



## WASHINGTON OFFICE ON LATIN AMERICA

Promoting human rights, democracy, and social justice

### Written Testimony Submitted by Adam Isacson and Maureen Meyer Washington Office on Latin America

#### Hearing of the United States Senate Committee on the Judiciary “Comprehensive Immigration Reform” February 13, 2013

Since 2011 the Washington Office on Latin America’s Border Security and Migration project has visited six of the nine regions into which Border Patrol divides the U.S.-Mexico border. On both sides, we have met with law enforcement and migration officials, human rights advocates, humanitarian workers, lawyers, journalists, scholars, and migrant shelter staff.

Our work has introduced us to a reality quite different from the way the border often gets portrayed in Washington. Mexico’s severe recent violence has almost entirely failed to “spill over” into the United States.<sup>1</sup> The number of migrant apprehensions has dropped precipitously, even as drug seizures have climbed.

Our work on the border has made us aware of greatly increased, but questionably allocated, U.S. border security resources; a lack of strategic clarity following a historic buildup; practices that make deportees vulnerable to organized crime; and a sharply rising toll of migrants who die preventably of thirst, exposure, drowning or similar causes while on U.S. soil.

Future efforts to secure our southern border must reflect the reality on the ground, while ensuring that enforcement policies do not multiply risks to migrants’ lives and safety. Now is the time for the U.S. government, in collaboration with Mexico, to make the world’s busiest frontier more efficient, lawful, and humane for the rest of the twenty-first century.

As Congress begins discussing immigration reform, with further increases in border security spending a likely outcome, we ask that it consider the following elements.

#### **1. Focus additional border security investments on the ports of entry.**

It appears likely that any immigration reform measure this year will include a further buildup of security assets and capabilities on the U.S.-Mexico border. If that happens, we ask that it make the distinction among areas *between* land ports of entry, where coverage is quite thorough, and the ports of entry themselves, where needs are greater.

Recent years have seen a dramatic increase in federal efforts to cover the mostly remote and rural areas between the ports of entry. Border Patrol, the agency primarily responsible for these areas, has experienced a fivefold increase in personnel in the last twenty years. By the end of 2012, there were 18,516 Border Patrol agents along the U.S.-Mexico border, up from 9,891 in 2005 and 3,496 in 1993.<sup>2</sup>

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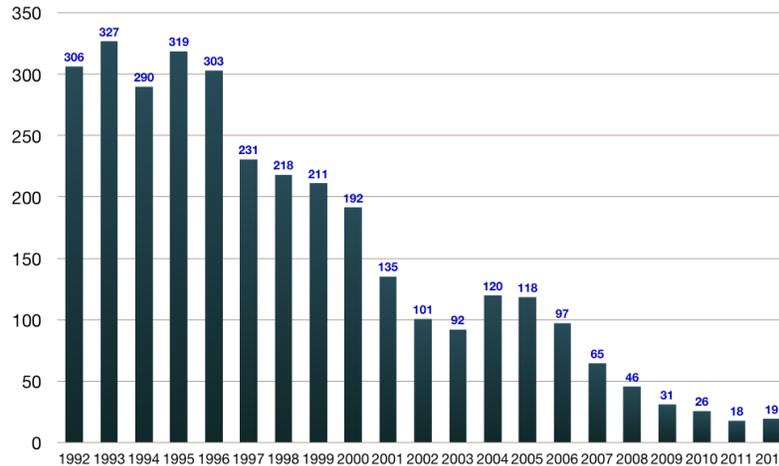
<sup>1</sup> See the discussion of spillover violence data on pages 5-7 of WOLA’s recent report [Beyond the Border Buildup](http://www.wola.org/files/Beyond_the_Border_Buildup_FINAL.pdf) (Washington: WOLA, April 2012) <[http://www.wola.org/files/Beyond\\_the\\_Border\\_Buildup\\_FINAL.pdf](http://www.wola.org/files/Beyond_the_Border_Buildup_FINAL.pdf)>, and the analysis of Arizona state violent crime statistics at WOLA’s [Border Fact Check](http://borderfactcheck.tumblr.com/post/29317170766/is-arizona-suffering-increased-crime-and-drugs) website: “Is Arizona suffering ‘increased crime and drugs’ because of the border?” [Border Fact Check](http://borderfactcheck.tumblr.com/post/29317170766/is-arizona-suffering-increased-crime-and-drugs) (Washington: WOLA, August 13, 2012) <<http://borderfactcheck.tumblr.com/post/29317170766/is-arizona-suffering-increased-crime-and-drugs>>.

