCLUSION / RECOMMENDATIONS

The solution to the problem of security along the Southwestern border is complex and requires some fundamental changes to the nation's view of national security and the paradigm used to execute it. This work has attempted to establish the immediate need to implement changes to the current border security posture and the forces conducting the mission. The introduction to this work provided a detailed explanation of the changes in the international security environment that directly challenge the basic assumptions, governmental organizations, roles and missions that the nation relies on to provide security. The terrorist attacks that occurred on September 11, 2001 forever changed the definition of terrorism from a regional, politically motivated threat focused on limited objectives to a global war between radical Islam and the rest of the non Muslim world. The rise of transnational terrorist organizations like Al Qaeda and its affiliates presented a threat unlike anything the nation has faced in the past. The potential for a catastrophic attack emanating from a single individual or organization crossing the Southwest border illegally changes the dynamics of the entire security environment. This possibility highlights the importance of effective execution of security operations along the nation's borders. The combination of the declared global '*Jihad*' against the Western powers, and the recent reports of the presence and recruiting efforts by known terrorist groups like Hezbollah in Northern Mexico, highlight the immediate threat to the national security of the United States.

Chapter Two provided a detailed assessment of the current situation along the border. It provided historical data reflecting the level of illegal activity and the indirect causes of the increasing level of violence over the last several years. The success of

operations like “Operation Jump Start” and the ongoing success of Joint Interagency Task Force – South (JIATF-S) have denied Drug Trafficking Organizations (DTOs) and human smugglers access to the United States using the air and maritime domains. This success has forced the threat onto the land domain in Northern Mexico. Increasing numbers of individuals from countries other than Mexico (OTM) attempting to gain entry into the country and the presence of known terrorist groups like Hezbollah exceed the capability of the departments and agencies tasked to secure the border. The deployment of National Guard Troops to assist the Customs and Border Patrol (CBP) helps, but as proven by the results of “Operation Jump Start” is only a stop gap measure and not a solution. These historical examples and the reality of the current situation prove the thesis that: ***To ensure the National Security of the United States, the U.S. Government must utilize Department of Defense Active Duty Forces to assist in the security of the Mexican border.***

Implementing this solution is a difficult task and will require thoughtful consideration of all aspects of national security policy and strategy. The examination of the nation’s founding documents and history revealed three fundamental assumptions that shape the nation’s thinking. Those assumptions are: 1) the nation is protected by its near unique geographic position provided by the Caribbean Sea and two great oceans on its East and West; 2) no significant internal or external land-based threat exists to threaten the nation’s existence; and 3) a large standing Army is not necessary and any use of federal military forces in a domestic law enforcement or security role is to be avoided. Chapter Two presented evidence that these assumptions are no longer valid in the current security environment. It also highlighted the paradigm of assuming a “peace dividend”

following major overseas conflicts that reduces military funding and capability. The historical record showed that the forces that resulted from these savings were not prepared for the next inevitable conflict. The situation at the border provides an opportunity for the Department of Defense to leverage current force structure and funding levels to assist in solving a pressing national security crisis. The efficiencies in personnel and funding benefit the Departments of Defense and Homeland Security by effectively utilizing current capabilities, equipment and personnel to solve a pressing national security problem without repeating the mistakes of the past.

Once the need for reform and change is established the question of how to accomplish it is raised. In order to understand the changes required a full understanding of the current structure and myriad of agencies and forces executing the mission is required. Chapter Three outlined the importance of a specific “professional vocabulary” to define the key terms used in the execution of “Homeland Security,” “Homeland Defense” and “National Defense.” This basic requirement is strikingly absent across all national level policy and strategy documents. The lack of specific, accepted definitions and the difficulties associated with determining what department or agency had assigned responsibility as the Lead Federal Agency (LFA) when dealing with these complex issues hinders the assignment of roles and responsibilities across all departments, agencies and organizations. The resulting lack of clarity has created a situation with blurred reporting, command and control of operations and ensured general confusion in providing security along the border. The “Enterprise” of Homeland Security consists of a vast array of departments, agencies, and organizations and individuals attempting to solve the problem, but lacks a clear leader to set policy and enforce standards. The goal of an

“integrated effective and efficient approach to enhance the National Security of the United States” is still elusive.¹

