



Testimony of
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**Hearing on “Securing the Border: Building on the
Progress Made”**

**before the Committee on Homeland Security and
Governmental Affairs**

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Mr. Chairman and Members of the Committee, thank you for the invitation to appear before you today on a subject that is of critical importance to the security of the nation and to the viability of our immigration system. My name is Doris Meissner and I am a Senior Fellow and Director of the U.S. Immigration Policy Program at the Migration Policy Institute (MPI), an independent, non-partisan policy research organization in Washington, D.C. I served as Commissioner of the U.S. Immigration and Naturalization Service (INS) from 1993-2000 and have been engaged in immigration matters for more than 35 years in government and now in non-governmental policy research roles.

My core message today is to urge the administration and the U.S. Department of Homeland Security (DHS), working with Congress, to define what constitutes effective border control and establish measures of effectiveness for managing and assessing border-control efforts. Clear definitions and indicators of what constitutes effective border control are essential as a basis for promoting a more informed public discussion and broader consensus about the effectiveness of border enforcement, especially along the Southwest border.

Let me explain. The need for effective border enforcement and control may be the most widely shared point of agreement in the national immigration debate. For more than 15 years, and particularly since Sept. 11, 2001, both Democratic and Republican administrations and Congresses have allocated unprecedented levels of resources to strengthen border enforcement, particularly at the Southwest land border with Mexico. Yet, we have very little basis for assessing the return on that investment, and it would seem that many Americans have yet to grasp how much enforcement at the border has been strengthened.

The buildup began in earnest in the mid-1990s. I remember well its origins and driving the border enforcement agenda. I had hardly adjusted the height of my desk chair as INS Commissioner when Attorney General Janet Reno returned from a trip to the U.S.-Mexico border and told me to “do something about the border” as my first and highest order of priority.

What she had seen was the 12-mile stretch of the border south of San Diego between the Otay mountains and the Pacific Ocean. Every day at dusk, hundreds of would-be illegal crossers assembled on the Mexican side of the international boundary, amid food vendors and smugglers (*coyotes*) who made a living from the daily traffic, sometimes with sinister consequences. As darkness came, large groups would run across a wide earthen bowl known as the soccer field, rushing the small number of Border Patrol agents positioned on the U.S. side. The agents caught some crossers, but many more got past them, making their way to Los Angeles, to California’s vast agricultural valleys and to points far beyond.

This section of the border also regularly witnessed banzai runs, when northbound cars filled with smuggled migrants sped dangerously through inspection lanes at the San Ysidro port of entry, racing onto the interstate to evade law enforcement. That same interstate was the scene of countless deaths of migrants attempting to cross multiple lanes of highway without understanding the danger of speeding freeway traffic.

The Attorney General’s directive underscored my own concerns and experience. My confirmation hearings in fall 1993 took place on the heels of a special operation in El Paso carried out by then-Border Patrol Sector Chief Silvestre Reyes, whom we now all know as Congressman Reyes. As chief, he devised a special operation that directed the bulk of the

sector's personnel, equipment and attention to high-visibility forward positions directly at the border. He demonstrated that it was possible to largely prevent illegal crossings before they took place, instead of pursuing and attempting to apprehend individuals once they had entered the United States, which was the modus operandi of the Border Patrol at that time. Members of the Judiciary Committee and others in Congress urged me to support the El Paso operation on a sustained basis.

Within weeks, working with the Office of Management and Budget and the White House, INS and the Department of Justice reconfigured the INS fiscal year (FY) 1995 budget request and soon forwarded to Congress the first of what has become more than 15 years of major infusions of people, equipment and technology that Congress has supported for border enforcement, most directed at the U.S.-Mexico border. We followed up that budget with Operation Gatekeeper, which began in fall 1994 in the San Diego sector, and then Operation Hold the Line in El Paso, which built on Chief Reyes' earlier efforts.

The deep institutional experience and expertise of the Border Patrol drove the design of these strategies to gain control of the border. The operations and resource allocations were grounded in a new doctrine of border enforcement, known as deterrence through prevention [of entry]. The core idea, which continues today, has been to build the size of the Border Patrol to permit the positioning of agents in sizeable numbers as close as possible to the border in high-crossing areas — and providing them the necessary technology, equipment and other forms of support to establish and maintain deterrence of illegal crossings of every kind, whether illegal immigration, narcotics or other forms of criminal activity.

Today, the Southwest border is a dramatically different place. The soccer field is gone and in its place — as in many other border locations — are many miles of Border Patrol vehicle roads and fences, stadium lighting and substantial contingents of agents, backed up by air support, sophisticated intelligence, ground sensor systems and other technology-based tracking and detection techniques.