<sup>2</sup> U.S. Border Patrol, “Border Patrol Agent Staffing By Fiscal Year” (Washington: Customs and Border Protection, February 2013) <[http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/usbp\\_fy12\\_stats/staffing\\_1993\\_2012.ctt/staffing\\_1993\\_2012.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/staffing_1993_2012.ctt/staffing_1993_2012.pdf)>.

Customs and Border Protection’s Office of Air and Marine now has over 290 aircraft at its disposal, including seven Predator-B drones patrolling the U.S.-Mexico border and a plan to reach 11 drones by 2016.<sup>3</sup>

Data on apprehensions indicate that undocumented migration across the U.S.-Mexico border has fallen to early-1970s levels.<sup>4</sup> Combine this drop with the increase in Border Patrol personnel, and the number of migrants apprehended per Border Patrol officer (19 in 2012) is now one tenth of what it was in 2000.<sup>5</sup>

**Apprehensions per Border Patrol Agent, 1992-2012**



Instead, it is *at the ports of entry* where needs are now greatest and least fulfilled. While Border Patrol’s presence doubled at the U.S.-Mexico border since 2005, that of CBP’s Office of Field Operations, which interviews and inspects all would-be crossers, grew by only 14 percent, to about 5,500 employees today.<sup>6</sup> As a result, northbound waits at busy border crossings routinely last a commerce-stifling one to two hours, at times even more.

The consequences of underfunding the ports of entry go still further. Our interviews with law enforcement officials coincide in concluding that the majority of most drugs (with the possible exception of marijuana) pass through the ports of entry—not the areas in between—hidden in cargo containers, vehicles, and

<sup>3</sup> U.S. Customs and Border Protection, “Office of Air and Marine Overview” (Washington: Customs and Border Protection, October 5, 2010)

<[http://www.cbp.gov/xp/cgov/border\\_security/am/documents/oam\\_nr/cbp\\_air\\_marine\\_overview.xml](http://www.cbp.gov/xp/cgov/border_security/am/documents/oam_nr/cbp_air_marine_overview.xml)>.

Brian Bennett, “Homeland Security adding 3 drone aircraft despite lack of pilots,” *The Los Angeles Times* (Los Angeles: October 27, 2011) <<http://articles.latimes.com/2011/oct/27/nation/la-na-us-drone-20111027>>.

U.S. Government Accountability Office, Observations on the Costs and Benefits of an Increased Department of Defense Role in Helping to Secure the Southwest Land Border (Washington: GAO, September 12, 2011)

<<http://www.gao.gov/products/GAO-11-856R>>.

<sup>4</sup> U.S. Border Patrol, “U.S. Border Patrol Total Apprehensions by Southwest Border Sectors Fiscal Year 1960-2012” (Washington: Customs and Border Protection, February 2013)

<[http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/usbp\\_fy12\\_stats/appr\\_swb.ctt/pr\\_swb.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/appr_swb.ctt/pr_swb.pdf)>.

<sup>5</sup> U.S. Border Patrol, “Border Patrol Agent Staffing By Fiscal Year,” *op. cit.*

<sup>6</sup> United States Congress, “Testimony of Congressman Silvestre Reyes (TX-16) Before the Committee on Appropriations, Subcommittee Homeland Security” (Washington: U.S. House of Representatives, April 14, 2011)

<<http://web.archive.org/web/20121212125201/http://reyes.house.gov/news/documentsingle.aspx?DocumentID=249470>>.