For the last decade the nation’s security has relied heavily on the military instrument of power. The nation has prosecuted two wars abroad and worked to strengthen security in the homeland. The creation of the Department of Homeland Security (DHS) and the United States Northern Command (USNORTHCOM) was intended to assist in the coordination and execution of the numerous existing Federal, State and local agencies responsible for protecting the homeland. The commitment of forces, from all branches of the armed services, to the wars in Iraq and Afghanistan and the creation of DHS solidified the historic division of effort between DoD and DHS. The 2008 National Defense Strategy clearly articulates the defense of the homeland as “The core responsibility of the Department of Defense is to defend the United States from attack upon its territory at home and to secure its interests abroad.”² In order to protect the nation’s territory at home, DoD must partner with DHS and all civil authorities to ensure that the right capability, experience and tools are applied to the right problem. The massive federal deficit and the austere economic times guarantee a reduction in the budgets and closer scrutiny on federal spending. The era of increased personnel authorizations and purchasing additional equipment to accomplish the mission without consideration of common capabilities between departments is over. Comparison of the ‘core competencies’ and the Mission Essential Task List (METL) of several current DoD units and the core requirements to secure the border revealed a significant degree of commonality. DoD has the capability to assist. Thousands of Soldiers, Sailors, Airmen

¹ PSD-1, 1-2.

² *National Defense Strategy 2008*, 6.

and Marines have redeployed from Iraq and thousands more could begin to redeploy from Afghanistan over the next two years. This reduction in the number of deployed troops coupled with the ongoing reduction of strength at historical garrisons in Germany, Japan and Korea provides a pool of trained and ready forces to assist DHS and its subordinate agencies in protecting the U.S. homeland.

The decision to commit these DoD forces to assist DHS is politically and legally sensitive. The common belief is that the Posse Comitatus Act of 1878 forbids the use of Title 10 forces to solve a civil law enforcement problem. Under normal circumstances this interpretation is true and valid. It is only under emergency circumstances that the President and Congress can authorize execution under the existing exemptions to the PCA that these forces can be brought to bear on the problem. This requires the acknowledgement of the change in the security conditions the nation faces and a willingness to veer off the 'status quo' course and apply the full weight of the all elements of national power to solve the problem. This is a clear and present danger to the nation's National Security and DoD Active Duty Forces must be part of the solution. Positive action must be taken before a catastrophic event, that threatens America's citizens, property, and sovereignty occurs and the subsequent investigation traces its origin and cause to a lapse in the security at the nation's Southwest border. The nation must achieve a coherent policy and strategy before that event takes place. The American people deserve nothing less.

Recommendations:

This work recommends the immediate execution of three broad categories of actions to solve this ‘clear and present’ danger and achieve the goal stated above. These actions are legislative, operational and organizational in nature.

The first actions recommended are immediate Congressional legislation and a Presidential Declaration declaring the situation at the Southwest border as an “Emergency Situation” with dire National Security implications. The legislation must address four major topics and clearly state the following:

- 1) The current violence and situation at the Southwest border exceeds the capability of the Department of Homeland Security (DHS) and its subordinate agencies to deal with and constitutes a threat to the National Security of the United States of America.
- 2) The legislation must establish the area of the Southwest border as a “border enforcement and security zone” and declare security of the borders of the United States as a Federal responsibility under the Constitutional requirement to “provide for the common Defence and general Welfare of the United States;”³
- 3) The legislation must specifically direct the establishment of a Joint Interagency Task Force and authorize the use of DoD Title 10 units and personnel to assist DHS in the execution of security missions along the border. The Homeland Security Act of 2002 specifically authorized the creation of a JIATF (See Appendix G) to coordinate the response to complicated homeland security issues. JIATF-S is referenced as an example structure to follow in order to solve these problems. The recommended legislation should officially establish a JIATF to

³ US Constitution, Art 1, Sec 8.

address the issue of Southwest border security and declare the Southwest border a 'Border Enforcement and Security Zone' in the same way that the coastal waters are declared a 'Drug Enforcement Area' for JIATF-S. This sets the stage for the assignment of personnel in point 4.

- 4) The legislation must direct the addition of a subsection to Title 10, Subtitle A, Part I, Chapter 18, United States Code to allow the assignment of personnel from the federal agencies (CBP/ICE) to DoD ground combat units executing border security operations allowing them to directly execute their law enforcement tasks while the DoD forces provide security and support. (See Appendix H for text of the subsection). This subsection is similar to the provisions in Subsection 379 which authorizes Coast Guard personnel to execute law enforcement duties aboard U.S. Navy vessels.