The San Diego and El Paso sectors, the two highest crossing corridors that historically had accounted for almost 60 percent of apprehensions, now experience only about 20 percent of apprehension activity. Moreover, apprehension levels that had reached historic highs of more than 1.6 million in 2000 have now dipped to below 450,000 last year, lows not experienced since the 1970s. These are dramatic, positive changes.

At the same time, the changes have brought with them important lessons learned and new challenges; some were anticipated, others not. Among the more consequential are the following:

- Smugglers of migrants and illegal drugs have shifted and adapted their crossing patterns in response to enforcement strategies far more quickly than the Border Patrol has been able to check against. The new routes, albeit across ever more remote and generally dangerous terrain, have become high-volume crossing corridors, particularly in Arizona.
- Border enforcement has made it increasingly difficult, more expensive and dangerous to cross the Southwest border illegally. The result is that once unauthorized immigrants arrive, they are more likely to remain because of the cost, danger and risk of apprehension of frequent crossing. Known as "locking-in," this

dynamic has led to the more rapid growth of the size of the resident unauthorized population.

- In an often overlooked fact, about 35 to 40 percent of the unauthorized population in the United States stems from visa overstayers — individuals who came to the U.S. with properly issued visas and did not depart as required. No matter how effective enforcement is at the Southwest border, it is inadequate to deal with this sizeable segment of illegal immigration. (Analytics on this part of the illegal immigration phenomenon were first developed in the 1990s and need to be updated and made public.)
- Until the recent recession, border enforcement swam against the tide of a booming economy, especially during the 1990s when the United States experienced the longest sustained period of job and economic growth since World War II and perhaps before. There are significant limits to what conventional law enforcement can achieve in the face of the laws of economic supply and demand.

However, by far the overarching new dynamic has been the Sept. 11, 2001 terrorist attacks and the imperative for effective border control in the face of a greater threat of terrorism. The task is a daunting one, when one considers that protecting the nation's borders involves geography that includes nearly 7,500 miles of land borders with Mexico and Canada, 12,380 miles of U.S. coastline and a broad array of functions at land ports, seaports, airports and the visa-issuing activities at U.S. consulates abroad.¹ During FY 2010, customs and border officials cleared the entry of \$2 trillion in goods,² and on an average day process nearly 1 million passengers and pedestrians.³

As this Committee knows well, creation of DHS in the aftermath of 9/11 was driven in part by the need to establish an integrated approach to border security as an indispensable element of U.S. national security. Accordingly, substantial levels of new resources have flowed to the parts of the immigration system that involve border security. Customs and Border Protection (CBP), the new agency within DHS charged with securing U.S. borders, has been allocated the largest share of those resources.

CBP includes the air, sea and land ports-of-entry inspections mission, which is complex and has traditionally received proportionately less attention and resources than has the Border Patrol mission. Although resource enhancements for ports of entry have been more modest than those for the Border Patrol, despite the fact that the 9/11 hijackers came to the United States through ports of entry — in most cases with legitimate visas — major investments have been made in United States Visitor and Immigrant Status Indicator Technology (US-VISIT), a technology initiative that is not part of the CBP budget but that represents a long-needed and essential tool for inspectors in carrying out their key role in providing border security.

¹ Central Intelligence Agency (CIA), "The World Factbook," www.cia.gov/library/publications/the-world-factbook/geos/us.html#Geo.

² U.S. Customs and Border Protection (CBP), *Import Trade Trends Fiscal Year 2010 Year-End Trade Report* (Washington, DC: CBP, 2010), www.cbp.gov/linkhandler/cgov/trade/trade_programs/trade_trends/itt.ctt/itt.pdf.

³ CBP, "Snapshot: A Summary of CBP Facts and Figures," <http://cbp.gov/linkhandler/cgov/about/accomplish/snapshot.ctt/snapshot.pdf>.

Thus, the missions of both Border Patrol agents in their work between ports of entry and the inspectors at air and land ports of entry have been recognized as being essential to national security, as well as to immigration and crime control, in a post-9/11 era. Successive administrations and Congresses have backed up that understanding with substantial resource investments with the goal of achieving effective border control

Defining What Constitutes Effective Border Control

The United States has made dramatic progress in improving border security over the past 15 years, and at an accelerated pace since 9/11. Today, the Border Patrol employs 20,700 agents, more than double the number from 2004, and CBP's budget exceeds \$11 billion, an amount that has grown at a comparably rapid rate.