U.S. Government Accountability Office, Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct (Washington: GAO, December 4, 2012) <<http://www.gao.gov/products/GAO-13-59>>.

merchandise. Meanwhile, overwhelmed Field Operations staff can devote little time to southbound inspections that are needed to halt arms trafficking and bulk cash transfers.

To address border security challenges effectively, and to make better use of U.S. financial resources, any additional investment should go to the agents at the ports of entry.

## **2. Increase coordination among federal, state and local agencies by developing a comprehensive southwest border security strategy coordinated by the White House.**

After the buildup of the last several years, the U.S. government now has a multi-layered, overlapping, often confusing, and expensive set of agencies with border security responsibilities.<sup>7</sup>

These include components of the Departments of Homeland Security (CBP, Border Patrol, Immigration and Customs Enforcement (ICE), Justice (Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Defense (Northern Command, National Guard deployments), states, localities, and others. Some are civilian, some are military, and nearly all have their own separate intelligence capabilities. Their growth has been accompanied by numerous ad hoc efforts to get employees of different agencies to work together, share intelligence, and carry out joint operations through a series of task forces, fusion centers, and other coordination bodies. Even when they are part of the same cabinet department, however, agencies have different goals, cultures, authorities, and ways of measuring success, and may at times compete for resources—and thus for credit.

This lack of clarity not only risks wasting resources. It can cause threats to be misread or missed. And it can cause consequences, like the humanitarian crisis facing the migrant population discussed below, to be overlooked, ignored, or even aggravated.

As is the case with the National Drug Control Strategy and Southwest Border Counternarcotics Strategy, the development of a national *border security* strategy should be the responsibility of the White House, since so many cabinet departments have a stake in border security. The strategy must also take into account cooperation—including sharing resources and intelligence and carrying out joint operations—with agencies over which the White House has no jurisdiction, such as states, localities, and especially the Mexican government.

## **3. Increase efforts to protect migrants.**

### *3a. Abandon deportation practices that risk endangering people.*

The U.S. government's repatriation practices have prioritized dissuading migrants from reentry over preventing families from being separated and respecting deportees' human rights. Mexican migration officials, migrant shelters, and U.S. border groups repeatedly report violations of the 2004 Memorandum of Understanding on the Safe, Orderly, Dignified and Human Repatriation of Mexican Nationals and local agreements between governments on repatriation practices, particularly provisions regarding the time of day when—and ports of entry where—women and children can be repatriated.

Although current agreements permit repatriation of able-bodied men 24 hours a day, returning any migrant in the post-midnight hours—as happens frequently—leaves deportees lacking shelter, bus services, and wire transfer services. At times, they may even be in danger: Mexico's six border states are all included in the State Department's November 2012 travel warning for Mexico.<sup>8</sup> Migrants in these states' cities are often victims of kidnapping, abuse, and extortion by criminal organizations and, at times, by Mexican officials.

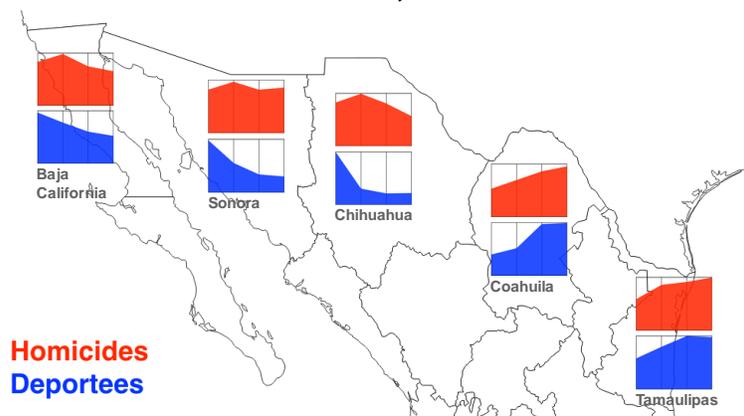
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<sup>7</sup> See the discussion of agencies' responsibilities on pages 17-28 of WOLA's recent report Beyond the Border Buildup (Washington: WOLA, April 2012) <[http://www.wola.org/files/Beyond\\_the\\_Border\\_Buildup\\_FINAL.pdf](http://www.wola.org/files/Beyond_the_Border_Buildup_FINAL.pdf)>.