Action two is executed by DoD in partnership with the Interagency to determine the appropriate command and control structure and authorities required to conduct the operation. All partner agencies must conduct a detailed analysis of the missions and requirements to determine the forces and capabilities required to effectively secure the border. A comprehensive review must be conducted to identify the gaps in capability, manpower and equipment. DoD Active Duty units Mission Essential Task Lists (METL) should be used to identify the appropriate units and required skill sets to fill the identified gaps. Security, Intelligence sharing, Reconnaissance and Surveillance capability as well as communications capability must be considered to ensure the appropriate unit is selected. DHS and the Interagency partners must establish the required screening criteria for personnel and select the most qualified personnel to be assigned to these units to

ensure that effective partnership between DoD and DHS is maintained. Once the requirements and screening criteria are established the task of determining the appropriate training must be addressed. Both DoD and DHS personnel should train jointly on the common tasks and capabilities of each department or agency and these requirements codified in a joint training memorandum of agreement maintained by the JIATF HQ.

The final action recommended is for DoD and DHS to determine the length of the rotation and lay out a calendar extending for a minimum of three years. It is the recommendation of this work that the rotation will not exceed six months and maintain a minimum one month overlap between units. The total DoD unit and DHS personnel commitment is nine months and is broken out as follows: Month 1: Notification and initial training. Month 2: DHS personnel link up and mandatory training, unit movement to JIATF staging area. Unit will conduct Joint Reception, Staging, Onward Movement and Integration (JRSOI) followed by a hand over with the departing unit. Month 3 – 8 is mission execution and hand over to follow on unit. Month 9 is dedicated to redeploying personnel and equipment and conducting reset operations in preparation for follow on missions. DHS personnel should be assigned for the duration of the deployment and mission execution and rotate as the unit rotates. This will allow continuity within the unit and predictability for the agents.

The immediate adoption of these recommended actions and the legislation required to execute them can establish a lasting partnership between the Department of Homeland Security and the Department of Defense that will solve a critical National Security problem. This partnership would stand as an example of the type of changes

that are required in the nation's strategic thinking to address the reality of the security environment the nation faces in 2011 and beyond.

APPENDICES

Appendix A (Listing of money stripped from Fiscal Year 2010 Supplemental Appropriations Bill)

The money stripped from the bill by the Senate would have paid for additional Border Patrol agents, surveillance technology and assistance to local law enforcement agencies including:

- \$208.4 million for 1,200 additional Border Patrol agents to be deployed between ports of entry along the Southwest border
- \$201 million for Justice Department programs and the temporary deployment of personnel to high-crime areas (including adding seven Alcohol, Tobacco and Firearms Gunrunner Teams; five FBI Hybrid Task Forces; additional Drug Enforcement Administration agents; more than 20 deputy U.S. marshals; additional attorneys including more than 30 prosecutors and immigration judges; and additional detention and incarceration costs for criminal aliens and provide funding to support Mexican law enforcement operations)
- \$136 million to add 500 additional officers at ports of entry along the Southwest Border and deploy additional canine teams
- \$50 million for Operation Stonegarden grants to support local law enforcement activities on the border
- \$35.5 million for improved tactical communications on the Southwest border, three permanent Border Patrol forward operating bases and a surge in investigations designed to prevent corruption among CBP officers and agents
- \$32 million to procure two additional CBP unmanned aerial detection systems
- \$30 million to hire additional Immigration and Customs Enforcement agents⁴

⁴ “Gabrielle Giffords blasts Senate for failing to fund border security”

Appendix B: (DHS Definitions)

Operational control—defined by DHS as the number of border miles where Border Patrol had the ability to detect, respond, and interdict cross-border illegal activity.⁵

Table 1: Border Patrol Levels of Border Security⁶

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.