Yet what constitutes *effective* border control has not been meaningfully defined or debated. As a result, we have little basis for assessing the return on investment of substantial multi-year border enforcement expenditures or for conducting an informed debate on the adequacy of today's border enforcement strategies and results.

In addition, disagreements about border control that are based on unexamined assertions about the adequacy or inadequacy of current efforts have contributed to a continuing stalemate in Congress over the broader immigration reform agenda.

Opponents of comprehensive immigration reform legislation argue that control of the border must be established as a *pre-condition* for broader reforms. Reform proponents maintain that effective border control can only be achieved *with* broad immigration reform. In both cases, "border control" is undefined.

Moreover, lawmakers "keep moving the goalpost," as Homeland Security Secretary Janet Napolitano has observed.⁴ Secretary Napolitano has also argued that DHS will never be able to "seal the border" in the sense of preventing *all* illegal migration.⁵

In making that point, she has presented an alternative view of border control from the one set out in the *Secure Fence Act*, which Congress enacted in 2006. That statute calls for "operational control" of the border, defining it as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."⁶

From a professional law enforcement standpoint, her point is well taken. Zero tolerance is unrealistic and is not a standard to which we hold law enforcement in other, comparable realms. Instead, overall effectiveness — established through a combination of metrics and other factors — is the appropriate goal and assessment for which to strive.

⁴ Ivan Moreno, "Janet Napolitano in Denver: Divided Congress Keeps Obama from Overhauling Immigration," The Huffington Post, June 24, 2010, www.huffingtonpost.com/2010/06/24/janet-napolitano-in-denve_n_624757.html.

⁵ Press conference with Homeland Security Secretary Janet Napolitano et. al., U.S. Immigration and Customs Enforcement (ICE) headquarters, October 6, 2010.

⁶*Secure Fence Act of 2006*, Public Law 109-367, U.S. Statutes at Large 120 (2006): 2638.

CBP has determined that national security and public safety are its highest priorities. It has adopted a risk-management approach to border security, seeking to secure and maintain control of U.S. borders and to “detect and prevent the entry of dangerous people.”⁷ It has not embraced blanket enforcement — in the sense of preventing *all* illegal entries — as a goal. Rather, it seeks to establish “effective control” of the border, by which it means being able to detect illegal entries, to identify and classify them based on the threat they present, to respond to them and to “bring each event to a satisfactory law enforcement resolution.”⁸

In a recent speech on the administration’s Southwest border strategy, Secretary Napolitano argued that the approach is working:

*[I]t is inaccurate to state, as too many have, that the border is overrun with violence and out of control. This statement — often made only to score political points — is just plain wrong. Not only does it ignore all of the statistical evidence, it also belittles the significant progress that effective law enforcement has made to protect this border and the people who live alongside it.*⁹

This speech represented an important step in sparking a responsible debate about border control. Still, without greater rigor and broader consensus about what constitutes effective border control, public confidence and immigration reform initiatives will remain vulnerable to assertions of inadequate control.

The administration and DHS, working with Congress, can play a pivotal role in breaking the stalemate by providing a realistic definition and sound measures of effective border control, particularly on the Southwest border, as the basis for a more informed, honest debate on the issue and the substantial investments the nation has made, over now many years, to establish a sound border control infrastructure and strategies.

What Is “Effective Control?”

Historically, apprehension numbers have served as the Border Patrol’s answer to the question of what constitutes effective control. From a high of more than 1.6 million in FY 2000, apprehensions fell to 463,382 in FY 2010, the lowest level since the early 1970s — when large-scale illegal immigration to the United States began in earnest — and less than half the number as recently as 2006.¹⁰

The dramatic reduction in apprehensions, particularly at a time of record numbers of Border Patrol agents, represents a valid measure of effectiveness of border control. However, apprehensions are insufficient and misleading as the primary method for assessing enforcement effectiveness for several reasons:

⁷ CBP, *Secure Borders, Safe Travel, Legal Trade: US Customs and Border Protection Fiscal Year 2009-2014 Strategic Plan* (Washington, DC: CBP, 2009), 12-16, www.cbp.gov/linkhandler/cgov/about/mission/strategic_plan_09_14.ctt/strategic_plan_09_14.pdf.

⁸ *Ibid.*, 13-14.

⁹ Napolitano, “Remarks on Border Security at the University of Texas at El Paso,” January 31, 2011, www.dhs.gov/ynews/speeches/sp_1296491064429.shtm.