<sup>8</sup> U.S. Department of State, Bureau of Consular Affairs, "Travel Warning" (Washington: November 20, 2012) <[http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5815.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html)>.

Between 2009 and 2012 we noted a disturbing trend: the United States increased repatriations to Mexican border cities in Coahuila and Tamaulipas states, where homicides at the time were rising—a key indicator of increasing danger. Where homicides were dropping, as in Sonora and Baja California states, U.S. authorities chose to repatriate fewer migrants.<sup>9</sup> While the security crisis in Mexico’s border zones continues, determinations of sites for repatriation must take into account security conditions, assessed on current data about risks.

### Homicide and U.S. Deportation Trends, by Mexican State, 2009-2012



Homicide data: Government of Mexico, Sistema Nacional de Seguridad Pública (SNSP)  
 Deportee data: Government of Mexico, Instituto Nacional de Migración (INM)

The services available to deported migrants should also be a factor. Tijuana, Baja California state, where the United States reduced deportations by one-third between 2009 and 2012, has 12 migrant shelters. In contrast, one only shelter operates in Matamoros, Tamaulipas state, yet the number of migrants deported to this city more than quintupled in this period.<sup>10</sup>

The practice of “lateral repatriation,” officially termed the Alien Transfer Exit Program (ATEP), also puts some migrants at risk. The program moves undocumented male migrants from the sector where they were detained to another location, often hundreds of miles away, for removal. The rationale is to disrupt the connection between migrants and the smugglers with whom they originally crossed, thus making it harder to attempt another border crossing.

Concerns about the program include a lack of transparency about its operations and guidelines about who can be laterally repatriated; the effects of repatriating Mexican migrants to cities with which they are unfamiliar, and which may lack safety and social services; and the separation of families. Multiple

<sup>9</sup> Government of Mexico, Secretaría de Gobernación, Sistema Nacional de Seguridad Pública, “Incidencia Delictiva Nacional, Fuero Común” (Mexico: SNSP, 2013) <[http://www.secretariadoejecutivosnsp.gob.mx/es/SecretariadoEjecutivo/Incidencia\\_Delictiva\\_Nacional\\_fuero\\_comun](http://www.secretariadoejecutivosnsp.gob.mx/es/SecretariadoEjecutivo/Incidencia_Delictiva_Nacional_fuero_comun)>.

Government of Mexico, Secretaría de Gobernación, Instituto Nacional de Migración, “Boletines Estadísticos” (Mexico: Centro de Estudios Migratorios, 2013) <[http://www.inm.gob.mx/index.php/page/Boletines\\_Estadisticos](http://www.inm.gob.mx/index.php/page/Boletines_Estadisticos)>.

<sup>10</sup> Government of Mexico, Secretaría de Gobernación, Instituto Nacional de Migración, “Boletines Estadísticos,” *op. cit.*