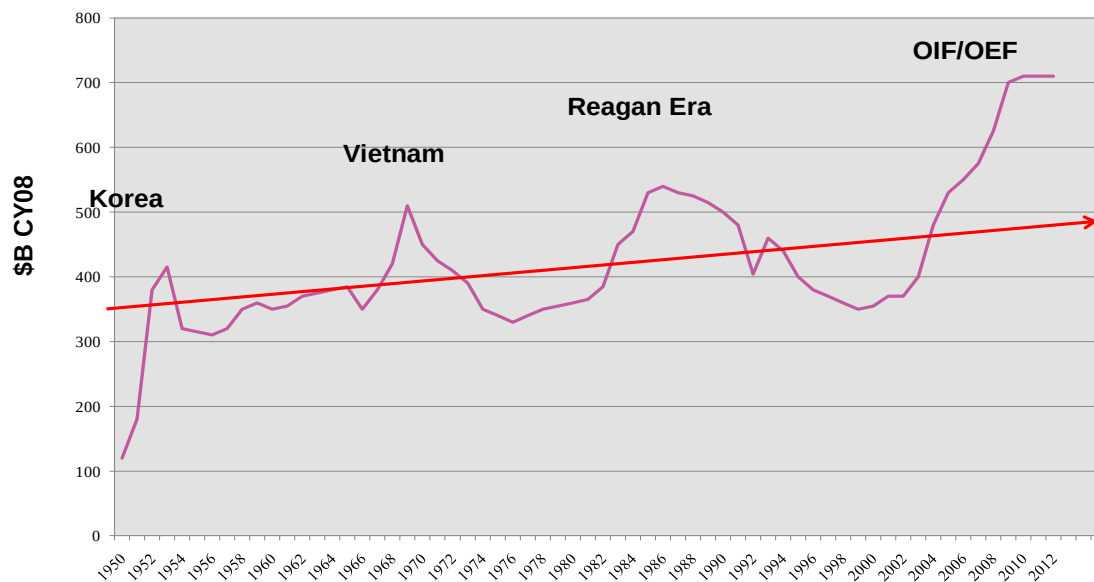
⁵ *Border Security: Preliminary Observations on Border Control Measures for the Southwest Border*, 2.

⁶ *Ibid*, 8.