¹⁰ Transactional Records Access Clearinghouse (TRAC), “Federal Criminal Enforcement and Staffing: How Do the Obama and Bush Administrations Compare?” (Syracuse, NY: TRAC, 2011), <http://trac.syr.edu/tracreports/crim/245/>; TRAC, “Controlling the Borders” (Syracuse, NY: TRAC, 2006), <http://trac.syr.edu/immigration/reports/141/>.

Apprehensions measure activity, not persons.

The same individual can be apprehended — and thereby counted — multiple times. Thus, apprehensions are a useful metric of workload and level of activity, but an inadequate measure of overall effectiveness.

Illegal immigration is in great part a function of job demand and economic growth.

It has not been possible to disentangle the effects of border enforcement from that of weak job demand. The border buildup has made it increasingly difficult to cross the border illegally and has strengthened deterrence. But the record-low apprehension numbers also coincide with an historic recession in which demand for foreign-born workers — especially low-wage workers in the home construction and, to a lesser extent, hospitality sectors — has diminished dramatically. Inflows of migrants are dependent not only on changing enforcement policies and strategies, but also on the availability of jobs and growth in the U.S. economy, along with economic conditions in migrant-sending countries.¹¹

Over time, apprehensions have mirrored fluctuations in the U.S. economy more closely than they have tracked border enforcement staffing, resources or strategies. In fact, job fluctuations in the U.S. economy have been shown to mirror apprehensions. One economist has wryly observed that border apprehensions could serve as a leading indicator in assessing U.S. economic growth.

Apprehension surges, as well as decreases, have both been cited by the Border Patrol as evidence of control.

When apprehensions were on the rise in the 1990s, the Border Patrol stated that it was intercepting a greater proportion of potential crossers. At other times, falling numbers have been cited as evidence of deterrence. Both arguments can be legitimate. However, such divergent interpretations throw into question how much to rely on apprehension data as the principal measure of effectiveness.

The reliability of apprehension data as a metric of effectiveness has not been able to be independently corroborated.

In interviews with would-be border crossers and returning unauthorized migrants, independent research has found that while most Mexicans in migrant-sending communities see crossing the border as increasingly difficult and dangerous, these attitudes have little, if any, statistically significant effect on whether or not a person succeeds in migrating illegally to the United States.¹² According to this research, enhanced fencing and other border enforcement measures undertaken since 1994 have had no discernible effect on immigrants' overall ability to cross the border.¹³

¹¹ Demetrios G. Papademetriou and Aaron Terrazas, *Immigrants and the Current Economic Crisis* (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/lmi_recessionJan09.pdf

¹² Wayne A. Cornelius and Jessa M. Lewis, eds., *Impacts of Border Enforcement on Mexican Migration: The View from Sending Communities* (Boulder, CO: Lynne Rienner and University of California – San Diego Center for Comparative Immigration Studies, 2007); Wayne A. Cornelius and Idean Salehyan, "Does Border Enforcement Deter Unauthorized Immigration? The Case of Mexican Migration to the United States of America," *Regulation and Governance*, no. 1 (2007): 139-153.

¹³ Wayne A. Cornelius, "Reforming the Management of Migration Flows from Latin America to the United States" (working paper 170, Center for Comparative Immigration Studies, San Diego, CA, December 2008), www.ccis-ucsd.org/PUBLICATIONS/WP%20170.pdf.

Apprehension data are one piece of the puzzle. But CBP and DHS collect many other kinds of data. Especially valuable should be the extensive biometric data — now more than 91 million records of fingerprints — that have been collected in CBP’s Automated Biometric Identification System (IDENT) on persons apprehended since the mid-1990s, as well as legitimate travelers through the US-VISIT system and persons seeking immigration benefits.¹⁴ These data could be mined for information about crossing patterns, repeat entries, smuggling activity, outstanding orders of removal, applications for benefits and the success of various enforcement strategies.

CBP may be analyzing and relying on these data to inform its operational, resource and policy decisions. However, such information has not been released or made available to the public. Thus, there is at a minimum a lack of transparency of important, relevant data and more likely a lack of serious analysis and efforts to understand information that could more fully substantiate the effectiveness of border enforcement and permit informed review and critique of border-control policies.

Many other government agencies have long-standing, rich relationships with communities of scholars, analysts and experts in an effort to bring the best thinking and insight to bear on understanding data that shed light on important public policy questions. DHS/CBP have not invited dialogue, analysis and insight from independent experts to assist in developing meaningful assessments and standards for determining success.