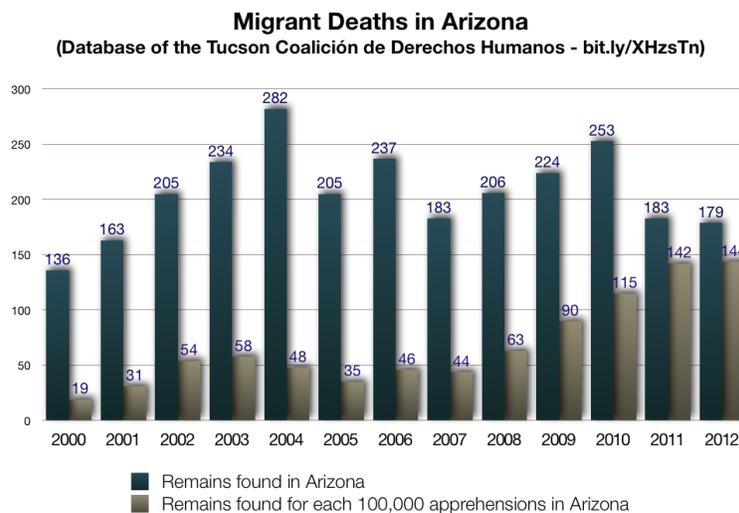
Universidad Autónoma de Baja California Campus Mexicali, Instituto de Investigaciones Sociales, Directorio de Organizaciones Sociales que Atienden a Migrantes en la Frontera Norte de México (Mexicali: IIS, 2013) <<https://docs.google.com/file/d/0ByHZE7WNNIsfaG9EZmxHdDRrMG8/edit>>.

accounts indicate that migrants, especially those unfamiliar with their cities of arrival, are preyed upon by gangs and organized criminal groups when deported from the United States.<sup>11</sup>

**Immigration reform efforts should ensure that deportations of undocumented migrants to Mexico are carried out in a way that does not endanger them.** Late-night returns and lateral repatriations should be stopped. In its cooperation with Mexico, the United States government should hold bi-national meetings every six months to assess the security situation and existing government and social services in Mexican border towns to determine which areas are safer and better equipped to receive repatriated migrants. This is particularly the case with migrants whom ICE is deporting from the interior of the United States.

### 3b. Prevent migrant deaths.

Every day, one or more migrants die on U.S. soil of dehydration, hypothermia, drowning, or similar causes related to the dangers of their journey. In fiscal year 2012, Border Patrol reported finding the remains of 463 migrants, over 100 more than in 2011 and the highest number on record since 2005.<sup>12</sup> Deaths of migrants are increasing at a time when apprehensions of migrants—and thus most likely the total number of migrants—are dropping. This means that their passage is getting deadlier.



Many more of these lives could be saved with a few inexpensive adjustments in water availability, rescue beacons, and search-and-rescue capability. **Additional funds should be appropriated to DHS to expand Border Patrol Search, Trauma, and Rescue Unit teams (BORSTAR), particularly in**

<sup>11</sup> Daniel Hernandez, "Does U.S. deportation program put migrants in harm's way?" *The Los Angeles Times* (Los Angeles: September 29, 2011) <[http://latimesblogs.latimes.com/world\\_now/2011/09/mexico-zetas-deportation-illegal-immigration-letter-exit-transfer.html](http://latimesblogs.latimes.com/world_now/2011/09/mexico-zetas-deportation-illegal-immigration-letter-exit-transfer.html)>.

Richard Marosi, "Deportees to Mexico's Tamaulipas preyed upon by gangs," *The Los Angeles Times* (Los Angeles: September 8, 2012) <<http://articles.latimes.com/2012/sep/08/local/la-me-deportee-danger-20120909>>.

Nick Miroff, "Lateral deportation: Migrants crossing the Mexican border fear a trip sideways," *The Washington Post* (Washington: February 12, 2013) <<http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/12/lateral-deportation-migrants-crossing-the-mexican-border-fear-a-trip-sideways/>>.

<sup>12</sup> U.S. Border Patrol, "U.S. Border Patrol Sector Profile" (Washington: Customs and Border Protection, February 2013)

<[http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/usbp\\_fy12\\_stats/usbp\\_sector\\_profile.ctt/usbp\\_sector\\_profile.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/usbp_sector_profile.ctt/usbp_sector_profile.pdf)>.