Appendix C: Historical Trends in DoD Spending (1950-present)⁷



Historical Trends in DoD Spending

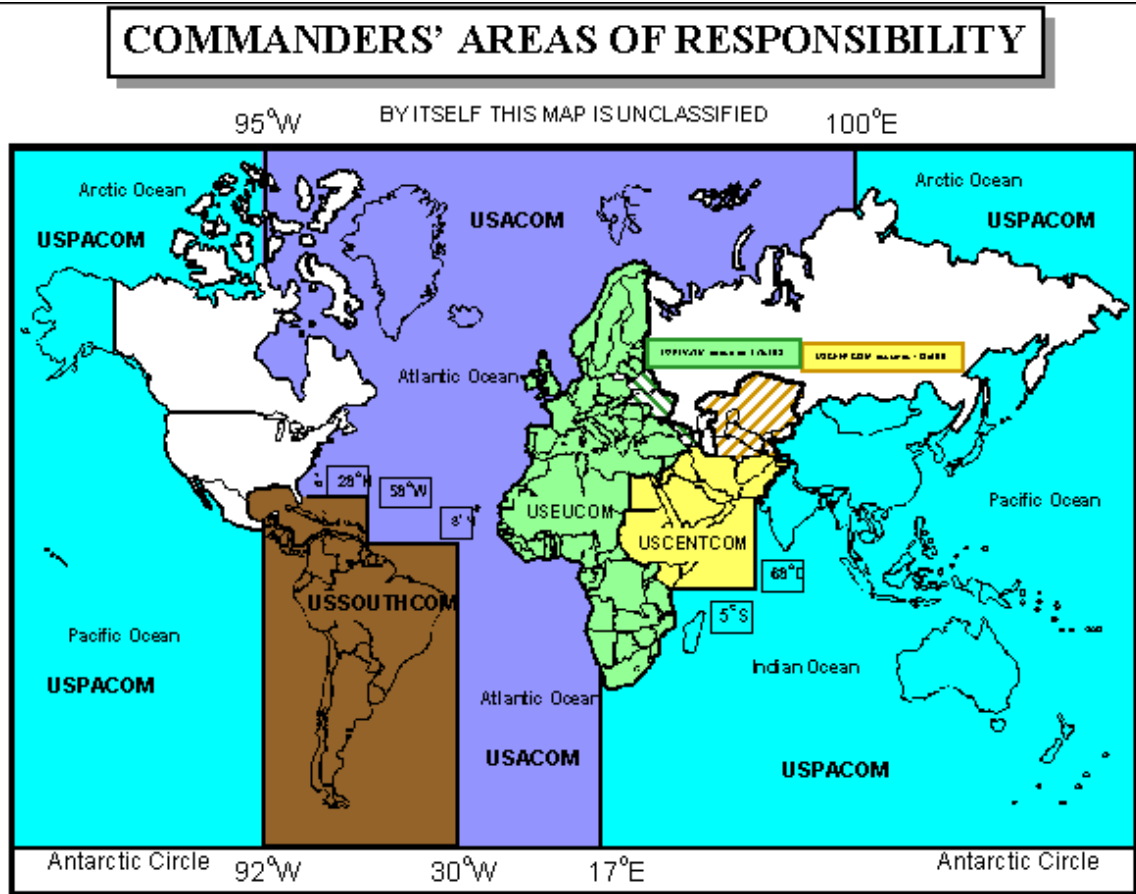


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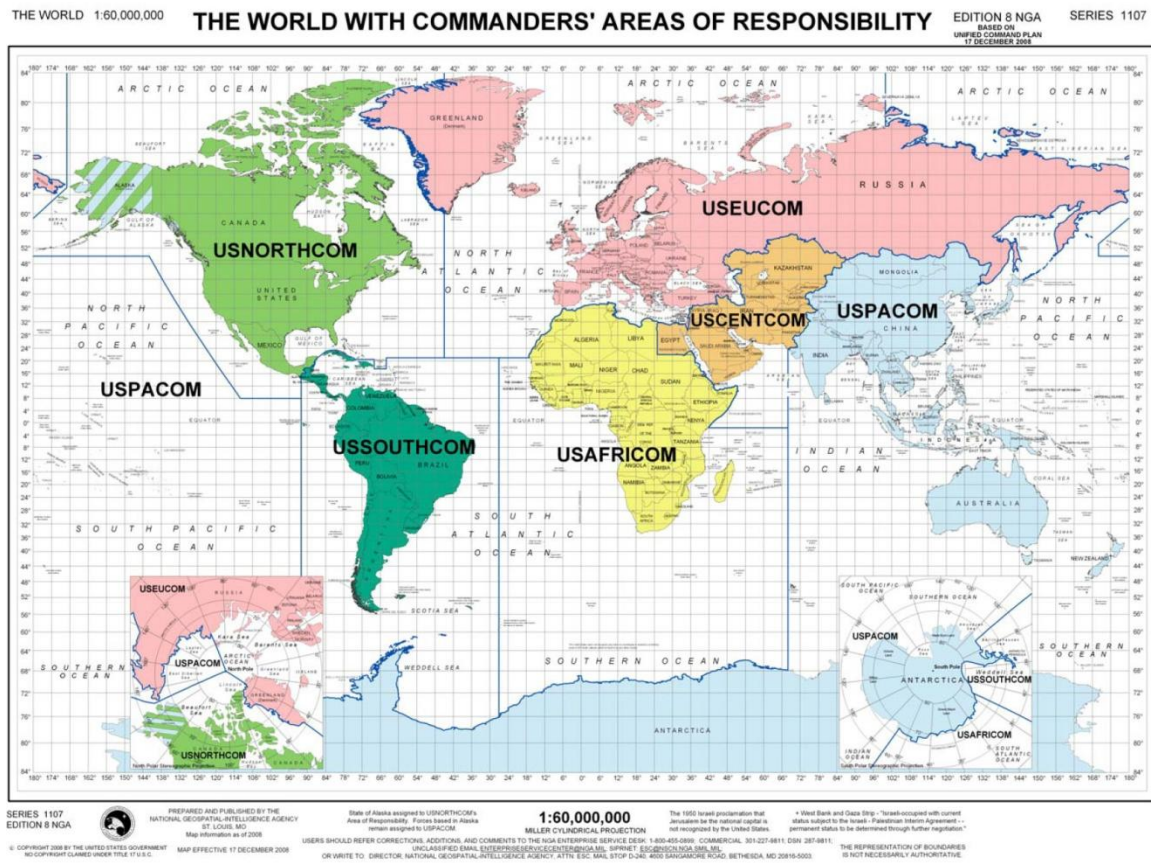
⁷ Gregg Sturdevant, (BGEN), Assistant Deputy Commandant, P&R, "USMC Programs and Resources", http://jpsc-spp/sites/JAWS/Strategic%20Foundations%20ST6300%20%20Students/AY%2010-11%20ST%206300%20Student%20Lesson%20Materials/ST%206307A-E%20Armed%20Service%20Planning%20and%20Programming/JAWS%20Brief-ADC_PR_Brief_10%20Dec%202011_v1.2.pptx, (accessed 10 January 2011), slide 9.