Establishing Measures of Effectiveness

Examples of measures of effectiveness that are relevant to border control and could be systematically tracked and incorporated into regular assessments would include:

Hot Spots

An indicator of control is even distribution of the proportion of apprehensions and criminal activity across the border, so that no single corridor — such as Arizona — is vulnerable to a disproportionate share of illegal activity. And, when hot spots do arise, CBP should be able to quickly redirect resources in response.

Crime Rates

Border communities across the Southwest border have lower crime rates today than other comparably sized cities.¹⁵ El Paso, for example, won the designation of safest city in America with a population over 500,000 in 2010, despite being directly across the border from Ciudad Juárez, one of the most violent cities in Mexico.¹⁶ Rates of violent crime in Southwest border counties have dropped by more than 30 percent and are among the lowest (per capita) in the United States.¹⁷

¹⁴ CBP, “New anti-terror technology produces astounding arrest numbers,” *Customs and Border Protection Today* (October/November 2004), www.cbp.gov/xp/CustomsToday/2004/oct_nov/new_anti_terror.xml; Department of Homeland Security (DHS), “DHS Exhibit 300 Public Release BY 10 / NPPD – US-VISIT – Automated Biometric Identification System (IDENT),” (public release, April 17, 2009), www.dhs.gov/xlibrary/assets/mgmt/e300-nppd-usvisit-ident2010.pdf.

¹⁵ Associated Press, “US-Mexico Border Safety: Area is One of Safest Parts of America,” June 3, 2010, www.msnbc.msn.com/id/37493275/.

¹⁶ Monica Ortiz Uribe, “El Paso, San Diego Among Safest Cities,” KPBS, November 22, 2010, www.kpbs.org/news/2010/nov/22/el-paso-san-diego-among-safest-cities/.

¹⁷ Napolitano, “Remarks on Border Security at the University of Texas at El Paso.”

Ports of Entry

Ports of entry, which are staffed by CBP personnel, have traditionally received far less attention and resources than the Border Patrol, which works between ports of entry. Yet, the ports-of-entry mission is arguably the most difficult and complex element of border security. Ports of entry are responsible for facilitation of legitimate trade and travel, which is vital for the economies and social well-being of the United States and most countries around the world, and for preventing the entry of a small but potentially deadly number of dangerous people and lethal goods. As border enforcement *between* ports of entry makes illegal crossing ever more difficult, new pressures are arising as smugglers increasingly attempt to get unauthorized migrants and illicit cargo *through* ports of entry.

Thus, monitoring, resources and information exchange between the Border Patrol and port inspections officials must be seamless to deter illegal entries and contraband. Enforcement metrics must cover the entire border and all aspects of border enforcement if they are to give an accurate picture of true border control.

Community Confidence and Support

Most areas of the border have experienced shifts in public opinion about federal enforcement over the past decade. Some communities acknowledge improvements in crime rates, safety and quality of life. Others have raised serious concerns regarding enforcement strategies developed without local input or reference to community needs, and that can cause disruption and deterioration in the lives of border residents. Still others are angry and vocal in their criticism of inadequate control.

Public attitudes and support of border enforcement activities are important ingredients in ensuring and assessing effective border control.

Census and other Demographic Data

After two decades of steady increases in the size of the unauthorized population, current estimates show a drop since 2007, from 11.8 million to 10.8 million in 2010.¹⁸ In addition, Mexico's 2010 census shows that the numbers leaving Mexico have fallen by more than two-thirds since a peak in the mid-2000s. Mexican analysts are attributing the drop to the U.S. economic downturn and to stepped-up border enforcement.¹⁹

Such indicators are examples of the kinds of measures of effectiveness that could be established, tracked and regularly reported. There are additional measures that should be developed to get as complete a picture as possible. However, at the present time, the measures that are available point in varying degrees to meaningful positive progress in securing the borders.

Over the longer term, the goal should be to systematically track such measures and allow for open assessment of the substantial investments that the country has made in border security since the mid-1990s. Only then can public debate about border control be honest and informed, and move beyond rhetoric and unexamined assertions that frustrate solutions for fixing a dysfunctional immigration system. In turn, determining how much and

¹⁸ DHS Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010* (Washington, DC: DHS, 2011), www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf.

¹⁹ Associated Press, "Mexico census: Fewer migrating, many returning," March 3, 2011, www.thestate.com/2011/03/03/1721751/mexico-census-fewer-migrating.html.

what kind of border enforcement work to keep us safe is essential for building public confidence in the government's ability to enforce the nation's immigration laws and manage its immigration system.

Mr. Chairman and Members of the Committee, thank you. I am happy to respond to your comments and questions.