U.S. Border Patrol, "U.S. Border Patrol Sector Profile" (Washington: Customs and Border Protection, April 2012) <[http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/usbp\\_fy11\\_stats/fy\\_profile\\_2011.ctt/fy\\_profile\\_2011.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy11_stats/fy_profile_2011.ctt/fy_profile_2011.pdf)>.

Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry* (Washington: Congressional Research Service, January 6, 2012): 33 <<http://fpc.state.gov/documents/organization/180681.pdf>>.

**southwest border sectors with high numbers of migrant deaths.** Studies have shown that the probability of death decreases significantly if BORSTAR agents, as opposed to non-BORSTAR Border Patrol agents, respond to a migrant in distress.<sup>13</sup>

Since they enable agents to locate migrants in distress, Border Patrol has also affirmed that rescue beacons help them save migrants' lives.<sup>14</sup> Access to water, too, can also be a question of life and death. Humanitarian organizations routinely place water jugs and drums in the borderlands, but their capacity is limited and state and federal agents at times obstruct their efforts. **Directing Border Patrol to establish water drums, particularly alongside rescue beacons, would be an important step to avoid preventable deaths on U.S. soil.**

Preventing migrant deaths would also ease the financial burden on state and local authorities with meager resources to deal with migrant remains. Local officials in Brooks County, Texas, which saw migrant deaths nearly double in 2012, estimate that the costs of dealing with the unidentified dead, including mortician fees and autopsies, amount to hundreds of thousands of dollars each year.<sup>15</sup>

#### **4. Identify migrant remains.**

Many of these recovered remains, which now number in the thousands, are unidentified. No unified procedure exists to process remains and DNA samples of bodies found in the border region. Many remains have not had their DNA sampled, and there has been no consolidated effort to match the DNA of unidentified remains with family members searching for missing loved ones.

**An immigration reform effort could make it possible to identify the dead, and find the missing, by including the following modest measures.**

- Provide federal funding to counties and tribal governments for the handling and DNA analysis of remains found in U.S. territory within 200 miles of the border with Mexico.
- Mandate and fund the creation of a Missing Migrants program within the National Missing and Unidentified Persons System (NamUs). This would include uploading all missing migrant cases into NamUS and directing all forensic institutions processing migrant remains to do the same.
- Clearly authorize and encourage NamUs to respond to international requests and facilitate information sharing.
- Authorize and fund large-scale DNA comparisons between unidentified remains found in the U.S. and that of relatives of missing nationals provided by foreign consulates.

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#### **Recent border security and migration resources from WOLA:**

- [BorderFactCheck.org](http://borderfactcheck.org) website
- "Beyond the Border Buildup," an April 2012 report: [www.bit.ly/MBzJzz](http://www.bit.ly/MBzJzz)
- "Border Security and Migration: A Report from South Texas," January 2013: [www.bit.ly/14pPofX](http://www.bit.ly/14pPofX)
- "Five Misconceptions about Border Security," February 2013: [www.bit.ly/X3Mk4X](http://www.bit.ly/X3Mk4X)
- "An Uneasy Coexistence: Security and Migration Along the El Paso-Ciudad Juárez Border," December 2011: [www.bit.ly/x0H69n](http://www.bit.ly/x0H69n)

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<sup>13</sup> U.S. Government Accountability Office, [Border-Crossing Deaths Have Doubled Since 1995](http://www.gao.gov/assets/260/251173.pdf) (Washington, August 2006): <<http://www.gao.gov/assets/260/251173.pdf>>

<sup>14</sup> U.S. Customs and Border Protection, "Rescue Beacon Helps Border Patrol Agents Save Lives of Two People" (Falfurrias, Texas: CBP, April 27, 2012)

<[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/local/2012\\_news\\_releases/april\\_2012/04272012\\_5.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/local/2012_news_releases/april_2012/04272012_5.xml)>

<sup>15</sup> "Death toll of illegal immigrants soars in South Texas," [The Fort Worth Star-Telegram](http://www.star-telegram.com) (Fort Worth, TX: January 1, 2013).