Appendix D: 1999 Unified Command Plan Map⁸



⁸ U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), Press Release No. 470-99, October 07, 1999.

Appendix E (Post 2001 UCP Map)⁹



⁹ Joint Chiefs of Staff, *Department of Defense, Unified Command Plan*, <http://www.defense.gov/specials/unifiedcommand/>, (accessed 23 Jan 11).

Appendix F (Joint Task Force – North (JTF-N), History and Mission)

Joint Task Force originally established in 1989

History of Joint Task Force North

Joint Task Force North (JTF North) was formerly known as Joint Task Force-Six (JTF-6). In a ceremony conducted on September 28, 2004, JTF-6 was officially renamed JTF North and its mission was expanded to include providing homeland security support to the nation's federal law enforcement agencies.

In response to President George H.W. Bush's declaration of the "War on Drugs," General Colin Powell, then Commanding General of the U.S. Army's Forces Command, issued the order on November 13, 1989 that established JTF-6 at Fort Bliss, Texas.

JTF-6 was established to serve as the planning and coordinating operational headquarters to support local, state, and federal law enforcement agencies within the Southwest border region to counter the flow of illegal drugs into the United States.

JTF-6's original area of operations consisted of the four border states of California, Arizona, New Mexico and Texas -- a land area of more than 660,000 square miles. In February 1995, by directive of the Commanding General of U.S. Army Forces Command, JTF-6's area of responsibility was expanded to include the entire continental United States, Puerto Rico and the Virgin Islands. In June 1997, responsibility for Puerto Rico and the U.S. Virgin Islands was transferred to U.S. Southern Command.

JTF-6's efforts led to both a greater recognition of the potential for military assistance in counterdrug efforts and a significant expansion of the partnership among active duty forces, reserve components, and the nation's law enforcement agencies.

The tactics, techniques, and procedures that the command developed over the years in the "War on Drugs" contribute immeasurably to the accomplishment of JTF North's broader new mission of combating transnational threats.

From its inception as JTF-6, to its evolution as JTF North, the command has completed over 6,000 missions in direct support of the nation's local, state, and federal law enforcement agencies and counterdrug task forces.

Joint Task Force North Mission

Joint Task Force North (JTF North), based at Biggs Army Airfield, Fort Bliss, Texas, is a joint service command comprised of active duty and reserve component Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, Department of Defense civilian employees, and contracted support personnel.

JTF North is the Department of Defense organization tasked to support our nation's federal law enforcement agencies in the identification and interdiction of suspected transnational threats within and along the approaches to the continental United States.

Transnational threats are those activities conducted by individuals or groups that involve international terrorism, narcotrafficking, alien smuggling, weapons of mass destruction, and includes the delivery systems for such weapons that threaten the national security of the United States.

JTF North's homeland security support role is articulated in its mission statement:

*Joint Task Force North supports
Drug Law Enforcement Agencies in the conduct of
Counter Drug/Counter Narco-Terrorism operations
in the USNORTHCOM area of responsibility
to disrupt trans-national criminal organizations
and deter their freedom of action
in order to protect the homeland.*

Homeland Security Support

Joint Task Force North (JTF North) coordinates military support to law enforcement agencies in order to deter and prevent transnational threats to the homeland. All military support for homeland security is based on support requests and threat assessments.

Support requests are submitted to JTF North by designated federal law enforcement agencies. Assuming the support is appropriate and in compliance with the statutory guidelines for the domestic employment of military forces, JTF North seeks military units to volunteer to provide the requested operational support. Once a unit volunteers, JTF North facilitates mission planning and execution with the unit and the supported agency. In accordance with Department of Defense policy, missions must have a training value to the unit or provide a significant contribution to national security.

JTF North is an effects multiplier assisting law enforcement agencies to secure the homeland by providing supplemental and unique capabilities. JTF North support to federal law enforcement agencies is categorized in the following four support categories:

- **OPERATIONAL SUPPORT**
 - Aviation Support Operations
 - Aviation Transportation/Insertion/Extraction
 - Aviation Medical Evacuation (MEDEVAC)
 - Aviation Reconnaissance
 - Daytime Operations
 - Nighttime Operations
 - Air and Maritime Surveillance Radar
 - Unmanned Aircraft Systems (UAS)
 - Ground Surveillance Radar
 - Listening Post/Observation Post
 - Ground Sensor Operations

- Ground Transportation
- **INTELLIGENCE SUPPORT**
 - Law Enforcement Agency Case Sensitive Intelligence Support
 - Collaborative Threat Assessment
 - Geospatial Intelligence Support
 - Modified Threat Vulnerability Assessment
 - Threat Link Analysis Product
- **ENGINEERING SUPPORT**
 - Personnel Barriers
 - Vehicle Barriers
 - Lights
 - Roads
 - Bridges
- **GENERAL SUPPORT**
 - Mobile Training Teams
 - Basic Marksmanship
 - Trauma Management
 - Emergency Response
 - Counterdrug Field Tactical Police Operations
 - Counterdrug Marksman/Observer Training
 - Counterdrug Special Reaction Team Training
 - Drug Trafficking Organization Targeting
 - Integrated Mission Planning
 - Intelligence and Link Analysis
 - Interview Techniques
 - Multi-Subject Tactical Instruction
 - Threat Mitigation Training
 - Other training as requested
 - Tunnel Detection
 - Transportation
 - Sustainment
- **INTERAGENCY SYNCHRONIZATION**
 - Support interagency planning process
 - Facilitate interagency and bi-national info sharing
 - Point of Integration Operations
- **TECHNOLOGY INTEGRATION**
 - Leverage Department of Defense science & technology investment
 - Ground/ Air/ Maritime sensor integration
 - Information Efficiency and Networks

- Biometrics
- Tunnel Detection

Evolution of Support

During the first decade of JTF North's Military Support to Law Enforcement Agencies (MSCLEA), our support was relatively personnel-intensive, using individual personnel on the ground to provide border detection. Today we have shifted to a greater focus on technology, using ground sensors, radar, airborne platforms, and thermal imaging to not only reduce the manpower requirements, but conduct more effective border detection.¹⁰

Appendix G: (Homeland Security Act of 2002, Section 885):

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.¹¹

Appendix H: (Recommended addition to U.S. Code as Title 10, Subtitle A, Part I, Chapter 18, Subsection 383):

383. Assignment of Interagency Law Enforcement personnel to Active Duty Ground Combat Units for the purpose of executing Law Enforcement and Border Control Duties.

(a) The Secretary of Defense and the Secretary of Homeland Security shall provide that there be assigned with in every appropriate ground combat unit assigned duty along the Nation's borders in a Border Enforcement and Security mission Federal Agents from the Customs and Border Patrol (CBP) or Immigration and Customs Enforcement (ICE) Agency who are trained in law enforcement and have the powers of Federal Law Enforcement under title xx, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Interagency (CBP/ICE) assigned to duty in ground combat units under this section shall perform such law enforcement functions (including drug-interdiction, and border enforcement functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary of Homeland Security; and

¹⁰ NORTHCOM Website.

¹¹ *Homeland Security Act of 2002*. 104.

(2) as are otherwise within the jurisdiction of the Customs and Border Patrol and Immigration and Customs Enforcement Agencies.

(c) No fewer than 500 personnel from the Agencies shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Homeland Security, after consultation with the Secretary of Defense, determines that there are insufficient units available for purposes of this section or the situation no longer requires the participation of Department of Defense Active Duty units, such personnel may be assigned other duty as directed by the appropriate Agency leadership.

(d) In this section, the term “Border Enforcement and Security mission” means an area within the land area of the Continental United States (CONUS) in which the Secretary of Defense and the Secretary of Homeland Security (in consultation with the Attorney General) determine that activities involving illegal border crossing and smuggling of drugs, weapons and individuals into the United States are ongoing.¹²

¹² Modeled on Title 10, US CODE, Subtitle A, Part 1, Chapter 18, Subsection 379 (Assignment of Coast Guard Personnel to naval vessels for Law Enforcement purposes), http://www.law.cornell.edu/uscode/10/usc_sec_10_00000379----000-.html, (accessed 14 March 2011).

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VITA

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